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 COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES** CLASS ACTION Filed on behalf of: PLAINTIFF RAJESH PATEL Counsel of Record for Plaintiff:

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TABLE OF CONTENTS

PRELIMINARY STATEMENT AND HISTORY OF THE CASE 1

ARGUMENT 3

I. LEAD PLAINTIFF'S COUNSEL ARE PERMITTED AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND CREATED BY THEIR EFFORTS 3

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND MERIT APPROVAL UNDER LONG-ESTABLISHED PRECEDENT 4

A. The Requested Attorneys' Fees Are Reasonable Applying the Percentage of Recovery Method 5

B. The Requested Attorneys' Fees Are Also Reasonable Under the Lodestar Method 7

C. The Requested Fees Are Reasonable Under the Factors Set Forth in Rule 1717 10

1. The Magnitude, Complexity, and Uniqueness of the Litigation 10

2. The Results Achieved and Benefits Conferred on the Class 13

3. Time and Effort Expended on the Action 15

4. Receipt of a Fee Is Contingent on Success 17

5. Skill of Plaintiff's Counsel and Quality of Services 19

III. PLAINTIFF'S COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED 20

IV. LEAD PLAINTIFF'S REQUEST FOR A SERVICE AWARD 21

CONCLUSION 22

TABLE OF AUTHORITIES

Page(s)

Cases

Abadilla v. Precigen, Inc.,
No. 20-CV-06936, 2023 WL 7305053 (N.D. Cal. Nov. 6, 2023) 9

Bateman Eichler, Hill Richards, Inc. v. Berner,
472 U.S. 299 (1985).....4, 18

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980).....4

Bredbenner v. Liberty Travel, Inc.,
No. CIV.A. 09-1248, 2011 WL 1344745 (D.N.J. Apr. 8, 2011) 8

Brown v. Pro Football, Inc.,
839 F. Supp. 905 (D.C. Cir. 1993).....21

Gunter v. Ridgewood Energy Corp.,
223 F.3d 190 (3d Cir. 2000).....4, 7

Hall v. AT&T Mobility LLC.,
No. 07-5325, 2010 WL 4053547 (D.N.J. Oct. 13, 2010) 20, 21

Hensley v. Eckerhart,
461 U.S. 424 (1983).....13

Hicks v. Morgan Stanley & Co.,
No. 01 Civ. 10071, 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005) 22

Hinckley v. E.I. DuPont De Nemours and Co.,
583 F. Supp. 11 (E.D. Pa. 1983) 8

In re AT&T Corp. Sec. Litig.,
455 F.3d 160 (3d Cir. 2006).....5, 7

In re ATI Techs., Inc. Sec. Litig.,
No. CIV.A. 01-2541, 2003 WL 1962400 (E.D. Pa. Apr. 28, 2003) 8

In re Bridgeport Fire Litig.,
8 A.3d 1270 (Pa. Super. Ct. 2010).....6, 10

In re Brightview Holdings, Inc. Sec. Litig.,
No, 2019-07222, slip op. (Pa. Comm. Pl. Dec. 17, 2020) 22

In re Cendant Corp. Sec. Litig.,
404 F.3d 173 (3d Cir. 2005).....4

In re CIGNA Corp. Sec. Litig.,
No. 02-8088, 2007 WL 2071898 (E.D. Pa. July 13, 2007) 5

In re Colgate-Palmolive Co. ERISA Litig.,
36 F. Supp. 3d 334 (S.D.N.Y. 2014).....21

In re Corel Corp. Inc. Sec. Litig.,
293 F. Supp. 2d 484 (E.D. Pa. 2003) 6

In re Gen. Instrument Sec. Litig.,
209 F. Supp. 2d 423 (E.D. Pa. 2001) 7

In re Herley Indus. Inc. Sec. Litig.,
2:06-cv-02596-JS, slip op. (E.D. Pa. Sept. 13, 2010).....6

In re Ikon Office Sols., Inc., Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).....4, 10

In re Intelligent Elecs., Inc. Sec. Litig.,
No. 92-CV-1905, 1997 WL 786984 (E.D. Pa. Nov. 26, 1997) 5, 7

In re Maxar Techs. Inc. S'holder Litig.,
No. 19CV357070 (Cal. Super. Ct. Dec. 11, 2023) 9

In re Oppenheimer Rochester Funds Grp. Sec. Litig.,
No. 09-md-02063, slip op. (D. Colo. Nov. 6, 2017).....22

In re Oracle Corp. Sec. Litig.,
No. C 0100988, 2009 WL 1709050 (N.D. Cal. June 19, 2009) 18

In re Prudential Ins. Co. Am. Sales Practices Litig.,
148 F.3d 283 (3d Cir. 1998).....5, 8

In re Ravisent Techs., Inc. Sec. Litig.,
No. CIV.A.00-CV-1014, 2005 WL 906361 (E.D. Pa. Apr. 18, 2005) 6

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

In re Unisys Corp. Sec. Litig.,
Civ. A. No. 99-5333, 2001 WL 1563721 (E.D. Pa. Dec. 6, 2001).....6

In re Vaxart, Inc. Sec. Litig.,
No. 3:20-cv-05949-VC, ECF No. 274 (N.D. Cal. Jan. 25, 2023).....9

