UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JESSICA FERGUS, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. IMMUNOMEDICS, INC., CYNTHIA L. SULLIVAN, PETER P. PFREUNDSCHUH and DAVID GOLDENBERG, Defendants.	Civil Action No. 2:16-cv-03335-KSH-CLW (Document Filed Electronically) **CLASS ACTION** Motion Day: January 19, 2023

NOTICE OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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PLEASE TAKE NOTICE that pursuant to the Court's Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (ECF No. 114), on January 19, 2023, at 11:00 a.m., Lead Plaintiff Sensung Tsai ("Lead Plaintiff")[1] will move this Court, the Honorable Katharine S. Hayden, United States District Judge of the United States District Court for the District of New Jersey, via Zoom hearing, for entry of an order granting final approval of the proposed class action Settlement, approving the Plan of Allocation for distribution of the Net Settlement Fund, and certifying the Settlement Class for settlement purposes.

In support of this motion, Lead Plaintiff relies on the accompanying Memorandum of Law, the Declaration of Reed R. Kathrein and exhibits attached thereto, all filed contemporaneously herewith, the pleadings and records on file in this Action, and such further argument and briefing as may be presented at or before the Settlement Hearing. In the event that there are requests for exclusions or objections received after the date of this filing,[2] Lead Plaintiff will address those in his reply.

[1] Unless otherwise defined, all capitalized terms used herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 13, 2022 (the "Stipulation") (ECF No. 113-2).

[2] The deadline for objections and exclusions is December 29, 2022.

DATED: December 21, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to counsel of record.

/s/ *Bruce D. Greenberg*
Bruce D. Greenberg

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JESSICA FERGUS, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. IMMUNOMEDICS, INC., CYNTHIA L. SULLIVAN, PETER P. PFREUNDSCHUH and DAVID GOLDENBERG, Defendants.	Civil Action No. 2:16-cv-03335-KSH-CLW (Document Filed Electronically) **CLASS ACTION** Motion Day: January 19, 2023

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff Sensung Tsai ("Lead Plaintiff"),[1] on behalf of himself and the Settlement Class, respectfully submits this memorandum of law in support of his motion for final approval of the proposed Settlement[2] resolving all claims asserted in the Action, approval of the proposed Plan of Allocation of Settlement proceeds, and certification of the Settlement Class for settlement purposes.

I. INTRODUCTION[3]

Subject to this Court's approval, Lead Plaintiff and Defendants—with the assistance of Jed Melnick of JAMS, a skilled and respected mediator—have agreed to settle all claims in this Action against Defendants in exchange for a guaranteed cash payment of $4 million. This is a favorable result for the Settlement Class in that it provides certain resolution for this over-six-years-old contentious and complex litigation against Defendants—who have fought Lead Plaintiff at every turn in this case and would continue doing so including into the looming class certification stage, which the parties were in the midst of briefing immediately prior to mediation—and the Settlement Amount compares favorably to other securities fraud class action settlements when evaluating the percentage of recovery compared to total estimated damages. If approved, this Settlement will

[1] Lead Plaintiff Sensung Tsai died on November 5, 2022. A Suggestion of Death was filed with the Court on December 19, 2022. ECF No. 118. Lead Counsel will file a Motion for Substitution—requesting substitution of Sensung Tsai with his wife, Meichu Tsai, as Lead Plaintiff—along with or before Lead Plaintiff's reply brief due on January 12, 2023.

[2] Unless otherwise defined, all capitalized terms used herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 13, 2022 (the "Stipulation") (ECF No. 113-2).

[3] The Declaration of Reed R. Kathrein ("Kathrein Decl."), filed herewith, is an integral part of this submission. For the sake of brevity, the Court is respectfully referred to it for a detailed description of, among other things: the 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. All citations to "¶ __" and "Ex. __" in this memorandum refer, respectively, to paragraphs in, and exhibits to, the Kathrein Declaration.

completely dispose of this Action—without further drain on judicial resources and providing definite closure and recovery to the Settlement Class.

This Settlement is fair, adequate, and reasonable under the governing standards in this Circuit. The $4 million Settlement represents approximately 9.7% to 28% of estimated losses between $14.4 million and $41.3 million, depending on assumptions, and compares favorably to other securities fraud cases; and the Settlement also eliminates the significant costs and risks of litigating the anticipated class certification motion, summary judgment motion, trial, and inevitable appeals. At the time the Settlement was reached, Lead Plaintiff had ample knowledge of the strengths and weaknesses of his claims and was cognizant of the future risks and challenges of litigation if this hard-fought case were to continue indefinitely—which would have been in addition to the already six-plus-years of prior litigation. The reaction of the Settlement Class has also been overwhelmingly positive; to date, no objections have been received to any aspect of the Settlement.

The Court must also determine if Lead Plaintiff has adequately established a formula to distribute the Settlement. Here, the proposed Plan of Allocation was formulated in consultation with an expert and the Claims Administrator, comports with applicable legal principles, and in no way favors Lead Plaintiff over other members of the Settlement Class. Accordingly, it is fair and reasonable.

