UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BING LI, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

AETERNA ZENTARIS INC., DAVID A. DODD, JUERGEN ENGEL, and PAUL BLAKE

Defendants.

Case No. 3:14-cv-07081-PGS-TJB

CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES

Motion Day: February 16, 2021

Hon. Peter G. Sheridan

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Court-appointed Lead Counsel, The Rosen Law Firm, P.A. ("RLF") and Glancy Prongay & Murray LLP ("GPM") (collectively, "Lead Counsel"), and Court-appointed Liaison Counsel, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. ("Liaison Counsel" and together with Lead Counsel, "Plaintiffs' Counsel"), respectfully submit this memorandum of law in support of their motion for an award of attorneys' fees and reimbursement of Litigation Expenses.[1]

I. INTRODUCTION

The proposed $6.5 million all cash, non-reversionary Settlement is the result of Plaintiffs' Counsel's vigorous, persistent, and skilled efforts over the course of more than six years of hard-fought litigation. *See* ECF No. 1 (Initial Complaint filed by the RLF on November 11, 2014). It is an excellent result for the Class, achieved in the face of significant litigation risks and hurdles. Indeed, from the outset of this litigation Plaintiffs' Counsel faced numerous challenges to establishing Defendants' liability and countering their loss causation and damages arguments. The risk of losing was very real and greatly enhanced by the fact that Plaintiffs' Counsel would be litigating against a corporate defendant represented by highly skilled defense counsel, under the heightened pleading standard and automatic discovery stay of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The PSLRA—as well as a host of post-PSLRA judicial decisions concerning falsity, scienter, loss causation, and damages—have made it significantly harder for investors to bring and successfully conclude securities class actions. *See In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166,194 (E.D. Pa. 2000) ("[S]ecurities

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated July 22, 2020 (ECF No. 169-1), or the concurrently-filed Declaration of Laurence Rosen in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel's Motion For an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Rosen Declaration" or "Rosen Decl."). All citations to "¶ __" and "Ex. __" in this memorandum refer, respectively, to paragraphs in, and exhibits to, the Rosen Declaration.

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actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA."); *Alaska Elec. Pension Fund v. Flowserve Corp*., 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J., sitting by designation) ("To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action."). There was, therefore, a very strong possibility that the case would yield little or no recovery after many years of costly litigation. Despite these risks, Plaintiffs' Counsel undertook this litigation on a fully contingent basis with no guarantee of ever being paid, and continued to vigorously pursue the case even after the Court granted Defendants' motion to dismiss the 104-paragraph Amended Class Action Complaint for Violations of the Federal Securities Laws on September 16, 2015. *See* ECF No. 46 (Order granting Defendants' motion to dismiss). In short, at no point in this litigation were Plaintiffs' Counsel "assured of a paycheck." *Florin v. Nationsbank of Georgia, N.A.*, 60 F.3d 1245, 1247 (7th Cir. 1995).

For their efforts on behalf of the Class, Plaintiffs' Counsel seek a collective award of attorneys' fees in the amount of 33⅓% of the Settlement Fund, or $2,166,667, plus interest earned at the same rate as the Settlement Fund. Having toiled for more than six years, successfully defeated an appeal and collectively invested more than $4,885,315.50 worth of professional time to achieve the Settlement (¶117), the requested attorneys' fee is plainly reasonable based on an application of the Third Circuit's "*Gunter*" and "*Prudential*" factors for determining appropriate fee awards in common fund cases. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (listing factors) (citing *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 336-40 (3d Cir. 1998)). In addition, it is well within the range of fees awarded in similar complex, contingency fee cases, and it is further

supported by a "cross-check" of the requested attorneys' fee against Plaintiffs' Counsel's lodestar, which results in a ***fractional*** multiplier of 0.44. ¶¶113, 117.

Plaintiffs' Counsel also seek reimbursement of Litigation Expenses in the total amount of $734,161.10, consisting of: (i) $683,161.10 of combined out-of-pocket expenses reasonably and necessarily expended by Plaintiffs' Counsel in prosecuting this Action ($520,489.50 (or 76.2%) of which were paid to experts and the mediators* (¶¶132, 140)); and (ii) $17,000 in costs to each of the three Lead Plaintiffs, all of whom played an extremely active and important role in achieving the Settlement. ¶143, Exs. 3-5. These Litigation Expenses are reasonable in amount and were necessary to the successful prosecution of the Action.

For these reasons and those set forth below, Plaintiffs' Counsel respectfully requests that the Court grant their request for an award of attorneys' fees of 33⅓% of the Settlement Fund and reimbursement of Litigation Expenses.

II. HISTORY OF THE LITIGATION

The Rosen Declaration is an integral part of this submission. For the sake of brevity, the Court is respectfully referred to it for a more detailed description of, *inter alia*: (i) the factual and procedural history of the Action (¶¶10-81); (ii) class certification and the appeal thereof (¶¶39-50, 54-64); (iii) the extensive negotiations leading to Settlement and the Parties' signing of the Stipulation (¶¶ 51-53, 66-74); (iv) the risks and uncertainties of continued litigation (¶¶82-91); and (v) a description of the services Plaintiffs' Counsel provided for the benefit of the Class (¶¶ 5, 113-119).

