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Liaison Counsel for Plaintiffs and the Settlement Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NICHOLAS MILLER, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. EAGLE PHARMACEUTICALS, INC., SCOTT TARRIFF, and BRIAN CAHILL, Defendants.	Case No. 2:23-CV-23011-MAH Hon. Michael A. Hammer **Motion Day:** August 19, 2026

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

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Court-appointed lead counsel, Glancy Prongay Wolke & Rotter LLP (f/k/a Glancy Prongay & Murray LLP; "Glancy Prongay" or "Lead Counsel"), respectfully submits this memorandum of law in support of its motion for an award of attorneys' fees and reimbursement of Litigation Expenses.[1]

I. INTRODUCTION

Lead Counsel successfully obtained a $9,500,000 non-reversionary, all cash settlement (the "Settlement") for the benefit of the Settlement Class in the above-captioned action (the "Action"). This is an outstanding result in the face of substantial risks that was the result of Plaintiffs' Counsel's vigorous, persistent, and skilled efforts. Lead Counsel now respectfully moves this Court for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund (*i.e.*, $3,166,666, plus interest earned thereon), and reimbursement of $147,360.81 in Litigation Expenses. The Litigation Expenses consist of $112,360.81 in out-of-pocket costs incurred by Plaintiffs' Counsel while prosecuting the Action, and an aggregate of $35,000 to Court-appointed Lead Plaintiff Evans Associates I, LLC ("Evans Associates" or

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[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation of Settlement, dated March 13, 2026 ("Stipulation"; ECF No. 62-3), or in the concurrently filed Declaration of Garth Spencer in Support of: (I) Plaintiffs' Unopposed 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 ("Spencer Declaration"). Citations to "¶__" or "Ex. __" in this memorandum refer to paragraphs in, or exhibits to, the Spencer Declaration.

"Lead Plaintiff"), and named plaintiffs Nicholas Miller, Liyu Wang, and Joanna Pluta (collectively, with Lead Plaintiff, "Plaintiffs"), for reimbursement of the reasonable costs (including the cost of time spent) incurred in prosecuting the Action on behalf of the Settlement Class pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4).

As detailed below and in the accompanying Spencer Declaration, the Settlement represents an excellent recovery for the Settlement Class. In the absence of the Settlement, the litigation would have been uncertain and likely have continued for many years, through a decision on the motion to dismiss, class certification, fact discovery, expert discovery, summary judgment, trial, and likely appeals. Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Settlement Class.

Achieving the Settlement was not easy. Defendants were represented by highly skilled litigators, and Plaintiffs' Counsel faced numerous hurdles and risks from the outset, including the PSLRA's heightened pleading standards and automatic stay of discovery, the complex nature of the claims at issue, the high cost of experts and investigators needed to litigate a securities fraud case, and a substantial risk of non-payment. These are not idle risks. "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." *Alaska Elec.*

Pension Fund v. Flowserve Corp., 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J. sitting by designation).[2] As a result, a significant number of cases are dismissed in whole or in part at the pleading stage. *See* Ex. 1 (excerpt from Edward Flores, Svetlana Starykh, and Ivelina Velikova, *Recent Trends in Securities Class Action Litigation, 2025 Full-Year Review* (NERA, Jan. 21, 2026) ("NERA Report") at 18, Fig. 15 (motion to dismiss filed in 96% of the securities class action cases in the last ten years, and in cases where the motion was decided, 62% were granted with or without prejudice, 21% were partially granted, and only 17% denied in full)).[3]

Nor do the risks end at the pleading stage. Even when a plaintiff is successful at trial, payment is far from guaranteed. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).[4] There was, therefore, a strong possibility that the case would yield little

[2] Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

[3] *See also Bray v. Rocket Lab USA, Inc.,* 2026 WL 1102830 (C.D. Cal. Apr. 14, 2026) (tentative ruling dismissing securities class action complaint with prejudice where GPWR was lead counsel) *adopted by Bray v. Rocket Lab USA, Inc.*, 2026 WL 1102785, at *1 (C.D. Cal. Apr. 16, 2026).

[4] *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing jury verdict awarding investors $2.46 billion on loss causation and damages grounds, and remanding for new trial on these issues), *reh'g denied* (July 1, 2015); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1235 (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); *In re Apple*

or no recovery after many years of costly litigation. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (observing that "Defendants prevail outright in many securities suits."); *In re Ocean Power Tech., Inc., Sec. Litig.,* 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain.").

Despite facing long odds, Plaintiffs' Counsel have vigorously pursued this case, working 2,699.45 hours and advancing $112,360.81 in out-of-pocket expenses, all on a fully contingent basis. Among other things, Plaintiffs' Counsel:

- researched, drafted and filed the initial complaint (ECF No. 1) in this Action;
- moved for appointment of Evans Associates I, LLC as lead plaintiff (ECF No. 8) pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4 ("PSLRA");
- conducted an extensive investigation of the claims asserted in the Action, which included, among other things: (a) review and analysis of regulatory filings made by Eagle with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases, media reports, presentations, and conference calls issued and disseminated by Eagle; (c) review and analysis of documents filed in other legal actions involving Eagle and/or Defendant Tarriff; (d) consultations with an accounting expert and research regarding relevant accounting standards; (e) consultations with an expert in the field of loss causation and damages; and (f) working with a private investigator to interview former employees of Eagle;

Computer Sec. Litig., 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions).

