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 AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD TO LEAD PLAINTIFF

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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 an award of attorneys' fees, reimbursement of expenses, and Award to Lead Plaintiff.

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 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 is December 29, 2022.

DATED: December 21, 2022

Respectfully submitted,

LITE DEPALMA GREENBERG & AFANADOR, LLC

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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 LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD TO LEAD PLAINTIFF

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Lead Plaintiff Sensung Tsai ("Lead Plaintiff")[1] respectfully submits this memorandum of law in support of Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Award to Lead Plaintiff.[2]

I. INTRODUCTION

The proposed $4 million all-cash, non-reversionary Settlement is the result of Lead Counsel's vigorous, persistent, and skilled efforts over the course of this complex litigation against Defendants—who have fought Lead Plaintiff at every turn in this litigation, including two rounds of motion to dismiss briefing, and is anticipated to continue fighting through the class certification, summary judgment, and trial stages. The Settlement is a favorable result for the Settlement Class and was achieved in the face of significant litigation risks and hurdles.

Indeed, from the outset of this litigation Lead Counsel faced numerous challenges to obtaining a recovery. This is a highly complex case involving Immunomedics—a biopharmaceutical company involved in developing novel immunotherapeutics for the treatment of cancer, autoimmune, and other serious diseases, which at the time was run by Defendants David Goldenberg and Cynthia Sullivan—and the alleged unlawful disclosure of cancer research data at several conferences—specifically, the American Society of Clinical Oncology ("ASCO") conference—in 2016. Such a case—which involves interpretation of voluminous cancer research data, evaluation of research materials presented at the ASCO conference, and analysis of scientific terminology—is inherently complex to litigate. Additionally, Defendants had several arguments

[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).

against Lead Plaintiff's damages and loss causation allegations, and Defendants surely would have fought Lead Plaintiff—and indeed did fight—Lead Plaintiff at every turn of the case. Moreover, the case had advanced significantly enough to reach the class certification stage where the parties were in the midst of retaining damages and market efficiency consultants. The parties were also embroiled in several ongoing discovery disputes; and additional depositions for Defendants would have closely followed the seven-hour deposition of Lead Plaintiff, which was taken prior to the mediation session leading to the Settlement. Thus, the success of the litigation was not guaranteed as the case approached the summary judgment and trial phases—given the highly contentious nature of discovery and the parties' competing legal theories in the case. The Settlement significantly mitigates against these risks by providing a certain recovery for Settlement Class Members.

Further, the risk of losing was very real, and it was greatly enhanced by the fact that Lead Counsel would be litigating against defendants represented by highly skilled defense counsel. The Private Securities Litigation Reform Act of 1995 ("PSLRA")—as well as a host of post-PSLRA judicial decisions concerning falsity, scienter, loss causation, and damages—has also made it significantly more difficult for investors to bring and successfully conclude securities class actions. *See In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA."); *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J., sitting by designation) ("To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action."). There was, therefore, a very strong possibility that the case would yield little or no recovery after

potentially many years of costly litigation—which would have been in addition to the already six-plus-years that has already passed since the case's inception.

Despite these risks, Lead Counsel undertook this litigation on a fully contingent basis with no guarantee of ever being paid. In short, at no point in this litigation was Lead Counsel "assured of a paycheck." *Florin v. Nationsbank of Georgia, N.A.*, 60 F.3d 1245, 1247 (7th Cir. 1995).

For its efforts on behalf of the Settlement Class, Lead Counsel seeks an award of attorneys' fees in the amount of one-third (33⅓%) of the Settlement Amount, or $1,333,333.33, plus interest earned at the same rate as the Settlement Fund.[3] Having engaged in over six years of diligent and hard-fought litigation and invested a collective $1,815,304.41[4] worth of professional time to achieve the Settlement, the requested attorneys' fee is reasonable based on an application of the Third Circuit's "*Gunter*" and "*Prudential*" factors for determining appropriate fee awards in common fund cases. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (listing factors) (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 336-40 (3d Cir. 1998)). In addition, it is well within the range of fees awarded in similar complex, contingency fee cases, and is further supported by a "cross-check" of the requested attorneys' fee against Lead Counsel and Liaison Counsel's lodestar, which results in a multiplier of 0.73.

[3] Lead Counsel (Hagens Berman Sobol Shapiro LLP) will allocate a portion of the awarded fees to Liaison Counsel (Lite DePalma Greenberg & Afanador, LLC).

[4] This collective amount includes the collective fees for time spent by Lead Counsel and Liaison Counsel. *See* Exs. 2 and 3 (Lead Counsel and Liaison Counsel's fee and expense declarations) of Declaration of Reed Kathrein submitted concurrently herewith.

