**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

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| RAJESH PATEL, Individually and on Behalf of All Others Similarly Situated,<br><br>Plaintiff,<br><br>v.<br><br>VIATRIS, INC., PFIZER INC., MICHAEL GOETTLER, SANJEEV NARULA, BRYAN SUPRAN, MARGARET M. MADDEN, DOUGLAS E. GIORDANO, ROBERT J. COURY, IAN READ, and JAMES KILTS,<br><br>Defendants. | CIVIL DIVISION<br>No. GD-21-13314<br><br>**DECLARATION OF MAX R. SCHWARTZ 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**<br><br>CLASS ACTION |

I, Max R. Schwartz, hereby declare as follows:

1. I am a partner at Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Court-appointed Lead Counsel[1] for Plaintiff Rajesh Patel ("Lead Plaintiff" or "Class Representative") and the Settlement Class in this securities class action ("Action").[2] I am an attorney at law licensed to practice in the State of New York, and I have been admitted to appear and participate *pro hac vice* in this matter. I am familiar with the proceedings in this Action and have personal knowledge

[1] As used herein, "Lead Counsel" refers to Scott+Scott and the Hall Firm Ltd. Lead Counsel, together with additional counsel Lynch Carpenter LLP and Schall Law Firm, collectively are referred to herein as "Plaintiff's Counsel."

[2] All capitalized terms not otherwise defined herein have the same meaning as those set forth in the Stipulation of Settlement dated January 18, 2024 ("Stipulation"), attached as Exhibit 1 to Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification, and for Authorization of Class Notice ("Motion for Preliminary Approval").

of the facts set forth herein based on my own and my firm's active participation in this Action. If called as a witness, I could and would testify competently thereto.

2. The purpose of this declaration is to set forth the background of the Action, its procedural history, and the negotiations that led to the proposed $16-million cash Settlement with Defendants Viatris, Inc. ("Viatris"), Pfizer Inc. ("Pfizer"), Michael Goettler, Sanjeev Narula, Bryan Supran, Margaret M. Madden, Douglas E. Giordano, Robert J. Coury, Ian Read, and James Kilts (collectively, "Defendants"). The proposed Settlement will resolve all claims asserted in this Action against Defendants on behalf of Lead Plaintiff and the Settlement Class.[3]

3. For the reasons set forth below and in the accompanying memoranda,[4] Lead Counsel respectfully submits that: (i) the terms of the proposed Settlement and Plan of Allocation are fair, reasonable, and adequate in all respects and should be finally approved by the Court; (ii) Lead Counsel's application for an award of attorneys' fees and payment of expenses should be approved in all respects; and (iii) Class Representative's request for a service award also should be approved.

## I. PRELIMINARY STATEMENT

4. After over two years of hard-fought litigation, the Court preliminarily approved the Parties' proposed Settlement in its Preliminary Approval Order on February 16, 2024. The Settlement will resolve all claims in the Action against Defendants in exchange for a $16-million cash, non-recourse recovery for the Settlement Class.

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[3] Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, for Issuance of Notice to the Class, and for Scheduling of Fairness Hearing, ¶¶1-2 (Feb. 16, 2024) ("Preliminary Approval Order").

[4] *See* (i) Plaintiff's Motion and Memorandum in Support of Final Approval of Class Action Settlement and Plan of Allocation ("Final Approval Memo"); and (ii) Lead Counsel's Motion and Memorandum in Support of Application for Attorneys' Fees and Plaintiff's Requests for Service Award ("Fee Memo").

5. The Settlement was reached after extensive settlement discussions led by a highly experienced mediator of securities class actions, the Honorable Layn R. Phillips (U.S.D.J., ret.) ("Judge Phillips" or "Mediator"). The Settlement resulted from a full-day mediation session on November 17, 2023, at the end of which the Mediator made an independent "mediator's proposal." Specifically, Defendants would pay $16 million in cash in exchange for Lead Plaintiff and the Settlement Class releasing all claims against them. There can thus be no question that the Settlement was the result of vigorous arm's-length negotiations, conducted by experienced counsel and supervised by an equally experienced mediator.

6. Although Lead Plaintiff believes that the case against Defendants is strong, the case is complex and involves significant risk of no recovery. The settlement was reached while Defendants' four sets of preliminary objections challenging Plaintiff's operative Amended Class Action Complaint (filed on January 3, 2023) ("Amended Complaint") were pending before the Court. Defendants' preliminary objections advanced significant factual and legal challenges to the Amended Complaint that, even if unsuccessful at the pleading stage, would have presented obstacles to Plaintiff prevailing at summary judgment, trial, or on appeal. Also, Plaintiff did not have the benefit of restatements of company financials, and there were no parallel governmental proceedings regarding the conduct at issue, which would have aided Lead Plaintiff in proving key elements of the case. Moreover, even if Lead Plaintiff established Defendants' liability here, Defendants had "negative causation" affirmative defenses that could have reduced (or completely eliminated) the recoverable damages. In short, there is no question that to prevail here, Lead Plaintiff would have confronted numerous legal and factual challenges, while trying to prove

complex securities claims.[5] Though Lead Plaintiff and Lead Counsel believe it was possible to overcome these challenges, doing so would likely have required additional years of litigation, at substantial expense, for an uncertain outcome. By contrast, the Settlement is an outstanding result, which provides a certain and substantial recovery for the Settlement Class, particularly in light of the serious risk of no recovery at all.

7. Moreover, as discussed in the Final Approval Memo at §I.B.2, the $16-million Settlement compares favorably to the settlement values of other securities class actions that settled in 2023. Lead Plaintiff's damages expert has estimated that a ***maximum*** class-wide recovery in this Action – *i.e.*, assuming Lead Plaintiff "ran the table" on ***all*** liability issues – was approximately $730 million, while Defendants maintain that Lead Plaintiff's best-case scenario is actually much lower. The median settlement value of securities class actions in 2023 in cases involving estimated investor losses between $600 million and $999 million was about 1.7% of damages.[6] The recovery here is above the median, with the $16-million Settlement representing approximately 2.1% of the Settlement Class's estimated maximum damages. But the recovery is likely a much higher percentage of the damages that could be won at trial, when considering the risks that Lead Plaintiff would not "run the table" on liability, and that Defendants could prevail on some of their "negative causation" affirmative defenses, both of which could substantially reduce the recoverable damages. The $16-million recovery here is also greater than the median settlement amount for

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[5] These risks are discussed in greater detail in the Final Approval Memo at §I.B.1, and *infra* at §IV.A.1.

[6] *See* Edward Flores, et al., *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, NERA ECON. CONSULTING, at 25 fig.21 (Jan. 23, 2024), https://www.nera.com/insights/publications/2024/recent-trends-in-securities-class-action-litigation--2023-full-y.html ("NERA Trends") (attached hereto as Exhibit 7).

securities class actions in 2023, which was $14.4 million.[7] Accordingly, the Settlement recovery here is superior to the recovery in most securities settlements.