In re ViroPharma., Inc. Sec. Litig.,
C.A. No. 12-2714, 2016 WL 312108 (E.D. Pa. Jan. 25, 2016) 13, 19, 20

Milkman v. Am. Travellers Life Ins. Co.,
No. 011925, 2002 WL 778272 (Pa. Com. Pl. Apr. 1, 2002) ..... *passim*

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

Rodriguez v. Fulton Bank, N.A.,
No. 1303748, 2016 WL 7163262 (Pa. Com. Pl. Mar. 7, 2016).....7, 22

Smith v. Upto65.com,
No. GD 0800651, 2008 WL 4453493 (Pa. Com. Pl. Apr. 11, 2008).....7

Sullivan v. DB Invs. Inc.,
667 F.3d 273 (3d Cir. 2011).....5

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007).....4

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

Ward v. Succession of Freeman,
854 F.2d 780 (5th Cir. 1998) 18

Yang v. Focus Media Holding Ltd.,
No. 11 Civ. 9051, 2014 WL 4401280 (S.D.N.Y. Sept. 4, 2014).....21

Statutes, Rules, and Regulations

15 U.S.C. §77(I).....13

Pennsylvania Rule of Civil Procedure 1717 ..... *passim*

Other Authorities

5 NEWBERG ON CLASS ACTIONS (5th ed.)

§14.03..... 8
§16:5 20

Charles Silver, Class Actions In The Gulf South Symposium, *Due Process and the Lodestar Method: You Can't Get There From Here*,
74 TUL. L. REV. 1809 (2000) 6

Edward Flores et al., *2023 Full-Year Review*, NERA ECON. CONSULTING (Jan. 24, 2024), https://www.nera.com/content/dam/nera/publications/2024/PUB_2023_Full-Year_Sec_Trends_ 0123.pdf.....14

Lead Counsel Scott+Scott Attorneys at Law LLP and the Hall Firm, Ltd., on behalf of Plaintiff's Counsel, hereby respectfully request, in connection with the proposed settlement of the above-captioned class action: (i) an award of attorneys' fees in the amount of one-third of the Settlement Fund ($5,333,333.33), plus accrued interest; (ii) payment of litigation expenses incurred by Plaintiff's Counsel in the amount of $164,005.56, plus accrued interest; and (iii) an award of $7,500 to Lead Plaintiff for his effort on behalf of the proposed Settlement Class.[1]

The Motion is based on the following memorandum of law and the Declaration of Max R. Schwartz (the "Schwartz Declaration") in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, (II) Lead Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and (III) Lead Plaintiff's Request for a Service Award, submitted herewith.[2]

PRELIMINARY STATEMENT AND HISTORY OF THE CASE

Plaintiff's Counsel have vigorously litigated this case on an entirely contingent basis against a well-resourced defense that has fought the claims aggressively. The $16 million

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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. Lead Counsel Scott+Scott Attorneys at Law LLP and the Hall Firm, Ltd., as well as The Schall Law Firm and Lynch Carpenter LLP are Plaintiff's Counsel in the Action.

[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 litigation efforts; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Schwartz Declaration.

All exhibits referenced herein are annexed to the Schwartz Declaration. In some instances, those exhibits themselves have additional exhibits annexed to them. For clarity, citations to those additional exhibits – which are themselves annexed to exhibits to the Scwartz Declaration – will contain hyphenated letter designations herein . The first numerical reference is to the designation of the entire exhibit attached to the Schwartz Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

proposed Settlement, if approved by the Court, represents an excellent result for the Settlement Class. The Settlement is particularly favorable considering the significant litigation risks present in this case. As discussed below, and detailed in the accompanying Schwartz Declaration, Defendants advanced strong defenses to Lead Plaintiff's claims, and there was considerable uncertainty throughout the case as to whether Lead Plaintiff would be able to achieve a meaningful recovery, if litigation continued.

To achieve the recovery here, Lead Counsel devoted substantial resources to this litigation by, among other things: (i) conducting a thorough investigation of the allegations, including reviewing relevant public statements and financial disclosures and working with accounting experts to develop Lead Plaintiff's allegations and theory of the case; (ii) successfully moving to remand the Action to this Court (where it always belonged), after Defendants removed the Action to federal court; (iii) preparing and filing a detailed Amended Complaint; (iv) opposing Defendants' four comprehensive preliminary objections to the Amended Complaint, which involved hundreds of pages of briefing and exhibits, as well as a three-hour hearing; (v) consulting with experts on damages; (vi) engaging in settlement discussions under the guidance of a highly regarded and experienced mediator to reach the Settlement; (vii) thereafter resolving certain non-monetary terms of the Settlement, memorializing all terms of the Settlement in the Stipulation; and (viii) supervising the administration of the Settlement. Through these efforts, Lead Counsel had a deep understanding of the strengths and weaknesses of the claims and defenses in the Action at the time the Settlement was reached and firmly believe that the Settlement is in the best interest of the Settlement Class. *See generally* Schwartz Declaration, §§II.B-C & IV.A.

