IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

RAJESH PATEL, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. VIATRIS INC., PFIZER INC., MICHAEL GOETTLER, SANJEEV NARULA, BRYAN SUPRAN, MARGARET M. MADDEN, DOUGLAS E. GIORDANO, ROBERT J. COURY, IAN READ, and JAMES KILTS, Defendants.	)	CIVIL DIVISION No. GD-21-13314 **MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION** CLASS ACTION Filed on behalf of: PLAINTIFF RAJESH PATEL

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Lead Plaintiff Rajesh Patel ("Lead Plaintiff"), on behalf of himself and all other members of the proposed Settlement Class, respectfully submits this brief in support of his motion for: (i) final approval of the proposed Settlement of the above-captioned class action (the "Action"); (ii) approval of the proposed plan of allocation for distributing the proceeds of the Settlement to eligible claimants (the "Plan of Allocation"); and (iii) final certification of the Settlement Class.[1]

The Motion is based on the following memorandum of law and the Declaration of Max R. Schwartz in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, (II) Lead Counsel's Application for an Award of Attorneys' Fees and Payment of Expenses, and (III) Lead Plaintiff's Request for a Service Award (the "Schwartz Declaration"), submitted herewith.[2] A proposed final order and judgment, negotiated by the Parties as part of the Settlement, is also submitted herewith.

PRELIMINARY STATEMENT AND HISTORY OF THE CASE

Following the Stipulation, and the Preliminary Approval Order, Lead Plaintiff now moves for Final Approval of the proposed Settlement of the Action, which would result in an excellent recovery – a $16 million cash payment to the Settlement Class (the "Settlement Amount"). The Action arises out of alleged untrue and misleading statements made by Defendants[3] in connection

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[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated January 18, 2024 (the "Stipulation"), filed with the Court on January 18, 2024.

[2] The Schwartz 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, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation; among other things. Unless otherwise indicated citations to "¶__" in this memorandum refer to paragraphs in the Schwartz Declaration.

[3] "Defendants" are Viatris Inc. ("Viatris"), Pfizer Inc., Michael Goettler, Sanjeev Narula, Bryan Supran, Margaret M. Madden, Douglas E. Giordano, Robert J. Coury, Ian Read, and James Kilts.

with the merger of Upjohn, Inc., a spin-off of Defendant Pfizer Inc., and Mylan N.V. (the "Merger") to create Defendant Viatris in November 2020, and in connection with the issuance of Viatris shares to the Settlement Class pursuant to the Merger and those statements. Defendants deny all such allegations. The terms of the Settlement are detailed in the Stipulation, which was executed by the Parties on January 18, 2024, after a full-day, arm's-length, in-person mediation session in New York City under the auspices of the Hon. Layn R. Phillips (U.S.D.J., ret.) ("Judge Phillips" or the "Mediator") that resulted in a "mediator's proposal" – which the Parties accepted.

As described below and in the accompanying Schwartz Declaration, the decision to settle was well-informed by over two years of contentious and hard-fought litigation that involved (i) a comprehensive investigation before the filing of the operative Amended Class Action Complaint ("Amended Complaint") on January 3, 2023; (ii) almost 200 pages of briefing on Defendants' preliminary objections to the Amended Complaint; (iii) a three-hour hearing on those objections; (iv) supplemental memoranda following argument submitted by the parties in support of their positions in August and September 2023; and (v) the full-day mediation, including mediation statements and subsequent negotiations of the Stipulation. *See generally* Schwartz Declaration, §§II.B-C.

Lead Counsel, which has extensive experience and expertise in prosecuting securities class actions, submits that the $16-million recovery is an excellent resolution of this complex litigation in light of the specific risks of continued litigation, particularly given Defendants' pending preliminary objections. Lead Plaintiff, who was actively involved in the Action, diligently

represented the Settlement Class and fully supports the Settlement. *See* Schwartz Decl., Ex. 1 (Affidavit of Rajesh Patel) ¶6.[4]

For these and other reasons detailed below, the Settlement readily satisfies the elements for final approval. Lead Plaintiff therefore respectfully requests that the Court grant this Motion, and also finally certify the Settlement Class. In addition, the Plan of Allocation, which was developed with the assistance of Lead Plaintiff's consulting damages expert, is a fair and reasonable method for distributing the Net Settlement Fund and should also be approved by the Court.