8. Pursuant to the Preliminary Approval Order, the Claims Administrator has (a) completed the mailing of 462,416 Notices and Proof of Claim forms ("Notice Packets") to potential Settlement Class Members or their nominees who could be identified with reasonable effort; and (b) published the Summary Notice electronically on *PR Newswire* and in print in *Business Wire* (which directed Settlement Class Members to www.ViatrisSecuritiesSettlement.com, where potential Settlement Class Members could, and still can, download Notice Packets and submit claims). *See* Ewashko Decl., ¶¶2-8.[8] Although the deadline to opt out of the Settlement is May 13, 2024, and the deadline to object to the Settlement is May 22, 2024, to date, only one valid opt-out request has been received, and no objections to any aspect of the Settlement or fee request have been received. *Id.*, ¶15. Should any be received, Lead Plaintiff will address them in reply papers due to be filed on June 5, 2024.

9. Notice having been duly disseminated, for all of the reasons set forth herein and in the accompanying memoranda, Lead Counsel respectfully submits that the proposed Settlement is fair, reasonable, and adequate in all respects, and should be finally approved.

10. Lead Plaintiff also requests the Court's final approval of the proposed Plan of Allocation ("POA"). The POA provides for a customary *pro rata* distribution of the Settlement Fund, using a simple formula – based on the damages formula set forth in the Securities Act for

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[7] *Id*. at 18, 20 fig.19 (the median excludes outlier settlements of greater than $1 billion or of $0).

[8] "Ewashko Decl." refers to the Declaration of Jack Ewashko Regarding: (A) Mailing of Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, dated May 8, 2024, attached hereto as Exhibit 2.

the claims at issue – to translate each claimant's economic losses into a Recognized Loss. Accordingly, the POA ensures all authorized claimants will receive their fair share of the Net Settlement Fund consistent with the Securities Act. The POA will therefore result in a fair and equitable distribution of the Net Settlement Fund.

11. Lead Counsel also respectfully submits that Plaintiff's Counsel's request for total attorneys' fees equal to one-third (33-1/3%) of the $16-million Settlement (or $5,333,333.33) and payment of $164,005.56 in litigation expenses (plus interest at the same rate as earned by the Settlement Fund) is fair and reasonable. 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 after Defendants removed it to federal court; (iii) preparing and filing the detailed Amended Complaint; (iv) opposing Defendants' comprehensive preliminary objections to the Amended Complaint, including a three-hour hearing and subsequent supplemental briefing; (v) consulting with experts on damages and causation issues; (vi) engaging in settlement discussions under the guidance of a highly regarded and experienced mediator; and (vii) thereafter resolving certain non-monetary terms, and memorializing all terms of the Settlement in the Stipulation, and assisting with the administration of the Settlement.

12. As discussed in the Fee Memo at §II, the one-third fee requested for these efforts is reasonable, and within the range of fees awarded in comparable class action settlements by courts in Pennsylvania and within the Third Circuit. Plaintiff's Counsel agreed to represent Lead Plaintiff and the (then-putative) class on a fully contingent basis, advancing all litigation costs and

expenses. Despite assuming the risk of being paid nothing, Plaintiff's Counsel spent over 4,992 hours of time investigating and prosecuting the case to achieve an outstanding result for the Settlement Class. The reasonableness of the requested fee is also confirmed by a lodestar cross-check, which is often used in settlements like this to compare the value of counsel's lodestar (counsel's hourly rates times the number of hours worked) against the percentage of the overall recovery sought. Such a cross-check here yields a lodestar multiplier of 1.32, which is on the lower end of the range of multipliers that are frequently awarded in courts in Pennsylvania. Fees within this range of multipliers are routinely awarded because they are meant to compensate counsel for the risk they undertook in contingent representation, in addition to the hours they worked. Finally, the one-third fee request is also reasonable under an analysis of the Pennsylvania Rule of Civil Procedure 1717 ("Rule 1717") factors that Pennsylvania courts consider in determining awards of attorneys' fees, including: (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. Accordingly, Lead Counsel respectfully submit that the requested one-third fee should be approved.

13. Finally, Lead Counsel support Lead Plaintiff's request for a modest service award of $7,500 as fair and reasonable, based on his service to the Settlement Class.

## II. BACKGROUND

### A. Lead Plaintiff's Allegations

14. Defendant Viatris is a pharmaceutical company that was created in November 2020 through the merger of Mylan N.V. ("Mylan") and Upjohn, Inc. ("Upjohn"), which was a spin-off of Defendant Pfizer Inc. ("Merger"). ¶16.[9]

15. Lead Plaintiff's claims in this Action stem from alleged materially untrue statements and omissions concerning Viatris' revenue and related performance metrics that Defendants made in the offering materials issued in connection with the Merger. The offering materials consist of the S-4 registration statement as well as the 424B3 prospectus (inclusive of amendments thereto and documents incorporated by reference therein), and related oral communications (collectively, "Offering Materials") issued in connection with the November 2020 transactions by which Pfizer's subsidiary, Upjohn, was spun-off and merged with Mylan to form Viatris. ¶2.

16. Lead Plaintiff alleges that by the time the Merger closed on November 15, 2020, Upjohn and Viatris already had no realistic chance of hitting the key 2020 financial performance metrics they had touted to investors in connection with the Merger, and that this was due in substantial part to events in China and Japan that had negatively impacted legacy Upjohn's revenue by approximately $1 billion as of that time. Defendants omitted from the Offering Materials and related statements that Upjohn and Viatris already were suffering from substantial underperformance prior to the Merger close.

17. The underperformance of Upjohn owed in substantial part to the July 2020 expansion of the volume-based procurement program in China, and the loss of exclusivity for

[9] Unless otherwise indicated, all "¶" and "¶¶" references are to the Amended Complaint.

Upjohn's Lyrica product in Japan, also in July 2020, both of which Lead Plaintiff alleges negatively impacted Upjohn's sales. *See, e.g.*, ¶7.

18. China's volume-based procurement program ("VBP") is a healthcare policy that aims to lower the prices of drugs and medical products, among other things, implemented by the Chinese government under which large purchasers (such as hospitals) of healthcare products, including drugs, obtain reduced prices through large volume purchases. In turn, the makers of those drugs have to sell them for reduced prices, and face other restrictions. China's VBP program expanded in July 2020 to cover the Upjohn brand-name drugs Celebrex, Zoloft, and Viagra. *See, e.g.*, ¶83.

19. Also in July 2020, the Japanese Patent Office found certain patents for Upjohn's brand-name Lyrica drug to be invalid. *See, e.g.*, ¶82. This allowed generic competitors to enter the market at cheaper prices, undercutting demand for the branded drug (here, Lyrica) at its previous patent-protected price. Thus, the seller of a branded drug that loses exclusivity will face pressure to reduce prices to remain competitive with new market entrants, compounding revenue losses. *See, e.g.*, ¶6.

20. Lead Plaintiff alleges that because of the expansion of VBP in China and the loss of Lyrica exclusivity in Japan, prior to the Merger close, revenue from the legacy Upjohn business was well below the range for FY 2020 that Defendants had touted for the Merger. As a result, by the Merger close in November 2020, Lead Plaintiff alleges that Upjohn had no realistic chance of meeting even the bottom of its 2020 revenue range, and so Defendants' related key performance metrics for Viatris were materially untrue by that time. *See, e.g.*, ¶¶96–97.