As discussed below, the amount of fees requested for these efforts is within the range of fees awarded in comparable class action settlements by courts in Pennsylvania and within the Third

Circuit.[3] Additionally, the requested fee has the full support of Lead Plaintiff. *See* Schwartz Decl., Ex. 1 (Affidavit of Rajesh Patel) ¶6.

Finally, the reaction of the Settlement Class to date supports the motion. Pursuant to the Court's Preliminary Approval Order, 462,416 copies of the Notice have been mailed to potential Settlement Class Members and their nominees, and the Summary Notice was transmitted over the *PR Newswire* and printed in *Business Wire.* *See* Schwartz Decl., Ex. 2 (Declaration of Jack Ewashko) ¶¶8-9. The Notice advised potential Settlement Class Members that Lead Counsel would seek fees in an amount not to exceed one-third of the Settlement Fund and payment of up to $300,000 in litigation expenses. *See id.*, Ex. A at 10. While the May 22, 2024, deadline for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objection to the Fee and Expense Application has been received (and only one Class Member has validly opted out of the Settlement).

Accordingly, Lead Counsel respectfully request that the Court enter the accompanying proposed Order Granting Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses.

ARGUMENT

I. LEAD PLAINTIFF'S COUNSEL ARE PERMITTED AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND CREATED BY THEIR EFFORTS

The U.S. Supreme Court has long recognized that "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

[3] 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 attorneys' fees in a class action).

from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);[4] *In re Cendant Corp. Sec. Litig.,* 404 F.3d 173, 205 (3d Cir. 2005) ("attorney[s] whose efforts create, discover, increase, or preserve a [common] fund are entitled to compensation"). Pennsylvania courts have consistently adhered to this rule. *See, e.g.*, *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192–93 (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.").

Courts have emphasized that the award of attorneys' fees from a common fund serves to encourage skilled counsel to represent classes of persons who otherwise may not be able to retain counsel to represent them in complex and risky litigation. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (the goal of percentage fee awards is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation"). Indeed, the U.S. Supreme Court has repeatedly concluded that private securities actions (like this Action) are "an essential supplement to criminal prosecutions and civil enforcement actions," brought by the U.S. Securities and Exchange Commission. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "a most effective weapon in the enforcement' of the securities laws and are a necessary supplement to [SEC] action").

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND MERIT APPROVAL UNDER LONG-ESTABLISHED PRECEDENT

Pennsylvania courts have used three methods to evaluate proposed awards of attorneys' fees in class action settlements: the percentage of recovery method, the lodestar method, and the

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

five-factor test under Pennsylvania Rule of Civil Procedure 1717 ("Rule 1717"). *Milkman*, 2002 WL 778272, at *24. Plaintiff's Counsel's fee request is reasonable under each of these approaches.

A. The Requested Attorneys' Fees Are Reasonable Applying the Percentage of Recovery Method

In *Blum v. Stenson*, the U.S. Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class . . . " 465 U.S. 886, 900 n.16 (1984). It is well settled that where a common fund has been created for the benefit of a class because of counsel's efforts, the award of counsel's fees on a percentage-of-the fund basis is the preferred approach. *See, e.g., In re Prudential Ins. Co. Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3d Cir. 1998) ("[t]he percentage-of-recovery method is generally favored in cases involving a common fund and is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure"'); *In re Intelligent Elecs., Inc. Sec. Litig*., No. 92-CV-1905, 1997 WL 786984, at *9 (E.D. Pa. Nov. 26, 1997) ("in 'common fund' cases, such as this, the preferred, if not mandated, method of calculating attorney fees is the percentage of recovery method").

Indeed, in the Third Circuit, the percentage-of-recovery method is "generally favored" in cases like this one, where a settlement creates a common fund. *See Sullivan v. DB Invs. Inc.*, 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); *see also In re CIGNA Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, at *4 (E.D. Pa. July 13, 2007) ("For many years, both the Supreme Court and Third Circuit have favored calculating attorneys' fees as a percentage of the class recovery.").

Compensating counsel in common fund cases with a percentage of the fund their work creates is a sound rule, because it aligns the incentives of the class and its counsel. Specifically, both the class and counsel are incentivized to pursue the maximum reasonable recovery, and to do so in an efficient manner. One of the nation's leading scholars in the field of class actions and attorneys' fees, Professor Charles Silver, has accordingly concluded:

> ***The consensus that the contingent percentage approach creates a closer harmony of interests between class counsel and absent plaintiffs than the lodestar method is strikingly broad.*** It includes leading academics, researchers at the RAND Institute for Civil Justice, and many judges, including those who contributed to the Manual for Complex Litigation, the Report of the Federal Courts Study Committee, and the report of the Third Circuit Task Force. Indeed, it is difficult to find anyone who contends otherwise.

Charles Silver, Class Actions In The Gulf South Symposium, *Due Process and the Lodestar Method: You Can't Get There From Here*, 74 TUL. L. REV. 1809, 1819–20 (2000).