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On February 16, 2024, the Court entered an order preliminarily approving the Settlement and approving the proposed forms and methods of providing notice to the Settlement Class (the "Preliminary Approval Order"), and the Claims Administrator has disseminated notice pursuant to that Order. Specifically, through records maintained by Viatris's transfer agent and information provided by brokerage firms and other nominees, the Court-appointed Claims Administrator A.B. Data, Ltd. ("A.B. Data"), caused the Notice and Claim Form (together, the "Claim Packet") to be mailed by first-class mail to potential Settlement Class Members. *See* Schwartz Decl., Ex. 2 (Declaration of Jack Ewashko Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Ewashko Declaration")) ¶¶2-8. A total of 462,416 Claim Packets have been mailed as of May 7, 2024. *Id.*, ¶8. On March 11, 2024, the Summary Notice was disseminated over the internet using *PR Newswire* and published in *Business Wire. Id.*, ¶8 and Exs. 2-B & 2-C attached thereto.

[4] Unless otherwise indicated, all exhibits referenced herein are annexed to the Schwartz Declaration.

The Notice and Claim Form were also posted, for review and easy downloading, on the website established by A.B. Data for purposes of this Settlement. *Id.*, ¶14.

The Court-approved Notice described, *inter alia,* the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally id.*, ¶2 & Ex. 2-A. The Notice also gave the deadlines for objecting, seeking exclusion, submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id.*

While the deadline for requesting exclusion or objecting to the Settlement (May 13, 2024, and May 22, 2024, respectively) has not yet passed, to date there have been no objections submitted to any part of the Settlement, and just one valid request for exclusion.[5]

RELIEF REQUESTED

Lead Plaintiff respectfully requests that the Court: (1) grant final approval of the Settlement; (2) approve the Plan of Allocation; (3) certify a class for purposes of settlement; and (4) enter an Order and Final Judgment Approving Class Action Settlement and Plan of Allocation granting the aforesaid relief.

[5] Several requests for exclusion have been received that are not valid because the persons who submitted the requests are not members of the Settlement Class. Should any additional objections or requests for exclusion be received, Lead Plaintiff will address them in their reply papers, which are due to be filed with the Court on June 5, 2024.

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

A. The Standards for Final Approval of a Class Action Settlement

"[S]ettlements are favored in class action lawsuits." *Dauphin Deposit Bank and Trust Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999). As the United States Court of Appeals for the Third Circuit[6] has recognized, "[t]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004); *accord In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.");[7] *see also Moore v. Comcast Corp.*, No. 08-773, 2011 WL 238821, at *3 (E.D. Pa. Jan. 24, 2011) ("Settlement of complex class action litigation conserves valuable judicial resources, avoids the expense of formal litigation, and resolves disputes that otherwise could linger for years.").

Pennsylvania Rule of Civil Procedure 1714(a) provides that "no class action shall be compromised, settled or discontinued without the approval of the court after hearing." In *Brophy v. Phila. Gas Works*, the court explained that "a trial court's approval of a class action settlement as fair involves a two-step process." 921 A.2d 80, 88 (Pa. Commw. 2007). Given the Court's preliminary approval of the Settlement, entry of the Preliminary Approval Order, and

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[6] Pennsylvania state courts have looked to federal courts in the context of complex class action litigation. *See, e.g., Milkman v. Am. Travellers Life Ins. Co.,* No. 011925, 2002 WL 778272, at *24 (Pa. Com. Pl. Apr. 1, 2002) (citing to Third Circuit and other federal case law when assessing a class action settlement).

[7] Unless otherwise noted, citations are omitted and emphasis is added.

dissemination of the Notice, we are now at the second step: the Court's consideration of final approval.

The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement falls within a "range of reasonableness" after considering the following seven factors: (1) the risks of establishing liability and damages; (2) the range of reasonableness of the settlement in light of the best possible recovery; (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation; (4) the complexity, expense, and likely duration of the litigation; (5) the state of proceedings and the amount of discovery completed; (6) the recommendations of competent counsel; and (7) the reaction of the class to the settlement. *Dauphin*, 727 A.2d at 1078; *accord Buchanan v. Century Fed. Sav. and Loan Ass'n*, 393 A.2d 704, 709 (Pa. 1978) (citing *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)).[8]

