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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re PRUDENTIAL FINANCIAL, INC. SECURITIES LITIGATION	Civil Action No. 2:19-cv-20839-SRC-CLW CLASS ACTION
This Document Relates To: ALL ACTIONS.	LEAD COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES Motion Return Date: June 13, 2024

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Lead Counsel,[1] on behalf of all Lead Plaintiff's Counsel, respectfully submits this memorandum of law in support of their motion for attorneys' fees and litigation expenses.

I. OVERVIEW

This Settlement, consisting of $35 million in cash, which resulted from arm's-length mediation overseen by retired District Court Judge Freda Wolfson, an experienced mediator and the former Chief Judge of this District, represents an excellent recovery for the Settlement Class. The Settlement followed more than four years of lengthy and hard-fought litigation. *See* Declaration of Daniel J. Pfefferbaum in Support of: (1) Final Approval of Class Action Settlement; (2) Approval of Plan of Allocation; and (3) an Award of Attorneys' Fees and Expenses ("Pfefferbaum Declaration" or "Pfefferbaum Decl."), at ¶¶14-34.

Lead Counsel's request for an award of attorneys' fees and payment of litigation expenses is reasonable and well within the range approved in similar matters and should be approved. Lead Counsel advanced costs and devoted substantial time on a contingent basis to this complex matter, despite not knowing how long the litigation would last or whether there would ultimately be any recovery. Throughout

[1] Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation of Settlement (the "Stipulation"), dated February 12, 2024 (ECF 60-2). All citations are omitted and emphasis is added unless otherwise indicated.

the Litigation, Lead Counsel faced off against highly sophisticated defense counsel. Over the past four years, Lead Counsel has conducted a thorough investigation into the facts giving rise to this Litigation; drafted complaints which it believed were sufficient to comply with the heightened pleading standards of the Private Securities Litigation Reform Act of 1995 ("PSLRA"); opposed Defendants' motion to dismiss the amended complaint; appealed the Court's dismissal order to the Third Circuit Court of Appeals and obtained a partial reversal in a precedential opinion; and identified and retained experts and consultants. Pfefferbaum Decl., ¶4. Lead Counsel also engaged in mediation and negotiations overseen by Judge Wolfson. All of this work resulted in the excellent recovery presented here for final approval and supports Lead Counsel's fee and expense request.

Lead Counsel firmly believes that the Settlement is the result of its strenuous, diligent, and creative efforts, as well as its well-earned reputation as a firm whose attorneys are unwavering in their dedication to the interests of the Class and willing to zealously prosecute a meritorious case through trial and subsequent appeals. Here, in a case asserting claims based on complex legal and factual issues that were opposed by highly skilled and experienced defense counsel, Lead Counsel succeeded in securing an outstanding result for the Class.

Lead Plaintiff's Counsel dedicated a total of 3,573 hours of attorney and other professional staff time to bring the Litigation to this favorable resolution for Class

Members. Pfefferbaum Decl., ¶57. In class actions like this one, which are prosecuted on a contingent-fee basis, courts often award fees representing a "multiplier" of counsel's lodestar (often one to four times the amount of their lodestar) to compensate counsel for taking the risks of non-recovery and other factors. Here, Lead Plaintiff's Counsel's requested 25% fee represents a lodestar multiplier of 3.07.

Further, the requested fees have been approved by the Court-appointed Lead Plaintiff City of Warren Police and Fire Retirement System. *See* Declaration of Lead Plaintiff, submitted herewith. Lead Plaintiff evaluated the request for fees and expenses and has determined that the requested fees are warranted based on counsel's diligent and aggressive prosecution of the Litigation. *Id.*, ¶6. As a result, the fee request is entitled to a "presumption of reasonableness." *In re ViroPharma Inc. Sec. Litig.*, 2016 WL 312108, at *15-*16 (E.D. Pa. Jan. 25, 2016) ("Where the Lead Plaintiff approves the Lead Plaintiff's counsel's request[ed] fee award – as Lead Plaintiff does here – the Court should afford the fee requested a presumption of reasonableness.").

