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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re Amicus Therapeutics, Inc. Securities Litigation	Civil Action No. 3:15-cv-7350-PGS-DEA *Consolidated with* 3:15-cv-7380 and 3:15-cv-7448 (per ECF No. 40) Return Date: November 9, 2017

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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INTRODUCTION

Lead Plaintiff is pleased to submit this memorandum in support of his motion for final approval of the settlement of this shareholder class action for a cash payment of $3,750,000. Lead Plaintiff respectfully submits that the settlement is fair, reasonable, and adequate, and warrants final approval. Lead Plaintiff also moves the Court for the payment of attorneys' fees and for the modest reimbursement of Lead Plaintiff's costs. Both requests are warranted under the law in this Circuit.

This securities class action alleges that defendants Amicus Therapeutics, Inc. ("Amicus" or the "Company"), and officers John Crowley and Jay Barth, made materially false and misleading statements to Amicus investors. Specifically, on September 15, 2015 Amicus publicly reported on a meeting it held with the United States Food and Drug Administration ("FDA") concerning its prospects and timing to file a new drug application ("NDA") for its new drug in development, Galafold, which was to treat Fabry disease. Amicus disclosed, in part, that based on FDA meeting feedback, the Company was on track for filing its NDA by year-end 2015. Two weeks later, on October 2, 2015, Amicus indicated that based on what it claimed was additional FDA feedback, it would not be in position to file its NDA by year-end 2015 and Amicus' stock price plummeted by 54% on that day.

Two class action cases were filed alleging that Amicus defrauded its investors between September 15, 2015 and October 1, 2015 (the "Short Period"). During the

sixty-day lead plaintiff notice period, however, an additional class action was filed charging that Amicus misled investors as far back as March 19, 2015 regarding the timing and prospects for the Company to file an NDA by year-end 2015 (the "Long Period").

Defendants' motion to dismiss Lead Plaintiff's Consolidated and Amended Class Action Complaint (the "Amended Complaint") was pending when the parties reached this settlement. Lead Plaintiff acknowledges that sustaining a claim for securities fraud for alleged misstatements in the Long Period would have been extremely challenging. Whether the misstatements were actionable or merely forward-looking statements presented an uphill battle, along with questions of whether defendants acted with requisite degree of scienter when making those statements.

Lead Plaintiff, however, believed the statements made in the Short Period were meritorious. The Short Period misstatements were about a past event – the FDA meeting – which Plaintiff believes are not subject to the forward-looking statement defense. Similarly, Plaintiff made specific allegations about the Company's handling of an acquisition of a small biotech company, Scioderm, which occurred during the Short Period. Defendant Crowley sat on the Board of Scioderm, which Amicus acquired. Plaintiff specifically alleged that Amicus' decision to change the mix of stock and cash consideration being paid for Scioderm during the Class Period

provided additional evidence of scienter.

Nonetheless, Lead Plaintiff still faced a question about whether these allegations would be found to adequately support pleading that the Company and Crowley's post-September 15 statements were made with the requisite degree of scienter, a difficult task under the Private Securities Litigation Reform Act's ("PSLRA") high pleading bar.

The estimated alleged damages for the September 15 through October 1, 2015 period were determined by Plaintiff's damages expert to be approximately $44 million. A settlement of almost 8.5% of alleged recoverable damages for the Short Period investors, before resolution of a risky motion to dismiss, we submit, is an excellent result. It guarantees payment to the class now without the attendant risk of dismissal, or continued litigation which could yield no payment at all.

The Settlement Agreement[1] provides for the payment of $3,750,000 for the benefit of the Class.[2] Lead Plaintiff therefore requests that the Court enter the [Proposed] Order and Final Judgment (ECF 59-3, pp. 94-111), which, among other things, finally certifies the Class under Federal Rule of Civil Procedure 23(b)(3),

[1] Capitalized terms not defined herein have the same meaning as set forth in the Stipulation of Settlement dated April 14, 2017 ("Settlement Agreement") (ECF No. 59-3).

[2] As explained in the Notice accompanying the papers, and as discussed below, the proposed Plan of Allocation allocates 95% of the Recognized Loss to Short Period purchases.

certifies Lead Plaintiff as Class Representative, finds the Settlement as fair, reasonable, adequate, and in the best interests of the Class, releases the parties, approves the plan of allocation, awards attorneys' fees, and enters and Order and Final Judgment.

PROCEDURAL HISTORY

On October 7, 2015, Lifestyle Investments, LLC filed a class action complaint in the United States District Court for the District of New Jersey (the "District Court" or "Court") against Amicus and its Chairman and Chief Executive, Crowley. *Lifestyle Investments, LLC v. Amicus Therapeutics, Inc., et al.*, No. 3:15-cv-07350 (D.N.J. Oct. 7, 2015). The complaint alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. §§ 78j(b), 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5 (the "Exchange Act"), on behalf of a class of purchasers of the Company's common stock between September 15, 2015 and October 1, 2015, alleging that Defendants made materially false and misleading statements to Amicus investors concerning a September 15, 2015 meeting the Company held with the Food and Drug Administration about the approval pathway for the drug Galafold.

On October 8, 2015, Gary Frechter filed a complaint in the same Court against Amicus, Mr. Crowley and Amicus' Chief Financial Officer, Dr. Barth. *Frechter v.*

Amicus Therapeutics, Inc., et al., No. 3:15-cv-07380 (D.N.J. Oct. 8, 2015). This action also alleged violations of Sections 10(b) and 20(a) of the Exchange Act, but set a class period beginning on March 19, 2015, running through October 1, 2015, and also alleged that Defendants made materially false and misleading statements to Amicus investors about the company's prospects for obtaining FDA approval of its drug Galafold.

