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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 Motion Day: August 19, 2026 Hon. Michael A. Hammer

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-appointed lead plaintiff Evans Associates I, LLC ("Lead Plaintiff") and additional named plaintiffs Nicholas Miller, Liyu Wang, and Joanna Pluta (collectively, with Lead Plaintiff, "Plaintiffs"), on behalf of themselves and all others similarly situated, respectfully submit this memorandum in support of their unopposed motion seeking: (i) final approval of the proposed Settlement of the above-captioned Action; (ii) approval of the proposed Plan of Allocation for the proceeds of the Settlement; and (iii) final certification of the Settlement Class.[1]

I. INTRODUCTION

In conjunction with Plaintiffs' Motion for (I) Preliminary Approval of Class Action Settlement; (II) Certification of the Settlement Class; and (III) Approval of Notice of Settlement, ECF No. 62, the Court conducted a comprehensive analysis of the Settlement under Federal Rule of Civil Procedure 23(e)(1) and the relevant "*Girsh* factors" and issued a Preliminary Approval Order finding the Settlement to be fair, reasonable and adequate. *See* ECF No. 65. Since this time, Lead Counsel has diligently overseen the notice process and, to date, no shareholders have objected to the Settlement or requested exclusion from the Settlement Class. As nothing has

[1] Unless otherwise indicated, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated March 13, 2026. *See* ECF No. 62-3.

transpired to disrupt the Court's earlier findings, the Court should grant final approval to the Settlement.

Plaintiffs have agreed to settle all claims against Defendants[2] in exchange for a non-reversionary, all cash payment of $9,500,000 for the benefit of the Settlement Class. The Settlement Amount represents approximately 9.1% of the maximum recoverable damages in the Action,[3] and approximately 16.6% of recoverable damages if Defendants were to succeed on certain of their loss causation arguments. Under either scenario, the recovery is well above the 3.2% to 4.4% median settlement values for securities class actions with comparable damages. Ex. 1 (Excerpts from Edward Flores, Svetlana Starykh, and Ivelina Velikova, *Recent Trends In Securities Class Action Litigation: 2025 Full-Year Review* (NERA January 21, 2026) ("NERA Report")) at p. 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

[2] The "Defendants" are Eagle Pharmaceuticals, Inc. ("Eagle" or the "Company"), and its former executives Scott Tarriff and Brian Cahill.

[3] If the Court and jury accepted Plaintiffs' damages theory—*i.e.*, Plaintiffs' best case scenario—the total maximum damages would be approximately $104.6 million. *See* Declaration of Garth Spencer in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed herewith ("Spencer Declaration"), ¶¶65, 103. Unless otherwise indicated, citations to "¶_" or "Ex. _" in this memorandum refer to paragraphs in, or exhibits to, the Spencer Declaration.

damages between $50-$99 million). The Settlement is an excellent result when balanced against the many risks of continued litigation.

While Plaintiffs and Lead Counsel believe the claims are meritorious, they recognize the substantial challenges to establishing liability, proving damages, and achieving (and collecting upon) a greater recovery. Plaintiffs had still not defeated a motion to dismiss under the heightened pleading standard of Rule 9(b) and the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4, a task made substantially harder by the PSLRA's automatic stay of discovery. Any one of Defendants' arguments could have substantially narrowed Plaintiffs' claims or in some cases resulted in their outright dismissal. Even if Plaintiffs were successful in defeating the motion to dismiss, completing fact discovery would have been difficult and expensive, and Defendants would have continued to contest each element of Plaintiffs' claims, including liability, loss causation, and damages. Even if Plaintiffs were able to obtain a judgment, it would have likely been appealed. Eagle has recently disclosed that substantial doubt exists about the Company's ability to continue as a going concern, which calls into question whether Plaintiffs would be able to collect any judgment after additional years of costly litigation. In contrast, the Settlement removes the numerous significant risks that lay ahead at class certification, summary judgment, trial, and any eventual appeal(s). An adverse decision at any of these litigation milestones could result in zero—or a substantially reduced—recovery. *See* ¶¶36-64; *see also Gross v. GFI Grp., Inc.*, 310 F. Supp. 3d 384, 399 (S.D.N.Y. 2018) (granting summary judgment for defendants following four years of litigation), *aff'd on other grounds*, 784 Fed. Appx. 27, 29 (2d Cir. 2019). Accordingly, the Settlement is substantively fair, reasonable, and adequate.