21. Upjohn's actual 2020 revenue was about $7 billion – a miss of over $1 billion, or 15%, from the midpoint of the revenue range Defendants touted prior to the Merger close ($8.25

billion). ¶143. Lead Plaintiff alleges that Upjohn's underperformance was so substantial before the Merger close that by then, it was already untenable for Upjohn to meet its 2020 revenue range. ¶143.

22. As a result of Upjohn's revenue problems, Lead Plaintiff further alleges that Viatris also had no realistic chance of meeting other metrics for 2020 that it touted prior to the Merger close, including free cash flow ("FCF") and adjusted EBITDA (Defendants' preferred earnings metric). Viatris missed its 2020 pro forma combined adjusted EBITDA range (of $7.5–8 billion), generating only $6.8 billion of adjusted EBITDA in 2020. That was a miss of about 12.5% from the range's midpoint, which was driven by and reflected Upjohn's 15% revenue miss in 2020. ¶¶48, 128. Consequently, Viatris missed its related FCF metric as well, because the starting input for FCF is adjusted EBITDA, and Viatris' pro forma combined 2020 FCF estimate of $4 billion was based on Viatris hitting its combined adjusted EBITDA range, not having a $1 billion miss. ¶¶37, 48, 80.

23. In addition, Lead Plaintiff alleges that prior to the November 2020 Merger close, undisclosed synergy and integration costs were negatively impacting Viatris' FCF. *See, e.g.*, ¶135.

24. Lead Plaintiff alleges that Defendants' written and oral solicitations leading up to the Merger close did not disclose the forgoing problems – Upjohn's revenue drops, Viatris' earnings and FCF misses, and accelerated integration and synergy costs – that Viatris was then experiencing, and so contained materially untrue and misleading statements and omissions in violation of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act"). *See, e.g.*, ¶¶3, 168.

25. For example, in a presentation titled "Path to Shareholder Value Creation" – which Viatris issued on August 31, 2020 – Defendants stated that Viatris had "stable revenue,"

"Sustainable Near-Term Adjusted EBITDA Growth," and "$4bn of pro forma 2020E free cash flow." ¶¶88–91. They also stated that Viatris was able to achieve this positive performance despite "country-specific headwinds," calling out specifically, and only, the impediments discussed above, "China VBP" and "Lyrica Japan LoE [loss of exclusivity]." Lead Plaintiff alleges that these statements omitted the material, then-existing facts that 2020 revenue, adjusted EBIDTA, and FCF were cratering already, and that Defendants had already decided to substantially accelerate Merger integration costs and use those costs to further reduce FCF. Indeed, Plaintiff alleges that these then-existing problems with Upjohn were revealed after the Merger when Viatris announced its dramatic underperformance in 2020 due to Upjohn's 2020 revenues missing by over $1 billion.

26. Defendants have consistently denied and vigorously disputed the allegations and claims at issue, including that any of statements at issue were untrue or misleading.

27. Lead Plaintiff asserts his claims on behalf of a class of persons or entities who acquired shares of Viatris Inc. common stock in exchange for Mylan shares directly in the stock-for-stock exchange conducted pursuant to the offering materials issued in connection with the November 2020 merger of Mylan and Upjohn to form Viatris. *See* ¶160.

**B. History of and Work Performed in Litigating the Action**

28. Lead Plaintiff initiated the Action in this Court against Defendants on October 28, 2021, alleging Defendants violated §§11, 12(a)(2), and 15 of the Securities Act. Lead Counsel conducted an extensive pre-filing investigation before the initial complaint was filed. Lead Counsel's investigation included, *inter alia*, collecting, reviewing, and analyzing voluminous: (i) SEC filings of Mylan, Upjohn, Pfizer, and Viatris over a four-year period spanning the run-up to the Merger, the Merger itself, and post-Merger, including the Offering Materials, and various filings regarding those companies' performance; (ii) press releases, investor conference call transcripts, and other public statements of Mylan, Upjohn, Pfizer, and Viatris during that time; and

(iii) analyst reports and news stories about Mylan, Upjohn, Pfizer, and Viatris during that time. In total, Lead Counsel's investigation required reviewing thousands of pages of publicly available documents to develop all the facts necessary to bring this case.

29. Viatris removed the Action from this Court to the U.S. District Court for the Western District of Pennsylvania on December 3, 2021. *See* Notice of Removal, *Patel v. Viatris, Inc.*, No. 2:21-cv-01769 (W.D. Pa.), Dkt. 1.

30. In response, Lead Counsel prepared a successful motion to remand the Action to this Court, which was filed on December 31, 2021. Defendants filed their opposition to the motion to remand on January 31, 2022, and Lead Counsel prepared a reply memorandum, filed on February 14, 2022. The federal court granted Lead Plaintiff's motion to remand on September 21, 2022.

31. Following additional investigation into the acts and omissions at issue, Lead Plaintiff filed the operative Amended Class Action Complaint on January 3, 2023 ("Amended Complaint"), alleging Defendants violated §§11, 12(a)(2), and 15 of the Securities Act. Lead Counsel's additional investigation included, *inter alia*, working with accounting and finance experts to further analyze the relevant SEC filings and financial statements of Mylan, Upjohn, Pfizer and Viatris. Substantial additional investigation and work supported the Amended Complaint, which culminated in 182 paragraphs of detailed allegations spanning 61 pages.

32. On March 17, 2023, Defendants filed four sets of preliminary objections to the Amended Complaint, challenging its factual and legal sufficiency on various grounds across hundreds of pages of pleadings, briefing and supporting affidavits and exhibits:

a. Defendants Viatris, Michael Goettler, Sanjeev Narula, Robert Coury, Ian Read and James Kilts filed preliminary objections: (i) in the nature of a demurrer, (ii) for

insufficient specificity in a pleading, and (iii) for failure of a pleading to conform to law or rule of court. These preliminary objections argued, *inter alia*, that the allegedly omitted information in the Offering Materials was, in fact, disclosed, that the Registration Statement could not form the basis of liability because falsity is measured as of its effective date and none of the challenged statements in the Registration Statement were false as of that date, and that the challenged statements concerning Viatris' FCF and related dividends were forward-looking statements of corporate optimism or puffery;

b. Defendants Ian Read and James Kilts filed preliminary objections for lack of personal jurisdiction, arguing that Lead Plaintiff could not establish that this Court could exercise specific or general personal jurisdiction over these Defendants;

c. Defendant Pfizer filed preliminary objections (i) for failure of a pleading to conform to law or rule of court, (ii) for insufficient specificity in a pleading, and (iii) in the nature of a demurrer. These preliminary objections argued, *inter alia*, that Pfizer was not a proper defendant under §11 of the Securities Act, that the Registration Statement could not form the basis of liability because falsity is measured as of its effective date and none of the challenged statements in the Registration Statement were false as of that date, and that the challenged statements were forward-looking statements protected under the bespeaks-caution doctrine; and

d. Defendants Bryan Supran, Margaret Madden, and Douglas Giordano filed preliminary objections (i) for lack of personal jurisdiction, (ii) for insufficient specificity in a pleading, and (iii) in the nature of a demurrer. These preliminary objections argued, *inter alia*, that Lead Plaintiff could not establish that this Court could exercise general or

specific personal jurisdiction over these Defendants, and that these Defendants were not proper defendants under §§12 or 15 of the Securities Act.