- utilized their comprehensive investigation and additional research to prepare a draft amended complaint, which they provided to Defendants in connection with the Parties' mediation with their agreed mediator, Caroline Cheng, Esq. of Phillips ADR Enterprises;

- researched, drafted, and exchanged with Defendants detailed mediation statements and exhibits addressing issues of liability and damages;

- participated in a full-day, in-person mediation session, which although it did not result in an agreement to settle on that day, led to continuing discussions among the Parties and Ms. Cheng;

- continuously monitored Eagle's public statements concerning its financial condition, business developments, and the restatement of its previously issued financial statements, and also continuously monitored developments in litigation between Eagle and Defendant Tarriff;

- performed additional interviews of former Eagle employees;

- continued their research and investigation into Defendants' alleged misconduct, which they utilized to draft and file the comprehensive, 95-page Amended Class Action Complaint for Violations of the Federal Securities Laws (ECF No. 27, the "Complaint"), asserting violations of the Securities Exchange Act of 1934 (the "Exchange Act");

- thoroughly researched and analyzed Defendants' motion to dismiss (ECF No. 33), and researched, drafted, and filed an opposition to Defendants' motion (ECF No. 42);

- continued discussions about a potential resolution with Ms. Cheng and Defendants, which led to the Parties accepting a double-blind mediator's recommendation to resolve the Action for $9,500,000 in cash for the benefit of the Settlement Class;

- drafted a confidential settlement term sheet setting forth material terms of the Parties' agreement in principle to settle the Action, and then negotiated with Defendants concerning its terms;

- as a condition of the term sheet, negotiated for Defendants to produce documents to enable Plaintiffs to further evaluate the fairness, reasonableness, and adequacy of the Parties' agreement in principle, and then met and conferred with Defendants concerning document productions, and thoroughly reviewed and analyzed the over 115,000 pages of documents produced by Defendants;

- drafted the Stipulation (including the exhibits thereto) and the Supplemental Agreement, to reflect the final and binding agreement between the Parties, and negotiated with Defendants concerning the terms of those documents;
- worked with a damages expert to craft a plan of allocation that treats Plaintiffs and all other members of the proposed Settlement Class fairly.
- drafted the preliminary approval motion and supporting papers;
- prepared for and attended the virtual preliminary approval hearing;
- worked with the Court appointed Claims Administrator to provide notice to the Settlement Class; and
- drafted the final approval motion and supporting papers. *See* ¶¶16-35, 94.

As compensation for their significant efforts and achievements on behalf of the Settlement Class, Lead Counsel, on behalf of all Plaintiffs' Counsel, respectfully request a fee award in the amount of 33⅓% of the Settlement Fund. This request is consistent with fee awards granted in comparable class action settlements, whether considered as a percentage of the Settlement or in relation to a cross-check of Plaintiffs' Counsel's lodestar. Indeed, the requested fee represents a multiplier of 1.42 on Plaintiffs' Counsel's lodestar, which is a strong indicator of the reasonableness of the request, and well within—and below—the range of multipliers typically awarded in class actions with substantial contingency risks such as this one. *See Schuler v. The Meds. Co.*, 2016 WL 3457218, at *9-*10 (D.N.J. June 24, 2016) (awarding one-third of $4,250,000 settlement fund, resulting in 3.57 multiplier in case that settled before decision on motion to dismiss); *In re Interpublic Sec. Litig.*, 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) ("In recent years multipliers of between 3 and 4.5 have been common in federal securities cases."); *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *34 (D.N.J. Oct. 1, 2013) ("this very low 1.3 multiplier is well within the parameters allowed by courts throughout the Third Circuit and provides compelling evidence that the requested attorneys' fee is reasonable. Indeed, lodestar multipliers well above 1.3 and up to four are often used in common fund cases.").

Lead Counsel also seek reimbursement of $112,360.81 in out-of-pocket litigation expenses incurred in prosecuting the Action. ¶¶114-22. This amount is below the $185,000 limit on Litigation Expenses disclosed in the Notice—which, by definition, included PSLRA awards to Plaintiffs. The expenses are reasonable in amount and were necessarily incurred in the successful prosecution of the Action. Accordingly, they should be approved.

Finally, Lead Counsel respectfully request PSLRA awards in the aggregate amount of $35,000 to compensate Plaintiffs for the time and effort they have expended on behalf of the Settlement Class. Ex. 2 ("Evans Associates Decl."); Ex. 3 ("Miller Decl."); Ex. 4 ("Wang Decl."); Ex. 5 ("Pluta Decl."). Plaintiffs took responsibility for, and were actively involved in, initiating, prosecuting and settling the Action. Evans Associates Decl., ¶¶4-6; Miller Decl., ¶¶3-5; Wang Decl., ¶¶3-5;

Pluta Decl., ¶¶3-5. "[T]here would be no benefit to the Settlement Class Members if Plaintiffs had not stepped forward and prosecuted this matter to the current resolution." *Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at *15 (E.D. Pa. Sept. 16, 2021).

For all the reasons set forth herein, and in the Spencer Declaration, Lead Counsel respectfully request that the Court award attorneys' fees of 33⅓% of the Settlement Fund, approve reimbursement of $112,360.81 in out-of-pocket litigation expenses, and grant PSLRA awards of $20,000 to Lead Plaintiff, and $5,000 to each of the other three Plaintiffs.

II. SUMMARY OF FACTUAL AND PROCEDURAL HISTORY

The Spencer Declaration is an integral part of this submission. For the sake of brevity, the Court is respectfully referred to it for a discussion of, *inter alia*, the history of the Action; the claims asserted; the mediation and negotiations leading to the Settlement; the risks continued litigation; the services Plaintiffs' Counsel provided; and additional information on the factors that support the fee and expense application, including the lodestar cross-check.

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). The Third Circuit and courts within this circuit have reached the same conclusion. *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 Off. 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.").

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 v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (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) ("Congress, the Executive Branch, and this Court, moreover, have recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission.").