The Settlement was also achieved in a procedurally fair manner. Class Counsel's substantial efforts and well-developed understanding of the strengths and weaknesses of the Action informed the decision to settle. Class counsel, among other things:

- 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 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;
- 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 and its exhibits, to reflect the final and binding agreement between the Parties, and negotiated with Defendants concerning the terms of those documents; and

- worked with a damages expert to craft a plan of allocation that treats Plaintiffs and all other members of the proposed Settlement Class fairly.

¶94. The Settlement is the result of arm's-length negotiations, conducted by informed and experienced counsel, and overseen by a well-respected mediator. In other words, there was no collusion, and the process by which the Settlement was reached was procedurally fair.

As discussed in greater detail below and in the Spencer Declaration, Plaintiffs and Lead Counsel believe that the proposed Settlement meets the standards for final approval and is in the best interests of the Settlement Class. Consequently, Plaintiffs respectfully request that the Court grant the Settlement final approval and certify the Settlement Class.

Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation is designed to distribute the proceeds of the Net Settlement Fund fairly and equitably to Settlement Class Members on a *pro rata* basis. No Settlement Class Member is favored over another under the proposed Plan; rather, all Settlement Class Members—including Lead Plaintiff and the additional named Plaintiffs—are treated in the same manner. *See* Ex. 6-C (Notice) at ¶¶60-80. The Plan of Allocation is, therefore, fair and reasonable and, as such, it too should be approved.

II. FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION

The Spencer Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*: the factual background and procedural history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and the terms of the Plan of Allocation of the Net Settlement Fund.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) requires court approval for any settlement of a class action, and courts within this circuit have a "strong judicial policy in favor of class action settlement." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593-95 (3d Cir. 2010); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). "Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts." *Ehrheart*, 609 F.3d at 594. This is particularly true for class actions involving complex litigation and securities matters. 7 Conte & Newberg, *Newberg on Class Actions* §22.91 at 386-387 (4th ed. 2002) ("Securities suits readily lend themselves to compromise, because of the notable unpredictability of result and the potential for litigation spanning up to a decade or more"); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement[s], particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”).

Rule 23(e) provides that the Court should grant final approval to a class action settlement if it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Rule 23(e)(2)—which governs final approval— requires courts to consider the following questions in determining whether a proposed settlement is fair, reasonable, and adequate:

> (A) have the class representatives and class counsel adequately represented the class;
> (B) was the proposal negotiated at arm’s-length;
> (C) is the relief provided for the class adequate, taking into account:
>   (i) the costs, risks, and delay of trial and appeal;
>   (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>   (iii) the terms of any proposed award of attorneys’ fees, including timing of payment; and
>   (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) does the proposal treat class members equitable relative to each other.

Factors (A) and (B) “identify matters . . . described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement,” while factors (C) and (D) “focus on . . . a substantive review of the terms of the proposed settlement” (*i.e.*, “[t]he relief that the settlement is expect to provide to class members”). Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919).

These factors are not, however, exclusive. The four factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id*. at 918; *see also Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *3 (E.D. Pa. Apr. 5, 2019) ("The 2018 Committee Notes to Rule 23 recognize that, prior to this amendment, each circuit had developed its own list of factors to be considered in determining whether a proposed class action was fair and explain that the goal of the amendment is not to displace any such factors, but rather to focus the parties the 'core concerns' that motivate the fairness determination."). For this reason, the traditional factors that are utilized by courts in the Third Circuit—known as the "*Girsh* factors"—to evaluate the propriety of a class action settlement (certain of which overlap with Rule 23(e)(2)) are still relevant:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Singleton v. First Student Mgmt. LLC, 2014 WL 3865853, at *5 (D.N.J. Aug. 6, 2014) (*citing Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)); *In re AT&T Corp.*

Sec. Litig., 455 F.3d 160, 164-65 (3d Cir. 2006) (same).[4]

In sum, although the specific factors by which a settlement is evaluated may have changed in some respects, what has not changed is that "[t]he central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate." Advisory Committee Notes to 2018 Amendments (324 F.R.D. at 918).