Since a settlement is a compromise, the trial court should not decide the merits of the case. *See Buchanan*, 393 A.2d at 710–11. Moreover, the trial court should not attempt to substitute its own judgment for that of the parties, but rather, must consider all relevant factors and view the negotiated settlement as a whole. *See e.g.*, *Dauphin*, 727 A.2d at 1078 ("As with valuation problems in general, there will usually be a difference of opinion as to the appropriate value of a settlement. For this reason, judges should analyze a settlement in terms of a 'range of

[8] Federal Rule of Civil Procedure 23(e), to the extent its consideration is helpful to the Court, was amended to, among other things, specify that in considering approval of a settlement, courts should assess whether: (i) the class representatives and class counsel have adequately represented the class; (ii) the settlement was negotiated at arm's-length; (iii) the relief is adequate given "the costs, risks, and delay of trial and appeal," "the effectiveness [. . .] of distributing the relief to the class," "the terms of any proposed award of attorney's fees," and "any agreements required to be identified under Rule 23(e)(3)"; and whether (iv) the settlement treats class members equitably relative to each other. *See* amendments to Rule 23(e)(2)(A)-(D). Many of these considerations are already among the factors that courts within Pennsylvania weigh and each are readily satisfied here, as discussed below.

reasonableness' and should generally refuse to substitute their business judgment for that of the proponents.").

And where, as here, settlement results from "arms-length negotiations between experienced counsel, before an experienced and independent mediator[,]" many courts hold that "an initial presumption of fairness" applies. *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d 483, 493 (E.D. Pa. 2018); *see, e.g.*, *Milkman*, 2002 WL 778272, at *5 ("[A] settlement that is the product of arm's-length negotiations conducted by experienced counsel is presumed to be fair and reasonable." (alteration in original)); *Murphy v. Eyebobs, LLC*, 638 F. Supp. 3d 463, 479 (W.D. Pa. 2021) (same).

B. Application of the Relevant Factors Supports Final Approval of the Settlement

1. The Risks of Establishing Liability and Damages Support Approval of the Settlement

"One very significant factor in determining whether a settlement is reasonable is the risk involved in proving liability and damages." *Treasurer of State v. Ballard Spahr Andrews & Ingersoll LLP*, 866 A.2d 479, 484 (Pa. Commw. 2005). "The risks surrounding a trial on the merits are always considerable." *Milkman*, 2002 WL 778272, at *13. A reviewing court "must recognize the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id.* Although Lead Plaintiff believes that the case against Defendants is strong, that confidence must be tempered by the fact that the Settlement is certain and that every case involves significant risk of no recovery, particularly in a complex case such as this one. Here, there were no company admissions, or parallel governmental proceedings, which would have aided Lead Plaintiff in proving key elements of the case. There is no question that to prevail here, Lead Plaintiff would have confronted numerous legal and factual challenges, while trying to prove difficult securities claims.

As set forth in detail in the Schwartz Declaration, at §IV.A.1, Defendants have raised, and would continue to pursue, multiple factual and legal challenges to establishing liability and damages, which pose meaningful challenges to Plaintiff proving his claims and recovering damages at trial, and ultimately successfully defending such a victory on appeal. Defendants have also denied all claims and would continue to do so if the case were to continue.

For example, as a matter of fact, Defendants have maintained that Plaintiff is simply wrong that there were undisclosed negative impacts on Upjohn's revenues prior to the Merger due to (i) an expansion of China's VBP program; and (ii) loss of Lyrica exclusivity in Japan. Defendants contend that the expansion of VBP, while announced prior to the Merger (and allegedly disclosed by Pfizer in August 2020), was not implemented until November 2020 (the same month as the Merger) and so could not have impacted Upjohn's per-Merger revenues. Likewise, Defendants contend that while Upjohn lost its fight to maintain Lyrica exclusivity in Japan in July 2020 (before the Merger), Pfizer allegedly disclosed this fact in August 2020 and generic competitors to Upjohn's Lyrica did not enter the Japanese market until December 2020, after the Merger closed. Defendants also contend that Pfizer regularly updated the market on Upjohn's financial performance, including quarterly revenues, throughout 2020, such that any relevant information was disclosed, and there were no actionable omissions.

Establishing the fact of liability would, therefore, require extensive discovery into legacy Upjohn's businesses in China and Japan in order to prove Defendants misrepresented the financial health and future prospects of those businesses. Doing so would likely necessitate seeking documents and testimony from local, in-country current and former Viatris employees, some of which would likely require translations from Chinese and Japanese to English. And, even if Plaintiff could obtain such discovery, there was no guarantee that the facts would ultimately

support Plaintiff's claims, as Defendants have consistently maintained that Upjohn's revenues declined due to other, fully disclosed, factors.