Further, the requested one-third fee here is well within the range of percentages typically awarded in comparable cases by courts in Pennsylvania and within the Third Circuit. *See In re Ravisent Techs., Inc. Sec. Litig.*, No. CIV.A.00-CV-1014, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) ("courts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses"). A review of attorneys' fees awarded in class actions with comparably sized (and larger) settlements shows that both Pennsylvania state and federal courts regularly award a one-third fee under similar circumstances and supports the request here as well. *See, e.g.*, *In re Bridgeport Fire Litig.*, 8 A.3d 1270, 1289 (Pa. Super. Ct. 2010) (affirming award of 33.3% of $35 million settlement); *In re Herley Indus. Inc. Sec. Litig.*, 2:06-cv-02596-JS, slip op. at 2 (E.D. Pa. Sept. 13, 2010) (awarding 33% of $10 million settlement); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 497 (E.D. Pa. 2003) (awarding one-third of $7-million settlement and noting that the one-third "fee request in this complex case is within the reasonable range"); *Ravisent Techs.*, 2005 WL 906361, at *11 (awarding one-third of $7 million settlement); *In re*

Unisys Corp. Sec. Litig., Civ. A. No. 99-5333, 2001 WL 1563721 (E.D. Pa. Dec. 6, 2001) (awarding 33% of $5,750,000 settlement); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433 (E.D. Pa. 2001) (awarding a $16-million fee, which was one-third of $48-million settlement); *see also Rodriguez v. Fulton Bank, N.A.*, No. 1303748, 2016 WL 7163262 (Pa. Com. Pl. Mar. 7, 2016) (approving a fee of 40% of the cash fund); *Smith v. Upto65.com*, No. GD 0800651, 2008 WL 4453493 (Pa. Com. Pl. Apr. 11, 2008) (approving fee calculated as 40% of recovery, in a case where plaintiffs recovered funds misappropriated in a Ponzi scheme).

In sum, the amount of fees sought by Lead Counsel – one-third of the Settlement Fund (plus accrued interest) – is reasonable and within the range of percentage fees awarded in Pennsylvania courts and in connection with similar settlements.

B. The Requested Attorneys' Fees Are Also Reasonable Under the Lodestar Method

"In common fund cases," some courts also "cross-check the percentage award counsel asks for against the lodestar method of awarding fees," in order to assess the reasonableness of the request. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d at 199; *see, e.g.*, *Intelligent Elecs.*, 1997 WL 786984, at *9. This "cross-check . . . need not entail mathematical precision or bean-counting, and is not a full-blown lodestar inquiry." *AT&T Corp.*, 455 F.3d at 169 n.6. Instead, the Court takes counsel's base fee or "lodestar" – the hours expended on the case times the hourly rate – and then may make "[a]djustments to that fee" based on a number of factors. *Milkman*, 2002 WL 778272, at *26. In many jurisdictions, including Pennsylvania, a court may consider among things the "discretionary application of a fee enhancement to reflect the contingent risk of the particular . . . claim at issue." *Id.*, at *27.

These adjustments or enhancements to the lodestar are common, and are referred to as a "multiplier." For example, in *Milkman*, the Court of Common Pleas of Pennsylvania considered

the degree of risk in the case and the fact that the case was brought on a contingency basis, as well as the relief obtained, in ultimately awarding a 3.0-multiplier on counsel's lodestar – that is, to set the attorneys' fee, the court multiplied their lodestar by 3.0. 2002 WL 778272, at *28 (stating that ("courts have often found a multiplier of three or higher to be reasonable in a class action setting").

Likewise, other courts within Pennsylvania and numerous jurisdictions have frequently awarded fees that are multiples of counsels' lodestar-calculated fees. *See, e.g.*, *Prudential*, 148 F.3d at 341 ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding multiplier of 6.96 in securities violation case); *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248, 2011 WL 1344745, at *22 (D.N.J. Apr. 8, 2011) ("The Third Circuit has approved a cross-check multiplier of 3 in a relatively simple case . . . ."); *Hinckley v. E.I. DuPont De Nemours and Co.*, 583 F. Supp. 11, 14 (E.D. Pa. 1983) (applying multiplier of 3.0 in securities violations case); *In re ATI Techs., Inc. Sec. Litig*., No. CIV.A. 01-2541, 2003 WL 1962400, at *3 (E.D. Pa. Apr. 28, 2003) (awarding multiplier of 2.35 in securities violation case); *see generally* 5 NEWBERG ON CLASS ACTIONS §14.03 (5th ed.) ("Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.").

Here, the requested one-third fee would result in a multiplier well within, and indeed at the low end, of the range that courts commonly award in similar cases. Plaintiff's Counsel's collective lodestar is $4,036,775.50, which means that the requested fee represents a lodestar of only about 1.32 (*i.e.*, the one-third fee requested is approximately 1.32 times $4,036,775.50).

