**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>**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CLASS CERTIFICATION, AND FOR AUTHORIZATION OF CLASS NOTICE**<br><br>CLASS ACTION<br><br>Filed on behalf of:<br><br>PLAINTIFF RAJESH PATEL |


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## I. INTRODUCTION

Plaintiff Rajesh Patel ("Plaintiff") respectfully submits this unopposed Motion for an order granting preliminary approval of the proposed Stipulation and Agreement of Settlement ("Stipulation" or "Stip.") between himself and defendants Viatris Inc. ("Viatris"), Pfizer Inc., Michael Goettler, Sanjeev Narula, Bryan Supran, Margaret M. Madden, Douglas E. Giordano, Robert J. Coury, Ian Read, and James Kilts (collectively, "Defendants").[1]

As set forth herein, the proposed $16 million Settlement represents a significant recovery given the risks of continued litigation, other recently approved securities class action settlements and the potential range of recovery. Moreover, it was achieved through arm's-length negotiations with the assistance of an experienced mediator after Plaintiff and his counsel were well-informed regarding the merits of and defenses to the claims through thorough investigation, extensive briefing, argument and mediation.

For these reasons, and as further detailed below, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally certify a class for purposes of settlement; (3) and direct notice of the Settlement be provided to potential Class members in the manner customarily used in securities class-action cases through direct mailing and publication. To this end, Plaintiff requests (4) that A.B. Data, Ltd., a well-qualified and highly experienced Claims Administrator, be appointed to disseminate the Settlement Notice and administer the Settlement, and that Huntington Bank be appointed as Escrow Agent for the Settlement Fund. Plaintiff also requests (5) that the Court set a date for a hearing on final approval of the Settlement and related matters, which will allow for the prompt conclusion of this action

[1] Unless otherwise indicated, capitalized terms shall have their meaning as defined in the 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.

and distribution of the Settlement proceeds while providing sufficient time for Class Members to receive notice and present any objection or opt-out.

For the reasons set forth herein, and as the Motion is unopposed, the Motion should be granted in full.

## II. BACKGROUND

### A. Overview of the Claims at Issue

Defendant Viatris is a pharmaceutical company, which was created in November 2020 through the merger of Mylan N.V. and Upjohn, Inc., a spin-off of Defendant Pfizer Inc. (the "Merger"). Plaintiff's claims in this action stem from alleged material misstatements and omissions concerning Viatris' revenue and related performance metrics, alleged in the operative January 3, 2023, Amended Class Action Complaint ("Compl."). Specifically, Plaintiff alleges that by the time the Merger closed in November 2020, revenue from the legacy Upjohn business was well below the range for FY 2020 that Defendants had provided, owing to the July 2020 expansion of the VBP program in China, which negatively impacted Upjohn's products there, and the loss of exclusivity for Upjohn's Lyrica product in Japan, which also occurred in July 2020. As a result, Plaintiff alleges that by the Merger close in November 2020 Upjohn had no realistic chance of meeting even the bottom of its 2020 revenue range, that Defendants related key performance metrics for Viatris were in turn not realistic by that time either, and that Upjohn's FY 2020 revenue indeed ultimately missed the midpoint of the range that Defendants had provided by 15%, with other key metrics substantially missing their ranges as well. In addition, Plaintiff alleges that prior to the November 2020 Merger close, Viatris' key performance metrics were negatively impacted by undisclosed synergy and integration costs. However, Plaintiff alleges that Defendants' written and oral solicitations leading up to the Merger close did not disclose the foregoing problems which

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.

As detailed below, Defendants have consistently denied and vigorously disputed the allegations and claims at issue.

**B. Procedural Background**

Plaintiff initiated this case on October 28, 2021. Viatris removed the Action from this Court to the United States District Court for the Western District of Pennsylvania on December 3, 2021. On December 31, 2021, Plaintiff filed a motion to remand the Action to this Court, which was granted by the federal court on September 21, 2022.

Plaintiff filed the operative Amended Class Action Complaint on January 3, 2023, alleging Defendants violated §§11, 12(a)(2), and 15 of the Securities Act of 1933 ("1933 Act" or "Securities Act"). On March 17, 2023, Defendants filed preliminary objections, which Plaintiff opposed on June 2, 2023. On August 8, 2023, Judge Szefi held a three-hour hearing on Defendants' preliminary objections to the Amended Complaint. The parties subsequently filed supplemental memoranda in support of their positions in August and September 2023.

Plaintiff and Defendants, through their counsel, commenced preliminary discussions regarding resolution of the claims at issue through mediation, and the Parties ultimately agreed to retain a highly experienced mediator of securities class actions, the Hon. Layn R. Phillips (U.S.D.J., ret.) ("Judge Phillips" or the "Mediator") for that purpose.

On November 17, 2023, representatives of the Parties attended a full day, in-person mediation session in New York City under the auspices of the Mediator. At the end of this full day mediation session, the Mediator made a "mediator's proposal" for a settlement of all claims asserted in the Action under which, *inter alia*, Plaintiff on behalf of himself and the putative class

would settle, compromise and release all claims against Defendants in exchange for the Defendants' payment of $16,000,000.00 in cash.

The Parties accepted the mediator's proposal in principle, subject to the resolution of certain non-monetary terms prior to the execution of a final stipulation of settlement. The Parties executed a Memorandum of Understanding setting forth the material terms and conditions of the resolution of this Action ("MOU") on November 17, 2023, and thereafter began working on drafts of the stipulation of settlement, proposed notices, claim form, preliminary approval order, and final judgment. Following the Parties' execution of the MOU, the Parties jointly requested that the Court suspend current court proceedings while they prepared a full stipulation of settlement and this Preliminary Approval Motion.