But even if Plaintiff could develop the facts necessary to prove liability at trial, Defendants have argued that Plaintiff's Securities Act claims fail as a matter of law. Plaintiff alleges that declines in Upjohn's revenues due to the expansion of China's VBP program and the loss of Lyrica exclusivity occurred after both the Registration Statement became effective in February 2020 and the Mylan shareholders voted to approve the Merger in June 2020. Defendants have argued that Plaintiff's Section 11 claim fails as a matter of law because liability for the misstatements alleged in the Registration Statement must be measured from the February 2020 effective date and so cannot encompass any later developments. Similarly, Defendants claim that Plaintiff's Section 12(a)(2) claim fails because liability for Section 12(a)(2) is to be measured as of the date Mylan shareholders voted to approve the Merger, June 30, 2020, and cannot encompass later developments either.

Defendants have also raised additional factual issues that Plaintiff would have to overcome to ultimately prevail at trial (and on appeal). Among other things, Defendants maintain that they have made no misstatements, or that many of the alleged misstatements are inactionable as puffery or opinions, and/or subject to the statutory safe harbor appliable to securities claims. Prevailing on some or all of these points could severely limit, if not totally defeat, Plaintiff's claims.

Defendants also have at least two affirmative defenses. First, under the Securities Act damages caused by a misstatement are presumed but may be rebutted by showing the declines in a stock's price were caused by something other than the alleged misstatement. *See* 15 U.S.C. §77(I). This is the so-called "negative causation" defense. Here, Defendants have maintained that even if Plaintiff could prove liability, Defendants could still prove negative causation and thus

significantly reduce, if not entirely eliminate, Plaintiff's damages. Plaintiff believes it would be possible to overcome this defense, but doing so would likely result in a "battle of the experts," including over detailed event studies on days when Viatris' share price declined to assess what caused those declines.

Second, the Individual Defendants would have an affirmative "due diligence" defense to liability under the Securities Act. The due diligence defense permits an individual (but not an issuer) to escape liability for misstatements by proving certain elements including that he or she conducted an objectively reasonable investigation into the Offering Documents. *See* 15 U.S.C. §77k(b)(3)(A). Given the roles and involvement of the Individual Defendants, Plaintiff believes it is unlikely that they would be able to prove their due diligence defenses, but this is something that would potentially have to be decided by a jury at trial.

Finally, certain Individual Defendants filed preliminary objections on the grounds that the Court does not have personal jurisdiction over them. If this case were to continue, these Individual Defendants would continue to pursue their motions.

In sum, Plaintiff believes that Defendants' positions are wrong as a matter of law and of fact, while recognizing that, if the case were to proceed, there was significant uncertainty on how the Court would have ruled on these issues. Plaintiff's case also would require extensive fact and expert discovery into such issues as financial projections and analysis underlying Defendants' statements in the Offering Documents. Developing such evidence would likely be a highly technical process, which would demand the skills and expertise of forensic accountants, among others. In contrast, the Settlement provides an immediate, significant recovery for the Settlement Class without needing to risk further litigation.

2. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery Supports Approval of the Settlement

Lead Plaintiff's damages expert estimates that a reasonable maximum class-wide recovery was approximately $730,000,000, if Lead Plaintiff "ran the table" on all liability and damages issues prior to and at trial. Defendants have maintained that Plaintiff's best-case scenario for damages is much lower, and that due to negative causation and other arguments, the actual amount of damages that Lead Plaintiff could recover at trial is a fraction of that amount, or that there are potentially no damages at all. The Settlement's recovery of $16,000,000 compares favorably to other securities class actions in absolute and relative terms. In 2023, the median settlement recovery for securities class actions involving estimated losses between $600 million and $999 million was about 1.7%. *See* Edward Flores, et al., *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, NERA ECON. CONSULTING, at 25 fig.21 (Jan. 24, 2024), https://www.nera.com/content/dam/nera/publications/2024/PUB_2023_Full-Year_Sec_Trends_0123.pdf. The Settlement recovery here is about 2.1% of maximum reasonable damages, which is above the median recovery – and the recovery here is even greater when compared to lower maximum damages Defendants advocate for, or that would occur if Plaintiff did not run the table on all issues. Further, the recovery here is well above the $14.4 million median settlement amount for securities class actions settled in 2023 (excluding outlier settlements greater than $1 billion or equal to $0). *Id.* at 18, 20 fig.19. The above-average recovery here is even more impressive in light of the substantial risks of establishing liability and damages discussed here (*see infra* §I.B.3).