33. On June 2, 2023, Lead Plaintiff filed the following responsive papers to Defendants' four sets of preliminary objections, which required extensive research and analysis of various areas of procedural and substantive law to appropriately respond to:

a. Four answers to Defendants' four sets of preliminary objections across 48 pages (Plaintiff's Answer to Defendant Pfizer Inc.'s Preliminary Objections to the Amended Class Action Complaint Pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(2), (a)(3), and (a)(4); Plaintiff's Answer to the Viatris Defendants' Preliminary Objections to Amended Class Action Complaint in the Nature of a Demurrer; Plaintiff's Answer to Defendants Ian Read and James Kilts' Preliminary Objections Raising Questions of Fact to Amended Class Action Complaint for Lack of Personal Jurisdiction; and Plaintiff's Answer to Defendants Bryan Supran, Margaret M. Madden, and Douglas E. Giordano's Preliminary Objections to the Amended Class Action Complaint Pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(2), (a)(3), and (a)(4));

b. A 70-page Omnibus Memorandum of Law in Opposition to the Viatris Defendants' and the Pfizer Defendants' Preliminary Objections to the Amended Class Action Complaint in the Nature of a Demurrer, and

c. A 10-page Omnibus Memorandum of Law in Opposition to Defendants' Preliminary Objections to the Amended Class Action Complaint for Lack of Personal Jurisdiction; and

d. Over 500 pages of supporting exhibits.

34. On July 14, 2023, Defendants filed a 25-page Consolidated Reply Memorandum of Law in Support of the Viatris Defendants', Pfizer Inc.'s, and the Upjohn Directors' Respective Preliminary Objections to Amended Class Action Complaint in the Nature of a Demurrer. Also on that day, Defendants Ian Read and James Kilts filed a reply in support of their preliminary objections for lack of personal jurisdiction.

35. On July 26, 2023, Viatris filed a Notice of Supplemental Authority in Support of Their Preliminary Objections to Amended Class Action Complaint in the Nature of a Demurrer.

36. Thereafter, Lead Counsel prepared for oral argument on Defendants' preliminary objections, which the Court set for August 8, 2023. Lead Counsel's preparation included, *inter alia*, research and analysis of the hundreds of pages of pleadings, briefing, and exhibits that Defendants filed with their preliminary objections, as well as additional, related research and preparation. The hearing lasted roughly three hours.

37. Following the hearing, the Parties filed supplemental memoranda in support of their positions on the preliminary objections. Defendant Pfizer submitted a supplemental memorandum in support of its preliminary objections on August 29, 2023. In response, Lead Plaintiff filed a15-page supplemental memorandum in opposition to Defendants' preliminary objections on September 6, 2023. Defendants Viatris, Michael Goettler, Sanjeev Narula, Robert Coury, Ian Read, and James Kilts filed a supplemental reply memorandum on September 28, 2023.

### C. Settlement Negotiations, the Stipulation, and Preliminary Approval

38. Thereafter, the Parties commenced preliminary discussions to explore the possibility of resolving the Action through mediation. The Parties ultimately agreed to retain Judge Phillips as Mediator, and to attend an in-person mediation session on November 17, 2023.

39. In connection with the mediation, Lead Counsel prepared a mediation statement and engaged in pre-mediation calls with the Mediator on liability and damages issues and prepared

to present arguments and information at the Mediation. Lead Counsel also consulted extensively with their damages expert during this period.

40. The Parties' mediation session on November 17, 2023, lasted all day, and was heavily contested. At the end of the full-day session, Judge Phillips made a "mediator's proposal" under which, *inter alia*, Defendants would pay $16 million in cash in exchange for settling and releasing the claims at issue in this Action, as defined in the Stipulation.

41. The Parties accepted the mediator's proposal in principle that day, subject to the resolution of certain non-monetary terms prior to the execution of a final stipulation of settlement. Also on that day, the Parties executed a Memorandum of Understanding ("MOU") setting forth the material terms and conditions of the resolution of this Action.

42. Thereafter, the Parties began working on drafts of the stipulation of settlement, proposed notices, claim form, preliminary approval order, and final judgment. These settlement documents were principally drafted by Lead Counsel.

43. The Parties executed the Stipulation of Settlement (with all exhibits) as of January 18, 2024. On the same day, Lead Plaintiff moved for preliminary approval of the proposed Settlement by filing the requisite papers with the Court.

44. The Court held a hearing on Lead Plaintiff's unopposed motion for preliminary approval on January 22, 2024. The Court entered an Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, for Issuance of Notice to the Class, and for Scheduling of Fairness Hearing on February 16, 2024 ("Preliminary Approval Order").

## III. LEAD COUNSEL'S COMPLIANCE WITH THE COURT'S NOTICE REQUIREMENTS

45. In accordance with the Preliminary Approval Order, Lead Counsel, through A.B. Data, has implemented a comprehensive notice program by individual mail and publication.

46. Pursuant to and in compliance with the Preliminary Approval Order, the Court-appointed Claims Administrator A.B. Data, Ltd. ("A.B. Data" or "Claims Administrator"), caused the Notice and Claim Form (together, the "Claim Packet") to be mailed by first-class mail to potential Settlement Class Members. *See* Ewashko Decl., ¶¶4-8. To prepare the mailing, the Claims Administrator used records of potential Class Members maintained by Viatris' transfer agent and information provided by brokerage firms and other nominees. A total of 462,416 Claim Packets have been mailed as of May 7, 2024. *Id.*, ¶8.

47. The Notice Packets contain all required information regarding the Settlement and how Settlement Class Members can (a) exclude themselves from the Settlement Class; (b) object to the Settlement, the POA, or the Fee and Expense Application; (c) file a Proof of Claim; and/or (d) attend the Fairness Hearing.

48. In addition, pursuant to the Preliminary Approval Order, on March 11, 2024, the Summary Notice was disseminated over the internet using *PR Newswire* and published in *Business Wire.* *Id.*, ¶9 and Exs. 2-B & 2-C attached thereto. The Summary Notice notified potential members of the Settlement Class of the pendency of this Action, the material terms of the proposed Settlement, and what actions they had to take to obtain relief to which they were entitled, object to the Settlement, or exclude themselves from the Settlement, among other information.

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

50. While the deadlines for Settlement Class Members to request exclusion from or opt out of the Settlement are May 13, 2024, and May 22, 2024, respectively, to date, only one valid

opt-out request has been received,[10] and no objections to any aspect of the Settlement have been received. *Id.*, ¶15. Should any be received, Lead Plaintiff will address them in reply papers due to be filed on June 5, 2024.