For all the reasons set forth herein, in the Pfefferbaum Declaration, and in the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Brief"), Lead Counsel respectfully submits that the requested attorneys' fees and expenses are

fair and reasonable under the applicable legal standards and should be awarded by the Court.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

To avoid repetition, Lead Counsel respectfully refers the Court to the accompanying Settlement Brief and the Pfefferbaum Declaration for detailed discussions of the factual background and procedural history of the Litigation, the extensive efforts undertaken by Lead Counsel and Lead Plaintiff during the course of the Litigation, the risks of the Litigation, and the negotiations leading to the Settlement. *See generally* Pfefferbaum Declaration.

In summary, however, in the more than four years that this case was actively litigated, Lead Counsel filed two complaints; the parties briefed a pleading motion and an appeal; Lead Counsel retained experts and consultants; and engaged in arm's-length settlement negotiations overseen by an eminently qualified mediator. *Id*.

III. THE REQUEST FOR ATTORNEYS' FEES AND EXPENSES SHOULD BE APPROVED

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The PSLRA provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall 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). The ultimate determination of the proper amount of attorneys'

fees rests within the sound discretion of the court based on the facts of the case. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009).

Here, Lead Counsel requests attorneys' fees of 25% of the Settlement Fund plus litigation costs, charges, and expenses. Per the Stipulation, Lead Counsel will allocate the attorneys' fees among Lead Plaintiff's Counsel in a manner that Lead Counsel in good faith believes reflects the contributions of such counsel to the prosecution and resolution of the Litigation. Stipulation, ¶6.2.

These requests are fair and reasonable, and well within the range of fees and expenses typically granted in similar matters. The Settlement is a very good result for the Class in the face of significant risks. This case involved substantial outlays of costs and attorney and staff time, with no guarantee of any ultimate recovery. Further, Lead Counsel brought substantial experience to its work on this case, and skillfully overcame defense counsel's determined opposition. For these reasons, and as detailed below, Lead Counsel respectfully requests that these attorneys' fees and expenses be approved.

A. Lead Plaintiff's Counsel Are Entitled to a Fee from the Common Fund

It is well established that an attorney "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); *see also, e.g.*, *ViroPharma*, 2016 WL 312108, at *15 (same). Courts have recognized

that, in addition to providing just compensation, awards of attorneys' fees from a common fund ensure that "'competent counsel continue to be willing to undertake risky, complex, and novel litigation.'" *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000); *Schuler v. Meds. Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016). The Supreme Court has emphasized that private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426 432 (1964)); *see also Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007).

Courts in this Circuit have consistently adhered to these teachings. *See, e.g.*, *ViroPharma*, 2016 WL 312108, at *15 ("'The common fund doctrine provides that a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees.'") (quoting *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d Cir. 1995)); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

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

The Supreme Court has recognized that it is appropriate to award counsel a reasonable percentage of a common fund as a fee. *See Boeing*, 444 U.S. at 478-79. Further, the Third Circuit has noted that "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n.7 (3d Cir. 2005). This is because the percentage method aligns counsel's interests with those of the class.

Courts in this Circuit recognize that the percentage-of-recovery method is preferred in common fund cases because it rewards counsel for success, penalizes counsel for failure, and ensures that "'competent counsel continue to be willing to undertake risky, complex, and novel litigation.'" *Gunter*, 223 F.3d at 198. *See also McDermid v. Inovio Pharms., Inc.*, 2023 WL 227355, at *11 (E.D. Pa. Jan. 18, 2023) (same); *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006) ("In common fund cases such as this one, the percentage-of-recovery method is generally favored . . . ."); *see also Dartell v. Tibet Pharms., Inc.*, 2017 WL 2815073, at *8 (D.N.J. June 29, 2017) ("The percentage-of-recovery method is preferred in common fund cases because it 'rewards counsel for success and penalizes it for failure.'"); *P. Van Hove BVBA v. Universal Travel Grp.*, 2017 WL 2734714, at *10 (D.N.J. June 26, 2017) (same); *Hall v. Accolade, Inc.*, 2020 WL 1477688, at *10 (E.D. Pa. Mar. 25, 2020); *Fanning v.*

Acromed Corp., 2000 WL 1622741, at *5 (E.D. Pa. Oct. 23, 2000); *Grier v. Chase Manhattan Auto. Fin. Co.*, 2000 WL 175126, at *7 (E.D. Pa. Feb. 16, 2000).