III. THE COURT SHOULD APPROVE THE FEE REQUEST

A. Plaintiffs' Counsel are Entitled to an Award of Attorneys' Fees From the Common Fund

The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers

a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).[2] The Third Circuit and courts within this circuit have reached the same conclusion. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("[W]e agree with the long line of common fund cases that hold that attorneys 'whose efforts create, discover, increase, or preserve a [common] fund' . . . are entitled to compensation."); *In re Ikon*, 194 F.R.D. at 192 ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

Common fund fee awards, such as the 33⅓% of the Settlement Fund requested here, encourage and support meritorious class actions and thus promote private enforcement of, and compliance with, the federal securities laws, as well as representation of those seeking redress for damages inflicted on entire classes of persons. *See, e.g.*, *Gunter*, 223 F.3d at 198 (stating that goal of awarding fees from common fund is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation"); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 750-51 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("Fair awards . . . encourage and support other prosecutions, and thereby forward the cause of securities law enforcement and compliance."). Indeed, the Supreme Court has emphasized that private securities cases, such as this Action, are "'an indispensable tool with which defrauded investors can recover their losses' – a matter crucial to the integrity of domestic capital markets." *Tellabs, Inc. v. Makor Issues & Rights. Ltd.*, 127 S. Ct. 2499, 2508 n.4 (2007); *see also Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 478 (2013) (recognizing that "Congress, the Executive Branch, and this Court, moreover, have recognized that meritorious private actions to

[2] Unless otherwise noted, internal citations are omitted.

enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions") (quotations omitted).

B. The Court Should Award Attorneys' Fees Using the Percentage Approach

Plaintiffs' Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Class, and utilize a lodestar cross-check to confirm that the fee is reasonable. *See In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006). The percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (stating that in common fund cases "a reasonable fee is based on a percentage of the fund bestowed on the class"); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (the percentage of recovery method "'is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'").[3] The Third Circuit has also "recommended that district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award." *In re AT&T*, 455 F.3d at 164; *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011). However, "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *In re AT&T*, 455 F.3d at 164.

The use of the percentage of recovery method also comports with the language of the PSLRA, which mandates that "[t]otal attorneys' fees and expenses awarded ... not exceed a ***reasonable percentage*** of the amount of any damages and prejudgment interest actually paid to the class … ." 15 U.S.C. §78u-4(a)(6) (emphasis added); *In re Rite Aid Corp. Sec. Litig.*, 396

[3] *Accord In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("*Rite Aid I*"); *Prudential*, 148 F.3d at 333; *Gunter*, 223 F.3d at 195.

F.3d at 300 ("Consistent with past jurisprudence, the percentage-of-recovery method was incorporated in the Private Securities Litigation Reform Act of 1995."); *Maley v. Del Global Techns. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (when drafting the PSRLA, Congress "indicated a preference for the use of the percentage method"). Thus, "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *In re Cendant*, 404 F.3d at 188.

For the reasons set forth below, Plaintiffs' Counsel requested award of attorneys' fees of 33⅓% of the Settlement Fund is reasonable and should be approved.

IV. APPLICATION OF THE *GUNTER* AND *PRUDENTIAL* FACTORS SUPPORTS PLAINTIFFS' COUNSEL'S REQUEST FOR A 33⅓% FEE

Under Third Circuit law, district courts have considerable discretion in setting an appropriate percentage-based fee award in traditional common-fund cases. *See, e.g.*, *Gunter*, 223 F.3d at 195 ("We give [a] great deal of deference to a district court's decision to set fees."); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tanks Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995). In exercising this discretion, the Third Circuit instructed district courts to consider, among other things, the "*Gunter* factors" and the "*Prudential* factors." *In re AT&T Corp.*, 455 F.3d at 165. The *Gunter* factors include:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Id. at 165. The *Prudential* factors include:

> (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any "innovative" terms of settlement.

Id. "This list was not intended to be exhaustive. … [and] a district court should consider any other factors that are useful and relevant with respect to the particular facts of the case." *Id*. at 165-66. Moreover, in application, "these factors 'need not be applied in a formulaic way. Each case is different, and in certain cases, one factor may outweigh the rest.'" *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 94 (D.N.J. 2001), quoting *Gunter*, 223 F.3d at 195 n. 1.

As demonstrated below, analysis of the relevant factors supports the requested award.

A. The Size of the Fund Created and the Benefit to Class Members Supports the Requested Fee

The first *Gunter* factor "consider[s] the fee request in comparison to the size of the fund created and the number of class members to be benefitted." *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011); *see also Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"). Of course, "[a] smaller fund does not necessarily equate to a smaller percentage award." *P. Van Hove BVBA v. Universal Travel Grp., Inc.*, 2017 WL 2734714, at *11 (D.N.J. June 26, 2017). In fact,

> because of fixed costs and economies of scale, attorneys' fees and costs do not increase dollar-for-dollar with the size of the case. Thus, it takes a greater percentage of the settlement to support litigation in a smaller case.

Id.

Here, the $6.5 million Settlement is an excellent result that will provide Class Members with an immediate cash recovery, while avoiding the substantial expense, delay, risk, and uncertainty of further litigation. The Settlement represents a recovery of approximately 18% of the Class's ***maximum*** estimated damages, and 36.2% if the trier of fact accepted Defendants' colorable loss causation and damages arguments, which compares favorably to recoveries in similar complex securities class actions. *Compare* ¶90, *with* Ex. 1 at p. 6, Fig. 5 (Laarni T.