The methods that Lead Plaintiff used to communicate notice—the Notice of Pendency and Proposed Settlement of Securities Class Action ("Long Notice"), and the Summary Notice of Pendency and Proposed Class Action Settlement ("Summary Notice") (collectively, "Notice")—each closely followed what is routinely used to communicate notice in securities class actions. Thus, the Notice also satisfied the requirements of Rule 23.

For these reasons, and those set forth below, Plaintiffs respectfully submit that the Settlement and Plan of Allocation are in the best interests of the Settlement Class and merit final approval.

II. STANDARDS GOVERNING APPROVAL OF CLASS ACTION SETTLEMENTS

Rule 23(e) requires court approval for any settlement of class action claims, and such approval should be granted "only after a hearing and only on finding that [a proposed settlement] is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F. 3d 410, 436 (3d Cir. 2016) ("*NFL Players*").

Rule 23(e)(2) instructs that the Court should determine whether the Settlement is "fair, reasonable, and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is 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 attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

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 expected 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 Swinton v. SquareTrade, Inc.*, 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019) ("The specific considerations in Rule 23(e)(2)(A)–(D) were part of the 2018 Amendments. However, they were not intended to displace the various factors that courts have developed in assessing the fairness of a settlement."). 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 *5-6 (D.N.J. Aug. 6, 2014) (*citing Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164-65 (3d Cir. 2006) (same).

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).

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Court Should Grant Final Approval of the Settlement

Rule 23(e)(2)(A), requiring adequate representation, and Rule 23(e)(2)(B), requiring arm's-length negotiations, "constitute the 'procedural' analysis" of the fairness inquiry. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019). Each aspect of procedural fairness is satisfied here.

1. Plaintiffs and Lead Counsel Adequately Represented the Class

Representative plaintiffs provide adequate representation of a class where the "named plaintiffs' interests are sufficiently aligned with" absent class members. *In re Vicuron Pharms., Inc. Sec. Litig.*, 233 F.R.D. 421, 426 (E.D. Pa. 2006). Here, Lead Plaintiff's claims are typical of, and coextensive with, the Settlement Class's claims, and they have no antagonistic interests. Lead Plaintiff's interest in obtaining the largest possible recovery in this Action is aligned with the Settlement Class's interests. *Du on behalf of Enteromedics, Inc. v. Blackford*, 2018 WL 4691046, at *5 (D. Del. Sept. 28, 2018) (finding adequacy where "[p]laintiff's interests are coextensive with, and not antagonistic to, the interests of the class since they all raise the same claims and seek the same relief"). Indeed, Lead Plaintiff adequately represented the Settlement Class by vigorously pursuing his shared claims against Defendants by, among other things, selecting experienced counsel; overseeing the litigation; communicating regularly with Lead Counsel; reviewing motions, pleadings, and discovery; participating in his own seven-hour deposition; attending two mediation sessions with two separate mediators; participating in settlement discussions with Lead Counsel; and evaluating and approving the Settlement. *See* Kathrein Decl., ¶ 49.

Lead Counsel and Liaison Counsel also adequately represented the Settlement Class throughout the litigation. Lead Counsel and Liaison Counsel are highly qualified and experienced

in securities litigation, as set forth in their firm resumes.[4] Here, Lead Counsel, with the assistance of Liaison Counsel, zealously prosecuted the Action against skilled opposing counsel, achieving a favorable settlement for the Settlement Class.

Indeed, the Settlement was achieved only after Lead Counsel, among other things: (a) conducted a thorough investigation, including: analyzing SEC filings, press releases, analyst reports, and other publicly-available records concerning Immunomedics, Inc. ("Immunomedics"); (b) researched potential arguments and counter-arguments concerning Defendants' anticipated motion to dismiss and in anticipation of settlement negotiations; (c) prepared the Amended Complaint, motion to dismiss briefing, and a Second Amended Complaint; (d) retained and consulted with an economic expert concerning damages and an expert to opine on market efficiency in support of Lead Plaintiff's Motion for Class Certification; (e) prepared (but did not file) a Motion for Class Certification; (f) reviewed and analyzed thousands of documents during discovery; (g) wrote several detailed joint discovery dispute letters to the Court; (h) argued discovery disputes to the Court; (i) attended and participated in two mediation sessions over the course of three full-day sessions,[5] which included the preparation and exchanging of detailed mediation statements and hard-fought negotiations; (j) defended Lead Plaintiff at his seven-hour long deposition; (k) conferred extensively with Lead Plaintiff after the last round of mediation with Jed Melnick, which ultimately resulted in acceptance of Mr. Melnick's mediator's proposal that the Parties accepted; (l) prepared and negotiated the terms of the Stipulation, along with its

[4] *See* Exs. 4 and 5, Kathrein Decl. (Hagens Berman Sobol Shapiro LLP and Lite DePalma Greenberg & Afanador, LLC firm resumes).