Plaintiff's Counsel's collective lodestar is calculated from the fee and expense Declarations attached to the Schwartz Declaration. Specifically, Plaintiff's Counsel expended 4,992.50 hours in the prosecution of this case. *See* Schwartz Decl., Exs. 3, 4, 5 & 6 (Plaintiff's Counsel's

declarations); *id.* Exs. 3-A, 3-B, 4-A, 4-B, 5-A, 5-B, 6-A & 6-B (Plaintiff's Counsel's Summary Tables of Lodestars and Expenses). These hours were reasonably necessary to achieve the recovery here, which entailed substantial and complex work, as discussed below (§II.C, *infra*). In addition, Plaintiff's Counsel's current hourly rates for the work performed here range from $800 to $1,975 for partners and of counsel, and $625 to $675 for associates. *See* Schwartz Decl., Exs. 3, 4, 5 & 6 (Plaintiff's Counsel's declarations); *id.* Exs. 3-A, 3-B, 4-A, 4-B, 5-A, 5-B, 6-A & 6-B (Plaintiff's Counsel's Summary Tables of Lodestars and Expenses).[5] Plaintiff's Counsel respectfully submit that the hourly rates used in their lodestar calculation are reasonable in light of prevailing market rates for lawyers with comparable levels of experience and expertise in securities litigation and other complex class action litigation. Courts have therefore regularly approved these rates. *See, e.g.*, *In re Vaxart, Inc. Sec. Litig*., No. 3:20-cv-05949-VC, ECF No. 274 (N.D. Cal. Jan. 25, 2023) (approving fee award with Scott+Scott's rates ranging from $795 to $1,395 for partners or senior counsel, from $595 to $750 for associates, and roughly $395 for paralegals); *Abadilla v. Precigen, Inc*., No. 20-CV-06936, 2023 WL 7305053, at *15 (N.D. Cal. Nov. 6, 2023) (approving fee award with Scott+Scott's rates ranging from $1,095 to $1,595 for partners or senior counsel, from $625 to $795 for associates, and $395 to $675 for paralegals and professional support staff (investigators)); *In re Maxar Techs. Inc. S'holder Litig.*, No. 19CV357070 (Cal. Super. Ct. Dec. 11, 2023) (approving fee award with Hedin Hall (the precursor to the Hall Firm Ltd.) for "counsel and staff billing rates of $225 to $1,195").

Given the excellent recovery achieved, the substantial risks this litigation entailed (detailed below at §II.C), and the fact that Plaintiff's Counsel have proceeded for years on an entirely

[5] The U.S. Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds during the pendency of a case. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989).

contingent basis without any fees or expenses received to date, the modest multiplier represented by Plaintiff's Counsel fee request is reasonable. This supports the one-third fee request as well.

C. The Requested Fees Are Reasonable Under the Factors Set Forth in Rule 1717

In determining the reasonableness of a fee request, Pennsylvania courts may also consider the following five factors set forth in Rule 1717: (1) the time and effort reasonably expended by the attorney in the litigation; (2) the quality of the services rendered; (3) the results achieved and benefits conferred upon the class or upon the public; (4) the magnitude, complexity, and uniqueness of the litigation; and (5) whether the receipt of a fee was contingent on success. *See* Pa. R. Civ. P. 1717; *Bridgeport Fire*, 8 A.3d at 1289 (setting forth the Rule 171[7][6] factors); *Milkman,* 2002 WL 778272, at *24 (same).

As set forth below, the Rule 1717 factors all support approval of the requested one-third fee.

1. The Magnitude, Complexity, and Uniqueness of the Litigation

It is well-accepted that "[s]ecurities litigation is tough stuff." *W. Palm Beach Police Pension Fund v. DFC Global Corp.*, No. 13-6731, 2017 WL 4167440, at *8 (E.D. Pa. Sept. 20, 2017); *see also Ikon Office Sols.*, 194 F.R.D. at 179 (noting the "inherently complicated nature of large class actions alleging securities fraud"). This Action is no exception and required significant efforts from sophisticated and specialized counsel.

The magnitude and complexity of this Action is demonstrated by the Defendants' four sets of preliminary objections to the Amended Complaint, which challenged its legal and factual sufficiency in numerous ways. Opposing Defendants' preliminary objections required extensive research, analysis, and drafting, which resulted in filing four answers across 48 pages of additional

[6] Rule 1717 was renumbered from Rule 1716, effective July 1, 2012.

pleadings, an omnibus 70-page memorandum of law in opposition to the preliminary objections regarding the sufficiency of the pleadings, an omnibus 10-page memorandum of law in opposition to the preliminary objections regarding personal jurisdiction, and over 500 pages of supporting exhibits.

Assuming the claims had survived the pending preliminary objections – which was far from guaranteed – Lead Plaintiff faced a hard fight to establish liability and damages. Merits aside, the Parties would have had to spend years conducting fact and expert discovery. This process would have been particularly complex here because claims were asserted against two separate companies (Viatris and Pfizer), represented by separate counsel.

Defendants also raised, and would continue to pursue, both factual and legal challenges to establishing both liability and damages, which pose meaningful challenges to Plaintiff proving his claims, recovering damages at trial, and successfully defending such a victory on appeal. Defendants have denied all claims and would continue to deny all claims 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) the 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.

Establishing the fact of liability would, therefore, require extensive discovery into legacy Upjohn's businesses in China and Japan 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. Developing the foregoing evidence would likely be a highly technical process and so would also demand the skills and expertise of forensic accountants.

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 involving China or Japan in July 2020. 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 in June 2020, and so do not encompass those later developments either. Moreover, Defendants contend that Pfizer regularly updated the market on Upjohn's financial performance, including quarterly revenues, throughout 2020, and that any relevant information regarding China and Japan was disclosed, such that there were no actionable omissions.