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class, and utilize a lodestar cross-check to confirm that the fee is reasonable. 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."); *In re AT&T Corp., Sec. Litig.,* 455 F.3d 160, 164 (3d Cir. 2006); *In re Prudential Ins. Co.*

Am. Sales Prac. Litig. Agent Actions, 148 F.3d 283, 333 (3d Cir. 1998); *Gunter*, 223 F.3d at 195.

A percentage-of-the-fund fee award is also consistent with the PSLRA, that 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" recovered for the class. 15 U.S.C. § 78u-4(a)(6); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("*Rite Aid I*") ("Consistent with past jurisprudence, the percentage-of-recovery method was incorporated in the Private Securities Litigation Reform Act of 1995.").[5] Indeed, "[f]or the past [three] decade[s], counsel fees in securities litigation have generally been fixed on a percentage basis rather than by the so-called lodestar method." *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001).

Use of the percentage method does not, however, render the lodestar irrelevant. The Third Circuit has recommended that the percentage award be "cross-checked" against the lodestar method to ensure its reasonableness. *Sullivan*, 667 F.3d at 330; *see also Rite Aid I*, 396 F.3d 294, at 300 ("we do not believe the [PSLRA] precludes the use of the lodestar method as a check on the percentage-of-

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[5] *See also Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 643 (5th Cir. 2012) ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such a calculation.").

recovery calculation."). Of course, a cross-check is just that, and "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T Corp.*, 455 F.3d at 164.

As demonstrated below, Lead Counsel's attorneys' fee request is fair and reasonable. It should, therefore, be approved.

B. Application of the *Gunter* and *Prudential* Factors Supports Lead Counsel's Request for a 33⅓% Fee

In reviewing an attorneys' fee award request in a class action settlement, the Third Circuit looks at a number of factors known as the "*Gunter* factors" and the "*Prudential* factors." *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 Lead 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. Analysis of the relevant factors supports the requested award.[6]

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

"The first *Gunter* factor analyzes the size of the fund created and the number of persons benefitted." *Hall v. AT & T Mobility LLC*, 2010 WL 4053547, at *16 (D.N.J. Oct. 13, 2010). The sufficiency of the result achieved is a primary factor in assessing the propriety of an attorney fee award. *Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *6 (D.N.J. Dec. 31, 2009) (finding this factor "[m]ost important"); *In re Merck & Co., Sec., Derivative & "ERISA" Litig.*, 2016 WL 11686450, at *8 (D.N.J. June 3, 2016) ("The size of the fund is indicative of the success obtained through a settlement, and, accordingly, a significant consideration in evaluating the reasonableness of an award for attorneys' fees.").

Here, the result achieved—a Settlement Amount of $9.5 million—is an excellent outcome that will provide Settlement Class Members with an immediate cash recovery, while avoiding the substantial expense, delay, risk, and uncertainty of further litigation. Plaintiffs' damages expert estimates that *if* Plaintiffs had *fully prevailed* against Defendants' motion to dismiss, at both summary judgment and

[6] In application, it is well-established that "courts may give some of these [*Gunter/Prudential*] factors less weight in evaluating a fee award." *Id.* at 166.

after a jury trial, *if* the Court certified the same class period as the Settlement Class Period, and *if* the Court and jury accepted Plaintiffs' damages theory, including proof of loss causation as to each of the stock price drop dates alleged in this case (*i.e.*, Plaintiffs' *best case scenario*), the estimated total *maximum* class wide damages would be approximately $104.6 million. Thus, the $9.5 million Settlement Amount represents approximately 9.1% of the total *maximum* damages *potentially* available.

To fully appreciate the Settlement, however, it must be evaluated in light of the procedural and substantive hurdles that Plaintiffs would have to overcome in order to prevail in this complex securities fraud litigation. *See In re Facebook, Inc., IPO Sec. and Derivative Litig.*, 343 F.Supp.3d 394, 414 (S.D.N.Y. 2018) ("Because Plaintiffs face serious challenges to establishing liability, consideration of Plaintiffs' best possible recovery must be accompanied by the risk of non-recovery."). Obstacles included both the well-known general risks of complex securities litigation, as well as the specific risks inherent in this case. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) (noting that "[t]he difficulty of establishing liability is a common risk of securities litigation" and that "[t]he risk of establish damages [is] equally daunting.").

From the outset, there existed a very real possibility that the Court would dismiss the Action pursuant to the PSLRA's stringent pleading standards, and that the automatic discovery stay of discovery could prevent Plaintiffs from obtaining the evidence needed to successfully plead their claims. *See Jorling v. Anthem, Inc.*, 836 F. Supp. 2d 821, 831 (S.D. Ind. 2011) (discussing the PSLRA's "heightened pleading requirements, making it more difficult for plaintiffs to survive a motion to dismiss, and thus receive the keys to unlock the discovery process.").[7] Indeed, in the motion to dismiss and during settlement negotiations, Defendants denied and vigorously defended against Plaintiffs' allegations. Defendants mounted a strong defense to the Action's allegations relating to scienter, claiming, *inter alia*, that Plaintiffs had failed to allege a motive for the alleged wrongdoing given that Defendant Cahill did not sell any shares during the class period, and Defendant Tarriff sold less than 7% of his total holdings of Eagle stock during the class period. ECF No. 33-1 at 8-10. According to Defendants, "[t]he far more compelling inference is that Eagle offered good faith incentives to wholesalers to boost PEMFEXY sales, external factors beyond its control slowed pull-through and led to higher-than-expected returns, and Eagle— looking back—determined a restatement was warranted. *Id*. at 20. Although Plaintiffs were confident in their case, success in these types of cases is never assured. *See In re BP p.l.c. Sec. Litig.*, 852 F. Supp.