A. Plaintiffs And Lead Counsel Adequately Represented the Settlement Class

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." "The adequacy requirement entails two inquiries: (1) whether the attorneys retained by the named Plaintiffs are qualified, experienced, and generally able to conduct the litigation; and (2) whether the named Plaintiffs themselves have interests that are antagonistic to or in conflict with those they seek to represent." *Inmates of Northumberland Co. Prison v. Reish*, 2009 WL 8670860, at *20 (M.D. Pa. Mar.17, 2009) (citing *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998)).

Here, as the Court preliminarily found, Plaintiffs' claims are typical and coextensive with the claims of the Settlement Class, and they have no antagonistic interests. *See* ECF No. 65 at ¶¶2-3; ECF No. 66 at 9-11. Plaintiffs, like all other

[4] The *Girsh* factors "are a guide and the absence of one or more does not automatically render the settlement unfair." *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5 (D.N.J. Mar. 26, 2010).

Settlement Class Members, are investors who purchased Eagle common stock during the Settlement Class Period and allegedly suffered damages as a result of Defendants' allegedly wrongful conduct. *Id*. Their interest in obtaining the largest possible recovery is, therefore, aligned with the other Settlement Class Members. *See also In re Schering-Plough Corp.*, 2012 WL 4482032, at *6 (D.N.J. Sept. 25, 2012) ("[W]hen Lead Plaintiffs have a strong interest in establishing liability under federal securities law, and seek similar damages for similar injuries, the adequacy requirement can be met."); *In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 764 (2d Cir. 2020) (finding adequacy where "lead plaintiffs were sufficiently motivated to recover as much as possible for each class member").

In addition, Plaintiffs diligently oversaw the litigation, communicated with their counsel regularly, reviewed court filings and orders, and were fully engaged in the settlement process. *See* Ex. 2 at ¶¶4-6 (Evans Declaration); Ex. 3 at ¶¶3-5 (Miller Declaration); Ex. 4 at ¶¶3-5 (Wang Declaration); Ex. 5 at ¶¶3-5 (Pluta Declaration). Plaintiffs' active participation in the Action reinforces the reasonableness of the Settlement. *See In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) ("[U]nder the PSLRA, a settlement reached under the supervision of appropriately selected lead plaintiffs is entitled to an even greater presumption of reasonableness.").

Plaintiffs also retained counsel that have extensive experience and expertise litigating complex securities class actions throughout the United States, and they are qualified and able to conduct this litigation, as the Court recognized when appointing them to serve as lead and liaison counsel under the PSLRA. *See* ECF No. 21; *see also* Ex. 9-C (GPM firm resumé); Ex. 11-C (Carella Byrne firm resumé). The firms have demonstrated their abilities and commitment to this litigation by, among other things, conducting a thorough investigation into the facts of the case, drafting multiple pleadings, responding to a motion to dismiss, and participating in mediation proceedings in which briefs and exhibits were exchanged before a third-party neutral. Based on these efforts, the Court has already found, for purposes of the proposed Settlement, that Plaintiffs "have and will fairly and adequately represent and protect the interests of the Settlement Class" (ECF No. 65 at ¶2); and that GPM and Carella Byrne are fit to serve as "Class Counsel for the Settlement Class" pursuant to Fed. R. Civ. P. 23(g). *Id*. at ¶3; *see also* ECF No. 66 at 10:11-16 ("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, plaintiff's' interests are more than adequately protected, given the quality of those counsel."). Nothing has transpired to cause this Court to alter these conclusions.

B. The Settlement Resulted From Arm's-Length Negotiations

Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's length." Here, the Settlement was negotiated by counsel with extensive experience in securities litigation, who were well versed in the strengths and weaknesses of their respective positions, under the auspices of a highly respected mediator who ultimately made a mediator's recommendation that the Parties accepted. ¶¶11-12, 24, 29; *see also* ECF No. 66 at 12:8 (finding it "clearly" the case that negotiations had been arms-length). Accordingly, this factor weighs in favor of preliminary approval. *See Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("The participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties."); *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. Oct. 5, 2009) (granting preliminary approval and noting that the proposed settlement, which was achieved with the assistance of a mediator, appeared to be the result of serious negotiation between the parties); *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *7 (D.N.J. June 15, 2020) (where the settlement that was the result of a mediator's recommendation following two mediations, "[i]t is evident that the Settlement was conducted at arms-length").