Plaintiff believes that Defendants' positions are wrong as a matter of law and of fact, but recognizes that, if the case were to proceed, there was significant uncertainty on how the Court or an appeals court would have ruled. The three-hour Preliminary Objections' hearing illustrated that, by showing the Court grappling with the issues. Further, Defendants raised other arguments beyond those set forth above – the Schwartz Declaration at §IV.A.1 details their additional arguments.

Defendants also have affirmative defenses. For example, under the Securities Act, damages caused by a misstatement are presumed, but this presumption 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, they would be able to 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.

Lead Counsel respectfully submit that the magnitude and complexity of the risks and the litigation detailed above favor granting the requested attorneys' fees under Rule 1717.

2. The Results Achieved and Benefits Conferred on the Class

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *In re ViroPharma., Inc. Sec. Litig.*, C.A. No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016).

The Settlement's recovery of $16,000,000 compares favorably to other securities class actions in absolute and relative terms. If Lead Plaintiff "ran the table" on all liability and damages issues prior to and at trial, Lead Plaintiff's damages expert estimates that a reasonable maximum

class-wide recovery would then be approximately $730,000,000. By contrast, Defendants maintain that Plaintiff's best-case scenario for damages is much lower, and that due to causation and other arguments, the actual amount of damages that Lead Plaintiff could recover at trial is a fraction of that estimate, with potentially no damages at all. In 2023, the median settlement recovery for securities class actions with estimated investor losses between $600 million and $999 million was 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 here is greater than that, recovering 2.1% of Plaintiff's reasonable maximum damages, and a far greater percentage than under Defendants' view of the maximum damages, or than could be recovered if Plaintiff did not run the table on the many risky issues at play. Moreover, the recovery here is also 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.

Thus, in absolute and relative terms, the Settlement is an outstanding recovery for the Class. That is without even taking account of the risks of establishing liability and damages outlined above (*see supra* §II.C.1), which make the result even more significant.

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.

The result here weighs strongly in favor of granting the fee request under Rule 1717.

3. Time and Effort Expended on the Action

A substantial amount of work has been performed on this case, beyond what is typical prior to a decision on preliminary objections. This ensured that Plaintiff's Counsel and Lead Plaintiff fully understood the risks, strengths, and weaknesses of the claims at issue at the time the Settlement was reached.

As set forth in the Schwartz Declaration (*e.g.*, §IV.A.5), Plaintiff's Counsel's work included:

- conducting an extensive investigation before drafting and filing the initial complaint on October 28, 2021. Lead Counsel's investigation included, *inter alia*, collecting, reviewing and analyzing, from a span of four years, the voluminous relevant (i) SEC filings of Mylan, Upjohn, Pfizer and Viatris, including the voluminous Offering Materials; (ii) press releases, investor conference call transcripts, and other public statements of Mylan, Upjohn, Pfizer and Viatris; and (iii) analyst reports and news stories about Mylan, Upjohn, Pfizer and Viatris;

- researching, drafting and filing a successful motion to remand the Action back to this Court over Defendants' opposition, following Defendants' removal of this Action to federal court;

- conducting another extensive investigation into the acts and omissions at issue before filing the Amended Complaint, which took hundreds of hours of additional investigation and work. In connection with this additional investigation, Lead Counsel retained accounting and finance experts to assist in further analysis of the relevant SEC filings and statements made to investors that Lead Counsel reviewed in connection with the initial complaint;

- drafting and filing the Amended Complaint, which comprised 182 paragraphs of detailed allegations across 61 pages;

- analyzing Defendants' four sets of preliminary objections to the Amended Complaint – which collectively totaled hundreds of pages of pleadings, briefs, exhibits and affidavits, and consisted of various factual and legal challenges, each of which required distinct addressing – to prepare responsive papers;

- researching, drafting and filing responsive papers to Defendants' preliminary objections, which comprised: (i) four answers to Defendants' preliminary objections across 48 pages, (ii) a 70-page omnibus memorandum of law in opposition to the preliminary objections in the nature of a demurrer, for insufficient specificity, and for failure to conform to law or rule of court, (iii) a 10-page omnibus memorandum of law in opposition to the preliminary objections for lack of personal jurisdiction, and (iv) over 500 pages of supporting exhibits;

- preparing for oral argument on Defendants' preliminary objections, and appearing before the Court for oral argument on those objections, which lasted three hours;

- analyzing Defendant Pfizer's supplemental memorandum in support of its preliminary objections following the hearing in August 2023; drafting and filing a 15-page supplemental memorandum in opposition to Defendants' preliminary objections, in response to Defendant Pfizer's supplemental submission; and reviewing Defendants two additional supplemental memoranda, which they filed in September 2023;

- retaining and consulting with a damages expert after briefing on Defendants' preliminary objections concluded and the Parties began to discuss potential resolution of the Action through mediation;

- negotiating with Defendants' counsel to identify an appropriate person to preside over the Parties' planned mediation that all Parties agreed to, which culminated in the retention of Judge Phillips; then drafting a mediation statement and reviewing Defendants' mediation

statements; before preparing for and attending the Parties' full-day mediation, which resulted in the Settlement at hand; and

- drafting and negotiating the terms for the Parties' long-form Stipulation of Settlement and relevant ancillary documents (*e.g.*, the MOU); along with researching, drafting, and filing Plaintiff's Motion for Preliminary Approval – consisting of a 31-page memorandum of law, a 16-page long-form notice to Settlement Class members (as well as a short-form notice), a 15-page proposed preliminary approval order, and an eight-page proposed final judgment approving the Settlement, among other documents; and presenting at the hearing on Plaintiff's Motion for Preliminary Approval, which this Court granted.