Lead Counsel also seeks reimbursement of out-of-pocket litigation expenses that it and Liaison Counsel incurred in connection with the prosecution of this Action in the collective amount of $100,967.57.[5]

Finally, Lead Plaintiff requests a modest award in the total amount of $10,000 pursuant to 15 U.S.C. §78u-4(a)(4) to compensate him for his time spent leading this Action on behalf of the Settlement Class. This request is reasonable and in line with awards granted in similar cases.

II. HISTORY OF THE LITIGATION

The concurrently filed Declaration of Reed R. Kathrein ("Kathrein Decl.") is an integral part of this submission. For the sake of brevity, the Court is respectfully referred to it for a more detailed description of, *inter alia*: the factual and procedural history of the Action; the nature of the claims asserted; the litigation and negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and a description of the services Lead Counsel provided for the benefit of the Settlement Class.

III. THE COURT SHOULD APPROVE THE FEE REQUEST

A. Lead Counsel is Entitled to an Award of Attorneys' Fees From the Common Fund

The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).[6] The Third Circuit and courts within this circuit have reached the same conclusion. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("[W]e agree with the long line of

[5] This collective amount includes the collective litigation expenses incurred by Lead Counsel and Liaison Counsel. *See* Exs. 2 and 3 (Lead Counsel and Liaison Counsel's fee and expense declarations) of Declaration of Reed Kathrein submitted concurrently herewith.

[6] Unless otherwise noted, internal citations and quotations are omitted.

common fund cases that hold that attorneys 'whose efforts create, discover, increase, or preserve a [common] fund' . . . are entitled to compensation."); *Ikon*, 194 F.R.D. at 192 ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

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

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

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

percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (stating that in common fund cases "a reasonable fee is based on a percentage of the fund bestowed on the class"); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (the percentage of recovery method "'is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'").[7] The Third Circuit has also "recommended that district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award." *In re AT & T Corp.*, 455 F.3d at 164; *Sullivan*, 667 F.3d at 330. However, "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *In re AT & T Corp.*, 455 F.3d at 164.

The use of the percentage of recovery method also comports with the language of the PSLRA, which mandates that "[t]otal attorneys' fees and expenses awarded ... not exceed a ***reasonable percentage*** of the amount of any damages and prejudgment interest actually paid to the class … ." 15 U.S.C. §78u-4(a)(6) (emphasis added); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300 ("Consistent with past jurisprudence, the percentage-of-recovery method was incorporated in the Private Securities Litigation Reform Act of 1995."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (when drafting the PSLRA, Congress "indicated a preference for the use of the percentage method"). Thus, "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188, n. 7 (3d Cir. 2005).

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

For the reasons set forth below, Lead Counsel's requested award of attorneys' fees of one-third of the Settlement Fund is reasonable and should be approved.

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

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

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

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

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

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

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

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

The first *Gunter* factor "consider[s] the fee request in comparison to the size of the fund created and the number of class members to be benefitted." *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011); *see also Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"). Of course, "[a] smaller fund does not necessarily equate to a smaller percentage award." *P. Van Hove BVBA v. Universal Travel Grp., Inc.*, 2017 WL 2734714, at *11 (D.N.J. June 26, 2017). In fact, "because of fixed costs and economies of scale, attorneys' fees and costs do not increase dollar-for-dollar with the size of the case. Thus, it takes a greater percentage of the settlement to support litigation in a smaller case." *Id.*

Here, the $4 million settlement is a favorable outcome that will provide Settlement Class Members with an immediate cash recovery, while avoiding the significant risk, delay, expenses, and uncertainty of further litigation. As explained in Lead Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement (the "Final Approval Brief") filed concurrently herewith, the Settlement represents a recovery of 9.7% to 28% of maximum class-wide damages, estimated between $14.4 million and $41.3 million, depending on assumptions. This recovery compares favorably to similar settlements in the Third Circuit. *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. Witco Corp.*, 95 F. Supp. 2d 290, 319, 339 (W.D. Pa. 1997), *aff'd*, 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"); *Schuler v. Meds. Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (finding that a 4% recovery fell "squarely within the range of previous

settlement approvals"); *In re 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).[8] Accordingly, the Settlement represents a favorable outcome for the Settlement Class, providing an immediate and certain benefit that is in line with typical recoveries in securities class actions despite the many hurdles present in this case.

B. There Have Been No Objections by Settlement Class Members

The reaction of the Settlement Class to the requested fee is also important and, in this regard, courts consider "the presence or absence of substantial objections by members of the class to the settlement and/or fees requested by counsel." *Par Pharm.*, 2013 WL 3930091, at *9.