On October 13, 2015, Michael R. Harvey filed a complaint in the same Court against Amicus and Mr. Crowley that was virtually identical to the complaint filed by Lifestyle Investments, LLC. *Harvey v. Amicus Therapeutics, Inc., et al.*, No. 3:15-cv-07448 (D.N.J. Oct. 13, 2015) also alleged that Defendants made materially false and misleading statements to Amicus investors.

On May 26, 2016, the Court consolidated the three actions, appointed Dr. Barry Brenner as Lead Plaintiff, and approved Lead Plaintiff's selection of Block & Leviton LLP and Gardy & Notis LLP as Lead and Liaison counsel (collectively "Plaintiff's Counsel"), respectively, in the consolidated action.

Dr. Brenner filed an Amended Complaint against Amicus, Mr. Crowley, and Dr. Barth on July 11, 2016. (ECF No. 43.) The Complaint adopted the longer class period urged by the *Frechter* action, and alleged that (1) all Defendants made material misrepresentations and omitted from disclosure material facts necessary to make the statements made, not misleading, in violation of Section 10(b) and Rule

10b-5 of the Exchange Act, and (2) the Individual Defendants are liable for any primary violation of the Exchange Act as alleged control persons under Section 20(a) of the Exchange Act.

On August 25, 2016, Defendants filed a Motion to Dismiss the Complaint. (ECF No. 47.) Lead Plaintiff opposed that motion on September 26, 2016. (ECF No. 50.) Defendants replied on October 28, 2016. (ECF No. 54.)

On November 1, 2016, Magistrate Judge Douglas E. Arpert held a telephone conference with counsel for the Parties. During the teleconference, Judge Arpert inquired if the parties were interested in mediation while the motion was pending. The Parties agreed to attend an out-of-court mediation to see if the case could be resolved before the Motion to Dismiss was decided. *See* Declaration of Jeffrey C. Block ("Block Decl.") ¶¶ 8-9, submitted herewith.

On January 12, 2017, the Parties participated in a mediation led by Jed D. Melnick, Esq., of JAMS. The Parties engaged in arm's-length negotiations, but were unable to reach an agreement on that date. For over a month, the parties continued settlement discussions through Mr. Melnick as a mediator following the in-person mediation. On February 16, 2017, following those additional arms'-length negotiations facilitated by Mr. Melnick, the Parties reached an agreement-in-principle concerning the proposed settlement of the Action (the "Settlement"). Block Decl. ¶ 9.

On April 14, 2017, Dr. Brenner moved for preliminary approval of the Settlement. (ECF No. 59.) The Court heard oral argument on June 29, 2017, and preliminarily approved the settlement the same day. (ECF No. 64.)

Under the terms of the Settlement Agreement and the Preliminary Approval Order granted by the Court, the deadline for class members to object to the settlement or exclude themselves from the settlement is October 19, 2017. To date, no class member has objected to the settlement.

The Court has scheduled a Settlement Hearing for November 9, 2017. The deadline for class members to submit claim forms is January 1, 2018.

ARGUMENT

Plaintiff respectfully requests this Court to finally approve the Settlement Agreement, certify the class, approve the proposed plan of allocation, approve the notice program, award class counsel fees, and approve the reimbursement of expenses of the class representative.

I. The Settlement Should Be Finally Approved

A. The Law Favors the Settlement of Class Action Litigation

Judicial policy favors the settlement of class actions. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3rd Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal

litigation."); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3rd Cir. 2010) ("[A] strong public policy exists, which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation.").

By approving this Settlement, the Court will be heeding these policies, as this case is a complex securities class action that could take up years of additional time and resources of the parties and this Court (and potentially of the appellate courts).

B. The Standard for Approving a Class Action Settlement

Federal Rule of Civil Procedure 23(e) provides that "claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." The rule requires, among other things, approval "only after a hearing and on finding that it is fair, reasonable, and adequate." *Id*. Whether a settlement is fair, reasonable, and adequate rests in the Court's sound discretion. *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968).

The Court is not required to substitute its judgment for that of the parties who negotiated the settlement. *Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985). "Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. They do not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88

n.14 (1981) (internal citations omitted). The court may rely on the judgment of experienced counsel, and should not prejudge the merits of the case. *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 804 (3rd Cir. 1974).

C. The Settlement Is Fair, Reasonable, and Adequate

In the Third Circuit, courts are instructed to consider nine factors when determining whether a proposed class action is fair, reasonable and adequate. *Girsh v. Jepson*, 521 F.2d 153, 157 (3rd Cir. 1975). Specifically:

> (1) The complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the 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.

In this case, these factors (the "*Girsh* factors") militate in favor of approving the Settlement Agreement.

"The complexity, expense, and likely duration of the litigation"

This factor addresses the "probable costs, in both time and money, of continued litigation." *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3rd Cir. 2001) (citation and internal quotations omitted). A settlement is favored when "continuing litigation through trial would have required additional discovery, extensive pretrial

motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3rd Cir. 2004). "Securities 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); *See also In re Suprema Specialties, Inc. Sec. Litig.*, 02-168WHW, 2008 WL 906254, at **4-5 (D.N.J. Mar. 31, 2008) (complexity of securities class action supports final approval); *In re Datatec Sys. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *3 (D.N.J. Nov. 28, 2007) (complexity of the issues involved in a securities fraud class action among the reasons supporting settlement).

Here, there were numerous significantly costly (in time, money, and judicial resources) events that would likely have occurred had this case proceeded to trial:

- The Court would have heard argument on Defendants' Motion to Dismiss; this could have led to additional rounds of Motion practice depending on the Court's ruling;
- Assuming the Court denied any part of the motion to dismiss, the parties would have then engaged in significant discovery relating to the Company's interactions with the FDA and their internal discussions regarding the same; numerous depositions would have been taken of Amicus' executives and government officials;
- The parties would have briefed and likely contested class certification, including questions of whether Amicus stock traded efficiently, and thus allowed the Class to rely on the fraud-on-the-market presumption. This would have involved the retention of experts and potential *Daubert* hearings in addition to a hearing on class certification;

- Defendants were likely to move for summary judgment on some or all of the issues in the case, which would have led to additional briefing and hearings on expert admissibility and the merits of Defendants motion;

- Ultimately the case could have proceeded to a multi-week trial;

- Either side was likely to appeal unfavorable and case-dispositive decisions or, potentially, the Court's decision about class certification.