### C. Terms of the Proposed Class Action Settlement Agreement

#### 1. The Settlement Class Definition

For settlement purposes only, Plaintiff seeks certification of the following Settlement Class pursuant to Pa. R. Civ. P. 1710 and 1714:

> **All persons or entities who acquired shares of Viatris Inc. common stock in exchange for Mylan N.V. shares directly in the stock-for-stock exchange conducted pursuant to the offering materials issued in connection with the November 2020 merger of Mylan N.V. and Upjohn, Inc. to form Viatris.**

Excluded from the Settlement Class are Defendants; their respective successors and assigns; the past and current executive officers and directors of Viatris Inc. and Pfizer Inc.; the members of the immediate families of the Individual Defendants; and the legal representatives, heirs, successors, or assigns of any excluded person, and any entity in which any of the above excluded persons have or had a direct or controlling ownership interest, and the legal representatives, heirs, successors-in-interest or assigns of any such excluded persons or entities. Also excluded will be any person or entity that validly requests exclusion from the Settlement Class. (Stip., ¶1.39.)

### 2. Consideration Provided to the Settlement Class

Under the Stipulation, Defendants will pay the sum of $16,000,000.00 (sixteen million U.S. dollars) in cash, to be deposited into the Escrow Account. (Stip., ¶1.38.) Defendants are to pay the funds to the Escrow Account no later than 21 (twenty-one) calendar days from the date the Court signs and enters the Preliminary Approval Order. (Stip., ¶2.1.) Interest earned on the Settlement Fund will accrue to the benefit of the Settlement Class. (Stip., ¶¶1.42, 2.2.)

The Settlement is non-recapture, *i.e.*, it is not a claims-made settlement. 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.).

As this is a Class Action, the Settlement Fund will be used to pay the costs of notifying potential Class members of the settlement, administering the process through which Settlement Class members submit claims and receive a specified portion of the Settlement Fund, the expenses of litigating this case, including attorneys' fees and costs, and any taxes on the interest earned by the Settlement Fund.

The balance after those costs, or the Net Settlement Fund, will then be distributed to authorized claimants under a Plan of Allocation described in further detail below and in the proposed Notice to Settlement Class members. To qualify as authorized claimants, potential Settlement Class members must submit information requested in the Proof of Claim form (distributed with the Notice), which establishes that they are in fact Settlement Class members and the amount of relevant losses that they allegedly suffered, based on their transaction data in Viatris stock. The Plan of Allocation provides a simple formula, based on the damages formula set forth in the Securities Act for the claims at issue, for translating Claimants' economic losses into a Recognized Claim Amount, and then allocates the Net Settlement Fund to each Claimant based on

his or her *pro rata* share of the total Recognized Claims for all authorized Claimants. Accordingly, the Plan of Allocation here ensures all authorized Claimants will receive their fair share of the Net Settlement Fund consistent with the damages formula set forth in the Securities Act.

**3. Releases**

In exchange for the consideration provided by Defendants under the Stipulation, Plaintiff and each Settlement Class Member on behalf of themselves and their Related Persons will provide the following Release to the Released Defendants' Parties, from:

> all claims (including "Unknown Claims"), demands, losses, rights, damages, and causes of action of any nature whatsoever, whether in law or in equity, that have been or could have been asserted in the Action or could in the future be asserted in any forum, whether foreign or domestic, whether arising under federal, state, common, or foreign law, by Plaintiff, any member of the Settlement Class, or their successors, assigns, executors, administrators, representatives, attorneys, and agents, in their capacities as such, whether brought directly or indirectly against any of the Released Defendants' Parties, that both (a) arise out of, are based on, or relate in any way to any of the allegations, acts, transactions, facts, events, matters, occurrences, statements, representations or omissions involved, set forth, alleged or referred to in the Action, or which could have been alleged in the Action, and (b) arise out of, are based on, or relate to (i) the purchase or acquisition of any Viatris Inc. shares in exchange for common shares of Mylan N.V. in connection with the November 2020 merger of Mylan N.V. and Upjohn, Inc., or (ii) the purchase or acquisition of any Mylan N.V. shares during the period June 30, 2020 through November 16, 2020. "Released Claims" does not, however, include claims to enforce the settlement. (Stip., ¶1.33, 3.2.)

Additionally, each Defendant, and each of the Released Defendants' Parties in their capacities, will provide the following release to the Released Plaintiff's Parties, from:

> all claims (including, but not limited to "Unknown Claims"), demands, losses, rights, and causes of action of any nature whatsoever by the Released Defendants' Parties or any of them against Plaintiff, members of the Settlement Class, or Plaintiff's Counsel, which arise out of or relate in any way to the institution, prosecution, assertion, settlement, or resolution of the Action (except for claims to enforce the settlement). (Stip., ¶¶1.34, 3.3.)

These releases are standard in securities class action settlements, and provide finality to the Parties.

### 4. The Proposed Notice and Claims Program

#### a. Retention of A.B. Data, Ltd. as Claims Administrator

Lead Plaintiff proposes that the notice and claims process be administered by A.B. Data, Ltd., an independent settlement and claims administrator with experience handling the administration of securities class actions. Lead Counsel selected A.B. Data, Ltd. after a competitive bidding process in which three firms submitted proposals. All the proposals received involved comparable methods of providing notice and claims processing, including use of first-class mail and identifying potential Class Members through brokers and nominee owners.

#### b. Retention of Huntington National Bank as Escrow Agent

Lead Plaintiff proposes that the Court approve his selection of Huntington National Bank ("HNB") as escrow agent. HNB was established in 1866, holds over $60 billion in assets, and has more than 700 branches nationwide. HNB's national settlement team has handled more than 1,000 settlements for law firms, claims administrators, and regulatory agencies. Significantly, HNB has also agreed not to charge the Class any fees in connection with its investment of Settlement Fund assets.

#### c. Proposed Notice Procedures

The Notice provides the key and necessary information regarding the Settlement, how it affects Settlement Class members, and certain steps they may wish to take. (*See* Stip., Ex. A-1.) Among other things, it contains: an explanation of the litigation and claims; a description of the material terms of the Settlement; an overview of how to submit a claim to participate in the distribution of the Net Settlement Fund; instructions for how and when to object to or opt out of the Settlement if they so choose; the date upon which the Fairness Hearing will occur; the effect of taking or not taking any of the foregoing actions; and the address of the Settlement Website at

which Settlement Class Members can submit a Claim Form and access the Stipulation and other related documents and information.