The Claims Administrator caused 8,396 Notices to be emailed or mailed to potential Settlement Class Members. *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 ¶ 7. The Claims Administrator was notified by a nominee that it sent direct links to the Long Notice to 1,743 potential Settlement Class Members. *Id.* at ¶ 6. A copy of the Summary Notice was also published electrically on *Globe Newswire* and in print in the *Investor's Business Daily*. *Id.* at ¶ 10. Each of these notices states that Lead Counsel would request attorneys' fees of up to one-third of the Settlement Amount,

[8] *See also In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *9 (E.D. Pa. Apr. 18, 2005) (noting that "class action settlements have typically recovered 'between 5.5% and 6.2% of the class members' estimated losses'"); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013) (approving an $8.1 million settlement that represented "7% recovery of total class-wide damages" because it was both "consistent with or above the average level of recovery in similar securities fraud class actions" and "within the proper range of reasonableness"); *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *14 (E.D. Pa. Jan. 25, 2016) (finding settlement of $8 million to be a "healthy percentage" where the recovery was 9-10% of the maximum estimated losses, but "likely reflect[ed] an even higher percentage of the estimated losses Lead Plaintiff could have foreseeably recovered.").

reimbursement of expenses of no more than $180,000, and an Award to Lead Plaintiffs of no more than $10,000.[9]

While the deadline to file objections is not until December 29, 2022, and thus has not yet passed, to date there have been no objections to the fee request (or to any aspect of the Settlement). *Id.* at ¶ 14.[10] "[T]he absence of substantial objections by class members to the fee requests weigh[s] in favor of approving the fee request." *Rite Aid Corp*, 396 F.3d at 305; *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (even when 29 members of a 281 person class (*i.e.*, 10% of the class) objected, the response of the class as a whole "strongly favors [the] settlement"); *In re General Motors*, 55 F.3d at 812 (quoting *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313 n. 15 (3d Cir.1993)) (stating that it is generally assumed that "'silence constitutes tacit consent to the agreement'"); *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 176 F.R.D. 158, 185 (E.D. Pa. 1997) (holding that "relatively low objection rate 'militates strongly in favor of approval of the settlement'").

C. The Skill and Efficiency of Lead Counsel Supports the Request

The Third Circuit has explained that the goal of the percentage fee award device is to ensure "that competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter*, 223 F.3d at 198. In this regard, "[t]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000). Here, in the face of significant risks and determined opposition, Lead Counsel obtained a favorable result for the Settlement Class, securing a recovery representing approximately 9.7% to 28% of maximum damages. This certain recovery is especially favorable

[9] *See* Craig Decl., Ex. A.
[10] If any objections are received after the date of this filing, Lead Plaintiff will address them in Lead Plaintiff's reply brief, to be filed on January 12, 2023.

because Defendants have fought Lead Plaintiff at every turn in this litigation and would have continued fighting Lead Plaintiff through class certification, summary judgment, and trial. Therefore, even though Lead Plaintiff believes in the merit of his case, there is no guarantee that Lead Plaintiff would have easily achieved a recovery for the Settlement Class given the contentious nature of the case.

Against this backdrop, Lead Counsel performed a thorough investigation into the alleged misconduct. Among other things, Lead Counsel reviewed a voluminous quantity of public documents concerning Immunomedics, prepared the Amended Complaint, prepared a Second Amended Complaint, prepared two rounds of motion to dismiss briefing, and prepared (but did not file) a Motion for Class Certification. Lead Counsel also propounded and responded to written discovery; reviewed thousands of documents during discovery; wrote several detailed joint discovery dispute letters to the Court; argued discovery disputes to the Court; and attended two mediation sessions over the course of three full-day sessions. Additionally, Lead Counsel defended Lead Plaintiff during his seven-hour long deposition. Lead Counsel also obtained several damages estimates from an expert and obtained an expert to opine on market efficiency in support of Lead Plaintiff's Motion for Class Certification. All of this was instrumental in negotiating and obtaining this $4 million settlement.

Lead Counsel's experience and track record is described in its firm resume. *See* Ex. 4 to Kathrein Decl. As its firm resume shows, Lead Counsel is highly experienced in the complex field of securities fraud class action litigation and has obtained numerous recoveries on behalf of investors. Courts throughout the country have acknowledged Lead Counsel's experience and ability. *See e.g., Moshell v. Sasol Limited, et al.*, Case No. 1:20-cv-1008, ECF No. 220 (S.D.N.Y Sept. 26, 2022) (Judge John P. Cronan noting at final approval hearing that, "[Hagens Berman]

are experienced class-action leaders, frequently serving as either lead or co-lead counsel in significant securities class actions…. [Hagens Berman]'s ability to obtain a favorable settlement for the class in the face of such formidable legal opposition confirms the quality of their representation of the class."). Lead Counsel applied the same skill and determination to litigating this Action.