## IV. THE SETTLEMENT SATISFIES THE STANDARD FOR FINAL APPROVAL AND IS FAIR, REASONABLE, AND ADEQUATE

51. 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. *See, e.g.*, *Dauphin Deposit Bank & Tr. Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999). As described below, each of these factors supports approval of the Settlement.

### A. Application of the Relevant Factors

#### 1. Risks of Establishing Liability and Damages

52. Although Lead Plaintiff believes that the case against Defendants is strong, he is also cognizant that Defendants raised a number of substantial arguments and that the case involved significant uncertainty if it were to go forward. The risks of establishing liability here were notable, and some of the challenges that Lead Plaintiff faced in prevailing on liability on the claims that he proposes to settle were made clear early on.

[10] Lead Counsel and A.B. Data have received several exclusion requests that are invalid because the persons who submitted the requests are not Settlement Class Members.

53. For instance, surviving Defendants' preliminary objections was not guaranteed. 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 Lead 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 pre-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.

54. 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 Lead Plaintiff could obtain such discovery, there was no guarantee that the facts would ultimately support Lead Plaintiff's claims as Defendants have consistently maintained that Upjohn's revenues declined due to other, fully disclosed, factors.

55. Moreover, proving Lead Plaintiff's case would also require extensive fact and expert discovery into the 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.

56. Defendants have also raised additional factual and legal issues that Lead 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, inactionable opinions, and/or subject to the statutory safe harbor applicable to securities claims. Prevailing on some or all of these points could severely limit, if not totally defeat, Lead Plaintiff's claims. While Lead Plaintiff has disputed these arguments, Lead Plaintiff recognizes that each of them created material uncertainty regarding the outcome of the Action (whether on Defendants' preliminary objections, or subsequently at summary judgment or trial).

57. Lead Plaintiff also acknowledges that the Action lacks several of the hallmarks of many successful securities actions. For example, there was no restatement of financial results, no SEC investigation, and no criminal indictment on which Lead Plaintiff could rely to develop his claims or obtain discovery.

58. Even if Lead Plaintiff were able develop the facts necessary to prove liability at trial, Defendants have argued that his Securities Act claims must fail as a matter of law. Defendants have argued that Lead 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, in particular the alleged problems in China and Japan that occurred after the effective date.. Similarly, Defendants claim that Lead 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 and does not encompass any later developments either.

59. Moreover, Defendants contend that Pfizer regularly updated the market on Upjohn's financial performance, including quarterly revenues, throughout 2020, such that there were no actionable omissions.

60. The Individual Defendants who filed preliminary objections for lack of personal jurisdiction also would have continued to pursue that line of argument in all likelihood, potentially even through appeal.

61. Lead Plaintiff believes that Defendants' positions are wrong as a matter of law and of fact – as set forth in several previous briefs – but recognizes that, if the case were to proceed, there was significant uncertainty on how the Court would have ruled – or a jury would have found – on these issues.

62. Defendants also have at least two affirmative defenses available to them to diminish Lead Plaintiff's recovery even if he established liability. 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 Lead Plaintiff were able to establish liability, they could still prove negative causation and thus significantly reduce, if not entirely eliminate, Lead Plaintiff's recoverable damages. Lead 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.

63. Additionally, 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 several 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, Lead Plaintiff believes it is unlikely that they would be able to prove their due diligence defenses, but this is argument that defendants frequently raise in similar cases and that would potentially have to be decided by a jury at trial.

64. In sum, although Lead Plaintiff believes he has strong claims and would ultimately be able to prove liability and damages at trial (and sustain such a victory on appeal), doing so was far from certain. In contrast, the Settlement provides an immediate, significant recovery for the Settlement Class while eliminating the risks of establishing liability and damages associated with further litigation.

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

65. Here, absent the Settlement, there would be an especially long and costly road ahead to any litigated recovery, with many months (and more likely years) of hard-fought fact and expert discovery about Viatris' key performance metrics, and the extent to which the rollout of VBP policies in China and the loss of exclusivity of Lyrica in Japan affected Viatris and its share price.

66. However, the Settlement provides an excellent, immediate, and certain recovery for the Class, especially in light of the significant uncertainties the claims faced, as set forth above.

67. Lead Plaintiff's damages expert estimated that a reasonable ***maximum*** class-wide recovery in the Action is approximately $730 million, if the Class ran the table on all liability and damages issue prior to and at trial.

68. Defendants have maintained that damages are much lower, and that due to negative causation and other arguments, the actual amount of damages that Plaintiffs could recover at trial is a fraction of that amount, or that there are potentially no damages at all.

69. The Settlement's recovery of $16 million compares favorably to other securities class actions in absolute and relative terms. It represents approximately 2.1% of the Settlement Class's maximum estimated damages, which is higher than the 1.7% median settlement recovery of securities class actions in 2023 for cases involving estimated investor losses between $600 million and $999 million.[11]

70. Further, the recovery here is also greater than the $14.4-million median settlement amount for securities class actions that settled in 2023.[12]

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

71. The Settlement is even more impressive when considering the risk that Lead Plaintiff would not "run the table" on all liability and damages issues at trial – *i.e.*, in light of the risk of continued litigation. As discussed in §IV.A.1, *supra*, Defendants raised meaningful factual and legal arguments against Lead Plaintiff's claims, which if successful would have resulted in dismissal of the Action and no recovery for the Class.

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11 *See* NERA Trends at 25 fig.21.

12 *Id.* at 18 & 20 fig.19 (NERA excludes outlier settlements).

72. While all litigation is risky, and Lead Plaintiff believes he could ultimately prevail at trial and on appeal, Lead Plaintiff recognizes that at the August 8, 2023 hearing on Defendants' preliminary objections, Judge Szefi raised serious questions about Lead Plaintiff's claims as a matter of fact and law. For example, during that three-hour hearing, the Court asked, *inter alia*, whether: (i) Lead Plaintiff had and could allege a present omission in the Offering Documents (8/8/23 Hearing 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).

73. Judge Szefi also had questions at the August 8 hearing regarding whether, as a matter of law, Lead 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, part of the reason why the Parties submitted supplemental briefing on Defendants' preliminary objections following the hearing was to brief the Court on these and other issues.

74. Lead Plaintiff believes that he had significant responses to these serious 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 Lead Plaintiff's claims such that it may not have been possible to cure any defects in the claims through a further amended complaint.

75. And even if the Court overruled Defendants' preliminary objections in whole or in part, that would have been merely the first step to recovery for the Class. Thereafter, Lead Plaintiff would have had 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-million recovery in the Settlement is an outstanding result for the Class in light of the risks of continued litigation in pursuit of uncertain recovery.

**4. The Complexity, Expense, and Likely Duration of the Litigation**

76. Securities class actions are commonly complex, expensive, and time-consuming affairs. Assuming the claims had survived the pending preliminary objections, the Parties would have had to spend years conducting fact and expert discovery, briefing class certification, summary judgment, multiple experts for each side, and other pretrial motions, and likely also post-trial motion and appeals practice.

77. In that vein, this Action commenced in October 2021 and the hearing on Defendants' preliminary objections was not conducted until almost two years later. Accordingly, barring a settlement, litigating this case would have continued for several years (if not longer) and required expending substantial time and resources of the Parties as well as the Court. Had that happened, moreover, it is possible that the ultimate recovery would have been no better – and might have been worse – for the Settlement Class than what Lead Plaintiff has obtained in this Settlement for all of the reasons discussed above.