C. The Relief Provided To The Settlement Class Is Adequate

Rule 23(e)(2)(C)(i) overlaps significantly with *Girsh* (*e.g.*, factors 1, 4-9), and both sets of factors advise the Court to consider the adequacy of the settlement relief given the costs, risks, and delay that trial and appeal would inevitably impose.

Compare Fed. R. Civ. P. 23(e)(2)(C)(i) *with Girsh,* 521 F.2d at 157. Thus, the *Girsh* factors, analyzed below, inform the Rule 23(e)(2)(C)(i) inquiry.

1. The Complexity, Expense, And Likely Duration Of The Litigation Support Settlement

The first *Girsh* factor considers "the probable costs, in both time and money, of continued litigation." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013); *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *4 (D.N.J. May 31, 2012). A settlement is favored where "continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial." *See Warfarin*, 391 F.3d at 536.

As an initial matter, courts routinely recognize that "[s]ecurities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *Par Pharm*, 2013 WL 3930091, at *4; *see also Dartell v. Tibet Pharms., Inc.*, 2017 WL 2815073, at *4 (D.N.J. June 29, 2017) ("Federal securities class actions by definition involve complicated issues of fact and law."); *P. Van Hove BVBA v. Universal Travel Grp., Inc.*, 2017 WL 2734714, at *7 (D.N.J. June 26, 2017) (observing that "[f]ederal securities class actions by definition involve complicated issues of fact and law.").[5]

[5] *See also In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000) ("Large class actions alleging securities fraud" are "inherently complicated."); *In re Suprema Specialties, Inc. Sec. Litig.*, 2008 WL 906254, at *4-*5 (D.N.J. Mar. 31, 2008) (finding complexity of the securities class action supports final approval).

This case was no exception.

At the time the Settlement was reached, a motion to dismiss was pending before the Court. In the motion to dismiss and during settlement negotiations, Defendants denied and vigorously defended against Plaintiffs' allegations, and there was a significant risk that Plaintiffs' claims could have been dismissed, in whole or in part. *See* ¶¶38-54. Among other things, Defendants mounted a strong defense to the Action's allegations relating to scienter, claiming, among other things, that the accounting issues involved complicated judgment calls and 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. *See* ECF No. 33-1 at 8-10. Although Plaintiffs were confident in their case, success in these types of cases is never guaranteed. *See* Ex. 1 (Recent Trends in Securities Class Action Litigation: 2025 Full-Year Review, at 18, Fig. 15 (NERA Jan. 21, 2026) ("NERA Report") (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).

Assuming that Plaintiffs survived the motion to dismiss, they would still have to *prove* their case. 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. Indeed, no matter how efficiently the litigation is 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. *See* ¶¶38-64.

Conversely, settling this Action avoids these costs, and provides definite, substantial recompense to the Settlement Class now. In light of these considerations, settlement is less risky, less expensive, and less time-consuming, weighing in favor of approval. *See Par Pharm.*, 2013 WL 3930091, at *4 ("Given the procedural and substantive complexities inherent in securities fraud class actions, and the time and expense necessarily involved in fully adjudicating this matter, the Court finds that this factor weighs decidedly in favor of approving the Settlement."); *Fernandez v. DouYu Int'l Holdings Ltd.*, 2025 WL 972836, at *9 (D.N.J. Mar. 31, 2025) ("This matter is necessarily complex, and continuing litigation will be expensive and lengthy. This factor therefore weighs in favor of settlement.”).

2. Plaintiffs Faced Risks On The Merits

The fourth, fifth, and sixth *Girsh* factors—the risks of establishing liability, establishing damages, and maintaining the class action through the trial—also support approval. While Plaintiffs believe their claims to be meritorious, they also recognize that Defendants have potentially viable defenses, including arguments against scienter, falsity, and loss causation.

Plaintiffs might not have been able to defeat Defendants’ pending motion to dismiss, let alone prevail at summary judgment and trial. *See In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 645 (D.N.J. 2004) (proving liability, particularly scienter, “would have been very difficult” and based on risks and contingencies, settlement is reasonable given risks involved in establishing liability); *Ocean Power*, 2016 WL 6778218, at *19-20 (recognizing the difficulty of establishing liability in securities class action and the added risk of establishing damages). Plaintiffs also faced the risk that the SEC could end its investigation of Eagle without finding any violations of law or bringing an enforcement action, which could have substantially weakened Plaintiffs’ case.