C. The Requested Fee Is Presumptively Reasonable Because It Has Been Approved by the Court-Appointed Lead Plaintiff

Lead Plaintiff, a sophisticated institutional investor that took an active role in the Litigation, supports approval of the requested fee. Lead Plaintiff's endorsement of the fee request supports its approval. *See, e.g.*, *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("Significantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fees and expenses request."). Indeed, while approval of the fee is left to the sound discretion of the Court, the fact the requested award has the support of Lead Plaintiff affords it a "presumption of reasonableness." *See ViroPharma*, 2016 WL 312108, at *15; *Utah Ret. Sys. v. Healthcare Servs. Grp., Inc.*, 2022 WL 118104, at *11 (E.D. Pa. Jan. 12, 2022) ("Given that Lead Plaintiff, a sophisticated entity, reviewed and approved the fee, this presumption applies."). *See also In re Valeant Pharms., Int'l, Inc. Sec. Litig.*, 2021 WL 358611, at *5 (D.N.J. Feb. 1, 2021) (same).

D. The Requested Fee Is Fair and Reasonable Under the *Gunter* Factors

Under Third Circuit law, district courts have considerable discretion on 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.").

Nonetheless, in exercising that broad discretion, the Third Circuit has also noted that a district court should consider, "among other things," the following factors in determining a fee award:

> (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 195 n.1. These factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *Id.*; *Schuler*, 2016 WL 3457218, at *9. Here, each factor supports the requested 25% fee award.

1. The Size of the Common Fund Created and the Number of Persons Benefited by the Settlement

In awarding fees, the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *ViroPharma*, 2016 WL 312108, at *16 (same). To assess this factor, courts "'consider[] the fee request in comparison to the size of the fund created and the number of class members to be benefitted.'" *Dartell*, 2017 WL 2815073, at *9 (quoting *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *20 (D.N.J. Nov. 10, 2016)).

Here, the $35 million Settlement is an outstanding result that provides an immediate cash recovery to a large class of investors. There were substantial risks to proceeding and proving liability and damages. Pfefferbaum Decl., ¶¶42-49; Settlement Brief, §V.C. If this Litigation were to continue absent the Settlement, Lead Plaintiff faced the significant risk that the remaining allegations related to a single alleged misrepresentation remaining in the case would be dismissed on a subsequent motion to dismiss, decreasing the likelihood of obtaining any recovery in the future. In light of this and other factors, after discussions and negotiations, Judge Wolfson recommended that the parties accept a $35 million settlement. As discussed in the Settlement Brief (§V.C.4.), the Settlement is several times the median values of recent securities class action settlements.

Additionally, the "number of class members to be benefitted" by the Settlement is undoubtedly large, since the Class includes all Persons who purchased Prudential common stock between June 5, 2019 and August 2, 2019, inclusive (excluding those individuals and entities who are excluded by definition or who request exclusion from the Class). Likely thousands of investors who bought Prudential common stock during that period will benefit from the Settlement. *See* Settlement Brief, §II.B. (Notice sent to over 104,800 potential Class Members). For these reasons, the first *Gunter* factor clearly weighs in favor of approving the negotiated fee.

2. Reaction of Class Members to the Fee Request

Notice of this Settlement, including the fee request, has been provided to over 104,800 potential Class Members. *See* Declaration of Ross D. Murray, ¶10, submitted herewith. To date, ***no*** objections to the fee request have been submitted. Pfefferbaum Decl., ¶62. Thus, the reaction of the Class weighs in favor of approval of the requested fee. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (stating that "[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement"); *see also High St. Rehab., LLC v. Am. Specialty Health Inc.*, 2019 WL 4140784, at *4 (E.D. Pa. Aug. 29, 2019) ("A low number of objectors or opt-outs is persuasive evidence of the proposed settlement's fairness and adequacy."); *Inovio*, 2023 WL 227355 at *12 (fact that these were no objections to fee request "favors approval").