[5] The Settling Parties attended an unsuccessful mediation session with Judge Alfred Lechner (D.N.J. Ret.) on May 4 and 5, 2021, before attending a successful mediation session with Jed Melnick on January 12, 2022, which led to the Settlement after Mr. Melnick made a "mediator's proposal."

exhibits, with Defendants; and (m) prepared Lead Plaintiff's preliminary approval of settlement application, which was granted on October 5, 2022 (ECF No. 114). *See* Kathrein Decl. ¶¶ 46. Accordingly, this factor supports final approval of the Settlement.

2. The Settlement was the Result of Arm's-Length Negotiations Between Experienced Counsel

Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's-length." This "procedural" fairness determination also encompasses the third *Girsh* factor, which assesses the "degree of case development that Class Counsel [have] accomplished prior to Settlement" to "determine whether counsel had an adequate appreciation of the merits of the case before negotiating" the settlement. *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 321 (3d Cir. 2011); *see also In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *10 (D.N.J. Mar. 26, 2010). Approval of a settlement is warranted "[w]here a court can conclude that the parties had 'sufficient information to make an informed decision about settlement[.]'" 4 NEWBERG ON CLASS ACTIONS § 13.50; *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (The relevant inquiry "is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.").

There is a presumption of fairness when a settlement is reached with the assistance of a mediator. *Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd,* 559 F. App'x 151 (3d Cir. 2014) ("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."); *In re CIGNA Corp.*, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) ("Concerning the presumption of fairness, it is clear that negotiations for the settlement occurred at arm's length, as the parties were assisted by a retired federal district judge who was privately retained and served

as a mediator."); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("[A] ... mediator's involvement in ... settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Ocean Power Techs., Inc.*, 2016 WL 6778218, at *11 (using an independent mediator for settlement discussions "virtually insures… that the negotiations were conducted at arm's length and without collusion between the parties.").

Here, the Settlement was the result of hard-fought negotiations between experienced counsel. As discussed above, Lead Counsel, along with Liaison Counsel, have extensive experience litigating securities class actions. Defendants were represented by experienced counsel from DLA Piper LLP (US) and Morris James LLP. Moreover, at the time the Settlement was reached, Lead Plaintiff had a thorough understanding of the strengths and weaknesses of his case. *See* Kathrein Decl. ¶¶ 49 (detailing Lead Plaintiff's work in the case); ¶¶ 21-32 (explaining the risks and complexities of continued litigation). Given Lead Counsel's extensive experience and Defendants' representation by experienced counsel, the Settling Parties were able to engage in meaningful negotiations to achieve the Settlement.

Further, the Settlement was the result of a mediator's proposal by Jed Melnick, whom the Parties engaged to act as mediator after a prior, unsuccessful mediation with Judge Lechner. The Parties participated in a full-day mediation with Mr. Melnick, a skilled and respected mediator, which involved hard-fought negotiations and the preparation of detailed mediation statements. Only after Mr. Melnick made a mediator's proposal did the Settling Parties arrive at the Settlement. Kathrein Decl. ¶¶ 17, 18, 36.

Accordingly, given the parties' extensive negotiations led by a respected mediator and experienced counsel, this factor supports final approval of the Settlement.

B. The Settlement is Substantively Fair: The Relief Provided for the Settlement Class is Adequate in light of the Risks, Costs, and Delay of Continued Litigation

Rule 23(e)(2)(C) instructs the Court to consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" along with other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). Rule 23(e)(2)(C)(i) essentially incorporates six of the traditional *Girsh* factors: the complexity, expense, and likely duration of the litigation (first factor); the risks of establishing liability and damages (fourth and fifth factors); the risks of maintaining class action status through the trial (sixth factor); and the range of reasonableness of the Settlement Fund in light of the best possible recovery and the attendant risks of litigation (eighth and ninth factors). *See Singleton*, 2014 WL 3865853, at *5. As discussed below, each of these factors supports approval of the Settlement.

1. The Complexity, Expense, and Likely Duration of the Litigation

In assessing whether the proposed Settlement is fair, reasonable, and adequate, the Court must also "'survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of immediate settlement.'" *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 439 (3d Cir. 2016) (quoting *In re Prudential Ins. Co. Am. Sales Practices Litig.*, 148 F.3d 283, 319 (3d Cir. 1998)).

Courts routinely recognize that "[s]ecurities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013).[6] Additionally, were the litigation to continue, a potential recovery—if

[6] *See also W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440, at *4 (E.D. Pa. Sept. 20, 2017) (commenting that "[s]ecurities litigation is notoriously complicated and

any—"would occur years from now, substantially delaying payment . . . to the Settlement Class." *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *8 (S.D.N.Y. Mar. 24, 2014). In contrast, the Settlement provides an immediate, substantial, and certain recompense to the Settlement Class without exposing the Settlement Class to the risk, expense, and delay of continued litigation—which has already gone on for more than six years. *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.").