Plaintiffs also faced hurdles in obtaining class certification, as Defendants may have challenged Plaintiffs’ adequacy as class representatives, attempted to rebut the fraud-on-the-market presumption of reliance, or argued that Plaintiffs cannot put forward a damages model corresponding to their theories of liability that is capable of calculating damages on a class-wide basis. While Plaintiffs believe they have the better arguments on these issues, they also recognize that Defendants' potential arguments could pose substantial risks. In short, class certification was not a forgone conclusion. *See In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("the uncertainty surrounding class certification supports approval of the Settlement").

Defendants would also contest that Plaintiffs suffered damages. Indeed, in securities class actions the issue of damages often turns into a "battle of the experts," with no guarantee who will prevail. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 539 (D.N.J. 1997) (a "jury's acceptance of expert testimony is far from certain, regardless of the expert's credentials. And, divergent expert testimony leads inevitably to a battle of the experts."), *aff'd,* 148 F.3d 283 (3d Cir. 1998). Such a battle would also increase the expense and thereby further deplete insurance, and a jury might credit Defendants' experts and, accordingly, reject Plaintiffs' claims. *See 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").

In contrast, the Settlement provides a favorable and immediate result for the

Settlement Class while avoiding the significant risks of establishing liability and damages. *See In re Facebook, Inc. IPO Sec. and Deriv. Litig.*, 2015 WL 6971424, at *5 (S.D.N.Y. Nov. 9, 2015) ("[D]amages would be subject to a battle of the experts, with the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount Plaintiffs' losses. Under such circumstances, a settlement is generally favored over continued litigation.").

3. The Settlement Amount Is Within The Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation

The seventh, eighth, and ninth *Girsh* factors—the ability of the defendants to withstand a greater judgment, and the range of reasonableness of the settlement fund given the best possible recovery and considering all the attendant risks of litigation—strongly support approval. This is especially true given potential collection issues in light of Eagle's going concern warnings. *See* ¶62. Thus, even if Plaintiffs secured a judgment greater than the Settlement Amount—an occurrence that would be many years from now given the relatively early procedural posture of the case—there is no guarantee that they would be able to collect on it. *See Dartell*, 2017 WL 2815073, at *6 ("If the parties did not settle and instead continued with discovery and motions for summary judgment, the insurance funds available for any potential settlement would be quickly diminished and perhaps exhausted."); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149

(E.D. Pa. 2000) ("[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 these serious limitations, and others, the proposed Settlement recovers $9.5 million in cash for the Settlement Class. This is an excellent result. Plaintiffs' damages expert estimates that *if* Plaintiffs had fully survived Defendants' motions to dismiss, prevailed on their claims at both summary judgment and 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—estimated total *maximum* class wide damages would be approximately $104.6 million. *See* ¶65. Under this scenario, the recovery is approximately 9.1% of *maximum* class-wide damages. *Id.*

This case was not, however, risk free and there were meaningful barriers to recovery. 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, as set forth in Defendants' motion to dismiss briefing, even this reduced damages estimate was not without risk.

A recovery of 9.1% to 16.6% of maximum recoverable damages is well-within the range of reasonableness. In fact, when compared to the median recovery in securities class action settlements with similar potential damages, it is an excellent result. *See* Ex. 2 ((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).

Given the range of possible results in this litigation, there can be no question that the Settlement constitutes a considerable achievement and weighs heavily in favor of final approval.

D. The Other Rule 23(e)(2)(C) Factors Are Met

Rule 23(e)(2)(C)(ii)-(iv) provide three more factors to consider in approving a settlement: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees; and (iii) the existence of any other agreements. Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors supports approval of the Settlement or is neutral and thus does not suggest any basis to conclude the Settlement is inadequate.

1. The Proposed Method for Distributing Relief Is Effective

The method for processing Settlement Class Members' claims and distributing relief to eligible claimants includes well-established, effective procedures for accomplishing both tasks. Here, as required by the Preliminary Approval Order, the Court-approved Claims Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), distributed notice to approximately 970 potential Settlement Class Members, caused the Summary Notice to be published in *Investor's Business Daily* and transmitted over the *PR Newswire*, and made the Notice, Claim Form, and other important documents available on www.EaglePharmaSecuritiesSettlement.com. *See* ¶¶71-75. Settlement Class Members could mail their Claims to Epiq, or file Claims online. ¶¶76, 79.