Bulan and Laura E. Simmons, Cornerstone Research, "Securities Class Action Settlements: 2019 Review and Analysis" (Mar. 2020) (reporting median percentage of 2019 recoveries of 9.2% and 12.8% in securities class actions alleging between $25-75 million and less than $25 million in damages, respectively, and 4.8% overall for all securities class actions)).[4]

The Settlement will also benefit a large number of investors. To date, the Claims Administrator has mailed over 21,497 copies of the Notice Packet to potential Class Members. Ex. 2 ("Evans Decl.") at ¶7. As a result, a large number of Class Members will benefit from the Settlement. *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) (amended June 4, 2004) ("The size of that [benefitted] population is best estimated by the number of entities that were sent the notice describing the [Settlement].").[5]

Consequently, the higher percentage of damages recovered militates in favor of the requested fee. *See, e.g.*, *Universal Travel*, 2017 WL 2734714, at *11 (approving award of one-third of $4.5 million settlement fund, which equaled 10% of "total maximum damages …

[4] *See also In re Raviscent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *9 (E.D. Pa. Apr. 18, 2005) (noting that "class action settlements have typically recovered 'between 5% and 6.2% of the class members' estimated losses'"); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013) (approving an $8.1 million settlement that represented "7% recovery of total class-wide damages" because it was both "consistent with or above the average level of recovery in similar securities fraud class actions" and "within the proper range of reasonableness"); *Schuler v. Meds. Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (finding that a 4% recovery fell "squarely within the range of previous settlement approvals"); *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *14 (E.D. Pa. Jan. 25, 2016) (finding settlement of $8 million to be a "healthy percentage" where the recovery was 9-10% of the maximum estimated losses, but "likely reflect[ed] an even higher percentage of the estimated losses [l]ead [p]laintiff could have foreseeably recovered.").

[5] The Court set January 26, 2021, as the Proof of Claim postmark deadline date. Plaintiffs' Counsel and the Claims Administrator reasonably expect that the number of participating Class Members will number in the thousands, but will provide the Court with more information on the number of Claims received in conjunction with the filing of Lead Plaintiffs' reply brief on February 9, 2021.

optimistically valued at approximately $45 million," and benefitted approximately 1,130 class members, as measured by expected valid claims received).

B. There Have Been No Objections by Class Members

The reaction of the Class to the requested fee is also important and, in this regard, courts consider "the presence or absence of substantial objections by members of the class to the settlement and/or fees requested by counsel." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *9 (D.N.J. July 29, 203).

While the deadline to file objections is not until January 26, 2021, and thus has not yet passed, there have been no objections to the request for attorneys' fees and Litigation Expenses included in the Notice.[6] ¶127; Evans Decl. ¶12. "[T]he absence of substantial objections by class members to the fee requests weigh[s] in favor of approving the fee request." *Rite Aid I*, 396 F.3d at 305; *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (even when 29 members of a 281 person class (*i.e.*, 10% of the class) objected, the response of the class as a whole "strongly favors [the] settlement"); *In re General Motors*, 55 F.3d at 812 (quoting *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313 n. 15 (3d Cir.1993)) (stating that it is generally assumed that "'silence constitutes tacit consent to the agreement'").

C. The Skill and Efficiency of Plaintiffs' Counsel Supports the Request

The Third Circuit has explained that the goal of the percentage fee award device is to ensure "that competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter*, 223 F.3d at 198. In this regard, "[t]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000). As explained above, Plaintiffs' Counsel's efforts

[6] Any objections or requests for exclusions received after the date of this submission will be addressed in the reply brief, which will be filed with the Court on February 9, 2021.

have resulted in an excellent settlement, providing substantial benefits to the Class in light of the posture of the Action and risks posed by further litigation. *See Ikon*, 194 F.R.D. at 194.

Moreover, Lead and Liaison Counsel are experienced securities class action litigators, and the Court has had the opportunity to observe Lead Counsel's abilities over the course of six years of litigation. *See* Ex. 6-C (RLF firm resume); Ex. 7-C (GPM firm resume); ECF No. 104-7 (Liaison Counsel firm resume). Indeed, the Court has already found that "[a]ll three firms have extensive experience in securities litigation and have demonstrated competency in litigating the present matter." *Bing Li v. Aeterna Zentaris, Inc.*, 324 F.R.D. 331, 346 (D.N.J. 2018).

"The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by [Plaintiffs'] Counsel." *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *21 (D.N.J. Nov. 10, 2016); *see also Universal Travel*, 2017 WL 2734714, at *11 (same). Here, Defendants were vigorously represented by experienced and able counsel from Norton Rose Fulbright US LLP and King & Spalding LLP, two very prominent firms with ample resources. Despite this opposition, Plaintiffs' Counsel were able to develop the Action, overcome Defendants' motions to dismiss the Second Amended Complaint and motion for reconsideration, certify the Class, prevail before the Third Circuit, and secure a significant recovery for the Class. The ability of Plaintiffs' Counsel to obtain a favorable outcome for the Class in the face of this formidable legal opposition further confirms the quality of Plaintiffs' Counsel's representation. Thus, this factor weighs in favor of the requested fee.