Without this settlement, the parties would have likely faced years of complicated litigation. Taking this into account, further litigation carries a great amount of risk to both parties, and burden to the parties and the Court.

Courts faced with these considerations have found that the complexity of securities fraud class actions warrants support of a Settlement. *In re Par Pharm.*, 2013 WL 3930091, at *4 ("Given the procedural and substantive complexities 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.").

"The reaction of the class to the settlement"

"This factor requires the Court to evaluate whether the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable." *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08-397(DMC)(JAD) and 08-2177(DMC)(JAD), 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013). The absence of a large number of objectors raises a strong presumption

that the terms of the proposed settlement are fair. *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 176 F.R.D. 158, 185 (E.D. Pa. 1997) ("relatively low objection rate militates strongly in favor of approval of the settlement") (internal citations omitted).

Here, the objection deadline is October 19, 2017. To date, after an extensive notice program (described below), no objections and only one exclusion request (representing 200 shares purchased during the Long Period) have been received. Declaration of Alexander Villanova ("Villanova Decl.") ¶¶ 18-19. This strongly militates in favor of approval of the settlement. (Plaintiff will update the Court in a reply brief to be filed on November 2, 2017 if it receives any objections or exclusions between now and then, and will respond to any objections.)

"The stage of the proceedings and the amount of discovery completed"

The settlement here occurred before a motion to dismiss was decided. Under the PSLRA, no formal discovery can take place before a Court decides a motion to dismiss. 15 U.S.C. § 78u-4(a)(3)(B). Nonetheless, the parties engaged in an arms-length mediation, and as part of that mediation, Defendants made certain proffers of evidence to Plaintiffs. These proffers were extremely valuable to Plaintiff's counsel in evaluating the strength of Plaintiff's claims and Defendants' anticipated defenses, Block Decl. ¶ 9.

The relevant inquiry here 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." *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, MDL 1500, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006).

Plaintiff's Counsel conducted a full investigation, including arranging the interviews of confidential witnesses, a review of SEC filings, news reports, analyst reports, earnings call transcripts, and other publicly available materials before drafting and filing the Amended Complaint. Block Decl. ¶¶ 3 and 5. Plaintiff's Counsel continued to evaluate the strengths of its case throughout the briefing on Defendants' Motion to Dismiss. *Id.* ¶ 11. And during the arms-length mediation, Plaintiff's Counsel learned additional facts about what discovery was likely to yield. *Id.* ¶ 9. As such, Plaintiffs' Counsel have demonstrated a strong understanding of the case that supports the approval of the Settlement.

"The risks of establishing liability" and "The risks of establishing damages"

When considering the risk of establishing liability, courts consider what the "potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them." *In re Cendant Corp. Litig.*, 264 F.3d at 237 (3rd Cir 2001). When considering the risk of establishing damages, courts "attempt[] to measure the expected value of litigating the action rather than settling it at the current time." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3dat 816 (3rd Cir. 1995).

Here, Lead Plaintiff faced significant hurdles: (a) Defendants' had a pending Motion to Dismiss (ECF No. 47) which could have resulted in the dismissal of the Long Period claims or the dismissal of the entire action; (b) even if Plaintiff survived the motion to dismiss, Defendants would have contested class certification; (c) there was no guarantee that discovery would have led to the production of evidence that supported Plaintiff's claims; (d) Plaintiff was likely to face a summary judgment motion from Defendants on disputed issues, including falsity and scienter; (e) even if successful in each of the above stages, Plaintiff faced a trial where Defendants' state of mind would have been an issue, and it is impossible to predict how a jury would have reacted to the evidence at trial.

In their motion to dismiss briefing, Defendants vigorously argued that the Amended Complaint be dismissed because, among other things, Lead Plaintiff failed to plead particularized facts supporting a strong inference of scienter, as is required by the PSLRA. For the Short Period, Defendants argued that the FDA provided different and additional information between the initial meeting on September 15, 2015 and October 1, 2015, and thus there were insufficiently pleaded facts to support the strong inference that Defendants intended to defraud when they reported on the meeting on September 15, 2015.

For the Long Period, Defendants argued that, among other things, all the alleged misstatements were non-actionable forward-looking statements; statements

concerning whether and when a future act might occur: the filing of an NDA for galafold. Defendants not only argued that these statements were not actionable, but that there were insufficient facts to support a strong inference that they acted with the requisite degree of scienter.

Plaintiffs are confident in their case, but realize that there is great "difficulty of establishing liability," which is a "common risk of securities litigation." *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, MDL 1500, 2006 WL 903236, at *11 (S.D.N.Y. 2006).

Similarly, Plaintiff would have faced competing expert testimony on loss causation and damages. While Plaintiff believes that Amicus shares were inflated by $8.05 per share (based on the report of its expert), Block Decl. ¶ 8, Defendants surely would have disputed that the entire drop experienced by Amicus shares on October 2, 2015 was attributable to alleged false and misleading statements made by Defendants. Proving damages in securities fraud cases 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.*, No. 00 Civ. 6689(SAS), 2003 WL 22244676, at *3 (S.D.N.Y. Sep. 29, 2003). The jury's decision would "depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *18 (S.D.N.Y. Nov. 18, 2010).

Furthermore, the risk of establishing liability and damages are "intertwined." *Milliron v. T-Mobile USA, Inc.*, No. 08-4149 (JLL), 2009 WL 3345762, at *7 (D.N.J. Sep. 10, 2009). "Normally, proving damages involves many of the same risks as proving liability because the former is contingent upon the latter." *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 505 (W.D. Penn. Dec. 22, 2003) (internal quotations and citations omitted).