78. Thus, the Settlement 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. The State of the Proceedings**

79. 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 clearly identify the risks, strengths, and weaknesses of the claims at issue.

80. To start, Lead 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 Lead Plaintiff's allegations and theory of the case. This investigation ultimately culminated with the filing of a lengthy and detailed Amended Complaint.

81. Thereafter, the parties engaged in extensive briefing on Defendants' four separate preliminary objections to the amended complaint (as explained in greater detail in §II.B, *supra*). This months-long process involved hundreds of pages of briefing, a three-hour hearing, and post-hearing supplemental briefing. That process allowed the Parties to fully develop and evaluate their arguments as to the legal sufficiency of Lead Plaintiff's claims. This is significant because many of the issues raised by Defendants were matters of law, which could be evaluated (and adjudicated) without the need for fact discovery.

82. 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 class actions. During this process, the Parties were able to further review their positions on the claims, factual allegations, and legal issues, while obtaining objective feedback 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.

83. Thus, through this extensive process, Lead Plaintiff, Lead Counsel, and all Parties, had ample opportunity to, and did, develop a deep understanding of the strengths and weaknesses of Lead Plaintiff's claims prior to reaching the Settlement.

### 6. The Recommendation of Counsel

84. Lead Counsel are two nationally recognized law firms that specialize in securities class actions and strongly recommend the Settlement – based on both their experience and the significant work performed on this case, detailed above.

85. Lead Counsel believes that the Settlement is fair, reasonable, adequate, and should be approved, especially when considered against the significant risks, costs, and uncertainties of continued litigation described above.

### 7. The Reaction of the Class

86. As discussed above, 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. Moreover, Lead Plaintiff fully supports the Settlement, as set forth in his accompanying declaration. We will update the Court on the response to the Notice from Settlement Class Members in our reply papers (which are scheduled to be filed after the foregoing deadlines have passed).

* * *

87. In sum, all relevant factors that Pennsylvania courts weigh support a finding that the Settlement is fair, reasonable, and adequate, and should be finally approved.

## V. THE PLAN OF ALLOCATION IS CUSTOMARY, FAIR, AND REASONABLE

88. The proposed Plan of Allocation (previously defined as "POA") is designed to equitably distribute the Settlement proceeds among the members of the Settlement Class who submit valid Claim Forms and have relevant losses.

89. The proposed POA is designed to equitably distribute proceeds from the Settlement among Settlement Class members who submit valid Proof of Claim forms ("Claim Forms") and

have relevant losses. Settlement Class Members are required to submit a Claim Form, which was mailed with the Notice and also is available on the Settlement website, to receive a distribution from the Net Settlement Fund.

90. 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.

91. The POA was formulated by Lead Counsel in consultation with the Lead Plaintiff's damages expert. That expert 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." 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 POA was set forth in the Notice, which was sent to Settlement Class Members.

92. 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 will determine each claimant's *pro rata* share of the Net Settlement Fund.

93. Once 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.

94. 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*

95. To date, no objections to the POA have been received, even though the POA was set forth in full in the Notice (*see* Ewashko Decl., Ex. 2-A at 9). Accordingly, Lead Counsel respectfully submits that the POA is fair and reasonable and should be approved.

## VI. PLAINTIFF'S COUNSEL'S FEE AND EXPENSE APPLICATION

96. In addition to seeking final approval of the Settlement and POA, Lead Counsel is making an application for a fee award of 33-1/3% of the Settlement Fund – *i.e.*, $5,333,333 – for roughly 4,992 hours of time devoted to this Action, plus accrued interest at the same rate as earned on the Settlement Fund until paid. This amount is consistent with the amount stated in the Notice

and is fully supported by Class Representative. *See* Patel Aff., ¶7.[13] And though the May 22, 2024 deadline for Settlement Class Members to object to the requested fee award has not passed yet, to date, no objection has been received.

97. Courts in Pennsylvania have long recognized that attorneys who successfully represent a class are entitled to compensation for their services, and that attorneys who obtain a recovery for a class in the form of a common fund should be awarded fees and expenses from that fund. Courts in Pennsylvania 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 five-factor test under Pennsylvania Rule of Civil Procedure 1717 ("Rule 1717"). These methods and the factors that federal and state courts in Pennsylvania use to assess whether a fee request is reasonable are set forth in the accompanying Fee and Expense Memo, which also explains why the request here satisfies them. This section provides further discussion of those factors – to the extent they are not already addressed in the discussion of final settlement approval in §IV, *supra*, as the Final Approval factors overlap with these factors to some extent. Lead Counsel respectfully submits that each of the factors supports an award of the requested fee here.

**1. The Time and Effort Reasonably Expended in the Action**

98. The work undertaken by Lead Counsel in investigating and prosecuting the Action to arrive at the present Settlement was substantial and challenging. As detailed in §§II.B and IV.A.4, *supra*, the Action was prosecuted for over two years and settled only after Lead Counsel expended significant resources to develop and prosecute Lead Plaintiff's case to a successful resolution.

[13] "Patel Aff." refers to the Affidavit of Rajesh Patel in Support of Motion for (1) Final Settlement Approval; (2) Attorneys' Fees and Payment of Litigation Expenses; and (3) Plaintiff's Service Award, dated May 7, 2024, attached hereto as Exhibit 1.

99. Among other actions, Lead Counsel's work consisted of:

a. Conducting an extensive investigation before 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;

b. Drafting and filing the initial complaint;

c. 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;

d. Conducting another extensive investigation into the acts and omissions at issue in the Action 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;

e. Drafting and filing the Amended Complaint, which comprised 182 paragraphs of detailed allegations across 61 pages;

f. 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;

g. 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;

h. Preparing for oral argument on Defendants' preliminary objections, including by analyzing the record in connection with the preliminary objections;

i. Appearing before this Court for oral argument on Defendants' preliminary objections, which lasted three hours;

j. Analyzing Defendant Pfizer's supplemental memorandum in support of its preliminary objections, which it filed after the oral argument this Court held;

k. Researching, drafting, and filing a 15-page supplemental memorandum in opposition to Defendants' preliminary objections, in response to Defendant Pfizer's supplemental submission;

l. 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;

m. 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;

n. Researching, drafting, and submitting a mediation statement, including consulting with Lead Plaintiff's damages expert ;

o. Preparing for and attending the Parties' full-day mediation, which resulted in the Settlement at hand;

p. Drafting and negotiating the terms for the Parties' long-form Stipulation of Settlement and relevant ancillary documents (*e.g.*, the MOU); and

q. 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 – which this Court granted after holding a hearing; and

r. Preparing for and attending the hearing on Plaintiff's Motion for Preliminary Approval, after which this Court granted the Motion.

100. Plaintiff's Counsel performed this work efficiently, and it was integral to prosecuting the claims and securing the successful recovery.

101. Additional work still lies ahead to obtain Final Approval and, pending approval, to supervise the administration and distribution of the proceeds of a fully approved Settlement.