3. The Skill and Efficiency of Counsel

The third *Gunter* factor – the skill and efficiency of the attorneys involved – is measured by the "'quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" *ViroPharma*, 2016 WL 312108, at *16 (quoting *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 323 (D.N.J. 1998)). Here, each of these

considerations demonstrates the skill and efficiency of Lead Counsel and supports the requested fee.

Among other things, Lead Counsel investigated Defendants' conduct; drafted detailed complaints; opposed Defendants' motion to dismiss; prevailed in part on an appeal to the Third Circuit Court of Appeals; and retained experts and consultants to assist it in pursuing claims against Defendants. Finally, Lead Counsel engaged in contentious, arm's-length settlement negotiations with an experienced mediator. *See generally* Pfefferbaum Decl.

By any measure, Lead Counsel's efforts have resulted in a highly favorable outcome for the benefit of the Class. The substantial and certain recovery obtained is the direct result of the significant efforts of highly skilled and specialized attorneys who possess substantial experience in the prosecution of complex securities class actions. Lead Counsel has a well-earned reputation as a firm whose attorneys and staff will zealously litigate a meritorious case through the trial and appellate stages. *See, e.g.*, *Lawrence E. Jaffe Pension Plan v. Household Int'l, et al.*, No. 1:02-cv-05893 (N.D. Ill.) (Robbins Geller obtained $1.575 billion settlement after 14 years of litigation and prevailing at trial); *Hsing Ching Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865 (C.D. Cal.) (Robbins Geller securing 2019 jury verdict in securities fraud class action). *See also Inovio*, 2023 WL 227355, at *12 ("Additionally, Robbins Geller Rudman & Dowd LLP's skill and experience in securities class actions has

been well noted (ECF 149-3) and favors approval of the requested award."). Defendants undoubtedly considered the fact when they decided to forego further legal challenges and agreed to settle this case for $35 million. Ultimately, this excellent result is the best indicator of the skill and expertise that Lead Counsel brought to this matter. *See Lucent Techs.*, 327 F. Supp. 2d at 436 ("Indeed, 'the results obtained' for a class evidence the skill and quality of counsel.").

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by plaintiffs' counsel. *See, e.g.*, *Ikon*, 194 F.R.D. at 194; *Dartell*, 2017 WL 2815073, at *9 ("'The quality and vigor of opposing counsel' is relevant when evaluating the quality of services rendered by Lead Counsel.") (quoting *Yedlowski*, 2016 WL 6661336, at *12). Defendants were represented by attorneys from Debevoise & Plimpton LLP and Walsh Pizzi O'Reilly Falanga LLP, prominent law firms with widely recognized experience and skill. The ability of Lead Counsel to obtain such a favorable settlement for the Class in the face of such formidable opposition further confirms the superior quality of the representation.

4. The Complexity and Duration of the Litigation

As detailed in the Pfefferbaum Declaration and the Settlement Brief, this Litigation has spanned more than four years and involved full briefing on Defendants' motion to dismiss and Lead Plaintiff's appeal to the Third Circuit. As a result of the procedural posture of the case, and in light of the PSLRA's mandatory discovery stay

pending denial of a motion to dismiss, formal fact discovery has not yet begun. Therefore, if Lead Plaintiff overcame Defendants' motion to dismiss, this case would continue for many more years, through class certification; fact and expert discovery; summary judgment; trial; and subsequent appeals.

Multiple complex issues are expected to arise in the course of this Litigation. In light of the complexity and duration of this case, this factor favors approval of the requested attorneys' fees. *See Healthcare Servs. Grp.*, 2022 WL 118104, at *12 ("Regarding the fourth [*Gunter*] factor, securities litigation is inherently complex, expensive, and lengthy, usually requiring expert testimony on variety of issues. Without a settlement, a significant amount of time and resources would be necessary to bring the case to a close."). *See also Inovio*, 2023 WL 227355, at *12 ("With efforts spanning almost three years, Counsel's requested fees [of 27.5%] are justified.").