Here, the risks for plaintiffs of establishing liability and damages were significant, and support the approval of the Settlement.

"The risks of maintaining the class action through the trial"

While Plaintiff believes that certification of the class here is appropriate, and would have been proper if the case proceeded, it is possible that the Court could have denied Plaintiff class certification. "Undoubtedly, Defendants would take discovery on class certification issues, seek to attack the certification of the class and to limit the size of the class." *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828 at *4. Because this case was settled before a class certification motion was briefed and decided, the settlement avoids the risk of Plaintiff losing on his motion for class certification.

"The ability of the defendants to withstand a greater judgment"

The Court may also consider Defendants' ability to withstand a judgment greater than that secured by the Settlement. *In re Cendant Corp. Litig.*, 264 F.3d at

240. Here, Defendants were entitled to rely on, among other things, Directors and Officers insurance that provided coverage greater than the value of the Settlement. The fact that Defendants *could* have paid more does not render the Settlement unreasonable, however. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 538 ("[T]he fact that [Defendants] could afford to pay more does not mean it is obligated to pay any more than what the . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached."); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550 at *19 ("[T]he mere ability to withstand a greater judgment does not mean the settlement is unfair."); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 333 (E.D. Pa. 2007) (even when Defendant "likely can withstand a judgment significantly greater than the Settlement . . . this determination in itself does not carry much weight in evaluating the fairness of the Settlement.")

"The range of reasonableness of the settlement fund in light of the best possible recovery" and "The range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation"

Courts apply the final two *Girsh* factors "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." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091 at *7 (internal quotations and citations omitted). In determining what is reasonable, the Court "compares the present value of the damages plaintiffs would likely recover

if successful, appropriately discounted for the risk of not prevailing, with the amount of the proposed settlement." *Id.*

The $3.75 million cash settlement, which represents approximately 8.5% of Plaintiffs' estimate of total recoverable damages in the Short Period, and which was obtained while the risk of dismissal was still present, is within the range of reasonableness in light of all of the attendant risks of litigation and in light of the best possible recovery.

Cornerstone Research analyzed securities class action settlements at all stages of litigation, and estimated that median settlements as a percentage of estimated damages in securities class actions ranged between 1.8% and 2.9% between 2007 and 2016.[3] Thus, the Settlement's provision of 8.5% of damages for the Short Period represents almost three times as much recovery as median settlements at all stages of litigation. Through the end of 2016, of over 5,000 securities class actions filed since the passage of the PSLRA, only 21 cases have gone to trial and only 16 have reached a verdict or judgment.[4] Thus, the vast majority of cases that survive motions

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[3] Cornerstone Research, Securities Class Action Settlements: 2016 Review and Analysis (available at https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2016-Review-and-Analysis)

[4] NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review* (available at https://www.supremecourt.gov/opinions/URLs_Cited/OT2016/16-373/16-373-1.pdf)

to dismiss and other dispositive motions result in settlements, not damages based on a verdict after trial. And, as explained above, the median settlements yield recoveries of between 2 and 3 cents on the dollar. Given this, a recovery of three to four times the median securities settlement is entirely fair, reasonable and adequate. When adding to the mix the continued litigation risks the class faced: granting the Rule 12(b)(6) motion; the risk of certifying the class; the risk of summary judgment being granted to Defendants; the risk of establishing recoverable damages and prevailing at trail make the 8.5% recovery that much more impressive.

In light of the complex issues present in this case and the uncertainty of litigation generally, this settlement is fair, reasonable, and adequate, and should be approved.

II. The Proposed Class Should Be Certified

As set forth in Plaintiffs' opening brief, the requirements of Federal Rules of Civil Procedure 23(a) are met, and the Class should be finally certified.[5] Under Rule

[5] Under Rule 23(b)(3), under which Plaintiff seeks class certification, the Court must also determine whether "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In a federal securities class action related to stock traded on a public exchange, where the class would rely on the fraud-on-the-market presumption, and not have to prove individual reliance, these requirements of predominance and superiority are generally met. *See, e.g., In re Amerifirst Secs. Litig.*, 139 F.R.D. 423, 427 (S.D. Fla. 1985) (citing *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3rd Cir. 1985) ("It is well-recognized that class actions are a particularly appropriate means for resolving securities fraud

23(a), Plaintiffs must demonstrate: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). These elements are present in this case.

Numerosity

The Rule 23(a)(1) numerosity requirement provides that it must be impracticable to join all class members, but there is "no minimum number of members needed for a suit to proceed as a class action." *Weissman v. Philip C. Gutworth, P.A.*, No. 2:14-cv-00666, 2015 WL 333465, at *3 (D.N.J. Jan. 23, 2015) (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3rd Cir. 2012)). Here, Amicus stock is traded publicly on the Nasdaq stock exchange, and there were over 100 million shares outstanding during the class period. As such, joinder of all class members is not practical.

Commonality

Rule 23(a)(2) requires that "the named plaintiffs share at least one question of

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actions.")); *Willis v. Big Lots, Inc.*, No. 2:12-cv-604, 2017 WL 1063479, at *17-18 (S.D. Ohio Mar. 17, 2017) (explaining why superiority and predominance are generally met in securities fraud class actions where the fraud-on-the-market presumption applies).

fact or law with the grievances of the prospective class." *Id*. (citing *Stewart v. Abraham*, 275 F.3d 220, 227 (3rd Cir. 2001)). Class claims must "depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011).

Here, among others, the question of whether Defendants made false statements or omitted to disclose material facts that violated Sections 10(b) and 20(a) of the Securities Exchange Act, whether they acted with scienter in doing so, and whether Class' losses were caused by those misstatements or omissions are all questions common to the entire class.