102. Attached hereto as Exhibits 3, 4, 5, and 6 are declarations from Plaintiff's Counsel in support of their request for an award of attorneys' fees and payment of litigation expenses.[14] Annexed to those declarations are schedules that summarize the number of hours worked by each attorney and professional support staffer employed by the firms, and the values of that time at current hourly rates (*i.e.*, the "lodestar"), as well as the expenses incurred by category. As set forth in the declarations, these schedules were prepared from contemporaneous records maintained in the ordinary course of business.

103. Lead Counsel respectfully submits that the hours of Plaintiff's Counsel, and the hourly rates, reflected in the individual fee declarations are reasonable and customary in litigation of this nature.

104. Collectively, Plaintiff's Counsel devoted a total of over 4,992 hours to the investigation, litigation, and ultimate resolution of this Action over more than two years. The value of that time results in a total aggregate lodestar of $4,036,775.50. Because the requested combined 33-1/3% fee equates to $5,333,333.33, Plaintiff's Counsel's requested fee represents a modest "lodestar multiplier" of 1.32 on their aggregate lodestar. Those figures exclude most of the time Lead Counsel has devoted to preparing the instant motion papers and does not include

[14] "Scott Decl." (attached hereto as Exhibit 3) refers to the Declaration of Daryl F. Scott on Behalf of Scott+Scott Attorneys at Law LLP in Support of Application for Award of Attorneys' Fees and Expenses, dated May 8, 2024. "Hall Decl." (attached hereto as Exhibit 4) refers to the Declaration of David Hall on Behalf of the Hall Firm Ltd. in Support of Application for Award of Attorneys' Fees and Expenses, dated May 8, 2024 "Schall Decl." (attached hereto as Exhibit 5) refers to the Declaration of Brian Schall on Behalf of Schall Law Firm Attorneys at Law LLP in Support of Application for Award of Attorneys' Fees and Expenses, dated May 7, 2024. The "Iverson Decl." (attached hereto as Exhibit 6) refers to the Declaration of Kelly K. Iverson on Behalf of Lynch Carpenter, LLP in Support of Application for Award of Attorneys' Frees and Expenses, dated May 8, 2024.

any time Lead Counsel will devote moving forward to working with the Claims Administrator on Settlement administration and distribution, among other acts.

105. For these reasons, Lead Counsel respectfully submits that the first statutory factor supports a finding that the requested fee award is reasonable and should be granted.

**2. The Quality of the Services Rendered**

106. As described in the accompanying individual declarations submitted in support of the application for fees and expenses, Plaintiff's Counsel have extensive and significant experience in the specialized field of securities class action litigation. *See* Scott Decl., Ex. 3-C; Hall Decl., Ex. 4-C; Schall Decl., Ex. 5-C; Iverson Decl., Ex. 6-C. Lead Counsel in this Action are each experienced in prosecuting class actions, with a significant history of achieving successful results in securities class actions.

107. Scott+Scott, as demonstrated by the firm resume attached to its declaration submitted herewith, is highly experienced in securities class action litigation, and has a long and successful track record in such cases, including the following: *Okla. Firefighters Pension & Ret. Sys. v. Newell Brands Inc.*, No. HUD-L-003492-18 (N.J. Super. Ct. Hudson Cty.) ($102.5-million settlement), *In re Micro Focus Int'l PLC Sec. Litig.*, Lead Case No. 18CIV01549 (Cal. Super. Ct., San Mateo Cty.) ($107.5-million settlement); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-cv-01519 (D.N.J.) ($164-million settlement); *In re LendingClub Corp. S'holder Litig.*, No. CIV. 537300 (Cal. Super. Ct. San Mateo Cty.) (part of $125-million global settlement); *In re Priceline.com Inc. Sec. Litig.*, No. 00-cv-01884 (D. Conn.) ($80-million settlement); *Irvine v. ImClone Sys., Inc.*, No. 02-cv-00109 (S.D.N.Y.) ($75-million settlement); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (S.D.N.Y.) ($70-million settlement); *Policemen's Annuity & Benefit Fund of the City of Chicago v. Bank of Am., NA*, No. 1:12-cv-2865 (S.D.N.Y.) ($69-million settlement); *In re Sandisk LLC Sec. Litig.*, No. 3:15-cv-01455-VC ($50 million settlement).

108. The attorneys of the Hall Firm Ltd. (formerly, Hedin Hall Firm LLP) are also recognized as having "extensive experience in class actions, with a specialty in securities matters." *Luczak v. Nat'l Beverage Corp*., CASE NO. 0:18-cv-61631, 2018 WL 9847842, at *2 (S.D. Fla. Oct. 12, 2018). With offices in San Francisco, the firm has successfully litigated and resolved numerous class actions under the federal securities law in state and federal courts nationwide. And founding partner Mr. Hall's personal experience includes over 12 years dedicated to complex securities litigation, including briefing and arguing numerous novel theories and issues of first impression. *See, e.g.*, *Plymouth Cnty. Ret. Sys. v. Impinj, Inc.*, Index No. 650629/2019 (N.Y. Sup. Ct., N.Y. Cty.) ($20 million aggregate recovery, as co-lead counsel for Securities Act claims); *Plutte v. Sea Ltd.*, Index No. 655436/2018 (N.Y. Sup. Ct., N.Y. Cty.) ($10.75-million settlement for investor class on Securities Act claims); *In re Menlo Therapeutics Inc. Sec. Litig*., Case No. 18-CIV-06049 (Cal. Super. Ct., San Mateo Cty.) ($9.5-million settlement for investor class on Securities Act claims); *In re EverQuote, Inc. Sec. Litig.*, Index No. 650907/2019 (N.Y. Sup. Ct., N.Y. Cty.) ($4.75-million settlement for investor class on Securities Act claims); *Chi. Laborers Pension Fund v. Alibaba Grp. Holding Ltd.*, Case No. CIV535692 (Cal. Super. Ct., San Mateo Cty.) ($75 million settlement for plaintiff class of investors); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc*., No. 12-CV-5275 (D.N.J.) ($33-million settlement for class of aggrieved investors on Exchange Act claims); *La. Mun. Police Emps.' Pension Fund v. KPMG, LLP*, No. 10-CV-1461 (N.D. Ohio) ($32.6-million settlement for class of aggrieved investors on Exchange Act claims); *Cyan v. Beaver Cty. Emps. Ret. Fund*, 138 S. Ct. 1061 (2018) (9-0 vote in favor of plaintiffs).

109. Lead Counsel respectfully submits that their skill and effort were also confirmed by their hard work and resulting success for the Settlement Class here. Their experience was

evident in the diligent and difficult work undertaken by Lead Counsel in prosecuting this Action and arriving at the Settlement in the face of Defendants' vigorous opposition and serious hurdles to success described herein (*see, e.g.*, *supra* §IV.A.1).