Indeed, securities class actions are inherently complex and expensive to litigate. This case is no exception. Immunomedics had over 94 million shares of common stock outstanding and was listed on the NASDAQ throughout the Class Period, demonstrating the large number of potential Settlement Class Members and potential damages issues. Moreover, Defendants produced thousands of pages of document discovery, and the parties were in the process of continuing litigation to the class certification stage immediately prior to reaching the Settlement. The parties also retained damages and market efficiency experts for class certification briefing and this case would have undoubtedly become more and more complicated if it were to reach the summary judgment and trial stages. *See* Kathrein Decl. ¶¶ 27-32 (detailing the complexity, expense, and duration of continued litigation). There is thus no guarantee that Lead Plaintiff would have been able to succeed at each of these stages of litigation; and even if he could do so, it would be costly, take years, and delay any potential recovery to Settlement Class Members. *See Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[E]ven

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it is certainly not conducted on the cheap"); *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.") (quotation omitted).

if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation [.]. . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery"). Moreover, Lead Plaintiff's untimely death after preliminary approval, in November 2022, makes it even more uncertain how this litigation would have possibly unfolded had the Settlement not been reached in April 2022. Thus, the complexity, expense, and likely duration of these proceedings favor approval of the Settlement.

2. Risks to Proving Liability and Damages

When deciding whether to approve a proposed class action settlement, the fourth and fifth *Girsh* factors—the risks of establishing liability and damages—are "commonly analyzed together" and "survey the possible risks of litigation by balancing the likelihood of success . . . against the immediate benefits offered by settlement." *Alves v. Main*, 2012 WL 6043272, at *19 (D.N.J. Dec. 4, 2012), *aff'd,* 559 F. App'x 151 (3d Cir. 2014); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 814 (3d Cir. 1995) (noting the "potential rewards (or downside)" of continued litigation).

While Lead Plaintiff believed that his claims had merit, he also recognized that he faced substantial obstacles to proving liability and damages. When compared to the certainty of the benefit conferred by the Settlement, these risks militate against further litigation, and support a determination that the Settlement is fair, reasonable and adequate.

Liability: Lead Plaintiff faced considerable hurdles to establishing liability. Indeed, "[t]he difficulty of establishing liability is a common risk of securities litigation." *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *11.

Here, there is no guarantee that Lead Plaintiff would have been successful in his motion for class certification (which was on the cusp of being filed immediately prior to mediation), that this Action would have survived Defendants' anticipated motion for summary judgment, or that Lead Plaintiff would have prevailed at trial. Defendants had strong arguments against several elements of Plaintiffs' *prima facie* claim, which were shared with Plaintiffs on a confidential basis during the mediation process. *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 in light of risks involved in establishing liability); *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *19-20 (D.N.J. Nov. 15, 2016) (recognizing the difficulty of establishing liability in securities class action and the added risk of establishing damages); *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *8 (S.D.N.Y. Dec. 19, 2014) ("Securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet.").

Damages: Proving damages in securities fraud trials "is always difficult and invariably requires expert testimony which may, or may not, be accepted by a jury." *In re Indep. Energy Holdings PLC Sec. Litig.*, 2003 WL 22244676, at *3 (S.D.N.Y. Sep. 29, 2003); *see also In re Datatec Systems, Inc. Sec. Litig.*, 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007) ("there would likely be a battle of experts at trial and there would be no guarantee whom the jury would believe.").

Although Lead Plaintiff has already obtained several damages estimates from an expert and obtained an expert to opine on market efficiency, Defendants would surely proffer equally well-credentialed experts to express contrasting views—views that could greatly reduce or even eliminate damages. Defendants have told Lead Plaintiff, and will continue to argue during the

litigation, that the Settlement Class's damages are substantially less than Lead Plaintiff's estimates and will dispute whether there are any damages at all. *In re Marsh & McLennan Cos., Sec. Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("[i]f there is anything in the world that is uncertain when a case like [a securities class action] is taken to trial, it is what the jury will come up with as a number for damages."). As a result, "the risks faced by the securities plaintiffs in establishing damages are substantial, and this factor favors approving the settlement." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004).

3. Risks of Class Certification

The sixth *Girsh* factor "evaluates the risks of maintaining the class throughout the trial." *F.C.V., Inc. v. Sterling Nat'l Bank*, 2006 WL 1319822, at *6 (D.N.J. May 12, 2006). Defendants would undoubtedly vigorously challenge class certification, and such disputes could very well delve into another "battle of the experts." Lead Plaintiff would need to continue retention of an economics expert to opine that Immunomedics's stock traded on an efficient market, and that there was a common methodology to calculate class-wide damages. Defendants would most certainly engage an expert to contest Lead Plaintiff's expert, arguing, for example, that the market for Immunomedics's stock was not efficient, or that the alleged fraud did not impact Immunomedics's stock price. Although Lead Plaintiff has already exchanged (but not filed) his class certification motion with Defendants, the likelihood of success is not guaranteed. Even if a class were to be certified, Defendants could move to decertify the class at any time. *See* Fed. R. Civ. P. 23(c)(2); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) ("[E]ven if plaintiffs could obtain class certification, there could be a risk of decertification at a later stage."). The Settlement avoids the risk and expense of briefing class certification.