Typicality

The Rule 23(a)(3) typicality requirement requires Plaintiff's claims to be "typical of the claims or defenses of the class," and is "intended to assess . . . whether the named plaintiffs have incentives that align with those of absent class members as to assure that the absentees' interests will be fairly represented." *Baby Meal v. Casey*, 43 F.3d 48, 57-58 (3rd Cir. 1994).

Here, Lead Plaintiff has claims that are typical of the claims of the class. And as explained in the detail in his briefing for his appointment as lead plaintiff (ECF Nos. 23-1, 31, 33), Dr. Brenner made purchases of Amicus shares throughout the

class period, including during the Long and Short Periods. Thus, his claims are typical of those of the entire Class.

Adequacy

The adequacy of representation requirement of Rule 23(a)(4) is satisfied where it is established that a representative party will fairly and adequately protect the interests of the class. *In re FleetBoston Fin. Corp. Sec. Litig.*, No. 02-cv-4561, 2005 U.S. Dist. LEXIS 36431, at *8-9 (D.N.J. Dec. 22, 2005).

Here, Lead Plaintiff is an adequate representative of the class. There is no antagonism between his interests and the interests of the Class, and his losses demonstrate that he has a sufficient interest in the outcome of the litigation. This Court also addressed Dr. Brenner's adequacy when it appointed him Lead Plaintiff. *See Letter Opinion appointing Lead Plaintiff and Lead Counsel*, at *9-10 (ECF No. 39) (May 20, 2016) (discussing Dr. Brenner's adequacy).

For these reasons, the Class should be finally certified.

III. The Proposed Plan of Allocation Should Be Approved

"Approval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable, and adequate." *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 126 (D.N.J. 2002). Plans of allocation that reimburse class members "based on the type and extent of their injuries are

generally reasonable." *Id.* (citing *In re Computron*, 6 F.Supp.2d 313, 321 (D.N.J. 1998)); *In re Ikon Sec. Litig.*, 194 F.R.D. 166, 183-84 (E.D. Pa. 2000)).

Here, the plan of allocation was described to class members in the long-form notice. (ECF No. 59-3.) To date, no Class Member has objected to the plan of allocation. Block Decl. ¶ 12. The plan is based on a total estimated loss of $8.05 per share: 95% of that loss ($7.65 per share) is allocated to shares purchased during the Short Period; 5% of that loss ($0.40 per share) is allocated to shares purchased during the Long Period. Class members will be paid their *pro rata* share of the Settlement Fund, which is the percentage that each Authorized Claimant's Recognized Loss bears to the total of the claims of all Authorized Claimants. The total estimated loss was determined in coordination with Plaintiffs' damages expert. Block Decl. ¶10.

The allocation of the vast majority of the Recognized Loss to the Short Period was based upon counsel's view of the strengths of the claims of those Class members versus those of Class members who purchased shares in the Long Period. This is a recognition that, for the Long Period, Defendants argued, among other things, that the alleged misstatements were non-actionable forward-looking statements. That is, the alleged misstatements between March 19, 2015 and September 14, 2015 all most all concerned whether and when a future act might occur: the filing of an NDA for Galafold. Defendants not only argued that these statements were not actionable forward-looking statements, but that there were insufficient facts to support a strong

inference that Defendants acted with the requisite degree of scienter when making those statements. While Plaintiff's Counsel were significantly more confident in claims of the Short Period, they recognize that the Long Period claims faced a significantly lower likelihood of success.[6] *Id.*

Based on the high pleading bar needed to sustain a securities fraud claim, Plaintiffs' counsel believed the strongest likelihood of success came from the Short Period claims, which Plaintiff believes would not be subject to Defendants' forward-looking statement defense. Similarly, Plaintiffs' believed that their allegations regarding scienter were stronger in the Short Period, where they pled specific allegations about changes in the consideration for the Scioderm transaction that Plaintiff alleged supported his theory of the case.

This Court has recognized and deferred to the experience and expertise of class counsel, particularly when counsel worked in tandem with experts. *In re Schering-Plough Corp. Sec. Litig.*, 01-CV-0829 (KSH/MF), 2009 WL 5218066, at *5 (D.N.J. Dec. 31, 2009). In this case, Plaintiffs' counsel relied on their experience and expertise, along with the advice of their damages expert, to craft the Plan of Allocation. The Plan is fair, reasonable, and adequate, and thus, should be approved.

[6] Among other things, this is reflected by the fact that Plaintiff's Counsel, representing another Class Member, initially brought this suit only for the Short Period. (ECF No. 1.)

IV. The Form and Method of Notice Were Adequate

Epiq Systems, Inc. has served as Claims Administrator, pursuant to the Preliminary Approval Order (ECF No. 64.) Pursuant to the Settlement Agreement (ECF No. 59-3.) and Preliminary Approval Order, the Claims Administrator has, to date, mailed the form of Notice and Proof of Claim Form (previously provided as Exhibit A(1) and A(2) of the Settlement Agreement) to 17,409 potential Class Members, as reasonably determined from the stock records maintained on behalf of Amicus. Villanova Decl. ¶ 10. The Claims Administrator has also published a website at www.AmicusSecuritiesSettlement.com. Villanova Decl. ¶ 17, and caused a form of the Summary Notice (previously provided as Exhibit A(3) of the Settlement Agreement) to be published in Investors' Business Daily on September 11, 2017. Villanova Decl. ¶ 11. The Claims Administrator has also maintained a call center since the Notice was first sent. Villanova Decl. ¶¶ 12-16.

Upon approval of the settlement, a court must "direct notice in a reasonable manner to all class members who would be bound by the [proposed settlement]." Fed. R. Civ. P. 23(e)(1). To ensure due process, there must be "the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jackquelin*, 417 U.S. 156, 173 (1974).