[7] *See also Ikon*, 194 F.R.D. at 194 ("[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA."); *Bryant v. Avado Brands, Inc*., 100 F. Supp. 2d 1368, 1377 (M.D. Ga. 2000) ("An unfortunate byproduct of the PSLRA is that potentially meritorious suits will be short-circuited by the heightened pleading standard."), *rev'd on other grounds sub nom. Bryant v. Dupree*, 252 F.3d 1161 (11th Cir. 2001).

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."); *see also* Ex. 1 (NERA Report) at 17 (Fig. 15) (empirical research on dismissal rates in securities class actions).[8]

Nor did the risks end at the pleading stage. Lead Counsel faced significant hurdles in *proving* liability and damages.[9] For example, Plaintiffs anticipated that Defendants would continue to challenge loss causation with respect to the alleged May 9, 2023 corrective disclosure. *See* ECF No. 33-1 at 23-25. Defendants were also likely to challenge Plaintiffs' argument that Eagle's continuing stock price declines on the days following the alleged May 9, 2023 and October 2, 2024 corrective disclosures give rise to damages. If Defendants were to prevail on those arguments, *maximum* recoverable damages would drop to $57.3 million. Under such a scenario, a $9.5 million recovery equates to 16.6% of total potential damages. And,

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[8] *See also Ikon*, 194 F.R.D. at 194 ("[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA."); *Bryant v. Avado Brands, Inc.*, 100 F. Supp. 2d 1368, 1377 (M.D. Ga. 2000) ("An unfortunate byproduct of the PSLRA is that potentially meritorious suits will be short-circuited by the heightened pleading standard."), *rev'd on other grounds sub nom. Bryant v. Dupree*, 252 F.3d 1161 (11th Cir. 2001).

[9] *See In re AT&T*, 455 F.3d at 170 (noting that "the difficulty of proving actual knowledge under §10(b) of the Securities Exchange Act . . . weighed in favor of approval of the fee request."); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007) (commenting on the "formidable task of proving scienter and loss causation" and the risk to proving damages in a securities class action).

as set forth in Defendants' motion to dismiss briefing, even this reduced damages estimate was not without risk. *See id.* at 25 ("The rest of Plaintiffs' so-called corrective disclosures fail for the same reason.").

While Plaintiffs believed that they had meritorious arguments in response, the outcome would rely heavily on expert testimony, and if Defendants' arguments were accepted by the Court or a jury, the Settlement Class's maximum potential damages would have been substantially reduced, if not completely eliminated. ¶¶48-54; *see also Cendant Corp.*, 264 F.3d at 239 ("[E]stablishing damages at trial would lead to a battle of experts with each side presenting its figures to the jury and with no guarantee whom the jury would believe."); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *6 (D.N.J. July 29, 2013) (noting "the inherent unpredictability and risk associated with damage assessments in the securities fraud class-action context").

Given the range of possible results in this litigation—including no recovery at all—a recovery of 9.1% to 16.6% of *maximum* potential damages is an outstanding result. In fact, the recovery is more than 2¾ to 3¾ times the median recovery in securities class action settlements with similar potential damages. *See* Ex. 1 (NERA Report, at 27, Fig. 23) (median recovery for securities class actions that settled in the last ten years was 3.2% for cases with estimated damages between $100-$199 million, and 4.4% for cases with estimated damages between $50-$99 million); *see also In re Merck & Co., Inc. Sec., Derivative & "Erisa" Litig.*, 2016 WL 11686450, at *8 (D.N.J. June 3, 2016) ("The Settlement Fund also compares well to the median class action settlement value as a percentage of investor losses, *i.e.* 'the recovery compared to a rough measure of the size of the case', as described in NERA 2015.").

It is also important to recognize that the Settlement will benefit a significant number of investors. Notice was mailed or emailed to 970 potential Settlement Class Members, and there is no right of reversion. *See* Declaration of Melissa Mejia ("Mejia Decl."), Ex. 6 at ¶¶9-11; *see also* Stipulation, ¶32. The entire Net Settlement Fund will be distributed to Settlement Class Members who submit valid claims. Thus, the size of the fund and the number of persons benefitted support approving the requested fee. *See, e.g.*, *Universal Travel,* 2017 WL 2734714, at *11 (approving award of one-third of $4.5 million fund, where "total maximum damages [were] optimistically valued at approximately $45 million"; and settlement benefited approximately 1,130 class members, as measured by expected valid claims received).

2. No Settlement Class Members Have Objected to the Fee Request

The reaction of the Settlement Class to the requested fee is also important. 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, 2013).

While the deadline for objections is not until July 29, 2028, and thus has not yet passed, there have been no objections to the request for attorneys' fees and Litigation Expenses included in the Notice.[10] ¶¶91, 112; Mejia Decl. ¶14. "[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; *Dartell v. Tibet Pharm., Inc.*, 2017 WL 2815073, at *9 (D.N.J. June 29, 2017) ("To date, no class member has objected to the requested fees. Accordingly, the reaction from the class supports the fee request.").

3. Plaintiffs' Counsel's Skill and Efficiency Supports the Request

The skill and efficiency of counsel 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 the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Hall,* 2010 WL 4053547, at *19.

As explained in the Spencer Declaration and herein, Plaintiffs' Counsel's efforts have resulted in an outstanding recovery, especially given the risks posed by further litigation. *See In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) ("[T]he excellent result evidences Plaintiffs' Counsel's skill and efficiency.").

[10] Any objections or requests for exclusions received after the date of this submission will be addressed in the reply brief to be filed by August 12, 2026.