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

"The fourth factor captures 'the probable costs, in both time and money of continued litigation.'" *Universal Travel* 2017 WL 2734714, at *12 (quoting *In re Gen. Motors*, 55 F.3d at 812). As an initial matter, courts have repeatedly acknowledged that "securities fraud class

actions are notably complex, lengthy, and expensive cases to litigate." *Par Pharm.*, 2013 WL 3930091, at *10; *see also In re GNC Shareholder Litig.*, 668 F. Supp. 450, 451 (W.D. Pa. 1987) ("The complexity and concomitant expense of the instant litigation is beyond peradventure."); *Yedlowski*, 2016 WL 6661336, at *21 ("securities class actions are by nature particularly expensive to prosecute, usually requiring expert testimony on, at least questions of damages and loss causation."). This case was no exception.

Plaintiffs' Counsel faced a number of hurdles in establishing liability, loss causation and damages—the resolution of any in Defendants' favor could have resulted in no recovery for the Class. *See In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007) (commenting on the risk in proving scienter, loss causation, and damages). To avoid this fate, Plaintiffs' Counsel spent a tremendous amount of time and money litigating the case over the course of its six year pendency. At the time the Settlement was reached, Plaintiffs' Counsel had, among other things: (i) conducted a wide-ranging investigation concerning the allegedly fraudulent misrepresentations made by Defendants, including consulting with FDA and drug development experts and a thorough review of publicly available information; (ii) drafted and filed the initial complaint and two detailed amended complaints; (iii) researched and drafted extensive papers in opposition to Defendants' motions to dismiss and motion for reconsideration; (iv) moved for and obtained class certification; (v) prevailed before the Third Circuit against Defendants' challenge to class certification: (vi) undertaken extensive fact and expert discovery efforts, which included serving and responding to written discovery, numerous meet and confers, obtaining and analyzing over 192,000 pages of documents produced by Defendants, taking or defending eighteen (18) fact and expert depositions (including three in Germany), and exchanging expert reports on price impact, liability, and damages; (vii) identified, retained and

consulted with FDA, market efficiency, loss causation and damages experts; and (vii) engaged in an extensive arm's-length mediation process, including two in-person mediation sessions and the preparation of detailed mediation statements that addressed both liability and damages. ¶5.

However, had this litigation continued, Defendants would have moved for summary judgment, which would have to be briefed and argued, a pre-trial order would have to be prepared, proposed jury instructions would have to be submitted, and motions *in limine* would have to be filed and argued. Substantial time and expense would need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain.

Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process. Indeed, in complex securities cases, even a victory at the trial stage does not guarantee a successful outcome. *See Warner Commc'ns*, 618 F. Supp. at 747-48 ("Even a victory at trial is not a guarantee of ultimate success. If Lead Plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, Defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."); *Yedlowski*, 2016 WL 6661336, at *21 ("If the jury found in Plaintiffs' favor, they would still face Defendants' post-trial motions and likely appeal. Collecting a judgment requires crossing every one of these hurdles, but each of these steps involves significant risks.").[7] Considering the magnitude, expense, length, and complexity of this securities case—especially when compared against the significant and certain recovery

[7] *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 414, 433 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction in light of *Janus Cap. Grp., Inc. v. First Deriv. Traders*, 564 U.S. 135 (2011)); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion).

achieved by the Settlement—Plaintiffs' Counsel's fee request is reasonable. Accordingly, this factor weighs in favor of the requested fee. *See Universal Travel*, 2017 WL 2734714, at *12 (awarding one-third fee and noting that "due to the complexity and nature of securities litigation, any further litigation would likely be time consuming as well as expensive due to the need for experts.").

E. The Risk of Nonpayment Supports the Requested Fee

"Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees." *Yedlowski*, 2016 WL 6661336, at *21; *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval."); *In re Merck & Co., Inc. Vytorin ERISA Litig*., 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (finding "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees" where counsel accepted the action on a contingent-fee basis). The "risk of no recovery is especially high in securities class actions, as they are notably difficult and notoriously uncertain." *Universal Travel*, 2017 WL 2734714, at *12 (internal quotations omitted); *see also In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 820 (S.D. Tex. 2012) ("The Court is acutely aware that federal legislation and authoritative precedents have created for plaintiffs in all securities actions formidable challenges to successful pleading."); *Flowserve* 572 F.3d at 235; *Ikon*, 194 F.R.D. at 194.

Here, Plaintiffs' Counsel undertook this complex securities class action on an entirely contingent basis and prosecuted the claims with no guarantee of compensation or recovery of any related expenses. This is a heavy responsibility and involves substantial risk. Plaintiffs' Counsel

was obligated to ensure that sufficient resources were dedicated to this prosecution, and that funds were available to pay for the considerable expenses. *See e.g.*, ¶122. Furthermore, the risk of loss was extremely high. Indeed, "[t]he court needs to look no further than its own order dismissing the . . . litigation to assess the risks involved." *In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1003 (D. Minn. 2005); *see also* ECF No. 48 (Order granting Defendants' motion to dismiss).

To date, Plaintiffs' Counsel have received no compensation for their services, or reimbursement of the substantial out-of-pocket litigation expenses they have paid. This factor plainly weighs in favor of approving Plaintiffs' Counsel's fee request. *See In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *17 (E.D. Pa. Jan. 25, 2016) ("In litigating this case for nearly four years now, without pay, shouldering all expenses, Plaintiff's Counsel took on significant risk of non-payment. Given the length and complexity of this case, this factor weighs in favor of the award of attorneys' fees.").