The Notice, Claim Form, and Summary Notice were drafted to contain all

necessary information. The information provided is in a convenient, plain-language, question-and-answer format. The Notice advised Class members of their legal rights and obligations, and provided clear deadlines under the terms of the Settlement and the Preliminary Approval Order. Contact information for the Claims Administrator and for Class Counsel was also clearly and conspicuously provided, and a convenient website, AmicusSecuritiesSettlement.com, provides further information. The Claims Administrator hosted a telephone hotline where Class members could ask questions of representatives. Notice programs as robust as this have been approved in similar class action settlements.[7]

Lead Plaintiff submits that the Notice provided here was fair, adequate, and reasonable, and should be approved.

V. Lead Counsel's Application for Attorneys' Fees and Expenses Should Be Approved

Plaintiff's Counsel move the Court for an award of attorneys' fee representing 25% of the Settlement Fund (*i.e.*, $937,500), along with reimbursement for

[7] *See, e.g., Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3rd Cir. 1985) ("It is well settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause."); *In re Veritas Software Corp. Sec. Litig.*, 396 Fed. Appx. 815, 816 (3rd Cir. 2010) (describing notice combining mail to known class members and publication in *Investor's Business Daily*); *In re Sterling Fin. Corp. Sec. Class Action*, MDL No. 1879, 2009 WL 2914363, at *1 (E.D. Pa. Sept. 10, 2009) (approving settlement where "Lead Counsel mailed notices to the class members of the settlements and their rights to opt out and object. Notice was also published in Investors' Business Daily.")

$31,146.20 in out-of-pocket expenses.

A. Plaintiff's Counsel are Entitled to an Award of Attorneys' Fees from the Common Fund Recovered for the Class

The award of attorneys' fees in this class action is governed by the common fund doctrine. The Supreme Court recognizes that a "litigant or 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 Germert*, 444 U.S. 472, 478 (1980). Courts have traditionally employed two methods for calculating reasonable fees in securities class actions: the percentage-of-recovery method and the lodestar method. Courts in this Circuit generally prefer the percentage-of-recovery method, while applying a lodestar cross check. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3rd Cir. 2011); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3rd Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3rd Cir. 2005).

B. The *Gunter* and *Prudential* Factors Confirm the Reasonableness of Plaintiffs' Fee Request

In the Third Circuit, the approval of attorneys' fee awards in a class action settlement requires the application of the *Gunter* and *Prudential* factors. *See In re AT&T Corp. Sec. Litig.*, 455 F.3d at 166. The *Gunter* factors include:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and

> efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases

Id. at 165 (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3rd Cir. 2000)).

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. at 165 (citing *In re Prudential Ins. Co. of Amer. Sales Practice Litig. Agent Actions*, 148 F.3d 283, at 338, 340, 342 (3rd Cir. 1998)).

Here, application of the *Gunter* and *Prudential* factors warrant approval of Plaintiffs' Counsel's fee request.

"Size of the fund created and the number of persons benefited"

The size of the settlement fund is one of the primary factors to be considered in assessing awards of attorneys' fees. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained.") Cornerstone Research has estimated that median settlements as a percentage of estimated damages in securities class actions range between 1.8% and 2.9% in the years

between 2007 and 2016.[8] In this case, the strongest claims belonged to class members who purchased shares during the Short Period, and thus 95% of the Recognized Loss in the proposed Plan of Allocation is provided to these class members. Plaintiff's expert estimated that total alleged damages during the Short Period were approximately $44 million; thus, a $3.75 million settlement represents over 8.5% of the estimated total alleged damages in the Short Period, significantly higher than the median settlement reported by Cornerstone. Plaintiff achieved this result before a motion to dismiss was decided, at a time when the claims of the class were at risk of being dismissed.[9]

"Presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel"

The "presence or absence of substantial objections by members of the class to the settlement and/or fees requested by counsel" should be considered by the Court. *In re Par Pharm.*, 2013 WL 3930091 at *9. While the date for objections has not yet passed, there have been no objections to Class Counsel's request for attorneys' fees

[8] Cornerstone Research, Securities Class Action Settlements: 2016 Review and Analysis (available at https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2016-Review-and-Analysis).

[9] *See, e.g., In re Fidelity/Micron Sec. Litig.*, No. CIV.A 95-12676-RGS, 1998 WL 313735, at *14 n. 11 (D. Mass. June 5, 1998) (in action that settled before discovery, "counsel should not be unduly penalized for promptly resolving litigation that could easily have been protracted."), vacated on other grounds, *In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735 (1st Cir. 1999).

or expenses, or to the settlement. Villanova Decl. ¶ 19. "The absence of substantial objections by class members to the fee request weigh[s] in favor of approving the fee request." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305.

"Skill and efficiency of the attorneys involved"

The skill and efficiency of the attorneys involved is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience, and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Hall v. AT&T Mobility LLC*, No. 07-5325(JLL), 2010 WL 4053547, at *19 (D.N.J. Oct. 13, 2010) (citations omitted). Courts in this District have found that the "single clearest factor reflecting the quality of class counsels' services to the class are the results obtained. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. at 132.

Here, Lead and Local Counsel bring decades of experience litigating securities class action cases. *See* Block & Leviton Firm Resume (Block Decl. Ex. A) and Gardy & Notis Firm Resume (Block Decl. Ex. B). Plaintiff's counsel applied their expertise in securities litigation to achieve a favorable result for the Class before a motion to dismiss was decided.

"Complexity and duration of the litigation"

The Third Circuit has recognized that securities class action matters are "notably complex, lengthy, and expensive cases to litigate." *In re Par Pharm.*, 2013

WL 3930091 at *10.

This case presented numerous contested issues involving complicated matters of FDA drug regulation and related representations made to investors. The parties motion to dismiss briefing (ECF Nos. 47-48, 50, 54) illustrates the complexity of the issues involved at the pleading stage. Defendants adamantly denied liability, and contested Plaintiffs' pleadings vigorously. The PSLRA establishes one of the highest pleading burdens in any area of the law for Plaintiffs. *Bourbonnais v. Ameriprise Fin. Services, Inc.*, No. 14-C-966, 2015 WL 778627, at *3 (E.D. Wisc. Feb. 24, 2015).