5. The Risk of Non-Payment

Lead Plaintiff's Counsel prosecuted this case on a contingency fee basis. Thus, without a settlement or a trial victory, they would go unpaid. This created an incentive to litigate the case aggressively and seek the best recovery possible. Unlike defendants, who are paid on an hourly rate and paid for their expenses on a regular basis, Lead Plaintiff's Counsel have not been compensated for any time or expense since this case began in 2019. Since that time, Lead Plaintiff's Counsel have

expended 3,573 hours in the prosecution of this Litigation and incurred $121,454.48 in litigation costs, charges, and expenses. "'Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.'" *High St. Rehab.*, 2019 WL 4140784, at *13; *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("*Schering-Plough I*") (approving 33.3% fee; noting that "the risk created by undertaking an action on a contingency fee basis militates in favor of approval").

Even though Lead Plaintiff's claims were revived in part following appeal to the Third Circuit, Lead Plaintiff still faced hurdles in prevailing on a subsequent motion to dismiss, a class certification motion, and on Defendants' summary judgment motion, which they would undoubtedly file at the end of discovery, and later, at trial. As set forth in more detail in the Settlement Brief and the Pfefferbaum Declaration, Defendants argued that the discovery will confirm that they did not make any materially false or misleading statement or omission, with scienter or otherwise. Pfefferbaum Decl., ¶¶42-49; Settlement Brief, §V.C.1. Likewise, Defendants have argued that there is no evidence to support loss causation or damages. In a "battle of the experts," the Court or jury could side with Defendants' experts and find no damages or only a fraction of the damages Lead Plaintiff claimed. *Kanefsky v. Honeywell Int'l Inc.*, 2022 WL 1320827, at *10 (D.N.J. May 3, 2022) (noting the various risks of nonpayment supporting the requested fee).

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result and that such a result would be realized only after considerable effort. This factor strongly favors approval of the requested fee.

6. The Significant Time Devoted to This Case

The significant time that counsel devoted to this case favors approval of the requested attorneys' fees. Counsel collectively invested 3,573 hours of attorney and support staff time over the course of four-plus years and incurred $121,454.48 in expenses prosecuting this case for the benefit of the Class, without promise of payment of attorneys' fees or expenses if Lead Plaintiff did not prevail on its claims. *See* Pfefferbaum Decl., ¶¶57-61; *see also* Declaration of Daniel J. Pfefferbaum Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Fee and Expense Decl."), ¶¶4-5; Declaration of Peter S. Pearlman Filed on Behalf of Cohn Lifland Pearlman Herrmann & Knopf in Support of Application for Award of Attorneys' Fees and Expenses ("Cohn Lifland Fee and Expense Decl."), ¶¶4-5, submitted herewith.

As discussed above and in the Pfefferbaum Declaration, this Litigation was actively litigated and vigorously defended for more than four years at the time the parties agreed to the Settlement. Defendants fought Lead Plaintiff at every step of the

Litigation. The successful resolution of this Litigation required Lead Plaintiff's Counsel to commit a significant amount of time and expense to the case.[2]

7. The Range of Fees Typically Awarded

"While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund." *Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at *12 (E.D. Pa. Sept. 16, 2021) (holding that this factor weighs in favor of approval where 33% fee request "falls in the middle" of the range of fees granted in comparable securities class actions in the Third Circuit); *see also Kanefsky*, 2022 WL 1320827, at *11 (finding 29.2% fee request "well within the reasonable range of awards approved by the Third Circuit and is consistent with similar class action settlements"); *ViroPharma*, 2016 WL 312108, at *17 (noting that "[i]n this Circuit, 'awards of thirty percent are not uncommon in securities class actions'") (quoting *Ikon*, 194 F.R.D. at 194) (citing cases).