Moreover, Plaintiffs' Counsel are experienced securities class action litigators (*see* Ex. 9-C (Glancy Prongay firm résumé); Ex. 11-C (Carella Byrne firm résumé); Ex. 10-C (Zwick firm résumé)), and the Court had the opportunity to observe Plaintiffs' Counsel's abilities in the course of preliminarily approving the Settlement. *See* ECF Nos. 62, 66. Indeed, the Court has already found that "Counsel in this matter are well experienced in representing the plaintiffs' side and settlement class side of securities fraud litigation, and in conjunction with Carella Byrne as liaison counsel, plaintiffs' interests are more than adequately protected, given the quality of those counsel." ECF No. 66 (Transcript of May 18, 2026, Preliminary Approval Hearing) at 10:11-10:16; *see also Miller v. Eagle Pharma., Inc.*, 2024 WL 3858124, at *5 (D.N.J. Aug. 19, 2024) ("After reviewing the firms' resumes, (ECF 8-7; ECF 8-8) the Court finds that both [Glancy Prongay and Carella Byrne] have substantial experience litigating securities fraud class actions and are thus competent to fulfill the duties of lead counsel and liaison counsel.").

"The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel." *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *21 (D.N.J. Nov. 10, 2016). Here, Defendants were vigorously represented by experienced and able counsel from Cooley LLP, Ropes & Gray LLP and Saul Ewing LLP, extremely prominent law firms with ample resources and skill. Plaintiffs' Counsel's ability to obtain a favorable outcome for the Settlement Class "in the face of formidable legal opposition further evidences the quality of their work." *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003); *In re Mercedes-Benz Emissions Litig.*, 2021 WL 7833193, *13 (D.N.J. Aug. 2, 2021) ("The competence of opposing counsel favors a finding that Class Counsel prosecuted this case with skill and efficiency."). Accordingly, "this factor strongly weighs in favor of approving the fee request." *Par Pharm.*, 2013 WL 3930091, at *9.

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

The fourth *Gunter* factor is "the complexity and duration of the litigation." *Gunter*, 223 F.3d at 195 n.1; *see also Universal Travel*, 2017 WL 2734714, at *12 ("The fourth factor captures 'the probable costs, in both time and money of continued litigation.'" (quoting *In re Gen. Motors*, 55 F.3d at 812)). Numerous courts recognize that "securities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *Par Pharm.*, 2013 WL 3930091, at *10; *In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 WL 9447623, at *17 (D.N.J. Dec. 9, 2008) ("Federal securities class actions by definition involve complicated issues of law and fact."); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 632 (D. Colo. 1976) (securities litigation presents "unique and substantial issues of law in the technical area of SEC Rule 10b-5 . . . difficult, complex, and oft-disputed class action questions, and difficult questions regarding computation of damages.").

This Action was no exception. Indeed, given its subject matter, it was even more complex. *See In re Datatec Sys.*, 2007 WL 4225828, at *7 ("securities fraud class actions involving alleged violations of accounting principles are complex actions to prosecute"). Moreover, at the time the Settlement was reached, the case was almost two years old and the motion to dismiss was still pending before the Court. Assuming that Plaintiffs survived the motion to dismiss, the Parties would face years of expensive and time-consuming litigation, including costly merits discovery, class certification, battling experts, summary judgment, trial, and likely post-trial appeals. No matter how efficiently the litigation was handled, the Parties would have to spend a considerable sum to see this case to completion in light of its complexity and procedural posture. For example, fact discovery would involve a more than two year class period, and subjects such as Eagle's Pemfexy sales, commercial agreements with wholesalers, customer inventory levels, accounting policies and judgments, internal controls over financial reporting, and the Individual Defendants' knowledge of the foregoing topics. Class certification would have required the hiring of costly market efficiency experts, and summary judgment and trial would have required expert testimony regarding accounting standards, sales practices in the pharmaceuticals industry, loss causation, and damages. Without a doubt, "any further litigation would likely be time consuming[,] as well as expensive due to the need for experts." *Universal Travel Grp. Inc.*, 2017 WL 2734714, at *12.

Finally, there is substantial likelihood that continued litigation would have resulted in a lower Settlement Amount. Eagle's D&O insurance was wasting, and its financial condition has deteriorated in the years leading up to and since the Action commenced. ¶¶60-64. Among other things, the Company has ceased filing reports with the SEC, its stock has been delisted from the NASDAQ exchange, and its most recent published financial statements (*for the second quarter of 2025*) state that Eagle "has suffered recurring losses from operations, experienced substantial negative decline in customer demand for one of the Company's key products, and has stated that substantial doubt exists about the Company's ability to continue as a going concern." ¶62; Ex. 13 at 3. As of June 30, 2025, Eagle had total liabilities $30 million in excess of its total assets, and had incurred a $52 million net loss in the prior six months. *Id.* at 4-5 (F-1 to F-2). Eagle's most recently published financial statements also reveal that it is cooperating with an ongoing SEC investigation (*id.* at 24 (F-21)), and if the SEC were to impose substantial fines on Eagle, that would likely further reduce the available assets from which Plaintiffs could attempt to collect any judgment. ¶63; *see also In re Critical Path, Inc.*, 2002 WL 32627559, at *7 (N.D. Cal. June 18, 2002) ("Through protracted litigation, the settlement class could conceivably extract more, but at a plausible risk of getting nothing ... ; watching Critical Path fall into bankruptcy; and, most certainly, drying up the available insurance.").

In reaching the Settlement, Lead Counsel has obtained "a substantial benefit undiminished by further litigation expenses, without the delay, risk and uncertainty of continued litigation." *In re Computron Software, Inc.*, *Sec. Litig.,* 6 F. Supp. 2d 313, 318 (D.N.J. 1998). Under such circumstances, the "Complexity and Duration" factor plainly weighs in favor of the requested fee. *See Universal Travel Grp. Inc.*, 2017 WL 2734714, at *12 ("In light of the potential length, the likely additional costs of this securities class action, and the fact that the Defendants have wasting insurance policies, a one-third fee is reasonable.").