For these reasons, this was a complex litigation. While the case was settled before a motion to dismiss was decided, it nonetheless required hundreds of hours of work over the course of many months. This factor supports the requested award. *See In re AT&T Corp. Sec. Litig.*, 455 F.3d at 170 (discussing the "difficulty of proving actual knowledge under 10(b) of the Securities Exchange Act . . . weighed in favor of approval of the fee request."); *In re Corel Corp. Inc., Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003) (discussing how success "in the face of formidable legal opposition further evidences the quality of [Plaintiffs'] work.")

"Risk of nonpayment"

Courts "routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval." *Schering-Plough ERISA*

Litig., No. 08-1432(DMC)(JAD), 2012 WL 1964451, at *7 (D.N.J. May 31, 2012). "The risk of little to no recovery weighs in favor of an award of attorneys' fees" when a case is handled on a contingent basis. *In re Merck & Co., Inc. Vytorin ERISA Litig.*, No. 08-cv-285(DMC), 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010).

One study analyzing motions to dismiss in securities class actions found that 44% of such cases where a motion to dismiss was decided in 2016 were dismissed; 30% more were partially dismissed.[10] Plaintiff's Counsel has received no compensation for its services since this action was initiated, and understood that it was taking on a complex, expensive, risky, and lengthy litigation. A dismissal of this action would have meant that Plaintiff's counsel received nothing.

These facts militate in favor of approval of the fee request.

"Amount of time devoted to the case by plaintiffs' counsel"

As outlined in the accompanying declarations of Jeffrey Block and Jennifer Sarnelli, Lead and Liaison counsel attorneys and staff billed a total of 765.30 hours directly to this case, at a total billing cost of $513,195. Specifically, the following attorneys and paralegals worked on the case:

[10] NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review (available at https://www.supremecourt.gov/opinions/URLs_Cited/OT2016/16-373/16-373-1.pdf).

Block & Leviton LLP (Lead Counsel)			
Personnel	**Hours Billed**	**Hourly Rate**	**Total**
Block, Jeffrey (P)	285.5	$825	$235,537.50
Leviton, Jason (P)	2.3	$725	$1,667.50
Walker, Jacob (A)	388.4	$575	$223,330.00
Fleming, Joel (A)	10.2	$550	$660.00
Harte, Steven	5.6	$600	$3,360.00
Vettraino, Bradley (A)	6.1	$450	$2,745.00
Jordy, Brooke (PL)	5.9	$225	$1,327.50
Ledwig, Julie (PL)	12.3	$225	$2,767.50
Total (Block & Leviton)	**716.30**		**$476,345.00**
Gardy & Notis (Liaison Counsel)			
Mark C. Gardy (P)	2.5	$825	$2,062.50
James S. Notis (P)	10.75	$825	$8,868.75
Jennifer Sarnelli (P)	35.75	$725	$25,918.75
Total (Gardy & Notis)	**49**		**$36,850.00**
Overall Total			
Total	**765.3**		**$513,195.00**

Block Decl. ¶ 13; Declaration of Jennifer Sarnelli ("Sarnelli Decl.") ¶ 2.

The work summarized above included, among other things, researching the claims in this case, drafting the initial and amended complaint, researching and briefing a motion to dismiss, evaluating the damages alleged, participating in a mediation, negotiating a settlement, and implementing a settlement. Block Decl. ¶¶ 3-10.

The billing rates used are reasonable for complex securities litigation, and set by reference to the market. *See* Billing Memo (Block Decl. Ex. C.)

"Awards in similar cases"

Plaintiff's Counsel's request for 25% of the fund created in this case is lower than other awards approved in this Court in similar securities class actions. *See, e.g., In re Ocean Power Technologies, Inc. Sec. Litig.*, No. 3:14-cv-03799-FLW-LHG, 2015 WL 8663241 (D.N.J.) (30% of common fund awarded); *P. Van Hove BVBA v. Universal Travel Group, Inc., et al.*, No. 2:11-cv-02164-JMV-JBC, 2017 WL 2734714 (D.N.J.) (33.3% of common fund awarded); *Schuler v. The Medicines Company, et al.*, No. 2:14-cv-01149-CCC-MF, 2014 WL 5472051 (D.N.J.) (33% of common fund awarded); *Yedlowski v. Roka Bioscience, Inc.*, No. 3:14-cv-08020-FLW-TJB, 2016 WL 6661336 (D.N.J.) (30% of common fund awarded). That Plaintiff's Counsel's request is lower than other fees provided in similar securities class actions in this Court supports Plaintiff's Counsel's fee request.

"Value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups"

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing. *In re AT&T Corp. Sec. Litig.*, 455 F.3d at. In this case, Lead Plaintiff was unaware of any related government investigation, and did not have the benefit of any government investigation materials or reports. Block Decl. ¶ 16. Thus, the entire benefits accruing to the Class derive solely from the efforts of Plaintiff's Counsel.

"Percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained"

"[A]ttorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class commercial litigation." *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085 FSH, 2005 WL 3008808 at *16 (D.N.J. Nov. 9, 2005). "If this were a non-class action case, the customary contingent fee would likely range between 30% and 40% over the recovery." *In re Lucent Technologies, Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004).[11]

Here, Plaintiff's counsel has asked for 25% of the common fund as a fee. As measured by the private market, this is a reasonable request and supports Plaintiff's Counsel's fee request.

C. A Lodestar Cross-Check Supports the Requested Fee

Application of the *Gunter* and *Prudential* factors clearly support Plaintiff's Counsel's fee request, so a lodestar cross-check is not required. *In re Cendant Corp. Litig.*, 264 F.3d at 221. Nonetheless, a cross-check here shows the fairness of the request.