Further, the Settlement is non-recapture, *i.e.*, it is not a claims-made settlement, so the $16-million recovery will not be reduced. Upon the occurrence of the Effective Date, no Defendant, Released Defendant Person, or any other Person or entity who or which paid any portion of the

Settlement Amount, shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever. Stip., ¶2.3.

3. The Range of Reasonableness in Light of the Risk of Continued Litigation Supports Approval of the Settlement

As detailed above (*see supra* §I.B.1), Defendants made numerous factual and legal arguments against Plaintiff's claims, which, if successful, would result in dismissal of this case and no recovery for the Class. To that point, Plaintiff notes that at the August 8, 2023, hearing on Defendants' Preliminary Objections, Judge Szefi asked serious questions about Plaintiff's claims given those arguments. For example, during that three-hour hearing, the Court questioned, *inter alia*, whether: (i) Plaintiff had and could allege a present omission in the Offering Documents (8/8/23 Tr. at 20:20–21:19); (ii) the 70 plus pages of disclosures in the Offering Documents sufficiently disclosed the risks to Viatris of potential expansion of VBP in China and loss of Lyrica exclusivity in Japan (*id*. at 80:23–82:13); and (iii) this Court could exercise personal jurisdiction over many of the Individual Defendants (*id*. at 170:3–18). Judge Szefi also had questions at the August 8 hearing regarding whether, as a matter of law, Plaintiff could allege a claim under the Securities Act when much of the evidence of problems with Upjohn's revenues post-dated both the effective date of the Registration Statement and the shareholder vote approving the Merger. Indeed, the Court invited supplemental briefing from the Parties on these and other issues, which was submitted in August and September 2023.

Plaintiff believes that he had significant responses to these questions about his claims, but prevailing on the preliminary objections was far from certain. Moreover, several of these issues highlighted by Judge Szefi go to the ***legal*** sufficiency of Plaintiff's claims such that it may not have been possible to cure any defects in the claims through a further amended complaint.

Even if Plaintiff's claims had survived the preliminary objections, in whole or in part, that would just be the first step to recovery for the Class. Thereafter, Plaintiff would have to conduct extensive discovery, move to certify the Class, survive summary judgment, prevail at trial, and successfully defend those victories on appeal.

Litigation is a risky affair – securities litigation especially so – and the above-average $16,000,000 recovery in the Settlement (*see supra* §I.B.2) is clearly an outstanding result for the Class in light of the risks of continued litigation in pursuit of uncertain recovery.

4. Complexity, Expense, and Duration of Continued Litigation Supports Approval of the Settlement

Final approval is also supported by the complexity, expense, and likely duration of continued litigation. In evaluating the settlement of securities class actions, courts have repeatedly recognized that such litigation is complex and uncertain. *See, e.g., In re Rent – Way Sec. Litig.*, 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003) ("[T]his has been, and will continue to be, a very expensive case to prosecute and defend in light of the complexity of the issues and necessity for expert witnesses."); *In re Suprema Specialties, Inc. Sec. Litig.*, No. 02-168, 2008 WL 906254, at *5 (D.N.J. Mar. 31, 2008) (finding complexity of the securities class action supports final approval). As the court noted in *In re Ikon Office Solutions, Inc., Securities Litigation*, which is equally applicable here:

> [i]n the absence of a settlement, this matter will likely extend for . . . years longer with significant financial expenditures by both defendants and [Lead Plaintiffs]. This is partly due to the inherently complicated nature of large class actions alleging securities fraud: there are literally thousands of shareholders, and any trial on these claims would rely heavily on the development of a paper trail through numerous public and private documents.

194 F.R.D. 166, 179 (E.D. Pa. 2000).

If the claims had survived the pending preliminary objections, the Parties would then have to spend years conducting fact and expert discovery, brief class certification and summary

judgment – and all of that is before "[t]he time and expense of a securities class action trial is substantial and would very likely lead to post-trial motions and subsequent appeals that could extend this case for several more years." *Kanefsky v. Honeywell Int'l. Inc.*, No. 18-cv-15536, 2022 WL 1320827, at *4 (D.N.J. May 3, 2022). Indeed, this case was first filed in October of 2021 and the hearing on Defendants' preliminary objections did not occur until almost two years later. Barring a settlement, there is no question that this case would be litigated for years, taking a considerable amount of court time and costing millions of additional dollars, with the possibility that the end result would be no better for the class, and might be worse.