All told, Plaintiffs' Counsel expended more than 4,992 hours prosecuting this Action with a lodestar value of $4,036,775.50. *See* Schwartz Decl., Exs. 3-6. At all times, Lead Counsel took care to staff the matter efficiently and to avoid duplication of efforts. The substantial time and effort devoted to this case by Plaintiffs' Counsel was critical to obtaining the favorable result achieved by the Settlement. Lead Counsel's efforts will also continue, if the Court approves the Settlement, as it will work through the settlement administration process, assist Settlement Class Members, and distribute the Settlement proceeds, without seeking any additional compensation.

Accordingly, Plaintiffs' Counsel's time and effort devoted to this Action and achieving the substantial recovery also confirm that the fee award requested is reasonable under Rule 1717.

4. Receipt of a Fee Is Contingent on Success

Plaintiffs' Counsel undertook the Action on a wholly contingent-fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. Courts have consistently recognized that this risk is an important factor favoring an award of attorneys' fees. *See, e.g.*, *Milkman*, 2002 WL 778272, at *25 ("The risk to Class Counsel in this matter was great, as receiving attorneys' fees was entirely contingent on a successful outcome of the

litigation."); *see also W. Palm Beach Police Pension Fund*, 2017 WL 4167440, at *8 (same) Ensuring there is an incentive for competent counsel to take on inherently complex securities class actions is also especially important given that cases like this one are "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc.*, 472 U.S. at 310.

Securities actions like this one are unquestionably risky. The complex issues, number of parties, difficult discovery, and other issues discussed above means that even if the action proceeds through one stage, it can be dismissed entirely later, leaving counsel with no fees at all for substantial amounts of work – as has happened on multiple occasions. *See*, *e.g.*, *In re Oracle Corp. Sec. Litig.*, No. C 0100988, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight years of litigation, and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing a lodestar of approximately $48 million); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud).

Unlike counsel for Defendants, who were paid and reimbursed for their out-of-pocket expenses on a current basis, Plaintiff's Counsel have received no compensation for their efforts, and no expense reimbursement, during the course of the Action. Plaintiff's Counsel have risked non-payment of $4,036,775.50 in time worked on this matter (as well as the expenses detailed below), knowing that if their efforts were not successful, that time and money could never be recovered.

Thus, the contingent nature of this Action also supports awarding Plaintiff's Counsel attorneys' fees in the amount of one-third of the Settlement Fund under Rule 1717.

5. Skill of Plaintiff's Counsel and Quality of Services

The quality of the legal representation also supports the requested fee award. The Explanatory Comment to Rule 1717 explains, in discussing the "quality of services rendered" factor, that "[c]ounsel who possess or are reputed to possess more experience, knowledge and legal talent are entitled to and generally command compensation superior to counsel who are less endowed." *See also ViroPharma*, 2016 WL 312108, at *16 (the skill and efficiency of attorneys are measured by, among other things, "the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel").

Plaintiff's Counsel have each earned a reputation for excellence through years of litigating complex civil actions, particularly the prosecution of securities class actions. As set forth in the firm résumés filed concurrently herewith, Plaintiff's Counsel's experience, resources, and high-quality attorneys have allowed them to obtain significant recoveries throughout the country on behalf of their clients. *See* Schwartz Decl., Exs. 3-C, 4-C, 5-C & 6-C (Plaintiff's Counsel's respective firm biographies).

The quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiff's Counsel. *See, e.g.*, *ViroPharma,* 2016 WL 312108, at *16. Plaintiff's Counsel were opposed in this Action by experienced and skilled counsel led by four of the top law firms in the country, Williams & Connolly LLP, Simpson Thacher & Bartlett LLP, Wilson Sonsini Goodrich & Rosati, P.C., and Dentons Cohen & Grigsby P.C. These are all excellent law firms with well-deserved reputations for vigorous advocacy on behalf of their clients. In the face of such substantial knowledgeable and experienced opposition, Plaintiff's Counsel were able to develop a case that was sufficiently strong to enable a settlement in an amount that Plaintiff's Counsel believe is highly favorable to the Settlement Class.

All of the Rule 1717 factors accordingly strongly support the requested one-third fee.

III. PLAINTIFF'S COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Courts also commonly award a payment of expenses that counsel reasonably incurred in the prosecution of a class action which results in the creation of a common fund. *W. Palm Beach Police Pension Fund*, 2017 WL 4167440, at *9; *ViroPharma*, 2016 WL 312108, at *18. The categories of expenses for which counsel seek payment here are the type of expenses routinely paid by fee paying clients in support of litigation, and so are of the type that courts commonly award. *Hall v. AT&T Mobility LLC.*, No. 07-5325, 2010 WL 4053547, at *23 (D.N.J. Oct. 13, 2010) ("Courts have generally approved expenses arising from photocopying, use of the telephone and fax, postage, witness fees, and hiring of consultants."); *see generally* NEWBERG §16:5 (collecting cases).