5. The Risk of Nonpayment Supports the Requested Fee

"Courts in the Third Circuit have consistently recognized that the attorneys' contingent fee risk is an essential factor in determining a fee award." *Mercedes-Benz*, 2021 WL 7833193, at *14; *see also 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." (collecting cases)); *Yedlowski*, 2016 WL 6661336, at *21 ("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."). In applying this factor, "'litigation risk must be measured as of when the case is filed,' rather than with the hindsight benefit of subsequent events." *Global Crossing*, 225 F.R.D. at 467 (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 55 (2d Cir. 2000)).[11]

Here, Lead Counsel undertook this class action on a *fully* contingent basis. ¶104. Thus, for nearly two and half years, Plaintiffs' Counsel carried both the substantial out-of-pocket costs of litigation and the risk of not being paid for their services. Contingency risk alone is a factor supporting the requested fee. This is because "[l]awyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 138 (5th Cir. 1981) overruled on other grounds by *Int'l Woodworkers of Am., AFL-CIO & its Local No. 5-376 v. Champion Int'l Corp.*, 790 F.2d 117 (5th Cir. 1986); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) ("[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success."); *Hall*, 2010 WL 4053547, at *20.

Further, the risk of loss in this case was not illusory. Securities fraud cases are extremely complicated, subject to the heightened pleading standard and automatic stay of discovery of the PSLRA, and success is never assured. *See*

[11] *See also In re NASDAQ Market-Makers*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) ("Risk, of course, must be judged as it appeared to counsel at the outset of the case, when they committed their capital (human and otherwise).").

Yedlowski, 2016 WL 6661336, at *21 ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain."); *Goldstein v. MCI WorldCom*, 340 F.3d 238 (5th Cir. 2003) (affirming dismissal with prejudice of securities fraud class action complaint against Bernard Ebbers and WorldCom arising out of a massive securities fraud that resulted in a $685 million write-off of accounts receivable, for which Ebbers was later convicted). This case was no different. Lead Counsel faced significant pleading challenges, as well as the substantial risks of establishing liability and damages. *See* ¶¶36-54; Plaintiffs' Unopposed Memorandum in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation, Sec. III.C.2; *see also Par Pharm.*, 2013 WL 3930091, at *10. Failing to establish a triable issue of fact on any element of their claim might result in a loss on summary judgment. *See, e.g., In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 395 (9th Cir. 2010) (affirming summary judgment in favor of defendants where plaintiff failed to establish a triable issue on loss causation); *In re NeoPharm, Inc. Sec. Litig.*, 705 F. Supp. 2d 946, 966 (N.D. Ill. 2010) (granting partial summary judgment where plaintiffs failed to prove falsity or scienter). Plaintiffs may also have had an expert excluded, damaging their case. *See, e.g., In re Puda Coal Sec. Inc., Litig.*, 30 F. Supp. 3d 230, 254 (S.D.N.Y. 2014), *aff'd sub nom. Querub v. Hong Kong*, 649 F. App'x 55 (2d Cir. 2016). And, even if Plaintiffs won at trial, there was still the risk of loss on post-trial motions and appeal. *See*

Robbins, 116 F.3d at 1446, 1449 (reversing judgment in plaintiffs' favor and entering judgment in favor of defendant).[12]

Finally, as noted above, collecting on a judgment many years from now was not a foregone conclusion. Eagle has been delisted from the NASDAQ, has not filed audited financial statements with the SEC in approximately three years (last audited financials filed March 23, 2023), is potentially still subject to an SEC investigation, has issued a going concern warning, and its officers' and directors' insurance policies are wasting. *See* ¶¶62-64; *see also Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000) (finding "[t]he risk of nonpayment in this case was acute" where, *inter alia*, the corporate defendant "lacked significant unencumbered hard assets against which plaintiffs could levy had a judgment been obtained" and there was "the risk that the wasting policy would run out by the time a trial was over").

Despite the risk that Plaintiffs' Counsel's significant commitment of time, money and effort could go uncompensated, Plaintiffs' Counsel vigorously

[12] *See also In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants after jury returned verdict for plaintiffs), *aff'd sub nom.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (where the class won a substantial jury verdict and motion for judgment N.O.V. was denied; on appeal, the judgment was reversed and the case was dismissed – after 11 years of litigation); *In re Apple Computer Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (overturning jury verdict for plaintiffs).

prosecuted the Settlement Class's claims, never wavering in their commitment to the case. Consequently, this factor weighs in favor of approving Lead Counsel's fee request. *Rowe v. E.I. Dupont De Nemours and Co.*, 2011 WL 3837106, at *20-*21 (D.N.J. Aug. 26, 2011) (finding this factor supported the requested fee where counsel diligently prosecuted claims despite the risk that counsel's significant time and efforts could go uncompensated); *Barnes v. Winking Lizard, Inc.*, 2019 WL 1614822, at *5 (N.D. Ohio Mar. 26, 2019) ("Class Counsel provided representation on a purely contingency fee basis, advancing all litigation costs and receiving no payment unless there was a recovery, and should be compensated for that risk.").