Upon receipt of Settlement Class Members' Claims, Epiq will process claims under Lead Counsel's guidance, allow claimants an opportunity to cure any deficiencies in their claims or request the Court review a denial of their claims, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court-approval. *See* Stipulation, ECF No. 62-3, at ¶¶18-29. Claims processing like the method proposed here is standard in securities class action settlements as it has long been found to be effective, as well as necessary insofar as neither Plaintiffs nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund.[6] *See O'Hern v. Vida Longevity Fund, LP*, 2023 WL 3204044, at *7 (D. Del. May 2, 2023) (finding nearly identical "method[] of distributing relief to class members is adequate and not overly burdensome."); *see also Becker v. Bank of New York Mellon Trust Co., N.A.*, 2018 WL 6727820, at *7 (E.D. Pa. Dec. 21, 2018) (holding that "[t]he requirement that class members submit documentation to substantiate their holdings of the bonds as of the record date will facilitate the filing of legitimate claims, yet is not overly demanding given the range of permissible documentation.").

2. The Proposed Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." The Notice provides that Lead Counsel will apply to this Court for an award of attorneys' fees not to exceed 33⅓% of the Settlement Fund. *See* Ex. 6-C (Notice) at ¶¶5, 81. This is reasonable in light of the work performed and the excellent result obtained. It is also consistent with attorneys' fees regularly approved in securities class action settlements. *See, e.g.*, *Dartell*, 2017 WL 2815073, at *10 ("The one-third fee is

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[6] This is not a claims-made settlement. If the Settlement is approved, Defendants will not have any right to the return of a portion of the Settlement Amount based on the number or value of the claims submitted. *See* Stipulation ¶13.

within the range of fees typically awarded within the Third Circuit through the percentage-of-recovery method"); *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 percentage [of] 31.71%" with a median value that "turns out to be one-third"). More importantly, approval of attorneys' fees is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation, ECF No. 62-3, at ¶16.

3. The Parties Have One Other Agreement

Rule 23(e)(2)(C)(iv) calls for disclosure of any other agreements entered into in connection with the settlement of a class action. The Parties have entered into a confidential agreement that establishes conditions under which Defendants may terminate the Settlement if Settlement Class Members who collectively purchased more than a certain amount shares of Eagle common stock eligible to participate in the Settlement request exclusion (or "opt out") from the Settlement. "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement." *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019).

4. All Settlement Class Members Are Treated Equitably

Rule 23(e)(2)(D) requires courts to evaluate whether a settlement treats class members equitably relative to one another. Here, the Plan of Allocation does not provide preferential treatment to the Lead Plaintiff, the additional named Plaintiffs, or any other segment of the Class.[7] Under the proposed Plan of Allocation, each Authorized Claimant will receive his, her, or its pro rata share of the Net Settlement Fund. *See* ¶85; *see also* Notice at ¶¶60-61, 71. The Plan of Allocation is set forth in the Notice and provides a fair and reasonable method to allocate the Net Settlement Fund among Class Members who submit valid Claim Forms. *See* Notice at ¶¶60-80. Under the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss amount for each Class Member's purchases of Eagle common stock during the Settlement Class Period for which adequate documentation is provided. *Id.* at ¶67.

The calculation of each Class Member's Recognized Loss under the Plan of Allocation is explained in detail in the Notice and will be based on several factors, including when the Eagle common stock was purchased and sold, the purchase and sale prices, and the estimated artificial inflation in the respective prices of the Eagle common stock at the time of purchase and at the time of sale as determined by Plaintiffs' damages expert. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Loss. Similar plans have repeatedly been approved by courts. *See, e.g.*, *In re Aetna Inc.*

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[7] Pursuant to the PSLRA, Plaintiffs may separately seek reimbursement of costs (including lost wages) incurred as a result of their representation of the Class. *See* 15 U.S.C. § 78u-4(a)(4).

Sec. Litig., 2001 WL 20928, at *12 (E.D. Pa. Jan. 4, 2001) *citing In re Ikon*, 194 F.R.D. at 184 ("Courts [] generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable."); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013) (approving a similar plan of allocation).