Here, Plaintiff's Counsel have incurred expenses in the aggregate amount of $164,005.56, which were necessary to prosecute the Action and were of the type commonly incurred in similar litigation. These expenses are outlined in Plaintiff's Counsel's individual fee and expense declarations submitted to the Court concurrently herewith. *See* Schwartz Decl., Exs. 3-B, 4-B, 5-B & 6-B (summary tables of expenses).

One of the main expenses here relates to work performed by Lead Plaintiff's experts and consultants ($73,283.75 or approximately 44% of total expenses). For example, the services of damages experts were necessary for preparing estimates of class-wide damages, analyzing causation issues, and assisting with the preparation of the Plan of Allocation. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 334, 353 (S.D.N.Y. 2014) ("Courts routinely award [expert] costs."). Computerized research totals $23,258.67. These are the charges for computerized factual and legal research services, such as PACER, Westlaw, and Bloomberg. *See*

Yang v. Focus Media Holding Ltd., No. 11 Civ. 9051, 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (approving computer research). Lead Counsel also paid $37,500 in mediation fees assessed by the Mediator. *See Yang*, 2014 WL 4401280, at *19 (approving mediator fees)

The other expenses for which Plaintiff's Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely assessed. Expenses for travel in connection with court hearings, lodging, transportation and working meals total $24,831.92. *See Brown v. Pro Football, Inc*., 839 F. Supp. 905, 916 (D.C. Cir. 1993) (approving "counsels' travel expenses" as "routinely billed to fee-paying clients, and thus all compensable"). Other expenses include, among others, duplicating costs, court fees, and postage and delivery expenses. *See Yang*, 2014 WL 4401280, at *19 (approving photocopying, postage, meals, and court filing fees).

In sum, Plaintiff's Counsel's expenses, in an aggregate amount of $164,005.56, were reasonable and necessary to the prosecution of the Action and, consistent with precedent, merit approval. *See, e.g.*, *W. Palm Beach Police Pension Fund*, 2017 WL 4167440, at *9 (approving award for "litigation expenses totaling $472,462.44 for expert fees, research, court reporting and transcripts, photocopying, travel, and postage"); *Hall*, 2010 WL 4053547, at *23 (approving award for "$506,943.75 in out-of-pocket litigation expenses").

IV. LEAD PLAINTIFF'S REQUEST FOR A SERVICE AWARD

Lead Plaintiff Rajesh Patel seeks an award in the total amount of $7,500 for the time and effort he dedicated to serving in that role and ensuring that the Settlement Class was adequately represented. His efforts are described in the Patel Affidavit (Ex. 1 to the Schwartz Declaration) and were necessary to the successful recovery for the Settlement Class. They included, among other things: regularly consulting with counsel about the Action, reviewing key litigation filings, reviewing the proposed settlement and having related discussions with counsel, and following the development and management of the Action. *See id.* ¶¶4-5.

Courts in Pennsylvania and other jurisdictions regularly grant awards in amounts similar to and greater than the request here. *See, e.g.*, *In re Brightview Holdings, Inc. Sec. Litig.*, No. 2019-07222, slip op. at 13 (Pa. Comm. Pl. Dec. 17, 2020) (awarding payment to lead plaintiff in the amount of $15,000); *Milkman*, 2002 WL 778272, at *31 (awarding payment to class representatives in the amounts of $10,000, $7,500, and $5,000); *Rodriguez v. Fulton Bank, N.A.*, No. 1303748, 2016 WL 7163262 (Pa. Comm. Pl. Mar. 7, 2016) (awarding class representative a service award of $5,000); *Public Emps.' Ret. Sys. of Miss. v. Endo Int'l plc, et al.*, No. 2017-02081-MJ, slip op. at 14 (Pa. Comm. Pl. Dec. 5, 2019) (awarding plaintiff a service award in the amount of $21,602.50); *see also W. Palm Beach Police Pension Fund*, 2017 WL 4167440, at *10 (awarding lead plaintiffs $5,560, $7,080, and $9,000 for their work relating to the representation of the class); *In re Oppenheimer Rochester Funds Grp. Sec. Litig.*, No. 09-md-02063, slip op. at 5 (D. Colo. Nov. 6, 2017) (awarding $74,000 in lost wages and expenses to lead plaintiff); *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005) (courts routinely grant such awards to compensate lead plaintiffs for their efforts, lost wages, and expenses undertaken to secure the class's recovery, and to incentivize such efforts).

For the foregoing reasons, it is respectfully submitted that an award of $7,500 to Lead Plaintiff is reasonable, and as of this filing there have been no objections to that request.

CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully request that the Court award: attorneys' fees in the amount of one-third of the Settlement Fund and $164,005.56 in litigation expenses, including interest at the same rate as earned by the Settlement Fund; and $7,500 to Lead Plaintiff for his efforts on behalf of the Settlement Class. A proposed Order Granting Lead

Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses is also submitted herewith.

Dated: May 8, 2024

Respectfully submitted,

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