When performing a lodestar crosscheck, a court need not engage in a "full-

[11] *See also In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *32 ("Given the significant differences in the risk and reward considerations between representing a client in private non-class action contingent litigation and serving as lead counsel in a PSLRA securities class action, we would accord this factor much less weight.")

blown lodestar inquiry," nor perform the test to "mathematical precision." *In re AT&T Corp. Sec. Litig.*, 455 F.3d at 169, n. 6.

As explained above and in the accompanying declaration of Jeffrey C. Block and Jennifer Sarnelli, Plaintiff's Counsel have spent 765.30 hours in connection with this matter, resulting in a total lodestar of $513,195. The fee request represents a multiplier of 1.83, which is reasonable in light of the frequently awarded range of a multiplier of between 1 and 4. *See, e.g., In re Prudential Ins. Co. of Amer. Sales Practice Litig. Agent Actions*, 148 F.3d at 341; *In re AT&T Corp. Sec. Litig.*, 455 F.3d at 172; *In re Rite Aid* 146 F.Supp. 2d 706, 736 (E.D. Pa. Jun 8, 2001) and 362 F. Supp. 2d 587, 589 (E.D. Pa. Mar. 24, 2005) (awarding multiplier of between 4.5 and 8.5 on 2001 settlement and 6.96 on 2005 settlement); *In re Lucent Tech., Inc., Sec. Litig.*, 327 F. Supp. 2d at 443 (awarding 2.13 multiplier); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D 109, 135 (D.N.J. 2002) (awarding 4.3 multiplier); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. at 195 (awarding 2.7 multiplier); *Schuler v. The Medicines Co., et al.*, Case No. 2:14-cv-01149-CCC-MF, 2014 WL 5472051 (D.N.J.) (ECF No. 72) (3.57x).

Accordingly, the 1.83 lodestar multiplier cross-check further supports Plaintiff's Counsel's fee request.

D. Expenses Were Reasonably and Necessarily Incurred by Class Counsel

Plaintiff's Counsel also seeks payment in the amount of $31,146.20 for

litigation expenses reasonable incurred while prosecuting this action. The expenses are described in detail in the accompanying Declarations of Jeffrey C. Block and Jennifer Sarnelli. Block Decl. ¶ 15 ($30,176.70); Sarnelli Decl. ¶ 4 ($969.50).

"Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *36.

VI. The Reimbursement of the Class Representative Should Be Approved

Lead Plaintiff Dr. Barry Brenner brought his unique and highly distinguished qualifications to bear on this case, providing insight to Lead Counsel during the drafting of the amended complaint, the opposition to Defendants' motion to dismiss, and settlement negotiations. Dr. Brenner is the Distinguished Samuel A. Levine Professor of Medicine at Harvard Medical School in Boston, Massachusetts, the Director of Brigham and Women's Hospital's Laboratory of Kidney and Electrolyte Physiology, and the original author of *The Kidney*. Brenner Decl. ¶ 3. That textbook has been described as the "most well-known nephrology resource in the world," and the "epitome of references on renal information and learning."[12] Thus, far from being an ordinary investor, Dr. Brenner is one of the foremost experts on topics that relate directly to the drug Amicus was seeking to have the FDA approve. His insights about

[12] *See* https://elsevier.ca/product.jsp?isbn=9781455748365.

statements made by Defendants and about the drug approval process were thus invaluable to counsel.

Dr. Brenner spent at least 45 hours dedicated to reviewing documents and discussing the case with counsel. Clients have regularly paid Dr. Brenner an hourly rate of $1,500. Brenner Decl. ¶¶ 4-5. The $10,000 incentive award provides Dr. Brenner with a more modest $222 per hour compensation rate for his time dedicated to this case in lieu of his other work.

This Court has previously noted that the "PSLRA permits a lead plaintiff to receive an award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class." *Schuler v. The Medicines Company, et al.*, No. 14-1149, 2016 WL 3457218, at *11 (D.N.J. Jun. 24, 2016) (citing 15 U.S.C. § 78u-4(a)(4)) (quotations omitted). "There are no set factors that a District Court must employ in determining the amount of class representative awards." *Id.* (citing *Brady v. Air Line Pilots Ass'n*, 627 Fed. Appx. 142, 146 (3rd Cir. 2015) (affirming award of $640,000)). "The Third Circuit favors encouraging class representatives, by appropriate means, to create common funds and to enforce laws—even approving "incentive awards" to class representatives." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *37.

Dr. Brenner's work reviewing filings, conferring with counsel about the litigation, and advising counsel on important medical issues related to the case, is

exactly the kind of activity courts have previously found to support reimbursement. *See Schuler v. The Medicines Co., et al.*, 2016 WL 3457218 at *11; *In re Evergreen Ultra Short Opportunities Fund Sec. Litig.*, No. CIV.A. 08-11064-NMG, 2012 WL 6184269, at *2 (D. Mass. Dec. 10, 2012) (awarding $54,626 to institutional lead plaintiffs); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding over $200,000 to lead plaintiffs to compensate them for "reasonable costs and expenses"); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding $100,000 to eight lead plaintiffs who "communicated with counsel throughout the litigation, reviewed counsels' submissions, indicated a willingness to appear at trial, and were kept informed of the settlement negotiations, all to effectuate the policies underlying the federal securities laws.")

The award to Dr. Brenner is particularly appropriate here where the Notice advised the Class that Lead Plaintiff would seek up to $10,000 as a reimbursement, and to date, no one has objected to this amount.

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully asks the Court to enter the [Proposed] Order and Final Judgment (ECF 59-3, pp. 94-111), which finally certifies the Class under Federal Rule of Civil Procedure 23(b)(3), certifies Lead Plaintiff as Class Representative, finds the Settlement as fair, reasonable, adequate,

and in the best interests of the Class, releases the parties, approves the plan of allocation, awards attorneys' fees, and enters and Order and Final Judgment.

October 12, 2017

Respectfully submitted,

/s/ Jennifer Sarnelli

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