The Claim Form is attached to the Notice, and also available on the Settlement Website or upon request (Stip., Ex. A-2). It clearly informs the Settlement Class Members of the process they must follow to submit a claim, the information they must provide to establish that they are Settlement Class members and the amount of their Recognized Loss, and instructions for how to submit that information. The Claims Administrator will review and process the claims under the supervision of Lead Counsel, provide claimants with an opportunity to cure any deficiencies in their claim(s) or request review of the denial of their claim(s) by the Court, and then mail or wire claimants their *pro rata* share of the Net Settlement Fund (as calculated under the Plan of Allocation) upon final approval of the Court and after the Effective Date. (*Id.*, ¶¶4.10, 4.14.)

The Claims Administrator will mail the Notice and Claim Form (the "Notice Packet") to all identified potential Settlement Class members. The Claims Administrator will identify potential Class members through brokerage firms and other nominees who purchased eligible Viatris common stock on behalf of other beneficial owners, and the Claims Administrator may also use records provided by Viatris to assist it in identifying potential Class members as well. The brokerage firms and nominees may choose to mail the Notice Packet directly to potential Settlement Class members or to provide their mailing information to the Claims Administrator so that it may do so. (*See* proposed Preliminary Approval Order, ¶11.)

The Claims Administrator will also cause the Summary Notice (attached as Ex. A-3 to the Stipulation) to be published (a) electronically once on the PRNewswire; and (b) in print once in Business Wire. (*Id*., ¶14). The Summary Notice provides an abbreviated description of the Action,

the Settlement, key dates and the effect of submitting a claim, objecting or opting-out, and explains how to obtain the more detailed Notice and Claim Form.

In addition, the Claims Administrator will publish the Notice and Claim Form and other materials on a website to be developed for the Settlement (*id.*, ¶13), which will contain copies of the notices and other important case materials and will permit Settlement Class Members to submit claims electronically. The Claims Administrator will also create a toll-free number that Settlement Class Members may call for information. Settlement Class Members will be able to file claims both electronically and by mail. The proposed plan for providing notice is the same method that has been used in numerous other securities class actions.

## III. ARGUMENT

### A. The Court Should Preliminarily Approve the Settlement and Authorize Notice

"[S]ettlements are favored in class action lawsuits." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("There is an overriding public interest in settling class action litigation, and it should therefore be encouraged."). Consistent with this maxim, Plaintiff requests that the Court preliminarily approve the proposed Settlement set forth in the Stipulation on the grounds that the proposal falls within the range of reasonableness and that approval on these terms will secure an excellent recovery in exchange for the releases of the claims raised in the Action.

Preliminary approval is the first of two stages before a class action settlement is finally approved. *Brophy v. Phila. Gas Works & Phila. Facilities Mgmt. Corp.,* 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). During the first stage, the Court must make a "preliminary fairness evaluation" of the settlement to determine (i) if there are "grounds to doubt its fairness or other obvious deficiencies"; and (ii) if the settlement "appears to fall within the range of possible

approval." *Id.*; *see also In re Nat'l Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (same). If preliminary approval is granted, notice is given to the class members and a formal fairness hearing is scheduled where the Court can receive arguments and evidence in support of or in opposition to the proposal. *Id.* The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an "'adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin*, 727 A.2d at 1079. Factors relevant to the ultimate approval of the settlement (after the final fairness hearing) include:

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 the proceedings and the amount of discovery completed;
6. the recommendations of competent counsel; and
7. the reaction of the class to the settlement.

*Id.* at 1079-80.

On the record developed so far, all of these factors militate in favor of this Court preliminarily approving the Settlement. Moreover, and in any event, the Settlement was the product of arm's-length negotiations under the auspices of a very respected mediator and was the product of a mediator's proposal. Many courts have held that settlements of complex class actions under such circumstances are presumptively reasonable. *See, e.g.*, *Shapiro v. Alliance MMA, Inc.*, No. 17–2583, 2018 WL 3158812, at *2 (D.N.J. June 28, 2018) (preliminarily approving settlement in part because "[t]he participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the

parties")[2]; *In re ViroPharma Inc., Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (same); *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012) (involvement of mediator is a "strong indicator of procedural fairness"); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) ("counsel have provided the Court significant evidence demonstrating that this settlement was the product of prolonged, arms-length negotiation, including as facilitated by a respected mediator"); *In re Toys R Us Antitrust Litig.*, 191 F.R.D. 347, 352 (E.D.N.Y. 2000) (approving settlements that were "reached only after arduous settlement discussions conducted in a good faith, non-collusive manner . . . and with the assistance of a highly experienced neutral mediator").[3]

**1. The Risks of Establishing Liability and Damages**

Defendants have 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 and recovering damages at trial, and ultimately 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 due to (i) an expansion of China's VBP program prior to the Merger; and (ii) loss of Lyrica exclusivity in Japan. Defendants contend that the expansion of VBP, while announced prior to the Merger (and allegedly disclosed by Pfizer in August 2020), was not implemented until November 2020 (the same month as the Merger) and so could not have impacted Upjohn's per-Merger revenues. Likewise,

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[2] Unless otherwise indicated, citations are omitted and emphasis is added.

[3] Pennsylvania's rules governing class actions "incorporate[] the best features of Federal Rule 23," but are not identical. *Cramer v. Getz*, 12 Pa. D. & C.3d 760, 764 (Pa. Ct. Com. Pl. 1979). Consequently, "federal case law is particularly instructive but not binding." *Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635, 637 n.4 (Pa. Super. Ct. 1986).