Because the proposed Plan of Allocation does not provide preferential treatment to any Settlement Class Member, segment of the Settlement Class, or to Plaintiffs, this factor supports final approval of the proposed Settlement. *See O'Hern*, 2023 WL 3204044, at *7 (finding plan of allocation where each class member would receive their *pro rata* share of the funds based on calculation of recognized losses "treats all class members equitably").

E. The Other *Girsh* Factors Support Final Approval

The final two *Girsh* factors—the reaction of the settlement class and stage of the proceedings/amount of discovery completed—also militate in favor of final approval.

1. The Reaction Of The Settlement Class Favors Approval

"This factor requires the Court to evaluate whether the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013), *appeal dismissed* (Apr. 17, 2014). It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of the settlement are favorable to the class members. *See In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 185 (E.D. Pa. 1997) (stating that a "relatively low objection rate militates strongly in favor of approval of the settlement").

Here, the Preliminary Approval Order established a detailed plan to provide notice to the Settlement Class, which Plaintiffs and the Claims Administrator followed. *See* Ex. 6 (Mejia Mailing Declaration), at ¶¶2-20. While the time to object to the Settlement has not passed, no Settlement Class Member has objected to, nor requested exclusion from, the Settlement.[8] *Id*. at ¶21. The lack of objections and opt outs further supports the conclusion that the Settlement merits final approval. *See O'Hern*, 2023 WL 3204044, at *7 ("When there are many class members and few objectors, there is a strong presumption in favor of approving the class action settlement under the second *Girsh* factor.").

2. The Stage Of The Proceedings And The Amount Of Discovery Completed

"Courts in this Circuit frequently approve class action settlement despite the absence of formal discovery." *In re Ocean Power*, 2016 WL 6778218, at *17 (citing

[8] The deadline to request exclusion from, or to object to any aspect of, the Settlement is July 29, 2026. If objections or requests for exclusions are received after the date of this filing, they will be addressed on reply.

cases); *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *13 (D.N.J. Nov. 10, 2016) (same). This is because the relevant inquiry under the third *Girsh* factor is "whether Plaintiffs had an adequate appreciation of the merits of the case before negotiating settlement." *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *5 (D. Del. Nov. 19, 2018).

Here, discovery was stayed due to the PSLRA. Plaintiffs and their counsel were, nevertheless, adequately informed of the relative strengths and weaknesses of their case. Plaintiffs and their counsel conducted an extensive investigation, thoroughly reviewing publicly available information about Defendants and working with investigators to speak with former Eagle employees. They consulted with accounting, loss causation and damages experts, prepared amended pleadings, exchanged mediation briefs with Defendants, and participated in a full day mediation session during which the Parties debated the merits of the Action. Plaintiffs also obtained significant informal discovery from Defendants, which included the review and analysis of over 115,000 pages of documents produced by Eagle concerning the matters alleged in the Complaint. These steps, among others, gave Plaintiffs and their counsel a clear and realistic understanding of the facts, legal issues, and risks of continued litigation, as well as the value of the case. *See* ¶94. Consequently, this factor weighs in favor of final approval. *See Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *7 (D.N.J. Sept. 10, 2009), *as amended* (Sept. 14, 2009) ("Thus, even though the action settled at a relatively early stage [after the denial of the motion to dismiss but before discovery] in the proceedings, the Court finds that counsel on both sides of the table are experienced and able litigators, and that the parties have sufficiently apprised themselves of the relevant facts and law to make a knowledgeable decision as to settlement."), *aff'd*, 423 F. App'x 131 (3d Cir. 2011); *Vaccaro v. New Source Energy Partners L.P.*, 2017 WL 6398636, at *5 (S.D.N.Y. Dec. 14, 2017) ("Although the action did not proceed to formal discovery, Lead Plaintiffs (i) reviewed vast amounts of publicly available information, (ii) conducted interviews of numerous individuals, and (iii) consulted experts on the . . . industry. The Court finds that Lead Plaintiffs were well-informed to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.").

In sum, the Rule 23(e)(2) and *Girsh* factors overwhelmingly support final approval of the Settlement.