C. The Settlement Amount is Within the Range of Reasonableness in Light of the Best Possible Recovery and Attendant Risks of Litigation

"The final two factors set forth in *Girsh* are typically considered in tandem, and 'ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial.'" *Par Pharm.*, 2013 WL 3930091, at *7. In conducting this evaluation, the Court should keep in mind "that settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution and [courts should] guard against demanding to[o] large a settlement based on the court's view of the merits of the litigation." *In re Johnson & Johnson Derivative Litig.*, 900 F. Supp. 2d 467, 484-85 (D.N.J. 2012). "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 105 (D.N.J. 2012). "Rather, the percentage recovery must represent a material percentage recovery to [the] plaintiff in light of all the risks considered under *Girsh*." *In re AT & T Corp.*, 455 F.3d at 170.

Considering the substantial risks that Plaintiffs face if litigation were to continue, this Settlement—which provides a certain and immediate recovery of $4 million for the benefit of the Settlement Class—is a favorable result. Lead Plaintiff's damages expert estimates that if the Court and jury accepted Lead Plaintiff's damages theory, including proof of loss causation—*i.e.*, Plaintiffs' *best-case scenario*—the total *maximum* damages estimate would be between $14.4 million and $41.3 million, depending on assumptions, under which the Settlement represents a recovery of 9.7% to 28%.

The Settlement's recovery of approximately 9.7% to 28% of maximum damages compares favorably to settlements in similar cases. *In re Cendant Corp. Litig.*, 264 F.3d 201, 241 (3d Cir. 2001) (noting that typical recoveries in securities class actions range from 1.6% to 14% of total

losses); *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 319, 339 (W.D. Pa. 1997), *aff'd sub nom. Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581 (3d Cir. 1999) (approving settlement for 5.35% of estimated damages, overruling objections, and collecting cases approving "class settlements involving far smaller percentage recoveries"); *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *15 (S.D.N.Y. May 13, 2011) (noting that the average settlement in securities class actions ranges from 3% to 7% of total estimated losses); *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 621 (S.D.N.Y. 2012) ("It is well-settled that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.").

Further, according to Cornerstone Research, the median settlement for Rule 10b-5 cases as a percentage of simplified tiered damages was 12.5% for settlements below $25 million and 7.2% for settlements between $25 million and $74 million.[7] Accordingly, this Settlement, which recovers approximately 9.7% to 28% of maximum damages of what Lead Plaintiff calculates to be maximum damages of between $14.4 million and $41.3 million against Defendants, is within a healthy range and compares favorably to settlements in similar securities class actions.

Taking into account the real possibility that the Settlement Class might recover nothing (*e.g.* if Lead Plaintiff cannot obtain class certification, if Lead Plaintiff cannot defeat Defendants' anticipated summary judgment motion, if Lead Plaintiff does not prevail at trial, etc.), this Settlement Amount is within the range of reasonableness, weighing in favor of final approval.

D. The Settlement Class's Reaction to the Settlement Supports Final Approval

The second *Girsh* factor—the reaction of the Settlement Class—overlaps with Rule 23(e)(4), on the opportunity for exclusion, and 23(e)(5), on the opportunity to object. As required

[7] *See* Cornerstone Research, *Securities Class Action Settlements: 2021 Review and Analysis*, at p. 6, available at: https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf

by Rule 23(e)(4) & (5), the Settlement affords Settlement Class Members the opportunity to request exclusion from, or object to, the Settlement. *See* Kathrein Decl., Ex. 1, Declaration of Margery Craig Concerning: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections ("Craig Decl.") at ¶¶ 13-14.

Here, in accordance with the Court's Order Granting Lead Plaintiff's Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order", ECF No. 114), the Claims Administrator, Strategic Claims Service ("SCS") caused 8,396 Notices to be emailed or mailed to potential Settlement Class Members. Craig Decl. ¶ 7. The Notice was also made available to potential Settlement Class Members on the settlement website.[8] *Id.* at ¶ 12. SCS was also notified by a nominee that it sent direct links to the Long Notice to 1,743 potential Settlement Class Members. *Id.* at ¶ 6. SCS also caused the Summary Notice to be published electrically on *Globe Newswire* and in print in the *Investor's Business Daily*. *Id.* at ¶ 10. In addition, SCS established a dedicated website where potential Settlement Class Members can go to access information about the Settlement, view case documents, and file their claims electronically. *Id.* at ¶ 12.

The Settlement Class's reaction to date demonstrates strong support for the Settlement. There has not been a single objection to any aspect of the Settlement. *Id.* at ¶ 14. *Cendant*, 264 F.3d at 235 ("The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement[.]"). Furthermore, there have been no valid opt-outs. *Id.* at ¶ 13.

[8] https://www.strategicclaims.net/immunomedics/

As provided in the Preliminary Approval Order, Plaintiffs will file reply papers in support of the Settlement on January 12, 2023, after the deadline for requesting exclusions or objecting has passed. Lead Plaintiff's reply papers will address any objections or requests for exclusions received after the date of this filing.