"The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel." *Yedlowski*, 2016 WL 6661336, at *21; *see also Universal Travel*, 2017 WL 2734714, at *11 (same). Here, Defendants were zealously represented by experienced and able counsel from DLA Piper LLP (US) and Morris James LLP, prominent law firms with ample resources and expertise. The ability of Lead Counsel to obtain a favorable outcome for the Settlement Class in the face of formidable legal opposition further confirms the quality of Lead Counsel's representation. Thus, this factor weighs in favor of the requested fee.

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

"The fourth factor captures 'the probable costs, in both time and money of continued litigation.'" *Universal Travel,* 2017 WL 2734714, at *12 (quoting *In re Gen. Motors*, 55 F.3d at 812). As an initial matter, courts have repeatedly acknowledged that "securities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *Par Pharm.*, 2013 WL 3930091, at *4; *see also In re GNC Shareholder Litig.*, 668 F. Supp. 450, 451 (W.D. Pa. 1987) ("The complexity and concomitant expense of the instant litigation is beyond peradventure."); *Yedlowski*, 2016 WL 6661336, at *21 ("securities class actions are by nature particularly expensive to prosecute, usually requiring expert testimony on, at least questions of damages and loss causation."). This case was no exception.

Lead Plaintiff faced a number of hurdles in establishing liability and damages, the resolution of any in Defendants' favor could have resulted in no recovery for the Settlement Class.

See In re Datatec Sys., Inc. Sec. Litig., 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007) (commenting on the risk in proving scienter, loss causation, and damages). To avoid this fate, Lead Counsel performed a thorough investigation of the claims in this Action, consulted with damages and market efficiency experts, defended Lead Plaintiff at his deposition, engaged in multiple discovery disputes with Defendants, attended two separate mediations led by Judge Lechner and Jed Melnick, and engaged in hard-fought negotiations with Defendants to achieve this Settlement.

However, had this litigation continued, Lead Plaintiff would have faced substantial hurdles and risk. Upon Lead Plaintiff's filing of his Motion for Class Certification, Defendants would have filed their opposition with the assistance of a well-credentialed expert. Even if Lead Plaintiff were to prevail, depositions and discovery would have continued—with uncertain results—and Defendants would then have moved for summary judgment, which would then have to be briefed and argued. Another supplemental pre-trial order would have to be prepared, expert reports would have to be prepared and exchanged along with the scheduling of expert depositions, proposed jury instructions would have to be submitted, and motions *in limine* would have to be filed and argued—all in preparation for trial if the case progressed further. Substantial time and expense would need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain.

Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process—all in addition to the already six-plus-years spent litigating this case to date. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *16 (S.D.N.Y. Dec. 19, 2014) ("Over the last five years, nearly 48% of all securities class actions have been dismissed on motions prior to trial, while plaintiffs who succeeded at trial have found their judgments overturned on post-trial motions or

appeal"). Indeed, in complex securities cases, even a victory at the trial stage does not guarantee a successful outcome. *See Warner Commc'ns*, 618 F. Supp. at 747-48 ("Even a victory at trial is not a guarantee of ultimate success. If [Lead Plaintiff] were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, [Defendants] would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."); *Yedlowski*, 2016 WL 6661336, at *21 ("If the jury found in Plaintiffs' favor, they would still face Defendants' post-trial motions and likely appeal. Collecting a judgment requires crossing every one of these hurdles, but each of these steps involves significant risks."). Lead Counsel's efforts to secure the Settlement mitigates against the aforementioned risks by guaranteeing certain recovery for Settlement Class Members.

Considering the riskiness, expense, length, and complexity of this putative securities class action—especially when compared against the significant and certain $4 million recovery achieved by the Settlement—Lead Counsel's fee request is reasonable. Accordingly, this factor weighs in favor of the requested fee. *See Universal Travel*, 2017 WL 2734714, at *12 (awarding one-third fee and noting that "due to the complexity and nature of securities litigation, any further litigation would likely be time consuming as well as expensive due to the need for experts.").

E. The Risk of Nonpayment Supports the Requested Fee

Lead Counsel undertook this action on an entirely contingent fee basis, taking the risk that the litigation would yield no or very little recovery and leave Lead Counsel uncompensated for its time, as well as for its out-of-pocket expenses. Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *E.g., In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *28 (D.N.J. Oct. 1, 2013).