110. The quality of the work performed by Plaintiff's Counsel in achieving the Settlement also must be evaluated in light of the quality of the opposition. That resolution was all the more significant here because Defendants were represented by nationally recognized defense firms, including Wilson Sonsini Goodrich & Rosati, P.C., Williams & Connolly LLP, Simpson Thacher & Bartlett LLP, and Dentons Cohen & Grigsby P.C., as well as esteemed local counsel, Pietragallo Gordon Alfano Bosick & Raspanti, LLP. These attorneys vigorously defended their clients and presented comprehensive challenges to Lead Plaintiff wherever they could.

111. As the Settlement is a direct result of Lead Counsel's work in the prosecution of the Action on behalf of the Settlement Class, this factor also supports the requested one-third fee award.

**3. The Results Achieved and Benefits Conferred on the Class**

112. As previously discussed, the proposed $16-million Settlement represents an excellent recovery for the Settlement Class not only in light of the risks of continued litigation, but also compared to the resolutions of comparable securities class actions last year.

113. The Settlement's recovery of $16 million is a substantial recovery, which is greater than the outcome of comparable cases, in both absolute and relative terms. *See supra* §IV.A.2.

114. Lead Counsel further submit that the recovery here is particularly commendable in the face of Defendants' multiple significant liability and damages arguments and affirmative defenses, and the significant uncertainty the case faced.

115. It also bears noting that this Action is the only case filed and prosecuted arising from the allegedly false and misleading Offering Materials. The hallmarks of many successful

securities class actions – such as the release of earnings restatements, regulatory or enforcement actions, or any other parallel actions – were not present to assist Lead Counsel's investigation and prosecution of the Action.

116. Plaintiff's Counsel were thus required to independently develop the facts and legal theories necessary to win the $16-million Settlement for the Settlement Class now pending before this Court. Accordingly, Lead Counsel submit that this statutory factor also weighs in favor of granting their fee request.

**4. The Magnitude, Complexity, and Uniqueness of the Action**

117. As discussed in §§II.A and IV.A.1, *supra*, the Action involved complex subject matter, and multiple sophisticated defendants with credible and complex defenses. The magnitude of the recovery Lead Counsel achieved constitutes a superior result under multiple metrics, as also set forth above.

118. Prosecuting this Action was complex from the start. Defendants removed this Action to federal court as soon as they could, which forced Lead Plaintiff to file a motion to remand the Action back to this Court. Defendants did not stop there, either. As discussed in greater detail in §II.B, *supra*, Defendants filed hundreds of pages worth of preliminary objections to the Amended Complaint, challenging it on multiple fronts, from the sufficiency and specificity of the pleadings, *inter alia*, to this Court's exercise of personal jurisdiction.

119. Nor was there any indication that Defendants' vigorous tactics would let up if the Amended Complaint had survived their preliminary objections. To the contrary, if the tack they took early in the case were any indication of things to come, Lead Plaintiff faced difficult battles litigating discovery disputes, class certification, and summary judgment, among other pretrial motions.

120. Even if Lead Plaintiff were successful in proving liability, he faced challenges proving the extent of damages, as Defendants had "negative causation" arguments that some, if not all, of the Class's alleged damages resulted from factors other than the alleged material misstatements and omissions in the Offering Materials. *See supra* §IV.B.1.

121. Accordingly, Lead Counsel respectfully submit that the achievement of an excellent result for the Settlement Class in a large, complex case – in the face the risks described herein – further supports an award of the requested one-third fee under the fourth statutory factor.

#### 5. Whether the Receipt of a Fee Was Contingent on Success

122. Lead Counsel, who worked on a contingent basis, bore the risk that no recovery would be achieved. From the outset, Lead Counsel understood that they were embarking on a complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. Even with the most vigorous and competent efforts, success in contingent-fee litigation, such as this, is never assured. In addition, even when successful, the road to recovery can be long. Lead Counsel's persistent efforts in the face of vigorous opposition – despite the risk of non-payment – is what resulted in the outstanding recovery for the Settlement Class. Thus, Lead Counsel submit that the final statutory factor supports the requested fee award.

### B. Plaintiff's Counsel's Request for Reimbursement of Necessary Litigation Expenses Is Reasonable

123. Plaintiff's Counsel also request reimbursement for the payment of expenses reasonably incurred in connection with the prosecution of this Action from the Settlement Fund in the amount of $164,005.56, plus accrued interest. This amount is below the $300,000 maximum expense amount that the Settlement Class was advised could be requested. *See* Ewasho Decl., Ex. 2-A ¶16.

124. Again, from this Action's inception, Plaintiff's Counsel understood that they might not recover any of their expenses and, at the very least, would not recover anything until this Action was resolved. Thus, Plaintiff's Counsel were motivated to take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of this Action.

125. Plaintiff's Counsel's litigation expenses are set forth separately in the individual declarations of each firm and are reflected in each firm's books and records. *See* Exs. 3-6.

126. The requested expenses are typical of those incurred in securities litigation. For example, the lion's share of expenses was for Lead Plaintiff's retention of industry and damages experts ($73,283.75) and conducting the mediation ($37,500.00). Both of those expenses were integral and necessary to incur to successfully resolve this Action.

127. The other expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients, including filing fees, online legal and factual research, and travel.

128. All these expenses are typical in litigation of this nature and were necessary for the successful prosecution and resolution of the claims against Defendants. Further, no objections to Plaintiff's Counsel's request for reimbursement of necessary litigation expenses have been received to date.

## VII. LEAD PLAINTIFF'S REQUESTED SERVICE AWARD IS REASONABLE

129. Lead Plaintiff requests a modest service award of $7,500 for the time and effort he spent overseeing the prosecution of the Action on behalf of the Settlement Class. This amount is below the $10,000 maximum expense amount that the Settlement Class was advised could be requested. *See* Ewashko Decl., Ex. 2-A ¶16. And, to date, no objections to the requested service award have been received.

130. As detailed in his declaration, attached hereto, Lead Plaintiff has fulfilled his fiduciary obligations to the Settlement Class. Patel Aff., ¶¶2, 5. For example, Lead Plaintiff read or reviewed the initial and Amended Complaint, numerous briefs and pleadings filed in this Court, and the mediation statement submitted to the Mediator before the Parties' mediation session. *Id.* Moreover, these and other efforts from Lead Plaintiff set forth in his declaration were necessary to the prosecution and outcome here. *Id.*

131. Lead Counsel can attest that Lead Plaintiff diligently performed the forgoing work on behalf of the Settlement Class and was in regular contact with Lead Counsel throughout the litigation, mediation, and settlement of this Action.

132. Lead Counsel submit that because Lead Plaintiff's efforts during this Action are of the type that courts routinely find to support service awards, the modest award totaling less than the noticed amount should also be approved.

## VIII. CONCLUSION

133. For the reasons set forth above, and in the accompanying memorandum of law, Class Representative and Lead Counsel respectfully submit that: (i) the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate, (ii) the request for a 33-1/3% attorneys' fee award and reimbursement of $164,005.56 in expenses, including accrued interest, should be granted, and (iii) a service award of $7,500 to Lead Plaintiff should also be approved as fair and reasonable.

I declare under penalty of perjury that the forgoing is true and correct.

Executed this 8th day of May, 2024, at New York, New York.

Max R. Schwartz