F. Plaintiffs' Counsel Devoted Significant Time to the Case

"The sixth *Gunter* factor looks at counsel's time devoted to the litigation." *Yedlowski*, 2016 WL 6661336, at *22. To date, Plaintiffs' Counsel have expended over 6,584.2 hours on this Action. ¶113. This reflects Plaintiffs' Counsel's commitment to vigorously pursuing this Action for the benefit of Lead Plaintiffs and the Class. Additionally, more time will be spent ensuring that the Settlement, if approved, is properly distributed to the Class. *See Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 253 (D.N.J. 2005) (fee award will be sole compensation for counsel "despite the continuing responsibilities [counsel] will have in responding to Class Member inquiries, assisting the Claim Evaluator … and any post-judgment proceedings and appeals."). The foregoing unquestionably represents a significant commitment

of time and personnel to this Action and the Settlement. Accordingly, this factor supports approval of the requested fee award. *See Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 146-151 (E.D. Pa. 2000) (fact that "class counsel afforded 3,899.84 hours to this litigation" and "engaged in almost two years of arduous arms-length litigation" supported awarding one-third of settlement valued at $7.27 million, which equated to a 2.04 multiplier).

G. Approval of Similar Awards in Similar Cases Supports the Request

With respect to the final *Gunter* factor, "the court must (1) compare the award requested with other awards in comparable settlements; and (2) ensure that the award is consistent with what the attorney would have received had the fee been negotiated on the open market." *Hall v. AT&T Mobility, LLC*, 2010 WL 4053547, at *21 (D.N.J. Oct. 13, 2010).[8] As to the first prong of the inquiry, numerous courts within the Third Circuit, including the District of New Jersey, have awarded fees of 33⅓% of the recovery, even in cases involving much larger settlement funds than the instant case. *See Merck ERISA*, 2010 WL 547613, at *11 (awarding 33⅓% of $41.5 million settlement fund and noting that "awards in similar common fund cases appear analogous" and award was "consistent with other similar cases"); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) (awarding one-third of $7.3 million and stating that "the award of one-third of the fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district"); *In re Rite Aid Corp. Sec. Litig. (Rite Aid II)*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee percentage [of] 31.71%" with a median value that "turns out to be one-third"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *12 (D.N.J. Nov. 9, 2005) (one-third of

[8] The second prong of this *Gunter* factor is substantially similar to the second *Prudential* factor. *See AT&T Corp.*, 455 F.3d at 165 (listing factors).

$75 million); *In re Liquid Aluminum Sulfate Antitrust Litig.*, 2019 WL 7375288, at *4 (D.N.J. Nov. 7, 2019) (approving attorneys' fees of one-third, or $11,018,884.36); *In re Corel Sec. Litig.*, 293 F. Supp. 2d 484, 495-98 (E.D. Pa. 2003) (awarding one-third of $7 million settlement fund); *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *10 (E.D. Pa. April 18, 2005) (finding award of one-third of $7 million reasonable after cross-checking percentage of recovery to lodestar).[9]

"The requested fee of 33⅓% is also consistent with a privately negotiated contingent fee in the marketplace." *Hall* 2010 WL 4053547, at *21. "Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation." *In re Remeron*, 2005 WL 3008808, at *16; *see also In re Orthopedic Bone Screw Prods. Liab. Litig.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct. 23, 2000) (noting that "plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent

[9] *See also In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340-SLR, Dkt. No. 543 (D. Del. 2009) (awarding one-third fee from $250 million settlement fund); *Rowe*, 2011 WL 3837106, at *18 (awarding one-third of $8.3 million settlement); *In re General Instrument Sec. Litig.*, 209 F. Supp. 2d 423 (E.D. Pa. 2001) (one-third of $48 million); *In re Heckmann Corp. Sec. Litig.*, No. 1:10-cv-00378-LPS-MPT, slip op. at 2 (D. Del. June 26, 2014), ECF No. 308 (awarding 33.3% of $27 million settlement) (Ex. 13); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Company*, 2014 WL 12778314, at *7 (E.D. Pa. Sept. 15, 2014) (one-third of $15 million settlement); *In re Reliance Sec. Litig.*, 2002 WL 35645209, at *18 (D. Del. Feb. 8, 2002), opinion corrected, 2002 WL 35645207 (D. Del. Mar. 20, 2002) (awarding one-third of $7.485 million); *In re Unisys Corp. Sec. Litig.*, 2001 WL 1563721 (E.D. Pa. Dec. 5, 2001) (awarding one third of $5.75 million settlement fund); *In re Safety Components, Inc., Sec. Litig.*, 166 F.Supp.2d 72, 93-4 (D.N.J. 2001) (awarding one-third of $4.5 million settlement); *In re Greenwich Pharm. Sec. Litig.*, 1995 WL 251293 (E.D. Pa. Apr. 26, 1995) (one-third of $4.375 million); *Universal Travel*, 2017 WL 2734714, at *12 (awarding fees of one-third of $4.075 million settlement fund); *Elkin v. Walter Investment Management Corp.*, 2018 WL 8951073, at *1-2 (E.D. Pa. Dec. 18, 2018) (33⅓% of $2.95 million settlement fund); *Brown v. Esmor Correctional Servs., Inc.*, 2005 WL 1917869, at *14 (D.N.J. Aug. 10, 2005) (one-third of $2.5 million); *Neuberger v. Shapiro*, 110 F.Supp.2d 373 (E.D. Pa. 2000) (33⅓% of $1.5 million); *In re Interpool, Inc. Sec. Litig.*, No. 04-321 (SRC), slip op. at 2 (D.N.J. Aug. 29, 2006) (awarding 33-1/3% of $1 million fund) (Ex. 14); *Smith v. Dominion Bridge Corp.*, 2007 WL 1101272, at *10 (E.D. Pa. April 11, 2007) (granting fee of "33.33%" of $750,000).

of any recovery."); *Dartell v. Tibet Pharm., Inc.*, 2017 WL 2815073, at *11 (D.N.J. June 29, 2017) (similar); *Rowe*, 2011 WL 3837106, at *22 (awarding 33⅓% as "consistent with a privately negotiated contingent fee in the marketplace").[10] Thus, the requested fee award is strongly supported by both subparts of this final *Gunter* factor.