The Settlement, therefore, provides sizeable and tangible relief to the Settlement Class now, without subjecting Settlement Class Members to the risks, duration, and expense of continuing litigation.

5. State of the Proceedings Supports Approval of the Settlement

Courts also consider "whether counsel had an adequate appreciation of the merits of the case before negotiating[,]" and to that end look at the state of the proceedings, as well as any discovery. *Milkman*, 2002 WL 778272, at *18.

A substantial amount of work has been performed on this case, beyond what is typical prior to a decision on preliminary objections, and more than sufficient to fully understand the risks, strengths, and weaknesses of the claims at issue. To start, Plaintiffs' Counsel undertook an extensive investigation of the facts prior to filing the initial complaint and the Amended Complaint. This included reviewing relevant public statements and financial disclosures and working with accounting experts to develop Plaintiff's allegations and theory of the case. This investigation ultimately culminated with the filing of a lengthy and detailed Amended Complaint. Thereafter, the parties engaged in extensive briefing on Defendants' four separate preliminary objections to the amended complaint. This months-long process involved hundreds of pages of briefing and

exhibits, a three-hour hearing, and post-hearing supplemental briefing. The preliminary objections process permitted the Parties to fully develop and evaluate each other's arguments as to the legal sufficiency of Plaintiff's claims. This is significant because many of the issues raised by Defendants (*see supra* §II.B.1) were potentially matters of law, which could be evaluated (and adjudicated) without the need for fact discovery.

Further, the Parties exchanged mediation statements and engaged in a full-day mediation before a well-respected retired federal judge with years of experience in securities cases. During this process, the Parties were able to further share their positions on the claims and hear from the Mediator. Indeed, the Settlement was the result of the Mediator's proposal of how to resolve this case after hearing all that both sides had to offer. *See* Schwartz Declaration, ¶¶38-41, 82.

In sum, Lead Plaintiff and Lead Counsel had a full understanding of the likelihood of success and the potential recovery at trial at the time the Settlement was entered into.

6. The Recommendation of Counsel Supports Approval of the Settlement

In evaluating the fairness of a settlement, the "opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. 1984); *Shaev v. Sidhu*, No. 0983, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *30 (Pa. Com. Pl. Mar. 5, 2009) ("Although a judge must take care that there is no collusion between the proponents of the proposed class action settlement, if no indicia of collusion are present, and while there was extensive, adversarial discovery, then 'the recommendations and opinions of counsel are entitled to substantial consideration."); *see also Alves v. Main*, No. 01-cv-789, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("[C]ourts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class."), *aff'd*, 559 F. App'x. 151 (3d Cir. 2014); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543

(D.N.J. 1997) ("[T]he Court credits the judgment of Plaintiffs' Counsel, all of whom are active, respected, and accomplished in this type of litigation."), *aff'd*, 148 F.3d 283 (3d Cir. 1998).

Lead Counsel are two nationally recognized law firms that specialize in securities class actions, who strongly recommend the Settlement. Counsel reached this conclusion after, among other things: (i) an extensive factual investigation leading to the filing of a detailed complaint that contained 182 paragraphs of detailed allegations across 61 pages, (ii) hundreds of pages of briefing on Defendants' preliminary objections, and (iii) an arm's-length mediation overseen by a former federal judge – all of which are further detailed above and in the Schwartz Declaration, at §§II.B-C and IV.A.5. Based upon all of this analysis and testing of the claims, as well their experience in similar litigation, Plaintiff's Counsel concluded that the Settlement is fair, reasonable, and adequate, particularly when contrasted against the significant risks, costs, and uncertainties of continued litigation described above (*see supra* §§III.B.1-4).

As a result, Lead Plaintiff and Lead Counsel had a sound basis for assessing the strengths and weaknesses of the claims and Defendants' defenses when they engaged in mediation and agreed to the Settlement. Their judgment that the Settlement is in the best interest of the Settlement Class should therefore be given substantial weight.