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 in order to prove Defendants misrepresented the financial health and future prospects of those businesses. Doing so would likely necessitate seeking documents and testimony from local, in-country current and former Viatris employees, some of which would likely require translations from Chinese and Japanese to English. And, even if Plaintiff could obtain such discovery, there was no guarantee that the facts would ultimately support Plaintiff's claims as Defendants have consistently maintained that Upjohn's revenues declined due to other, fully disclosed, factors. Moreover, proving 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.

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

that Plaintiff's Section 12(a)(2) claim fails because liability for Section 12(a)(2) is to be measured as of the date Mylan shareholders voted to approve the Merger and the issues with Upjohn's business in China caused by expansion of the VBP program and the loss of Lyrica exclusivity in Japan did not occur until after that date. Moreover, Defendants contend that Pfizer regularly updated the market on Upjohn's financial performance, including quarterly revenues, throughout 2020, and that any relevant information 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 would have ruled on these issues.

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

Defendants also have at least two affirmative defenses. First, under the Securities Act damages caused by a misstatement are presumed but may be rebutted by showing the declines in a stock's price were caused by something other than the alleged misstatement. *See* 15 U.S.C. §77(I). This is the so-called "negative causation" defense. Here, Defendants have maintained that even if Plaintiff could prove liability, they could still prove negative causation and thus significantly reduce, if not entirely eliminate, Plaintiff's damages. Plaintiff believes it would be possible to overcome this defense, but doing so would likely result in a "battle of the experts,"

including over detailed event studies on days when Viatris' share price declined to assess what caused those declines.

Second, the Individual Defendants would have an affirmative "due diligence" defense to liability under the Securities Act. The due diligence defense permits an individual (but not an issuer) to escape liability for misstatements by proving that he or she conducted an objectively reasonable investigation into the Offering Documents and had a subjective, reasonable belief that they contained no misstatements. *See* 15 U.S.C. §77k(b)(3)(A). Given the roles and involvement of the Individual Defendants, Plaintiff believes it is unlikely that they would be able to prove their due diligence defenses, but this is something that would potentially have to be decided by a jury at trial.

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

In sum, while Plaintiff does believe that 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 without needing to risk further litigation.

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

Plaintiff's damages expert estimates that a reasonable class-wide recovery was approximately $730,000,000. Defendants maintain that Plaintiff's best-case scenario is actually much lower. The Settlement's recovery of $16,000,000 is approximately 2.1% of Plaintiff's estimated damages, which is above the 1.7% average for securities cases in 2022 where the

estimated damages were between $600 million to $999 million.[4] *See* Janeen McIntosh et al., *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review*, NERA ECON. CONSULTING, at 17 fig.18 (Jan. 24, 2023), https://www.nera.com/content/dam/nera/publications/2023/PUB_2022_Full_Year_Trends.pdf. The recovery here is also well-above the $13 million median settlement amount for all securities class actions settled in 2022. *Id.* at 13. When faced with the risks for establishing liability and damages outlined above (*see supra* §III.A.1), the Settlement is an excellent result for Class Members.

**3. The Range of Reasonableness of the Settlement in Light of the Risks of Continued Litigation**

The parties reached the Settlement prior to discovery and a ruling on Defendants' pending preliminary objections. As detailed above (*see supra* §III.A.1), Defendants have raised meaningful factual and legal arguments against Plaintiff's claims, which if successful would result in dismissal of this case and no recovery for the Class. While all litigation is risky, and Plaintiff believes he could ultimately prevail at trial and on appeal, Plaintiff recognizes that at the August 8, 2023 hearing Judge Szefi expressed serious concerns about the viability of Plaintiff's claims as a matter of fact and law. For example, during that three-hour hearing, the Court expressed concerns about, *inter alia*, whether (i) Plaintiff had and could allege a present omission in the Offering Documents (8/8/23 Tr. at 20:20–21:19); (ii) the 70 plus pages of disclosures in the Offering Documents sufficiently disclosed the risks to Viatris of potential expansion of VBP in China and loss of Lyrica exclusivity in Japan (*id*. at 80:23–82:13); and (iii) this Court could exercise personal jurisdiction over many of the Individual Defendants (*id*. at 170:3-18). Judge Szefi also had questions at the August 8 hearing regarding whether, as a matter of law, Plaintiff could allege a claim under the

[4] Metrics for settlements that occurred in 2023 are not yet available.

Securities Act when much of the evidence of problems with Upjohn's revenues post-dated both the effective date of the Registration Statement and the shareholder vote approving the Merger. Indeed, the Court invited supplemental briefing from the parties on these and other issues, which was submitted in September 2023. 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 Plaintiff's claims such that it may not have been possible to cure any defects in the claims through a further amended complaint.

Moreover, even if Plaintiff's claims had survived the preliminary objections in whole or in part, that would just be the first step to recovery for the Class. Thereafter, Plaintiff would have to conduct extensive discovery, move to certify the Class, survive summary judgment, prevail at trial, and successfully defend those victories on appeal. Litigation is a risky affair—securities litigation especially so—and the above-average $16,000,000 recovery in the Settlement (*see supra* §III.A.2) is clearly 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**

Securities class actions are inherently complex, expensive, and time-consuming. *See, e.g.*, *Kanfsky v. Honeywell Int'l Inc.*, No.: 18-cv-15536, 2022 WL 1320827, at *4 (D.N.J. May 3, 2022); *In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 642 (D.N.J. 2004); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000). Assuming the claims had survived the pending preliminary objections, the parties would have to spend years conducting fact and expert discovery, then brief summary judgment and then "[t]he time and expense of a securities class action trial is substantial and would very likely lead to post-trial motions and subsequent appeals that could extend this case for several more years." *Kanefsky*, 2022 WL 1320827, at *4.

Indeed, this case was first filed in October of 2021 and the hearing on Defendants' preliminary objections did not occur until almost two years later.