E. The Settlement Satisfies the Remaining Rule 23(e)(2) Factors

1. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." As discussed in the memorandum of law in support of the motion for an award of attorneys' fees, expenses, and award to Lead Plaintiff, filed concurrently herewith, Lead Plaintiff's Counsel[9] seeks an award of attorneys' fees of one-third of the Settlement Amount ($1,333,333.33), payment for litigation charges and expenses of no more than $180,000, and an Award to Lead Plaintiff of $10,000 pursuant to 15 U.S.C. § 78u-4(a)(4) in connection with his efforts in stewarding this Action. These requests, fully disclosed in the Notice, are in line with other settlements approved in the Third Circuit. In addition, Lead Counsel requests that any award of fees and expenses be paid at the time the Court makes its award.

2. The Parties Have No Other Agreements Aside from Opt-Outs

Pursuant to Rule 23(e)(2)(C)(iv), and as disclosed in the Stipulation (¶ 10.5), the Parties have entered into a standard supplemental agreement which provides that if the number of opt-outs reach a certain confidential threshold, Defendants have the option to terminate the Settlement. As is standard practice in securities class actions, while the supplemental agreement is identified in the Stipulation, the terms were confidential to avoid creating incentives for a small group of

[9] Defined in the Stipulation as Lead Counsel Hagens Berman Sobol Shapiro LLP and Liaison Counsel Lite DePalma Greenberg & Afanador, LLC.

investors to opt out solely to leverage the threshold to exact an individual settlement. This agreement has no bearing on the fairness of the Settlement, and as such, this factor weighs in favor of final approval. *See Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019) (stating that opt-out agreements are "standard in securities class action settlements and ha[ve] no negative impact on the fairness of the Settlement").

F. The *Prudential* Factors Support Approval

In addition to the *Girsh* factors, the Third Circuit also advises courts, when appropriate, to address the considerations set forth in *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998), where applicable. The *Prudential* factors relevant to this case are whether class members may opt out of the Settlement (they can), and whether the procedure for processing individual claims is fair and reasonable. 148 F.3d at 323–24.[10]

Claim procedures in securities class actions are standardized. As in every case, Settlement Class Members here must fill out a form setting out their mailing address and personal identifying information (either a Social Security Number or Tax Identification Number), and their transactions in the securities at issue (here, Immunomedics securities). It is necessary to ask Settlement Class Members to submit claims because there is no central repository of the ultimate beneficial owners of these securities. Only Settlement Class Members know who they are; they must therefore submit claims.

[10] The majority of the *Prudential* factors are irrelevant here (just as they were irrelevant in *Prudential*, 148 F.3d at 323-24). Here, no individual lawsuits were filed. Thus, there has been no experience in adjudicating individual actions, nor will there ever be. Scientific knowledge as understood in *Prudential* is not relevant here. In terms of discovery, and as discussed above, Plaintiffs were armed with information necessary to evaluate the strengths and weaknesses of their case. In this case, approval of the Settlement does not depend on approval of attorneys' fees. If the Court believes attorneys' fees requested are too high, it can just award a smaller amount in attorneys' fees and does not need to deny approval of the Settlement. Whether attorneys' fees are reasonable is therefore irrelevant. *Id.* at 323.

The claims procedures also require Settlement Class Members to submit proof of their transactions in Immunomedics securities. In Lead Counsel's experience, fraudulent claims are unfortunately submitted in many settlements. Often these claims, if approved, would have large recognized losses. Requiring proof of transactions ensures that the Claims Administrator can verify suspicious account statements with the brokerage firms at which the accounts are purportedly held, ensuring that the Settlement does not pay fraudulent claims.

G. The Court Should Approve the Plan of Allocation

The Long Notice spells out in detail the Plan of Allocation, explaining how the Settlement proceeds are to be divided among claiming Settlement Class Members. *See* Craig Decl., Exhibit A, at pp. 4-6. The "[a]pproval 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." *In re Merck & Co., Inc. Vytorin Erisa Litig.*, 2010 WL 547613, at *6 (D.N.J. Feb. 9, 2010) (quoting *In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)); *see also Cendant*, 264 F.3d at 248. Courts "generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable." *DB Investments*, 667 F.3d at 328. "In evaluating a plan of allocation, the opinion of qualified counsel is entitled to significant respect. The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis." *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014); *see also In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007) (approving plan because it was "rational and consistent with Lead Plaintiffs' theory of the case.").

In this case, the Plan of Allocation was formulated by Lead Counsel in consultation with an expert consultant and the Claims Administrator. Kathrein Decl. ¶ 37. The Plan of Allocation comports with applicable legal principles and employs accepted loss causation principles. It fairly and rationally allocates the Settlement proceeds among eligible Settlement Class members. *See In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *23 (D.N.J. Nov. 15, 2016) ("pro rata distributions are consistently upheld, and there is no requirement that a plan of allocation 'differentiat[e] within a class based on the strength or weakness of the theories of recovery'"); *Global Crossing*, 225 F.R.D. 462 ("When formulated by competent and experienced class counsel, an allocation plan need have only a 'reasonable, rational basis.'"). Accordingly, the Plan of Allocation is fair, reasonable, and adequate, and should be approved.