The risk of non-payment is especially high in securities class actions, as they are "notably difficult and notoriously uncertain." *Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993); *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *13 (D.N.J. June 15, 2020) (finding that the risk of non-payment supported fee request and that "recovery was uncertain due to the difficulty of prevailing in securities cases generally."). Legal precedents are continually making it more difficult to plead securities class actions. *In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 820 (S.D. Tex. 2012) ("The Court is acutely aware that federal legislation and authoritative precedents have created for plaintiffs in all securities actions formidable challenges to successful pleading.").

Here, Lead Counsel undertook this litigation on a contingency basis, with no guarantee that its time would ever be compensated or expenses reimbursed. This is a heavy responsibility with substantial risk. In assuming this heavy responsibility, Lead Counsel had to ensure that sufficient resources were dedicated to the prosecution of the Action. With an average lag time of several years for cases of this type to conclude—and indeed this case has taken over six years to conclude—the financial burden on contingent-fee counsel is far greater than on firms that are paid on an ongoing basis, like most defense counsel in these cases. In light of the difficulty and risk of undertaking such a lawsuit, Lead Counsel should be reimbursed for its time and expenses.

F. Lead and Liaison Counsel Devoted Significant Time to the Case

The sixth *Gunter* factor looks at counsel's time devoted to the litigation. *Gunter*, 223 F.3d at 199. This factor is usually considered with the lodestar cross-check to look at reasonableness of counsel's requested fee. Accordingly, this factor is addressed in connection with the lodestar cross-check, *infra* Section IV. I.

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

With respect to the final *Gunter* factor, "the court must (1) compare the award requested with other awards in comparable settlements; and (2) ensure that the award is consistent with what the attorney would have received had the fee been negotiated on the open market." *Hall v. AT & T Mobility LLC*, 2010 WL 4053547, at *21 (D.N.J. Oct. 13, 2010).[11] As to the first prong of the inquiry, numerous courts within the Third Circuit, including the District of New Jersey, have awarded fees of one-third (*i.e.* 33⅓%) of the recovery, even in cases involving much larger settlement funds than the instant case. *See In re Merck & Co., Inc. Vytorin Erisa Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (awarding 33⅓% of $41.5 million settlement fund and noting that "awards in similar common fund cases appear analogous" and award was "consistent with other similar cases"); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) (awarding one-third of $7.3 million and stating that "the award of one-third of the fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district"); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee percentage [of] 31.71%" with a median value that "turns out to be one-third"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *12 (D.N.J. Nov. 9, 2005) (one-third of $75 million); *In re Liquid Aluminum Sulfate Antitrust Litig.*, 2019 WL 7375288, at *4 (D.N.J. Nov. 7, 2019) (approving attorneys' fees of one-third, or $11,018,884.36); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 495-98 (E.D. Pa. 2003) (awarding one-third of $7 million settlement fund); *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *10 (E.D. Pa. April 18, 2005) (finding award of one-third of $7 million

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

reasonable after cross-checking percentage of recovery to lodestar); *Ortiz v. Canopy Growth Corp., et al.*, Case No. 2:19-cv-20543-KM-ESK, ECF No. 100 (Jun. 7, 2022) (approving one-third of $13,000,000 settlement amount as attorneys' fee award).[12]

"The requested fee of 33⅓% is also consistent with a privately negotiated contingent fee in the marketplace." *Hall*, 2010 WL 4053547, at *21. "Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation." *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005); *see also Fanning v. Acromed Corp.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct. 23, 2000) (noting that "[Lead Counsel] in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery."); *Rowe*, 2011 WL 3837106, at *22 (awarding 33⅓% as "consistent with a privately negotiated contingent fee in the marketplace"). Thus, the requested fee award is strongly supported by both subparts of this final *Gunter* factor.

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

H. The *Prudential* Factors Favor Approving the Requested Fee

The applicable *Prudential* Factors also weigh in favor of approving the requested fee. First, the Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing. *See Prudential*, 148 F.3d at 338. Here, Lead Counsel performed its own independent investigation without the assistance of any governmental investigation and developed their own theories to ultimately obtain the Settlement. *Wallace v. Powell*, 288 F.R.D. 347, 375 (M.D. Pa. 2012) (the settlement in question could not be attributed to work done by other groups such as the government). Accordingly, this Settlement is solely attributable to the efforts of Lead Counsel.