**5. The State of the Proceedings**

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. To start, Plaintiff's counsel undertook an extensive investigation of the facts prior to filing the initial complaint and the amended complaint. This included reviewing relevant public statements and financial disclosures, and working with accounting experts to develop Plaintiff's allegations and theory of the case. This investigation ultimately culminated with the filing of a lengthy and detailed amended complaint. Thereafter, the parties engaged in extensive briefing on Defendants' four separate preliminary objections to the amended complaint. This months-long process involved hundreds of pages of briefing, a three-hour hearing, and post-hearing supplemental briefing. The preliminary objections process permitted the Parties to fully develop and evaluate one another's arguments as to the legal sufficiency of Plaintiff's claims. This is significant because many of the issues raised by Defendants (*see supra* §III.A.1) were matters of law, which could be evaluated (and adjudicated) without the need for fact discovery.

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

Accordingly, the Parties had ample opportunity to, and did, develop a deep understanding of the strengths and weaknesses of Plaintiff's claims prior to reaching the Settlement.

### 6. The Recommendation of Counsel

Plaintiff's Counsel are two nationally recognized law firms that specialize in securities class actions, who wholeheartedly recommend the Settlement. Counsel reached this conclusion after (i) an extensive factual investigation leading to the filing of a detailed complaint that contained 182 paragraphs of detailed allegations across 61 pages, (ii) hundreds of pages of briefing on Defendants' preliminary objections, and (iii) an arm's-length mediation overseen by a former federal judge. Based upon all of this, Plaintiff's Counsel concluded that the Settlement is fair, reasonable, and adequate, particularly when contrasted against the significant risks, costs, and uncertainties of continued litigation described above (*see supra* §§III.A.1-4). Courts typically give substantial weight to the judgment of counsel in situations such as this. *See Alves v. Main*, No. 01–789 (DMC), 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("courts in this Circuit traditionally 'attribute weight to the belief of experienced counsel that settlement is in the best interest of the class'"), *aff'd*, 559 F. App'x 151 (3d Cir. 2014); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997) ("the Court credits the judgment of Plaintiffs' Counsel, all of whom are active, respected, and accomplished in this type of litigation"), *aff'd*, 148 F.3d 283 (3d Cir. 1998).

### 7. The Reaction of the Class

At this juncture it is premature to assess the reaction of the class, save to note that the Settlement has the full support of Plaintiff. That said, as described herein (*see supra* §II.C.4), should it be approved, the notice plan will "present a fair recital of the subject matter and proposed terms and inform the class members of an opportunity to be heard." *Tesauro v. Quigly Corp.,* No. 1011 AUG.TERM 2000, 2002 WL 1897538, at *3-4 (Pa. Ct. Com. Pl. Aug. 14, 2002) (citing *Fischer v. Madway,* 485 A.2d 809, 811 (1984)). Moreover, the program will permit Class Members

to voice their support for the settlement by, for example, submitting a claim, objecting to the Settlement, or opting-out.

### B. The Notice Plan Is Fair, Reasonable and Should Be Approved

As detailed above (*see supra* §II.C.4), the notice program is fair, reasonable and adequate. All forms of the notice include a description of the material terms of the Settlement and the forms of relief available to Settlement Class Members; a date by which Settlement Class Members may object to or opt out of the Settlement; the date upon which the Fairness Hearing will occur; and the address of the Settlement Website at which Settlement Class Members can submit a Claim Form and access the Stipulation and other related documents and information as well as a toll-free number at which they can contact the Claims Administrator with (Stip., Exs. A-1, A-2, & A-3). The long-form mail Notice explains further details regarding the litigation, Settlement and fees, as well as the full procedures for Settlement Class Members to submit a claim, exclude themselves or object to the any aspect of the Settlement. The Summary Notice notes those procedures as well, and directs the Settlement Class Members to the settlement website and the toll-free number, where additional information as well as the long-form Notice and Proof of Claim will be readily available. (Stip., Ex. A-3.) Further, the Claims Administrator will mail the long-form Notice and Proof of Claim to potential Settlement Class members identified by brokers and nominees who typically beneficially hold the relevant Viatris securities on their behalf, and the Claims administrator may also be assisted in identifying potential Settlement Class members by information provided by Viatris. In addition, the Summary Notice will be published in PR Newswire and BusinessWire.

This notice program meets or exceeds all requirements under Pennsylvania law, satisfies all constitutional considerations of fairness and due process, and is consistent with notice programs regularly approved in other securities class action settlements. *See Tesauro*, 2002 WL 1897538, at *3-4. Accordingly, it should be approved.

### C. The Proposed Schedule of Events

Plaintiff proposes the following schedule of to efficiently move this case to resolution and efficiently compensate the Settlement Class:

| Deadline | Event |
|---|---|
| Preliminary Approval Order ("**PAO**") + 14 days | Notice and Claim Form to be posted to the Settlement Website. (*See* PAO, ¶17.) |
| PAO + 21 days | Notice and Claim Forms mailed (the "**Notice Date**"). (*See* PAO, ¶15.) |
| PAO + 30 days | Summary Notice shall be published. (*See* PAO, ¶17.) |
| 35 days before Fairness Hearing | Memos in Support of Settlement, Plan of Allocation, and Fee and Expense Application filed. (*See* PAO, ¶28.) Lead Counsel shall make a filing sufficient to show that the Notice was disseminated pursuant to the PAO. (*See* PAO, ¶16.) |
| 30 days prior to Fairness Hearing | Deadline for Class members to request exclusion from the class. (*See* PAO, ¶23; Supplemental Agreement, ¶2; Stip., ¶8.4.) |
| 21 days prior to Fairness Hearing (and at least 30 days after Notice Date) | Deadline for Class members to submit objections to the Settlement. (*See* PAO, ¶26; Stip., ¶8.5.) |
| 7 days before Fairness Hearing | Reply Memos in Support of Settlement, Plan of Allocation, and Fee and Expense Application filed. (*See* PAO, ¶29.) Lead Counsel shall file any additional proof related to mailing of the notice. PAO, ¶16. |
| Notice Date + approximately 115 Days | Final Fairness Hearing |
| Notice Date + 120 days | Deadline to submit claims. (*See* PAO, ¶21(a).) |
| Later of: (i) Claims Administrator completes claims review + 21 days or (ii) Effective Date occurs | Lead Counsel shall file Settlement Class Distribution Motion. (*See* Final Judgment, ¶21(b).) |