H. The Settlement Is Solely Attributable to the Efforts of Lead Plaintiffs and Plaintiffs' Counsel

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement actions concerning the alleged wrongdoing, because this can indicate whether or not counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338; *AT&T Corp.*, 455 F.3d at 165. Here, there was no such government investigation or prosecution that produced helpful evidence or generated a fine, penalty or other punishment and, accordingly, the entire value of the Settlement achieved is attributable to the efforts undertaken by Plaintiffs' Counsel in this litigation. The lack of any type of governmental investigation strongly militates in favor of the requested fee award. *See AT&T*, 455 F.3d at 173 ("Here, class counsel was not aided by the efforts of any governmental group, and the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel. This strengthens the District Court's conclusion that the fee award was fair and reasonable.").[11]

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[10] *See also Mylan Pharms., Inc. v. Warner Chilcott Public Limited Co.*, 2014 WL 12778314, at *7 (E.D. Pa. Sept. 15, 2014) (approving award of one-third of $15 million settlement and stating: "a one-third contingency is standard in individual litigation; in antitrust litigation, a higher contingency would be reasonable, given the complexities and risks involved.").

[11] *See also In re Vicuron Pharms., Inc. Sec. Litig.*, 512 F. Supp. 2d 279, 287 (E.D. Pa. 2007) (requested fee supported by the fact that "[n]o agency of the United States, including the Securities and Exchange Commission, conducted any investigation of this matter and so class counsel had to perform all the work."); *In re Cigna Corp. Sec. Litig.*, 2007 WL 2071898, at *6 (E.D. Pa. July 13, 2007) (awarding requested fee and stating: "Furthermore, Plaintiffs and class counsel accomplished this result without any prior investigation or involvement by an agency of

I. There Are No Unusual Terms in the Settlement

The terms of the Settlement, providing a monetary benefit to the Class in return for releases, are otherwise standard, and thus, "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg Prods. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012).

Accordingly, the *Gunter* and *Prudential* factors strongly favor approving the fee request.

J. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

While not required, a court may "cross-check the percentage award at which [it] arrive[s] against the 'lodestar' award method[.]" *Gunter*, 223 F.3d at 195 n.1; *see also Prudential*, 148 F.3d at 333; *In re Cendant Corp. Litig.*, 264 F.3d 201, 221 (3d Cir. 2001); *AT&T*, 455 F.3d at 164. "The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method." *Rite Aid*, 396 F.3d at 306. "Conversely, where the ratio of the [percentage-of-recovery] to the lodestar is relatively low, the cross-check can confirm the reasonableness of the potential award under the [percentage] method." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013).

In "cross-checking" the percentage of recovery award against the lodestar, the Third Circuit has emphasized that the calculation is "not a full-blown lodestar inquiry" and need not entail "mathematical precision" or "bean-counting." *AT&T*, 455 F.3d at 169, n.6 (*quoting Rite Aid I*, 396 F.3d at 306); ("The lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method."). Accordingly, "the district

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the United States, such as the U.S. Attorney's Office or the Securities & Exchange Commission, and had to perform all the work, including detailed investigation and review of documents.").

court may rely on summaries submitted by counsel and need not review billing records." *Rite Aid I*, 396 F.3d at 306-07.

Here, application of a lodestar cross-check confirms that the requested 33⅓% fee is fair and reasonable. Plaintiffs' Counsel devoted an aggregate total of 6,584.2 hours to the prosecution and resolution of this Action. ¶¶113, 114. Plaintiffs' Counsel's collective lodestar—which is derived by multiplying their hours spent on the litigation by each firm's current hourly rates for attorneys, paralegals and other professional support staff—is $4,885,315.50.[12] *Id.* Thus, the requested 33⅓% fee, which equates to $2,166,667 (plus interest on that amount at the same rate as earned by the Settlement Fund), represents a "fractional" multiplier of approximately 0.44 on counsel's lodestar.[13] *Id.* In other words, the requested fee is only 44% of the lodestar value of the time Plaintiffs' Counsel dedicated to the Action. Had Lead Plaintiffs and the Class paid Plaintiffs' Counsel by the hour, they would have paid Plaintiffs' Counsel $4,885,315.50 or 10.7% more than the one-third fee Plaintiffs' Counsel is requesting.