Courts in the Third Circuit award fee percentages similar to (or above) the requested fee of 25% in this case. *See In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 2024 WL 815503, at *17 (E.D. Pa. Feb. 27, 2024)

[2] Lead Counsel's efforts will not end at final approval of the Settlement. Many additional hours and resources will be expended assisting Class Members with claim administration. *Kanefsky*, 2022 WL 1320827, at *11.

(awarding 32% of $385 million settlement); *Howard v. Arconic Inc.*, No. 2:17-cv-01057-MRH, ECF 253 (W.D. Pa. Aug. 5, 2023) (awarding 33-1/3% of $74 million settlement); *In re Novo Nordisk*, No. 3:17-cv-00209-ZNQ-LHG, ECF 361 (D.N.J. July 13, 2022) (awarding 29% of $100 million settlement); *Pelletier v. Endo Int'l PLC*, No. 2:17-CV-05114, ECF 417 (E.D. Pa. Apr. 8, 2022) (awarding 25% of $63.4 million settlement); *Beltran v. SOS Ltd.*, 2023 WL 319895, at *8 (E.D. Pa. Jan. 3, 2023) (Pascal, M.J.), *report & recommendation adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023), (awarding one-third of settlement as "within the typical range and . . . reasonable); *Inovio*, 2023 WL 227355, at *12 (approving 27.5% of settlement as "within the norm for awards in common fund cases"). Because the requested fee is reasonable in relation to fees typically awarded in similar cases, this factor favors approval of the requested fee award.[3]

[3] In evaluating attorneys' fee requests, courts in the Third Circuit have also considered factors such as whether the fee award "reflects commonly negotiated fees in the private marketplace," and any benefit received from the efforts of government agencies, or any innovative terms of settlement. *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *12-*13 (D.N.J. Feb. 9, 2010). These additional factors also favor approval of the requested fee here, as the advancement of this case was based upon the efforts of counsel, not government agencies, and a 25% fee is lower than commonly negotiated contingent fees. *See id.*, at *13 (noting that contingent fees in the private marketplace are commonly 30% to 40%).

E. The Requested Fee Is Reasonable Under a Lodestar Cross-Check

Courts in the Third Circuit may also use a "lodestar cross-check" to confirm the reasonableness of a percentage fee. *See Moore v. GMAC Mortg.*, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) (stating that the "lodestar cross-check is 'suggested,' but not mandatory"). If used, the lodestar cross-check "should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T*, 455 F.3d at 164.[4]

The Third Circuit has recognized that when used, the lodestar cross-check "need entail neither mathematical precision nor bean-counting," and "district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005). The lodestar cross-check involves simply comparing counsel's "lodestar" – *i.e.*, timekeepers' hourly rates multiplied by the number of hours spent on the case – to the fee resulting from the requested percentage award, and assessing the reasonableness of the resulting multiplier. The appropriate multiplier varies based on the specifics of each case and "'need not fall within any pre-defined range, provided that the [d]istrict

[4] Placing too much emphasis on the lodestar method "may encourage attorneys to delay settlement or other resolution to maximize legal fees" and "may also compensate attorneys insufficiently for the risk of undertaking complex or novel cases on a contingency basis." *Ikon*, 194 F.R.D. at 193. Given its limited value, some courts consider a lodestar review "an inevitable waste of judicial resources." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000).

[c]ourt's analysis justifies the award.'" *Schuler*, 2016 WL 3457218, at *10 (quoting *Rite-Aid*, 396 F.3d at 307).

The Third Circuit has recognized that percentage awards that result in multipliers "'ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'" *In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815, 819 (3d Cir. 2010); *accord The Shou Kao v. CardConnect Corp.*, 2021 WL 698173, at *11 (E.D. Pa. Feb. 23, 2021); *Wood v. AmeriHealth Caritas Servs., LLC*, 2020 WL 1694549, at *10 (E.D. Pa. Apr. 7, 2020); *see also Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16; noting that "multiples ranging from 1 to 8 are often used in common fund cases" to "compensate counsel for the risk of assuming the representation on a contingency fee basis"). *See also Bodnar v. Bank of Am., N.A.*, No. 14-3224, ECF 90 at 10 (E.D. Pa. Aug. 4, 2016) (a 4.69 multiplier was "appropriate and reasonable"); *Esslinger v. HSBC Bank Nev., N.A.*, 2012 WL 5866074, at *16 (E.D. Pa. Nov. 20, 2012) (A 1.7 multiplier was acceptable "because of the high risk of non-recovery shouldered by Plaintiffs' Counsel, who worked on a contingency basis, for more than two years.").