IV. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

The Court's May 20, 2026 Preliminary Approval Order certified the Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3). *See* ECF No. 65 at ¶1; *see also* ECF No. 66 at 8-11. There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Plaintiffs' Preliminary Approval Brief (*see* ECF No. 62 at 29-36), Plaintiffs respectfully request that the Court affirm its determinations in the Preliminary

Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3).

V. THE PLAN OF ALLOCATION SHOULD BE APPROVED

Approval of a "plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *Par Pharm.*, 2013 WL 3930091, at *3; *see also Schering-Plough ERISA*, 2012 WL 1964451, at *2 (same); *Walsh v. Great Atl. & Pac. Tea Co. Inc.*, 726 F.2d 956, 964 (3d Cir. 1983) ("The court's principal obligation is simply to ensure that the fund distribution is fair and reasonable as to all participants in the Fund"). To meet this standard, a plan of allocation recommended by experienced and competent class counsel "need only have a reasonable and rational basis." *Par Pharm.*, 2013 WL 3930091, at *8; *see In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). Further, "[a] plan of allocation that reimburses class members based on the type and extent of their injuries is generally reasonable." *In re Lucent Techs.*, 307 F. Supp. 2d at 649.

The proposed Plan of Allocation here was created with the assistance of Plaintiffs' damages expert, and it is contained in the Notice that was distributed to potential Settlement Class Members and published on the case website. *See* ¶80. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. *Id*. The computations under the Plan of Allocation are a method to weigh the Claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund. *See* Ex. 6-C (Notice) at ¶60.

Under the Plan of Allocation, a Claimant's Recognized Claim is calculated based on the estimated alleged artificial inflation in the price of Eagle common stock during the Settlement Class Period. *Id.* at ¶67. The amount of artificial inflation in Eagle common stock on each day of the Settlement Class Period is set forth in Table 1 in the Notice. *Id*. at ¶64.

Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase or other acquisition of Eagle common stock during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided. *See* Ex. 6-C (Notice) at ¶67. The calculation of Recognized Loss Amounts will depend upon several factors, including when each Authorized Claimant purchased and/or sold Eagle common stock and the transactions prices, and it requires that the Eagle common stock be held over an alleged corrective disclosure date in order for an Authorized Claimant to have a Recognized Claim. *Id*. at ¶63. In general, the Recognized Loss Amount will be the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale, or the difference between the actual purchase price and sale price, whichever is less. *Id*. The Recognized Loss Amount also incorporates the "90-day look back" provision of the PSLRA. *Id*. The sum of a Claimant's Recognized Loss Amounts is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. *Id*. at ¶¶70-71.

Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as result of the conduct alleged in the Action and should be approved by the Court. *See In re Schering-Plough Corp. Sec. Litig*., 2009 WL 5218066, at *5 (D.N.J. Dec. 31, 2009) (approving plan of allocation in part because "it was fashioned by experienced class counsel"); *Harris v. U.S. Physical Therapy, Inc*., 2012 WL 3277278, at *7 (D. Nev. July 18, 2012) ("Based on counsels' knowledge of the specific facts of this action, experience in settlements such as this, and opinion that the settlement [is fair, reasonable, and adequate," this factor weighs in favor of granting approval of the settlement.). Moreover, to date, no Settlement Class Members have objected to the Plan of Allocation, ¶89, further supporting approval of the Plan of Allocation. *See In re Veeco Instruments Inc. Sec. Litig*., 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007). The Court should, therefore, approve the Plan of Allocation. *See McDermid v. Inovio Pharms., Inc*., 2023 WL 227355, at *9 (E.D. Pa. Jan. 18, 2023) (approving substantially similar plan of allocation); *In re Innocoll Holdings Public Ltd. Co. Sec. Litig.*, 2022 WL 16533571, at *8 (E.D. Pa. Oct. 28, 2022) (finding the plan of allocation fair, reasonable, and adequate where the claim for each "class member's recognized loss is based on when the securities were purchased and sold" and where the "Settlement fund is then allocated *pro rata* based on the adjusted recognized loss.").

VI. CONCLUSION

For the reasons stated herein and in the Spencer Declaration, Plaintiffs respectfully request that the Court certify the final Settlement Class and approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate.[9]

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[9] Proposed orders will be submitted with Plaintiffs' reply papers, after the deadlines for objections and seeking exclusion have passed.

Dated: July 15, 2026

Respectfully submitted,

By: */s/ James E. Cecchi*

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