The fractional multiplier here is a strong indicator of the fairness of the requested fee because it demonstrates that counsel are requesting less than the market rate for their time

[12] Courts have approved the use of current rates in the lodestar calculation to "compensate for the delay in receiving compensation, inflationary losses, and the loss of interest." *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *see also Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *In re Safety Components, Inc. Sec. Litig.*, 166 F.Supp.2d 72, 103, n. 11 (D.N.J. 2001) ("calculating the lodestar of Plaintiffs' Counsel using current hourly rates is appropriate."); *Institutionalized Juveniles v. Secretary of Public Welfare*, 758 F.2d 897, 923 & n. 41 (3d Cir. 1985) ("using current market rates to calculate the lodestar figure may counterbalance the delay in payment as well as simplify the task for the district court" (quoting *Murray v. Weinberger*, 741 F.2d 1423, 1433 (D.C. Cir. 1984))); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) ("current rates, rather than historical rates, should be applied in order to compensate for the delay in payment"). Additionally, Lead Counsel submit that Plaintiffs' Counsel's rates are less than, or comparable to, those used by peer plaintiff and defense-side law firms litigating matters of similar magnitude. ¶115; Ex. 9. Indeed, defense firm rates, gathered from bankruptcy court filings nationwide, often exceed these rates. *See id.*

[13] $2,166,667 / $4,885,315.50 = 0.44.

litigating the matter. *See In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, 2009 WL 2137224, at *17 (E.D. Pa. July 16, 2009) (finding fractional multiplier "confirms the reasonableness of the fee award in this case."); *Hall*, 2010 WL 4053547, at *22 ("A multiplier of less than one, as is the case here, is therefore quite reasonable for a lodestar."); *Stagi v. Nat'l R.R. Passenger Corp.*, 880 F. Supp. 2d 564, 572 (E.D. Pa. 2012) (where fee resulted in a 0.89 lodestar multiplier it was "well under the generally acceptable range and provides strong additional support for approving the attorneys' fee request."); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 515 (S.D.N.Y. 2009) (finding "no real danger of overcompensation" given that the requested fee represented a discount to counsel's lodestar).[14] *A fortiori*, the lodestar cross-check confirms the reasonableness of the requested attorneys' fees.

V. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

"In the Third Circuit, it is standard practice to reimburse litigation expenses in addition to granting fee awards." *McDonough v. Toys R Us, Inc.*, 80 F.Supp.3d 626, 658 (E.D. Pa. 2015). Indeed, "'[c]ounsel in common fund cases are entitled to reimbursement of expenses that were

[14] *Compare AT&T*, 455 F.3d at 173 ("[W]e approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated 'was neither legally nor factually complex'" and that settled in 4 months); *Schuler*, 2016 WL 3457218, at *9-*10 (awarding one-third of settlement fund, resulting in 3.57 multiplier in case that settled before decision on motion to dismiss); *Ikon*, 194 F.R.D. at 195 (awarding 2.7 multiplier and noting that it was "well within the range of those awarded in similar cases"); *Universal Travel*, 2017 WL 2734714, at *13 (awarding one-third of settlement, resulting in 2.24 multiplier); *Meijer, Inc. v. 3M*, 2006 WL 2382718, at *24 (E.D. Pa. Aug. 14, 2006) (approving a percentage fee award that translated to a 4.77 multiplier in case that settled after one year); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *47-48 (D.N.J. Nov. 9, 2005) (multiplier of 1.8 is on the "low end of the spectrum"); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (approving percentage fee award that equated to a 6.96 multiplier).

adequately documented and reasonably and appropriately incurred in the prosecution of the case.'" *Universal Travel*, 2017 WL 2734714, at *13 (*quoting In re Cendant Corp.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002)); *see also In re Ikon*, 194 F.R.D. at 192 ("'There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of ... reasonable litigation expenses from that fund.'" (quoting *Lachance v. Harrington*, 965 F.Supp. 630, 651 (E.D. Pa. 1997)) .

Here, Plaintiffs' Counsel expended $683,161.10 in out-of-pocket costs, which are divided into categories and itemized in the declarations submitted by each individual firm. *See* ¶131; *see also Chemi v. Champion Mortg.*, 2009 WL 1470429, at *13 (D.N.J. May 26, 2009) (finding summary of expenses sufficient for determination that expenses requested were reasonable). These litigation expenses are well-documented, based on the books and records maintained by Plaintiffs' Counsel, and reflect the costs of prosecuting this Action. Exs. 6-8. They include, among other things, fees for experts; mediation fees; online legal research costs; travel and lodging expenses; court and filing fees; copying; mail; and telephone. ¶131. Reimbursement of similar expenses is routinely permitted. *See In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314, at *32 (D.N.J. Sept. 13, 2005) (approving reimbursement of "costs expended for purposes of prosecuting this litigation, including substantial fees for experts; . . . travel and lodging expenses; [and] copying costs"); *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, Case No. 05-232, 2008 WL 4974782, at *18 (E.D. Pa. Nov. 21, 2008) (approving reimbursement of expenses for "duplication costs, online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, [and] transportation" based on declarations of counsel); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (similar).

The Notice informed Class Members that Plaintiffs' Counsel would seek reimbursement of Litigation Expenses up to $825,000—significantly higher than the expense reimbursement sought—and to date, there have been no objections. ¶144; Evans Decl. ¶¶3, Ex. A (Notice ¶¶ 5, 78). The requested Litigation Expenses should, therefore, be awarded. *See Rite Aid II,* 146 F. Supp. 2d at 736 ("plaintiffs seek reimbursement of expenses . . . which they have detailed in their submissions to us. These out-of-pocket expenses . . . are compensable . . . they are also unobjected to and, in our judgment, reasonable").