6. Plaintiffs' Counsel Devoted Significant Time to the Case

Plaintiffs' Counsel have expended 2.699.45 hours and advanced $112,360.81 in out-of-pocket expenses on this case. ¶¶96, 114. These numbers reflect Plaintiffs' Counsel's commitment to vigorously pursuing this Action for the benefit of Plaintiffs and the Settlement Class. Furthermore, additional time and resources will necessarily be expended assisting Settlement Class Members with their Proof of Claim forms, responding to Settlement Class Members' inquiries, shepherding the claims process to conclusion, and filing a distribution motion. No additional compensation will be sought for this work. Accordingly, this factor supports approval of the requested attorney fees. *See Leach v. NBC Universal Media, LLC*, 2017 WL 10435878 at ¶49 (S.D.N.Y. Aug. 24, 2017) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request."); *Varacallo v. Mass. Mut. Life Ins. Co.,* 226 F.R.D. 207, 253 (D.N.J. 2005) (this factor supports a fee award where the "requested fee is the total fee Class Counsel will receive, despite the continuing responsibilities Class Counsel will have in responding to Class Member inquiries, assisting the Claim Evaluator, consulting on individual cases, and any post-judgment proceedings and appeals.").

7. Attorney Fee Awards in Similar Cases and Privately Negotiated Contingency Fee Contracts Support 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*, 2010 WL 4053547, at *21.[13] As to the first prong of the inquiry, courts within the Third Circuit, including the District of New Jersey, routinely award fees of 33⅓% of the recovery, even in cases involving much larger settlement funds. *See In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee

[13] 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).

percentage [of] 31.71%" with a median value that "turns out to be one-third"); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (awarding 33⅓% of $41,500,000 settlement fund, noting that "awards in similar common fund cases appear analogous" and award was "consistent with other similar cases"); *Bodnar v. Bank of America, N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016) (awarding 33% of $27.5 million settlement fund and "find[ing] that an award of 33% of the Settlement Fund is consistent with similar awards throughout the Third Circuit."); *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"); *Vitiello v. Bed Bath & Beyond Inc.*, 2022 WL 21305086, at *8 (D.N.J. June 3, 2022) (M.J. Hammer) (awarding 33⅓% of $7 million settlement and stating "the amount of attorneys' fees and expenses is fair and reasonable and consistent with awards in similar cases.").[14]

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[14] *See also* Ex. 7 (collecting cases); *Lincoln Adventures, LLC v. Those Certain Underwriters At Lloyd's, London Members of Syndicates*, 2019 WL 13159891, at *1 (D.N.J. Oct. 3, 2019) (awarding one-third of $21,900,000 settlement fund and stating "the amount of attorneys' fees is consistent with awards in similar cases"); *Johnson v. Community Bank, N.A.*, 2013 WL 6185607, at *8 (M.D. Pa. Nov. 25, 2013) ("An award of one-third of the settlement is consistent with this Court's prior decisions and with cases decided throughout the Third Circuit."); *Myers v. Jani-King of Philadelphia, Inc.*, 2019 WL 4034736, at *11 (E.D. Pa. Aug. 26, 2019) ("the requested fee of one-third (1/3) of the settlement amount is reasonable in comparison to awards in other cases.").

"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 Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005); *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 of any recovery."); *Rowe*, 2011 WL 3837106, at *22 (awarding 33⅓% as "consistent with a privately negotiated contingent fee in the marketplace"); *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.").

Thus, the requested fee award is strongly supported by both subparts of the final *Gunter* factor, and second *Prudential* factor.

8. The Settlement is Solely Attributable to Plaintiffs' and Plaintiffs' Counsel's Efforts

The Third Circuit advised district courts to examine "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."

AT&T Corp., 455 F.3d at 165 *citing Prudential*, 148 F.3d at 338. This is because the risk is not uniform in all class actions, and the risk of nonpayment is higher in cases where there has been no government action. *In re Peanut Farmers Antitrust Litig.*, 2021 WL 9494033, at *3 (E.D. Va. Aug. 10, 2021).[15] In the instant case, there was no public announcement of a SEC or DOJ investigation prior to filing of the initial complaint, the SEC has never publicly disclosed facts related to its investigation, and no civil or criminal charges have been filed. Rather, "Plaintiffs' counsel (and their teams and experts) were truly the authors of the favorable outcome for the class." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015); *In re Cigna Corp. Sec. Litig.*, 2007 WL 2071898, at *6 (E.D. Pa. July 13, 2007) (awarding requested fee and stating: "[f]urthermore, Plaintiffs and class counsel accomplished this result without any prior investigation or involvement by an agency of 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."); *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

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[15] *See also In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) ("The risk of nonpayment is even higher when a defendants' *prima facie* liability has not been established by the government in a criminal action" and thus "warrants approval" of class counsel's one-third fee request.).

Commission, conducted any investigation of this matter and so class counsel had to perform all the work.”).

9. There Are No Unusual Terms in the Settlement

The terms of the Settlement, providing a monetary benefit to the Settlement Class in return for releases, are 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); *In re Merck & Co.*, 2010 WL 547613, at *12 (finding factor neutral when no innovative terms are highlighted).

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

C. 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 I*, 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." *Schering-Plough Corp.*, 2013 WL 5505744, at *33.

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); 455 F.3d at 164 ("The lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method."). Accordingly, "the district 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 2,699.45 hours to the prosecution and resolution of this Action. ¶96. 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 $2,235,795.00.[16] ¶98. Thus, the requested 33⅓% fee, which

[16] 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

equates to $3,166,666 (plus interest on that amount at the same rate as earned by the Settlement Fund), represents a multiplier of approximately 1.42 on counsel's lodestar.[17] ¶98.

The multiplier is a strong indicator of the fairness of the requested fee because it demonstrates that counsel is requesting a fee on the lower end of the range courts normally grant. *See 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); *In re Raviscent Techs. Inc. Sec. Litig.,* 2005 WL 906361 (E.D. Pa. Apr. 18, 2005) ("Lodestar multiples of less than four are well within the range awarded by courts in this Circuit."); *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*); *Bodnar*, 2016 WL 4582084, at *6

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"); *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, Plaintiffs' Counsel's rates for attorneys on this Action range from $925 to $1,400 for partners, and $450 to $1,025 for non-partners (¶100), and "are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude." *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021); *see also* Ex. 12 (chart of rates charged by peer plaintiff and defense counsel in complex litigation). Indeed, defense firm rates, gathered from bankruptcy court filings nationwide, often exceed these rates. *See id*.