H. Final Certification of the Settlement Class

In its Preliminary Approval Order, the Court found, "preliminarily and for purposes of this Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied." Preliminary Approval Order at ¶3 (finding that each of the six factors of Rule 23(a) and (b)(3) had been satisfied). Nothing has changed with respect to these elements since the Court entered the Preliminary Approval Order on October 5, 2022. Thus, for the reasons stated in Lead Plaintiff's Preliminary Approval Brief (ECF No. 113-1), Lead Plaintiff respectfully requests that the Court affirm its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3).

IV. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant his motion for final approval of the Settlement.

DATED: December 21, 2022

Respectfully submitted,

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Lead Counsel for the Class

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, a true and correct copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT was filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to counsel of record.

/s/ *Bruce D. Greenberg*
Bruce D. Greenberg

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JESSICA FERGUS, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. IMMUNOMEDICS, INC., CYNTHIA L. SULLIVAN, PETER P. PFREUNDSCHUH and DAVID GOLDENBERG, Defendants.	Civil Action No. 2:16-cv-03335-KSH-CLW

[PROPOSED] ORDER AND FINAL JUDGMENT

On the 19th day of January 2023, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated April 13, 2022 ("Settlement Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Defendants (as defined in the Settlement Stipulation), including the release of all Released Plaintiff's Claims as against the Defendants' Released Parties and all Released Defendants' Claims as against the Plaintiff's Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Action with prejudice; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members; (4) whether and in what amount to award counsel previously appointed by the Court as Lead Counsel ("Lead Plaintiff's Counsel"), as fees and reimbursement of expenses; and (5) whether and in what amount to award Lead Plaintiff as incentive fees; and

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing in the record that the Notice substantially in the form approved by the Court in the Court's Order Granting Lead Plaintiff's Motion for Preliminary Approval of Class Action Settlement, dated October 5, 2022 ("Preliminary Approval Order") was mailed to all reasonably identifiable Settlement Class Members and posted to the website of the Claims Administrator, both in accordance with the Preliminary Approval Order and the specifications of the Court; and

It appearing in the record that the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with the Preliminary Approval Order and the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order and Final Judgment incorporates by reference the definitions in the Settlement Stipulation, and all capitalized terms used herein shall have the same meanings as set forth therein.

2. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all Settlement Class Members, and Defendants.

3. The Court finds that, for settlement purposes only, the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that:

(a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable;

(b) there are questions of law and fact common to the Settlement Class;

(c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent;

(d) Plaintiffs and Plaintiffs' Counsel fairly and adequately represent the interests of the Settlement Class;

(e) questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of this Action, considering:

i. the interests of the Settlement Class Members in individually controlling the prosecution of the separate actions;

ii. the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members;

iii. the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and

iv. the difficulties likely to be encountered in the management of the class action.

The Settlement Class is being certified for settlement purposes only.

4. The Court finally certifies this action as a class action solely for purposes of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons or entities who purchased or otherwise acquired publicly traded securities of Immunomedics, Inc. ("Immunomedics") from May 2, 2016, through June 24, 2016, inclusive (the "Class Period"). Excluded from the Class are Defendants, the officers and directors of Immunomedics, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which an officer or director of Defendants have or had a controlling interest. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion in accordance with the Preliminary Approval Order. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of this Settlement only, Lead Plaintiff is certified as the class representative on behalf of the Settlement Class ("Class Representative") and Lead Plaintiff's Counsel previously selected by Lead Plaintiff and appointed by the Court is appointed as Class Counsel for the Settlement Class ("Lead Plaintiff's Counsel").

5. In accordance with the Court's Preliminary Approval Order, the Court finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private

Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons and entities entitled to such notice. No Settlement Class Member is relieved from the terms and conditions of the Settlement, including the releases provided for in the Settlement Stipulation, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is determined that all Settlement Class Members are bound by this Order and Final Judgment.

6. The Settlement is approved as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure, and in the best interests of the Settlement Class. This Court further finds that the Settlement set forth in the Settlement Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of the Class Representatives, Settlement Class Members, and Defendants. The Settling Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Stipulation.

7. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against Defendants' Released Parties. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Stipulation.

8. Lead Plaintiff and each of the Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns or any other Person claiming (now or in the future) through or on behalf of them, in their capacities as

such, (and regardless of whether any such Person ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund), shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiff's Claim against Defendants and the other Defendants' Released Parties and shall have covenanted not to sue and forever be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Plaintiff's Claim, in any capacity, against any of the Defendants' Released Parties in any jurisdiction.

9. Pursuant to the Judgement without further action by anyone, upon the Effective Date, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns or any other Person claiming (now or in the future) through or on behalf of them, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim against Plaintiffs and the other Plaintiff's Released Parties and shall have covenanted not to sue and forever be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Defendants' Claim, in any capacity, against any of the Plaintiff's Released Parties in any jurisdiction.