VI. LEAD PLAINTIFFS ARE ENTITLED TO COSTS AND EXPENSES PURSUANT TO 15 U.S.C. §78U-4(A)(4)

In connection with their request for reimbursement of Litigation Expenses, Plaintiffs' Counsel also seek reimbursement of the costs and expenses incurred directly by Lead Plaintiffs. The PSLRA authorizes the Court to allow reimbursement to a representative plaintiff for their "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Reimbursement of such costs is allowed because it "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000). Indeed, courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005); *In re Am. Int'l Grp., Inc. Sec. Litig*., 2012 WL 345509, at *6 (S.D.N.Y. Feb. 2, 2012); *In re Schering-Plough*, 2013 WL 5505744, at *37.

Here, each of the Lead Plaintiffs devoted significant amounts of time to the litigation. Among many other things, Lead Plaintiffs: (i) regularly communicated with Lead Counsel by

regarding the posture and progress of the case; (ii) reviewed all significant pleadings filed in this action; (iii) reviewed Court orders and discussed them with Lead Counsel; (iv) responded to document requests from, and produced documents to, Defendants; (v) prepared for, traveled to New York, and sat for depositions; (vi) worked with Lead Counsel to respond to interrogatories; (vi) consulted with Lead Counsel regarding settlement negotiations; and (vii) evaluated and approved the proposed Settlement.[15] *See* Ex. 3 ("Khodavandi Declaration") at ¶7; Ex. 4 ("Dinh Declaration") at ¶7; Ex. 5 ("Vizirgianakis Declaration") at ¶7. "These are precisely the types of activities that support awarding reimbursement of expenses to class representatives." *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009); *see also In re Schering-Plough*, 2013 WL 5505744, at *37 (reimbursing four lead plaintiffs in the aggregate amount of $109,865.31 for, "*inter alia*: (i) reviewing pleadings and case materials; (ii) corresponding with Co–Lead Counsel about the status and strategy of the case; (iii) responding to document requests and producing more than 15,000 pages of documents; (iv) preparing for depositions and being deposed; and (v) preparing for, attending and participating in, multiple in-person mediation sessions and other settlement negotiations.").

Each of the Lead Plaintiffs devoted 50 or more hours to the aforementioned tasks for the benefit of the Class, and each respectfully seeks to be reimbursed $17,000 for his considerable time and effort. *See* Ex. 3, ¶¶ 10, 12; Ex. 4, ¶¶ 10, 12; Ex. 5, ¶¶ 10, 12. Given Lead Plaintiffs' extensive efforts on behalf of the Class, such an award is eminently reasonable and in line with other awards granted by courts in the Third Circuit. *See Sun v. Han et al.*, No. 2:15-cv-00703-

[15] Mr. Vizirgianakis traveled from South Africa to New York for his deposition (Ex. 5, ¶ 7), and Messrs. Khodavandi and Dinh both travelled from California to New York to be deposed. Ex. 3, ¶ 7; Ex. 4, ¶ 7. Mr. Khodavandi also travelled from Irvine, California to Los Angeles, California and attended the all-day mediation session held on August 25, 2017, with Robert A. Meyer, Esq. of JAMS. Ex. 3, ¶ 7.

JMV-MF (D.N.J. Mar. 6, 2018), slip op. at ¶ 6 (awarding lead plaintiff $20,000 out of $1.25 million settlement prior to class certification) (Ex. 10); *Par Pharm.*, 2013 WL 3930091, at *11 (awarding lead plaintiff $18,000 out of $8.1 million settlement prior to lead plaintiff's deposition); *In re Virgin Mobile USA IPO Litig.*, No. 07-cv-05619, slip op. at ¶ 19 (D.N.J. Dec. 8, 2010) (awarding co-lead plaintiffs $29,370, $29,205, $30,000, and $25,245 respectively, for a combined total of $113,820 out of $19.5 million settlement after commencement of discovery, but prior to class certification) (Ex. 11); *San Antonio Fire and Police Pension Fund et al v. Dole Food Company Inc. et al*, No. 1:15-cv-1140-LPS (D. Del. Jul. 18, 2017), slip op. at ¶¶ 6-8 (collectively awarding three lead plaintiffs $54,996.20 for their reasonable costs and expenses where settlement was reached shortly after discovery commenced) (Ex. 12).

Moreover, the Notice informed Class Members that Plaintiffs' Counsel's request for reimbursement of Litigation Expenses might include reimbursement of the reasonable costs and expenses of Lead Plaintiffs related to their representation of the Settlement Class, and there has been no objection to that request. Evans Decl., Ex. 2 at ¶13. The lack of objections further supports reimbursing Lead Plaintiffs for their costs and expenses in prosecuting this Action. *See Par Pharm.*, 2013 WL 3930091, at *11 (granting motion for PSLRA award to plaintiffs where notice was provided to all potential class members and no party objected).

Accordingly, Plaintiffs' Counsel respectfully request that the Court grant the requested awards. *See Bell v. Pension Comm. Of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019) ("Without [Plaintiffs'] commitment to pursuing these claims, the successful recovery for the Class would not have been possible.").

VII. CONCLUSION

For the foregoing reasons, Plaintiffs' Counsel respectfully request that the Court grant their motion.

DATED: January 12, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 12, 2021, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the District of New Jersey using the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

Dated: January 12, 2021

Respectfully submitted,

/s/ Laurence M. Rosen
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