### D. The Requirements for a Class Action Are Satisfied and the Court Should Conditionally Certify the Settlement Class

Under Pennsylvania's rules of civil procedure, the proponent of class certification must demonstrate that the prerequisites under Rule 1702 are met. Pa. R. Civ. P. 1702; *see also Samuel-Bassett v. Kia Motors Am., Inc.,* 34 A.3d 1, 16 (Pa. 2011).[5] The Court may conditionally certify a class pending a final order on the merits. Pa. R. Civ. P. 1710(d).

In deciding whether to certify a class action, the Court is vested with broad discretion. *Cambanis v. Nationwide Ins. Co.,* 501 A.2d 635 (Pa. Super. Ct. 1985) ("Pennsylvania Rules of Civil Procedure . . . grant the court extensive powers to manage the class action."). Indeed, "it is the strong and oft-repeated policy of this Commonwealth that, in applying the rules for class certification, decisions should be made liberally and in favor of maintaining a class action." *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 892 (Pa. Super. Ct. 2011) (quoting *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 937 A.2d 503, 505 (Pa. Super. Ct. 2007)); *D'Amelio v. Blue Cross of Lehigh Valley,* 500 A.2d 1137, 1141 (Pa. Super. Ct. 1985). Thus, all that is required at this stage is that Plaintiff "present evidence sufficient to make out a prima facie case from which the court can conclude that the [Rule 1702] certification requirements are met," *Braun*, 24 A.3d at 894, and Plaintiff's burden of proof is "not a heavy burden," *Clark v. Pfizer Inc.*, 990 A.2d 17, 24 (Pa. Super. Ct. 2010).

As explained below, Plaintiff satisfies Rule 1702, and this Court should conditionally certify this class action for settlement purposes.

Applying similar criteria as those at issue here, courts throughout the nation regularly certify class actions bringing claims under the federal securities laws for settlement purposes. *See*

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[5] Additionally, Rules 1708 and 1709 specify the factors considered in determining the last two requirements of Rule 1702 (adequacy of representation and fairness and efficiency). *Id.*

*In re 3D Sys. Sec. Litig.*, No. 21-cv-1920, 2024 WL 50909, at *6-8 (E.D.N.Y. Jan. 4, 2024); *Abadilla v. Precigen, Inc.*, No. 20-cv-6936, 2023 WL 7305053, at *4-6 (N.D. Cal. Nov. 6, 2023); *Hunt v. Bloom Energy Corp.*, No. 19-cv-02935, 2023 WL 7167118, at *3-4 (N.D. Cal. Oct. 31, 2023); *Sheet Metal Workers Loc. 19 Pension Fund v. ProAssurance Corp.*, No. 20-cv-856, 2023 WL 7180604, at *3-4 (N.D. Ala. Aug. 25, 2023); *Se. Pa. Transp. Auth. v. Orrstown Fin. Servs., Inc.*, No. 12-cv-0993, 2023 WL 1454371, at *5-9 (M.D. Pa. Feb. 1, 2023); *McDermid v. Inovio Pharms., Inc.*, No. 20-01402, 2023 WL 227355, at *2-3 (E.D. Pa. Jan. 18, 2023); *Beltran v. Sos Ltd.*, No. 21-7454, 2023 WL 319895, at *9-12 (D.N.J. Jan. 3, 2023), *report and recommendation adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023); *Duane & Virginia Lanier Tr. v. SandRidge Mississippian Tr. I*, CIV-15-634, 2022 WL 18585243, at *1-2 (W.D. Okla. Dec. 30, 2022); *In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, No. 17-341, 2022 WL 717254, at *2-4 (E.D. Pa. Mar. 10, 2022); *Macovski v. Groupon, Inc.*, No. 20-cv-02581, 2022 WL 17254746, at *1-2 (N.D. Ill. July 6, 2022).

**1. The Class Is So Numerous that Joinder of All Members Is Impracticable.**

Rule 1702(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Pa. R. Civ. P. 1702(1). While there is "no clear test of numerosity," the Court should inquire "whether the number of potential individual plaintiffs would pose a grave imposition on the resources of the Court and an unnecessary drain on the energies and resources of the litigants should such potential plaintiffs sue individually." *Temple Univ. of Com. Sys. of Higher Ed. v. Pa. Dep't of Public Welfare,* 374 A.2d 911, 996 (Pa. Commw. Ct. 1977).

That standard is met here. Lead Counsel estimates that there were at least thousands of persons or entities who acquired eligible Viatris common stock. The threshold presumption of impracticability of joinder is thus met – Pennsylvania courts routinely find that proposed classes

exceeding 100 members satisfy the numerosity requirement. *See ABC Sewer Cleaning Co. v. Bell of Pa.,* 438 A.2d 616, 621 n.6 (Pa. Super. Ct. 1981) (adopting trial court's determination that 250 class members satisfied Rule 1702(1)); *Temple Univ.,* 374 A.2d at 996 (123 class members sufficient).

**2. There Are Questions of Law or Fact Common to the Class**

Rule 1702(2) requires the existence of "questions of law or fact common to the class." Pa. R. Civ. P. 1702(2). Pennsylvania courts have explained that this requirement is generally met "if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the [defendant]." *Sommers v. UPMC,* 185 A.3d 1065, 1076 (Pa. Super. Ct. 2018) (quoting *Clark*, 990 A.2d at 24). "The common question of fact means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all. This is what gives the class action its legal viability." *Allegheny Cnty. Housing Auth. v. Berry,* 487 A.2d 995, 997 (Pa. Super. Ct. 1985).