7. Reaction of the Settlement Class to Date Supports Approval of the Settlement

While the deadlines set by the Court for Settlement Class Members to exclude themselves or object in response to the Notice have not yet passed (May 13, 2024, and May 22, 2024, respectively), to date, the response has been positive. No objections have been received, and only one valid exclusion has been received. *See* Ewashko Decl. ¶15. Moreover, Lead Plaintiff fully supports the Settlement, as set forth in his accompanying declaration. Lead Plaintiff will update

the Court on the response to the Notice from Settlement Class Members in his reply papers, which are scheduled to be filed after the forgoing deadlines have passed.

* * *

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant final approval to the proposed Settlement.

II. THE PLAN OF ALLOCATION FOR DISTRIBUTING RELIEF TO THE SETTLEMENT CLASS IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

At the final Settlement Hearing, the Court will be asked to approve the proposed Plan of Allocation for distributing the proceeds of the Settlement to eligible claimants.

The proposed Plan of Allocation is designed to equitably distribute the Settlement proceeds among the members of the Settlement Class who submit valid Proof of Claim forms ("Claim Forms") and have relevant losses. To receive a distribution from the Net Settlement Fund, Settlement Class Members are required to submit a Claim Form, which was mailed with the Notice and also is available on the Settlement website. The Claims Administrator will review the Claim Forms and supporting documents claimants submit, provide claimants an opportunity to cure any deficiencies identified, and mail or wire Settlement Class Members with valid claims their *pro rata* share of the Net Settlement Fund in accordance with the POA.

The POA was formulated by Lead Counsel in consultation with the Lead Plaintiff's damages expert, who has designed plans of allocation approved by numerous courts previously. The POA provides for a customary *pro rata* allocation of the Net Settlement Fund relative to each Authorized Claimant's "Recognized Loss". As set forth in the Notice, the Plan of Allocation calculates a Recognized Loss for each share of Viatris common stock acquired pursuant to the Registration Statement for the Merger, which a Claimant lists in the Claim Form and supports with adequate documentation. The POA calculates each Claimant's Recognized Loss using a simple

formula based on the Securities Act's statutory damages formula for the claims at issue and the time and price at which a Claimant sold the relevant Viatris shares.

The Claims Administrator will calculate each claimant's Recognized Loss using the transaction information provided by claimants in their Claim Forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors with hundreds of transactions, via e-mail to the Claims Administrator's electronic filing team. Each claimant's Recognized Loss, in turn, will determine his or her *pro rata* share of the Net Settlement Fund. After the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made determinations of each Authorized Claimant's *pro rata* share, Lead Counsel will apply for a "Settlement Distribution Order," which authorizes distributions to be made to eligible claimants of their share in the form of checks and wire transfers. *See* Stipulation, ¶¶4.5–4.10, 4.14.

To the extent funds remain in the Net Settlement Fund after the initial distribution to Authorized Claimants (*e.g.*, due to uncashed checks), the Claims Administrator will make repeated distributions on the same *pro rata* basis for as long as it is economically feasible to do so, after payment of Notice and Administration Expenses and Taxes. *See id.*, ¶4.15. Any balance that still remains in the Net Settlement Fund after redistribution(s), which is not feasible or economical to reallocate, after payment of any outstanding Notice and Administration Expenses or Taxes, will be contributed to the Pennsylvania Lawyers Trust Account Board (and may also be distributed to a 501(c)(3) nonprofit organization selected by Lead Counsel and approved by the Court). *Id.*

To date, no objections to the POA have been received, even though the POA was set forth in full in the Notice. Accordingly, Lead Plaintiff respectfully submits that the POA is fair and reasonable and should be approved.

III. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

The Court previously granted preliminary certification of the Settlement Class for settlement purposes. *See* Preliminary Approval Order, ¶¶1–2. Nothing has occurred since then to cast doubt on whether the applicable prerequisites of the Pennsylvania Rules of Civil Procedure have been met. Accordingly, for all the reasons stated in Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification, and for Authorization of Class Notice, submitted January 18, 2024, Lead Plaintiff requests that the Court reaffirm its determinations and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Pa. R. Civ. P. 1702, 1708, and 1709, appoint Mr. Patel as Class Representative and Scott+Scott Attorneys at Law LLP and the Hall Firm, Ltd., as Class Counsel.

CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court finally approve the proposed Settlement, finally certify the Settlement Class for purposes of the Settlement only, and approve the proposed Plan of Allocation.

Dated: May 8, 2024

Respectfully submitted,

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