Here, the lodestar cross-check further demonstrates the reasonableness of the requested fee percentage. As detailed in the Pfefferbaum Declaration, counsel spent 3,573 hours of attorney and other professional time prosecuting the Litigation for the benefit of the Settlement Class. Pfefferbaum Decl., ¶57. Counsel's lodestar, derived

by multiplying the hours spent on the Litigation by each attorney or other professional by his or her current hourly rate,[5] is $2,848,115.50.[6]

Thus, the requested fee of 25% of the Settlement Fund, or $8,750,000 (plus interest), represents a multiplier of 3.07 on counsel's lodestar. That multiplier is well within the range approved in other securities class actions. *See, e.g.*, *Arconic*, ECF 253 at 1-2 (awarding fee representing multiplier of 3.54); *Inovio*, 2023 WL 227355, at *13 (awarding fee representing multiplier of 2.69); *Schuler*, 2016 WL 3457218, at *10 (awarding fee representing 3.57 multiplier); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 134-35 (D.N.J. 2002) (awarding fee representing 4.3 multiplier).

F. Reasonably Incurred Litigation Expenses Should Be Awarded

Lead Plaintiff's Counsel also request payment of costs, charges, and expenses incurred by them in connection with the prosecution of this Litigation in the aggregate amount of $121,454.48. Counsel in class actions are entitled to recover expenses that

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[5] The Supreme Court has approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *See Mo. v. Jenkins by Agyei*, 491 U.S. 274, 284 (1989).

[6] Courts have noted that it is appropriate to consider further time in the lodestar crosscheck; for example, time that will be needed to administer the settlement. *See In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020) (noting that "[i]n addition to time spent through final approval, class counsel estimate they will spend [significantly more time] to implement and administer the settlement"), *aff'd in part, rev'd in part*, 999 F. 3d 1247 (11th Cir. 2021). Such additional time will reduce the multiplier.

are "'adequately documented and reasonable and appropriately incurred in the prosecution of the class action.'" *ViroPharma*, 2016 WL 312108, at *8 (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *Schering-Plough I*, 2012 WL 1964451, at *8 (approving litigation expenses and noting that "[t]his type of reimbursement has been expressly approved by the Third Circuit").

The expenses borne by Lead Plaintiff's Counsel are documented in the accompanying firm declarations. These expenses consist of typical categories, such as consultants, experts, travel, research costs, mediation fees, filing fees, postage, copying, and delivery. *See* Robbins Geller Fee and Expense Decl., ¶6; Cohn Lifland Fee and Expense Decl., ¶6. These expenses were reasonable and necessary to Lead Plaintiff's prosecution of the claims and achieving the Settlement and are of the same type routinely approved in securities class actions. *See ViroPharma*, 2016 WL 312108, at *18 (approving costs and expenses for, among other things, experts, travel, copying, postage, telephone, filing fees, and online and financial research); *Yedlowski*, 2016 WL 6661336, at *23 (approving costs and expenses for experts, investigation, mediation, publishing notice, and online legal research, and noting that "[c]ourts have held that all of these items are properly charged to the [c]lass").

Further, the requested amount is less than the expense figure of up to $200,000 set out in the Postcard Notice and Notice; to date, there have been no objections to

that proposed figure. For all of these reasons, the requested expense award should be approved.

IV. CONCLUSION

For all the reasons stated above and in the accompanying declarations, Counsel respectfully requests that the Court: (i) award Lead Plaintiff's Counsel attorneys' fees of 25% of the Settlement Amount and payment of litigation expenses of $121,454.48, plus the interest earned on both amounts.

DATED: May 9, 2024

Respectfully submitted,

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