Plaintiff alleges that Defendants violated the federal securities laws by making material misstatements and omissions concerning the Viatris' revenue and related performance metrics, including from the legacy Upjohn's business in China and Japan, in the Offering Materials and related oral communications Defendants used in connection with the Merger. These claims raise issues of law and fact common to the entire Settlement Class, as Plaintiff's alleged injuries stem from the same conduct by Defendants. For these reasons, the requirement of Rule 1702(2) is satisfied.

**3. The Claims of the Representative Parties Are Typical of the Claims of the Class**

Rule 1702(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Pa. R. Civ. P. 1702(3). The proposed representative's

"overall position on the common issues" must be sufficiently aligned with that of the class members "to ensure that his pursuit of his own interests will advance those of the proposed class members." *Baldassari v. Suburban Cable TV Co. Inc.,* 808 A.2d 184, 193 (Pa. Super. Ct. 2002). Typicality is satisfied when the "class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class." *Samuel-Bassett,* 34 A.3d at 31; *see also Janicik v. Prudential Ins. Co. of Am.,* 451 A.2d 451, 457-58 (Pa. Super. Ct. 1982). "But, typicality does not require that the claims of the representative and the class be identical, and the requirement 'may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.'" *Samuel-Bassett*, 34 A.3d at 31.

Here, Plaintiff is typical of the class because, like other Settlement Class Members, Plaintiff alleges that he acquired Viatris common stock pursuant to the Merger and was subsequently damaged due to Defendants' conduct. In pursuit of Plaintiff's Securities Act claims, he advances a singular, non-unique theory of liability that, if successful in continued litigation, would inure to the benefit of all Settlement Class Members. There are no differences between Plaintiff's overall position on the claims and those of the Settlement Class Members. Thus, the typicality requirement is satisfied.

**4. The Representative Plaintiff Will Fairly and Adequately Represent the Interests of the Class**

Rule 1702(4) requires that the "representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). In turn, Rule 1709 lists three requirements:

> (1) whether the attorney for the representative parties will adequately represent the interests of the class,
> (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and

(3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709. The proposed class meets all of these requirements.

**a. Counsel for Plaintiffs Have Adequately Represented the Interests of the Class and Will Continue to Do So**

Plaintiffs retained qualified attorneys with significant experience in class action litigation in both state and federal courts. Lead Counsel, Scott+Scott Attorneys at Law LLP and Hedin Hall LLP, are routinely appointed as class counsel in complex, multiparty litigation, and have a long record of obtaining class relief through approved settlements—or, when necessary, trial. Co-Lead Counsel also engaged local counsel, Lynch Carpenter, LLP, who are likewise routinely appointed as class counsel in complex class litigation and are also well-versed in the processes and procedures in this Court. Counsel have demonstrated their adequacy and commitment to this litigation through their pursuit of these claims to date. The Court is also permitted to presume counsel's adequacy in the absence of any demonstration to the contrary. *Haft v. U.S. Steel Corp.,* 451 A.2d 445, 448 (Pa. Super. Ct. 1982). For these reasons, the Court should find this factor is met here.

**b. There Are No Conflicts of Interest Between the Representative Plaintiff and the Class.**

As with the adequacy of counsel requirement, the Court "may generally presume that no conflict of interest exists unless otherwise demonstrated." *Id.* (quoting *Janicik,* 451 A. 2d at 459). Plaintiff is not aware of any "hidden collusive circumstances," *Haft,* 451 A.2d at 448, that could pose conflicts of interest between Plaintiff and members of the Settlement Class. If Plaintiff succeeds in obtaining approval of the proposed settlement, the benefits will inure to Plaintiff and all Settlement Class Members in a manner calculated to equitably correspond to the amount of monetary harm allegedly suffered by each individual. This factor is met.

### c. The Interests of Class Members Have Not Been Harmed by Lack of Adequate Financial Resources

The requirement that the representative plaintiff demonstrate access to adequate financial resources to ensure that interests of the class are not harmed may be met if "the attorney for the class representatives is ethically advancing costs." *Haft,* 451 A.2d at 448; *see also Janicik,* 451 A.2d at 459-60. That is the case here: Plaintiff's counsel undertook this litigation pursuant to a standard contingent fee agreement, and up through this point in the litigation, counsel have advanced all costs required to maintain the litigation. In connection with the final approval process, Plaintiff's Counsel will ethically seek reimbursement of its costs and fees, and counsel's application will be filed and available for Class Members to review prior to the objection deadline, and subject to ultimate approval by the Court.

### 5. A Class Action Is a Fair and Efficient Method of Adjudicating the Controversy.

Rule 1702(5) requires that the Court determine whether a class action provides a "fair and efficient method of adjudicating the controversy," with reference to additional factors in Rule 1708. Pa. R. Civ. P. 1702(5). In turn, Rule 1708 lists the following factors for Courts to consider when monetary relief is sought:

> (a) Where monetary recovery alone is sought, the court shall consider
>
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
>
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
>
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
>
> (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
> (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the

interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Pa. R. Civ. P. 1708. As explained below, these criteria are satisfied here.