Second, the requested fee of one-third of the common fund is also consistent with typical fee awards in non-class cases. *See In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138, at *7 (S.D.N.Y. Aug. 24, 1992) ("What should govern [contingent fee] awards is not the essentially whimsical view of a judge, or even a panel of judges, as to how much is enough in a particular case, but what the market pays in similar cases."). If this were an individual action, the customary contingent fee would likely range between 30% and 40% of the recovery. *See, e.g.*, *Ikon*, 194 F.R.D. at 194; *Blum*, 465 U.S. at 903 n. *19 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery."). Lead Counsel's fee request of one-third of the Settlement Fund comports with these private standards. *Schuler*, 2016 WL 3457218, at *10. Thus, this factor supports Lead Counsel's fee request.

Another factor the Third Circuit asks district courts to consider is whether the settlement contains "any innovative terms." *Prudential*, 148 F.3d at 340. This Settlement does not have any particularly innovative terms because, as Lead Counsel believes, an all-cash recovery is the best remedy for the injury suffered by the investors in the Settlement Class and is the standard recovery

in securities class actions. In such circumstances, the lack of innovative terms "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg Prod. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012).

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

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

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

In "cross-checking" the percentage of recovery award against the lodestar, the Third Circuit has emphasized that the calculation is "not a full-blown lodestar inquiry" and need not entail "mathematical precision" or "bean-counting." *In re AT & T Corp.*, 455 F.3d at 169 (*quoting Rite Aid Corp.*, 396 F.3d at 306); *AT & T Corp.*, 455 F.3d at 164 ("The lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method."). Accordingly, "the district court may rely on summaries submitted by [counsel] and need not review actual billing records." *Rite Aid Corp.*, 396 F.3d at 306-07.

Here, application of a lodestar cross-check confirms that the requested 33⅓% fee is fair and reasonable. Lead Counsel and Liaison Counsel devoted an aggregate total of 2,930 hours to the prosecution and resolution of this Action. Exs. 2 and 3 to Kathrein Decl. Lead and Liaison Counsel's total lodestar—which is derived by multiplying their hours spent on the litigation by

their current hourly rates for attorneys—is $1,815,304.41.[13] *Id*. Thus, the requested 33⅓% fee, which equates to $1,333,333.33 (plus interest on that amount at the same rate as earned by the Settlement Fund), represents a multiplier of 0.73 on Lead Counsel's lodestar.[14]

The multiplier here supports the fairness of the requested fee because it is *well below multipliers* normally and routinely granted by courts—even in less complex cases that did not last as long as the over six years it took to settle the instant case. *See In re Raviscent Techs. Inc. Sec. Litig.*, 2005 WL 906361, at *12 (E.D. Pa. Apr. 18, 2005) ("Lodestar multiples of less than four are well within the range awarded by courts in this Circuit."); *Schuler*, 2016 WL 3457218, at *9-10 (awarding one-third of settlement fund, resulting in 3.57 multiplier in case that settled before decision on motion to dismiss); *Meijer, Inc. v. 3M*, 2f006 WL 2382718, at *24 (E.D. Pa. Aug. 14, 2006) (approving a percentage fee award that translated to a 4.77 multiplier in case that settled after one year); *Yedlowski*, 2016 WL 6661336, at *18 (awarding a 3.4 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (approving percentage fee award that

[13] Courts have approved the use of current rates in the lodestar calculation to "compensate for the delay in receiving compensation, inflationary losses, and the loss of interest." *In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *see also Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *In re Safety Components, Inc. Sec. Litig.*, 166 F.Supp.2d 72, 103, n. 11 (D.N.J. 2001) ("calculating the lodestar of Plaintiffs' Counsel using current hourly rates is appropriate."); *Institutionalized Juvs. v. Sec'y of Pub. Welfare*, 758 F.2d 897, 923 (3d Cir. 1985) & n. 41 (3d Cir. 1985) ("using current market rates to calculate the lodestar figure may counterbalance the delay in payment as well as simplify the task of the district court" (quoting *Murray v. Weinberger*, 741 F.2d 1423, 1433 (D.C. Cir. 1984))); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) ("current rates, rather than historical rates, should be applied in order to compensate for the delay in payment").

Additionally, Lead Counsel submits that Lead Counsel and Liaison Counsel's rates are less than, or comparable to, those used by peer plaintiff and defense-side law firms litigating matters of similar magnitude. *See* Ex. 6 to Kathrein Decl. (Peer Firm Billing Rates).