10. Pursuant to the Judgement without further action by anyone, upon the Effective Date, Defendants and Gilead on behalf of themselves, and their respective heirs, executors,

administrators, predecessors, successors, and assigns or any other Person claiming (now or in the future) through or on behalf of them, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged as to each other only any claim to contribution or indemnity related to the Settlement Amount or any fees or costs incurred in connection with this Action, as defined in paragraph 1.1 of the Settlement Stipulation ("Mutual Contribution or Indemnity Claims"), and shall have covenanted not to sue and forever be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Mutual Contribution or Indemnity Claims in any capacity, against any of the Defendants or Gilead in any jurisdiction.

11. Nothing contained herein shall, however, bar the Settling Parties or Gilead from bringing any action or claim to enforce the terms of the Settlement Stipulation or this Order and Final Judgment.

Further, nothing contained herein, shall bar or affect any rights, obligations, or claims of the Defendants and Gilead that arise out of or relate in any way to: (1) the Stipulation and Agreement of Settlement, Compromise, and Release filed on November 2, 2017 and approved by the Court on February 9, 2018 in *venBio Select Advisor LLC v. Goldenberg*, C.A. No. 2017-0108-JTL (Del. Ch.), or (2) *Goldenberg v. Immunomedics, Inc.*, C.A. No. 2020-0523-JTL (Del. Ch.).

12. To the fullest extent permitted by law, all Persons shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Defendants' Released

Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Persons' participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum. Further, nothing in the Settlement Stipulation or this Order and Final Judgment shall apply to bar or otherwise affect any claim for insurance coverage by Defendants or Gilead.

13. The Court finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members, and Lead Plaintiff's Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Settlement Stipulation.

14. The Court finds that the Settling Parties and their counsel have complied with all requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private Securities Litigation Record Act of 1995 as to all proceedings herein.

15. Neither this Order and Final Judgment, the Settlement Stipulation, nor any of the terms and provisions of the Settlement Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statement in connection therewith:

(a) is or may be deemed to be, or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released

Claims, the truth or falsity of any fact alleged by the Class Representative, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence or fault of Defendants, the Defendants' Released Parties, or each or any of them;

(b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by any Defendants or Defendants' Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal;

(c) is or may be deemed to be or shall be used, offered or received against the Settling Parties, Defendants or the Defendants' Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by the Lead Plaintiff or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is or may be deemed to be or shall be construed as or received in evidence as an admission or concession against Defendants, or the Defendants' Released Parties, or each or any of them, that any of Class Representative's or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages

recoverable in the Action would have been greater or less than the Settlement Fund or that the consideration to be given pursuant to the Settlement Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

16. The Released Parties may file the Settlement Stipulation and/or this Order and Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties may file the Settlement Stipulation and/or this Order and Final Judgment in any proceedings that may be necessary to consummate or enforce the Settlement Stipulation, the Settlement, or this Order and Final Judgment.

17 Except as otherwise provided herein or in the Settlement Stipulation, all funds held by the Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed or returned to Immunomedics, Inc. pursuant to the Settlement Stipulation and/or further order of the Court.

18. Without affecting the finality of this Order and Judgment in any way, this Court retains continuing exclusive jurisdiction over the Settling Parties and the Settlement Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Settlement Class Members.

19. Without further order of the Court, Defendants and Class Representative may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation.

20. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

21. The finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the Court may make on Lead Plaintiff's Counsel's application for an award of attorneys' fees and expenses or an award to the Class Representative.

22. If the Settlement is not consummated in accordance with the terms of the Settlement Stipulation, then the Settlement Stipulation and this Order and Final Judgment (including any amendment(s) thereof, and except as expressly provided in the Settlement Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Plaintiffs or the Defendants' Released Parties, and each Settling Party shall be restored to his, her or its respective litigation positions as they existed immediately prior to the date of the execution of the Settlement Stipulation.

Dated: _____, 2023

_____
HON. KATHARINE S. HAYDEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JESSICA FERGUS, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. IMMUNOMEDICS, INC., CYNTHIA L. SULLIVAN, PETER P. PFREUNDSCHUH and DAVID GOLDENBERG, Defendants.	Civil Action No. 2:16-cv-03335-KSH-CLW

[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION

On the 19th day of January 2023, a hearing having been held before this Court to determine whether the proposed plan of allocation of the Net Settlement Fund ("Plan of Allocation") created by the Settlement in the above-captioned action ("Action") should be approved;

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Court's Order Granting Lead Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") (ECF No. 114) was provided to all reasonably identifiable Settlement Class Members and posted to the website of the Claims Administrator; and;

It appearing that the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with that Order and the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All capitalized terms used herein have the same meanings as set forth and defined in the Stipulation and Agreement of Settlement dated April 13, 2022 (ECF No. 113-2).

2. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all Settlement Class Members and Defendants.

3. The Plan of Allocation set forth in the Notice of Pendency and Proposed Settlement of Class Action (ECF No. 113-2) provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among Authorized Claimants, and is in all respects fair and reasonable. Accordingly, the Court approves the Plan of Allocation.

4. There is no just reason for delay in the entry of this Order, and the Court directs immediate entry of this Order by the Clerk of the Court.

IT IS SO ORDERED.

Dated: _____, 2023

_____
HON. KATHARINE S. HAYDEN
UNITED STATES DISTRICT JUDGE