**a. Common Questions of Law and Fact Predominate**

The predominance inquiry under Rule 1708(a)(1), while "more demanding" than the commonality standard, requires "merely" that the "common questions of fact and law . . . predominate over individual questions." *Samuel-Bassett*, 34 A.3d at 23. "[A] class consisting of members for whom ***most*** essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals for whom resolution of such elements does not advance the interests of the entire class." *Id.* Where class members can demonstrate they were subjected to the same harm and they identify a "common source of liability," individualized issues such as varying amounts of damages will not preclude class certification. *See id.*

It is well recognized that "[s]ecurities actions are almost in a class of their own for the uniformity of the questions of law and fact that they present." *Shapiro*, 2018 WL 3158812, at *6. For this reason, courts, including the United States Supreme Court, have observed that "the predominance requirement is 'readily met' in many securities class actions." *Yedlowski v. Roka*

*Bioscience, Inc.*, No. 14-cv-8020, 2016 WL 6661336, at *8 (D.N.J. Nov. 10, 2016) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)); *In re Viropharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (same); *In re Hemispherx Biopharma, Inc., Sec. Litig.*, No. 09-5262, 2011 WL 13380384 (E.D. Pa. Feb. 14, 2011) (same). Here, as explained above, the key common issues in this case shared by Plaintiff and Settlement Class Members are whether Defendants made material misstatements and omissions concerning the Viatris' revenue and related performance metrics, including from the legacy Upjohn's business in China and Japan, in the Offering Materials and related oral communications Defendants used in connection with the November 2020 Merger. Questions relating to whether Defendants made material misstatements and omissions in the Offering Materials would be the primary focus of continued litigation, and those questions would be resolved with answers uniform to Plaintiff and Class Members. Indeed, since cases under Section 11 and 12(a)(2) of the Securities Act are strict liability, the main question at issue is almost invariably falsity (*i.e.*, whether the defendants made untrue statements and omissions), which by definition can be answered with common proof. *See Yedlowski*, 2016 WL 6661336, at *8 (predominance of common questions "over individual issues are exemplified by the fact that if every class member were to bring an individual action, each plaintiff would be required to demonstrate the same omissions or misrepresentations to prove liability"); *see also In re NIO, Inc. Sec. Litig.*, No. 19-cv-1424, 2023 WL 5048615, at *10 (E.D.N.Y. Aug. 8, 2023) ("[T]he central issue of Securities Act claims—whether Defendants' registration statement 'contained an untrue statement of material fact' or omission giving rise to liability—is common across class members"); *Ret. Sys. of Miss. v. Merrill Lynch & Co.*, 277 F.R.D. 97, 105 (S.D.N.Y. 2011) (in Securities Act case "commonality requirement [wa]s plainly satisfied" because alleged untrue statements uniformly "relate[d] to all the investors," and the

"existence and materiality" of those statements "present[ed] important common issues"). Consequently, there can be no serious dispute that legal and factual issues predominate over individualized questions.

**b. The Size of the Class and Manageability of the Case Weigh in Favor of Class Certification**

Rule 1708(a)(2) requires the Court to consider "the size of the class and the difficulties likely to be encountered in the management of the action as a class action." Pa. R. Civ. P. 1708(a)(2). Lead Counsel estimates there were at least thousands of persons who acquired Viatris common stock pursuant to the Merger, and proceeding as a class action here for settlement purposes is fully manageable. Class Members can be identified from Defendants' records (or the records of their transfer agents), and the Parties have agreed to a settlement structure and claim process designed to permit the settlement administrator to make a straightforward and simple determination of the amount each Class Member will receive under the Settlement. In these circumstances, there are no potential manageability problems weighing against class certification. *See Janicik,* 451 A.2d at 462 (finding no manageability problems where class member information is readily available from defendant).

**c. Prosecution of Separate Individual Actions Creates a Risk of Inconsistent Rulings**

Rule 1708(a)(3) requires the Court to consider whether prosecution of separate individual actions, as opposed to a class action, would create risks of inconsistent or varying rulings which would confront the defendant with incompatible standards of conduct, and whether adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of others or impair their ability to protect their interests. Pa. R. Civ. P. 1708(a)(3). Where, as here, the Plaintiff and other Settlement Class Members share an identical claim stemming from the same conduct on the part of the Defendants, a class action "affords the speedier and more

comprehensive statewide determination of the claim," and is "the better means to ensure recovery if the claim proves meritorious or to spare [defendant] repetitive piecemeal litigation if it does not." *Janicik,* 451 A.2d at 462-63. This factor therefore weighs heavily in favor of class certification.

**d. The Extent and Nature of Litigation by Other Class Members Weighs in Favor of Class Certification, and this Court Is an Appropriate Forum**

Rule 1708(a)(4) requires the Court to consider "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues." Pa. R. Civ. P. 1708(a)(4). This factor weighs in favor of certification because the Parties are not aware of any other securities actions against Defendants related to the November 2020 Merger, so there is no risk that class certification would impair the rights of other litigants in other actions.

Additionally, this Court is an appropriate forum because Viatris' U.S. global center is located here. As a result, there is "no one common pleas court which would be better to hear the action." *Baldassari*, 808 A.2d at 195 (quoting *Cambanis,* 501 A.2d at 641 n.19).

**e. The Amounts at Issue, Complexities of the Issues, and Expenses of Litigation Justify a Class Action Rather than Individual Actions**

Rule 1708(a)(6) requires the Court to consider whether, in light of the complexity of the issues and expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Relatedly, Rule 1708(a)(7) requires the Court to consider "whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action."

These factors both support class certification here. This case raises issues that would inevitably require complex technical and expert discovery, including testimony on what caused (or did not cause) shares of Viatris Inc. to decline in value. As such, the costs of litigation are likely to exceed recoverable damages if claims were brought as individual actions rather than as a class action. Therefore, class members may not have the financial incentive to pursue litigation to vindicate their rights. When weighed against the prospects of individual litigation, the proposed class settlement here offers all of the potential advantages of class certification: eliminating the possibility of numerous duplicative claims and redundant work for counsel and the courts, while providing a recovery for a large group without requiring each individual Settlement Class Member to shoulder the burden of litigation expenses despite potentially small recovery.

For these reasons, the factors described in Rule 1708(a)(6)-(7) both support certification.

## CONCLUSION

For the reasons above, Plaintiff respectfully requests that this Court grant his motion and enter Plaintiff's proposed order preliminarily approving the settlement proposal, conditionally certifying the Settlement Class, appointing Plaintiff to serve as representative of the class, appointing Lead Counsel as class counsel, authorizing notice to be sent to the Class Members, and establishing a date for the Fairness Hearing.

Dated: January 18, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on this 18th day of January, 2024, on all counsel of record via email to:

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