[17] $3,166,666.00 divided by $2,235,795.00 equals approximately 1.42.

(awarding 33% of $27.5 million settlement fund that resulted in a multiplier of 4.69, and finding "that the multiplier is appropriate and reasonable, including when compared to awards in other cases in this court and Circuit."); *In re Cendant Corp. Sec. Litig.,* 404 F.3d at 183 n.4 (noting that the fee award challenged on appeal "would appear to lead to a multiplier in the mid-single digits," and then affirming the award without further discussion of the multiplier).[18]

Moreover, additional hours will be expended, *inter alia*, overseeing the claims process and drafting and filing a distribution motion. Because no additional compensation will be sought for this work, the multiplier will decrease by the time the Action concludes. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a

[18] *See also, 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"); *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); *Remeron*, 2005 WL 3008808, at *47-48 (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); *AremisSoft*, 210 F.R.D. at 135 (awarding percentage of the fund equating to 4.3 multiplier); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court.").

conclusion that a 33% fee award in this matter is reasonable.”). *A fortiori*, the lodestar cross-check confirms the reasonableness of the requested attorneys’ fees.

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

“‘Counsel in common fund cases is entitled to reimbursement of expenses that were 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)).

Here, Plaintiffs’ Counsel expended $112,360.81 in out-of-pocket costs. *See* ¶¶114-15; Exs. 9-B, 10-B and 11-B. These Litigation Expenses are well-documented, based on the books and records maintained by Plaintiffs’ Counsel, and reflect the costs of prosecuting this Action. *Id.* They include, among other things: expert and investigator fees; online legal and factual research costs; travel expenses; court filings fees; and service of process fees. Courts routinely reimburse counsel for similar expenses. *See e.g., In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, 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 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"); *Safety Components*, 166 F. Supp. 2d at 108 (similar).

The Notice informed Settlement Class Members that Lead Counsel would seek reimbursement of out-of-pocket litigation expenses up to $150,000 ($185,000 less potential PSLRA awards to Plaintiffs of $35,000). Mejia Decl., Ex. B (Notice), ¶¶5, 81. The expenses are less than what was provided in the Notice and, to date, there have been no objections. ¶117. The requested expenses should, therefore, be awarded. *See Rite Aid*, 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").

V. PLAINTIFFS SHOULD BE GRANTED PSLRA AWARDS

Lead Counsel also respectfully requests PSLRA awards to Plaintiffs in the aggregate amount of $35,000 (or $20,000 to Lead Plaintiff, and $5,000 to each of the three named Plaintiffs) for time and effort spent prosecuting the Action. 15 U.S.C. § 78u-4(a)(4). "Court[s] have found that the PSLRA permits courts to award lead plaintiffs in federal securities actions reimbursement for their time devoted to participating in and directing the litigation on behalf of the class." *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019).

Reimbursement of such costs are allowed because they "encourage[] participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000).

Here, Plaintiffs, *inter alia*: filed the initial complaint in the Action (Plaintiff Miller); produced trading records to Plaintiffs' Counsel; moved to be appointed as lead plaintiff (Lead Plaintiff Evans Associates); regularly communicated with Plaintiffs' Counsel regarding the posture and progress of the case; reviewed significant pleadings and briefs filed in the Action; consulted with counsel regarding the settlement negotiations; and evaluated and approved the proposed Settlement. Evans Associates Decl., ¶¶4-6; Miller Decl., ¶¶3-5; Wang Decl., ¶¶3-5; Pluta Decl., ¶¶3-5. 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)), and the amounts sought are consistent with awards in other complex cases. *See In re Virgin Mobile USA IPO Litig.*, No. 07-cv-5619, ECF No. 146 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) (Ex. 14); *San Antonio Fire and Police Pension Fund et al v. Dole Food Company Inc. et al*, No.

1:15-cv-1140, ECF No. 100 at ¶¶6-8 (D. Del. Jul. 18, 2017) (collectively awarding three lead plaintiffs $54,996.20) (Ex. 15).[19]

Accordingly, Lead Counsel respectfully requests that the Court approve the 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.").

VI. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request the Court grant their motion.

[19] *See also In re Eros Int'l PLC Sec. Litig.*, 2023 WL 8519091, at *2 (D.N.J. Nov. 28, 2023) (awarding $15,000 to each of the lead plaintiffs); *XL Fleet,* 2024 WL 1884483, at *2 (PSLRA award of $25,000 to lead plaintiff and $15,000 each to the four additional named plaintiffs); *In re Alibaba Grp. Holding Ltd. Sec. Litig.*, 2025 WL 933955, at *2 (S.D.N.Y. Mar. 27, 2025) (PSLRA awards of $25,000 to lead plaintiff and $25,000 to each of the three additional named plaintiffs); *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *1 (S.D.N.Y. Oct. 16, 2019) (PSLRA awards of $12,500 for each of the five representative Plaintiffs); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *24 (S.D.N.Y. July 21, 2020) (collecting cases and awarding $25,410 to lead plaintiff); *Sun v. Han et al.*, No. 2:15-cv-00703-JMV-MF, ECF No. 77 at ¶6 (D.N.J. Mar. 6, 2018) (awarding lead plaintiff $20,000 out of $1.25 million settlement) (Ex. 16).

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Respectfully submitted,

By: */s/ James E. Cecchi*

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2026, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ James E. Cecchi
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