[14] $1,333,333.33 / $1,815,304.41 = 0.73.

equated to a 6.96 multiplier); *In re AT & T Corp.*, 455 F.3d at 173 ("[W]e approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated 'was neither legally nor factually complex'" and that settled in four months); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05 CIV 10240 CM, 2007 WL 2230177, at *17 (S.D.N.Y. July 27, 2007) ("[l]odestar multipliers of nearly 5 have been deemed 'common' by courts[.]"); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming 3.65 multiplier and explaining that in contingency fee cases, courts "routinely enhanced the lodestar to reflect the risk of non-payment" and that this "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.").

Moreover, because the multiplier here is less than 1.0, it is further evidence of the reasonableness of the fee request. *West Palm Beach Police Pens. Fund v. DCF Global Corp.*, 2017 WL 4167440, at *9 (E.D. Penn. Sept. 20, 2017) (holding that 0.76 multiplier is "well within[] the range the Third Circuit has approved" and that multipliers from one to four are reasonable and frequently awarded in common fund cases); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *9 (D.N.J. Nov. 28, 2007) (multiplier of approximately 0.39 is well within the accepted range). In fact, in order to compute a below 1.0 multiplier, Lead Counsel billed a *higher value on its lodestar* than the requested fee award of $1,333,333.33, thereby evidencing that Lead Counsel has provided immense value to the class by choosing to accept a fee award lower than the total lodestar value it has billed. *A fortiori*, the lodestar cross-check confirms the reasonableness of the requested attorneys' fees.

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

"In the Third Circuit, it is standard practice to reimburse litigation expenses in addition to granting fee awards." *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 658 (E.D. Pa. 2015). Indeed, "'[c]ounsel in common fund cases [are] entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.'" *Universal Travel*, 2017 WL 2734714, at *13 (*quoting In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002)); *see also In re Ikon*, 194 F.R.D. at 192 ("'There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of ... reasonable litigation expenses from that fund.'" (quoting *Lachance v. Harrington*, 965 F. Supp. 630, 651 (E.D. Pa. 1997)).

Here, Lead Counsel and Liaison Counsel expended a collective $100,967.57 in out-of-pocket costs, which are divided into categories in the declarations submitted by Lead Counsel and Liaison Counsel. *See* Exs. 2 and 3 to Kathrein Decl., *see also Chemi v. Champion Mortg.*, 2009 WL 1470429, at *13 (D.N.J. May 26, 2009) (finding summary of expenses sufficient for determination that expenses requested were reasonable). These litigation expenses are well-documented, based on the books and records maintained by Lead Counsel and Liaison Counsel, and reflect the costs of prosecuting this Action. *Id.* The majority of expenses were for experts and mediation services. Other necessary expenses incurred include fees for notices and press releases to potential class members, online legal research costs, court and filing fees, shipping fees, court reporter/deposition fees, and messenger service expenses. These litigation expenses were necessary for the prosecution of this Action. Reimbursement of similar expenses is routinely permitted. *See In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314, at *32 (D.N.J. Sept. 13, 2005) (approving reimbursement of "costs expended for purposes of prosecuting this litigation,

including substantial fees for experts [and] copying costs"); *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, 2008 WL 4974782, at *18 (E.D. Pa. Nov. 21, 2008) (approving reimbursement of expenses for "duplication costs, online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, [and] transportation" based on declarations of counsel); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (similar); *Katz v. China Century Dragon Media, Inc.*, 2013 WL 11237202, at *8 (C.D. Cal. Oct. 10, 2013) (approving reimbursement of notice to class members and press releases).

The Notice informed Settlement Class Members that Lead Counsel would seek reimbursement of litigation expenses up to $180,000— higher than the expense reimbursement sought here—and to date, there have been no objections. Craig Decl. ¶ 14. The requested litigation expenses should, therefore, be awarded.

VI. THE COURT SHOULD GRANT THE REQUESTED AWARD TO PLAINTIFF

Pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), Lead Plaintiff seeks an award of $10,000 for his time and effort spent overseeing this action.

While the PSLRA does not explicitly provide for incentive awards for a lead or named plaintiff to compensate them for their service, it does acknowledge that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). "The Conference Committee recognizes that lead plaintiffs should be reimbursed for reasonable costs and expenses associated with service as lead plaintiff, including lost wages, and grants the courts discretion to award fees accordingly." H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. 35 (1995). "[T]he Third Circuit favors encouraging representative plaintiffs, by appropriate means, to create common funds and to enforce laws—even approving

'incentive awards' to class representatives." *Schering-Plough*, 2013 WL 5505744, at *37; *see also. Hicks v. Stanley*, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005) (courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place").

The Notice informed Settlement Class Members that Lead Counsel would seek an award for Lead Plaintiff not to exceed $10,000 in total.[15] No objections have been received in response to these requests. Craig Decl. ¶ 14. Accordingly, the Court should award the requested amounts. Throughout this litigation, Lead Plaintiff was available to Lead Counsel as needed and performed his duties with attentiveness and diligence. Before his untimely death, Mr. Tsai had deep familiarity with the claims in this action through his researching and filing of the Amended and Second Amended Complaint; had successfully opposed the Defendants' motion to dismiss (ECF Nos. 34, 51, and 52); had actively participated in discovery by responding and agreeing to produce documents to Defendants' requests for production and other discovery requests; had reviewed pleadings and motions submitted in this case; and had participated in the drafting of a motion for class certification. Mr. Tsai had vigorously pursued fact discovery, including propounding document requests. Mr. Tsai also participated in three full days of two separate mediation sessions and sat for seven hours for his own deposition. Mr. Tsai also spent time reviewing his deposition transcript and making corrections. Mr. Tsai continued to supervise, monitor, and participate in the ongoing prosecution of this case—including reviewing and approving the Settlement—and adequately represented the interests of the Class up until his passing.

[15] *See* Craig Decl., Ex. A.

These are the kinds of activities that warrant reimbursement for class representatives for their lost time and opportunities. *Schering-Plough*, 2013 WL 5505744, at *56-57 (approving awards to plaintiffs for reviewing pleadings, corresponding with Lead Counsel, and preparing for and attending mediation); *Par Pharm.*, 2013 WL 3930091, at *11 (similar); *Schuler*, 2016 WL 3457218, at *11 (approving awards to plaintiffs who reviewed filings, conferred with lead counsel, remained apprised about the case and the company). Lead Plaintiff is even more deserving here because he continued monitoring this case up until his passing.

Here, the award to Lead Plaintiff amounts to a small percentage (*i.e.* 0.25%) of the Settlement Fund, and as such, is reasonable and should be approved. This Court and others in this District regularly make similar or more generous awards to lead plaintiffs. *Pepe v. Cocrystal Pharma, Inc., et al.*, Case No. 2:18-cv-14901 (D.N.J.) (ECF No. 86) (awarding lead plaintiff $10,000 in case that settled before a motion to dismiss was filed); *Par Pharma.*, 2013 WL 3930091, at *11 (awarding $18,000 to lead plaintiff); *Andavarapu v. iBio, Inc. et al.*, 14-cv-1434-RGA (ECF No. 69) (D. Del. April 21, 2016) (awarding $10,000 to lead plaintiff in case that settled before discovery).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that this Court: (a) award Lead Counsel reasonable attorneys' fees in the total amount of one-third of the Settlement Amount (*i.e.* $1,333,333.33); (b) reimburse Lead Counsel and Liaison Counsel for expenses and costs in the total amount of $100,967.57; and (c) grant an Award to Lead Plaintiff in the total amount of $10,000.

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 LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD TO LEAD PLAINTIFF 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 AWARDING ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD TO LEAD PLAINTIFF

WHEREAS, the Court has granted final approval of the Settlement of the above-referenced class action;

WHEREAS, Lead Counsel has petitioned the Court for an award of attorneys' fees in compensation for services provided to Lead Plaintiff and the Settlement Class, along with reimbursement of expenses incurred in connection with prosecuting this Action, and an award to Lead Plaintiff, to be paid out of the Settlement Fund;

WHEREAS, capitalized terms used herein having the meanings defined in the Stipulation and Agreement of Settlement dated April 13, 2022 (the "Stipulation") (ECF No. 113-2); and

WHEREAS, the Court has reviewed the fee application and the supporting materials filed therewith and has heard the presentation made by Lead Counsel during the Settlement Hearing on January 19, 2023, and due consideration having been had thereon.

NOW, THEREFORE, it is hereby ordered:

1. Lead Counsel is hereby awarded attorneys' fees totaling one-third of the Settlement Amount ($1,333,333.33) plus reimbursement of out-of-pocket litigation expenses in the amount of $100,967.57, together with interest earned thereon at the rate earned by the Settlement Fund until paid. The Court finds that the amount of fees and expenses awarded is fair and reasonable.

2. Lead Plaintiff Sensung Tsai (or his estate or successor) shall be awarded $10,000, as reimbursement for his lost time and expenses in connection with the prosecution of this Action.

3. Except as otherwise provided herein, the attorneys' fees, reimbursement of expenses, and Award to Lead Plaintiff shall be paid in the manner and procedure provided for in the Stipulation.

IT IS SO ORDERED.

Dated: _____, 2023

_____
HON. KATHARINE S. HAYDEN
UNITED STATES DISTRICT JUDGE