UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: DR. REDDY'S LABORATORIES LTD. SECURITIES LITIGATION	Case No. 3:17-cv-06436-PGS-DEA Class Action

LEAD COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES

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PRELIMINARY STATEMENT

Labaton Sucharow LLP, Court-appointed Lead Counsel for Lead Plaintiff the Public Employees' Retirement System of Mississippi ("Mississippi PERS") and the Settlement Class, has successfully negotiated a favorable settlement of this securities class action with Dr. Reddy's Laboratories Ltd. ("Dr. Reddy's" or the "Company"); Dr. Reddy's Laboratories, Inc.; Abhijit Mukherjee; G.V. Prasad; Saumen Chakraborty; and Satish Reddy (collectively, the "Defendants") in the amount of $9,000,000 in cash.[1] The proposed Settlement represents a very favorable recovery for the Settlement Class, especially when viewed in light of the risks and costs attendant to further, protracted litigation. Accordingly, Lead Counsel requests, on behalf of itself and Liaison Counsel Kaplan Fox: (i) an award of attorneys' fees in the amount of 25% of the Settlement Amount, plus accrued interest; (ii) payment of litigation expenses incurred in prosecuting and settling the Action, in the amount of $314,531.64, plus accrued interest; and (iii) reimbursement of Lead Plaintiff's costs, in the amount of $27,500, pursuant to the Private Securities Litigation Reform Act of 1995.

As set forth in detail in the accompanying Rogers Declaration,[2] it is respectfully submitted that the Settlement was achieved through the skill, experience, and effective advocacy

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[1] All capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of May 15, 2020 (ECF No. 95-1) (the "Stipulation") or in the Declaration of Michael H. Rogers in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (the "Rogers Declaration" or "Rogers Decl."), filed herewith. "Plaintiff's Counsel" consists of Lead Counsel Labaton Sucharow and Liaison Counsel Kaplan Fox & Kilsheimer LLP.

[2] The Rogers Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action and a description of the services Plaintiff's Counsel provided for the benefit of the Settlement Class; the nature of the claims; the negotiations leading to the Settlement; the risks and uncertainties of the litigation; and the facts and circumstances

of Lead Counsel. Lead Counsel, with the assistance of Liaison Counsel, vigorously pursued the claims in the Action for the benefit of the class. To achieve the recovery here, Lead Counsel devoted substantial resources to pursuing the claims by, among other things: (i) conducting a thorough and wide-ranging factual investigation concerning the allegedly fraudulent misrepresentations made by Defendants, which involved a careful review of documents filed publicly by the Company with the United States Securities Exchange Commission (the "SEC") and the Bombay Stock Exchange ("BSE") and interviews with 10 confidential witnesses who were former Dr. Reddy's employees that were familiar with the Company's Indian manufacturing operations and other potentially relevant information; (ii) preparing and filing an Amended Consolidated Class Action Complaint (the "Complaint"); (iii) opposing Defendants' motion to dismiss the Complaint; (iv) moving for class certification, which included the preparation of an expert report from Lead Plaintiff's economic expert; (vi) engaging in extensive fact discovery, which included Lead Counsel's analysis of approximately 132,000 pages of documents produced by Defendants and defending four depositions; and (vii) engaging in a rigorous mediation process with Robert Meyer, including preparing detailed mediation briefs, attending a full-day mediation, and participating in lengthy follow-up negotiations. *See generally* Rogers Decl.

Lead Counsel were unaided by any governmental investigation of the alleged securities violations. Counsel's efforts to date have been without compensation of any kind and a fee has been wholly contingent upon the result achieved. As compensation for its efforts on behalf of the Settlement Class and the risks of non-payment it faced in bringing the Action on a contingent basis, Lead Counsel now seeks, on behalf of itself and Liaison Counsel Kaplan Fox, an

underlying Lead Counsel's requests for fees and expenses. Citations to "¶" in this memorandum refer to paragraphs in the Rogers Declaration.

attorneys' fee award of 25% of the Settlement Amount, plus accrued interest, which would be only 64% of the value of counsel's time. The attorneys' fee request is fair and reasonable when one considers, among other things: (i) the result achieved for the Settlement Class; (ii) the complexities and risks faced by counsel during the litigation; and (iii) the amount of fees awarded by courts within the Third Circuit and this district in comparable cases. Furthermore, Lead Plaintiff Mississippi PERS, a sophisticated institutional investor that actively supervised the Action, has evaluated the request for fees and expenses and has authorized it as reasonable. *See* Declaration of Ta'Shia S. Gordon on behalf of Mississippi PERS, (Ex. 1) at ¶¶ 1, 7.[3]

In addition, while the deadline set by the Court for Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the requests for fees and expenses have been received. ¶¶ 49, 101. Pursuant to the Preliminary Approval Order, 25,638 copies of the Notice have been mailed to potential Class Members and their nominees through August 21, 2020, and the Summary Notice was published in the national edition of the *Investor's Business Daily* and transmitted over the internet using *PR Newswire*. *See* Declaration of Jordan Broker Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion (the "Mailing Decl."), attached as Exhibit 2 to the Rogers Declaration, at ¶¶ 3-12. The Notice advised potential Class Members that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount, plus accrued interest, and for payment of litigation expenses in an amount not to exceed $600,000. *See* Ex. 2-A at ¶¶ 4, 37. The fees and expenses sought by Lead Counsel do not exceed the amounts set forth in the Notice.

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[3] All exhibits referenced herein are annexed to the Rogers Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. ___ - ___." The first numerical reference is to the designation of the entire exhibit and the second alphabetical reference is to the exhibit designation within the exhibit.

For the reasons set forth herein and in the Rogers Declaration, Lead Counsel respectfully submits that the attorneys' fees requested are fair and reasonable under the particular circumstances now before this Court, and that the expenses requested are reasonable in amount and should be approved.

ARGUMENT

I. LEAD COUNSEL IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND CREATED BY THE SETTLEMENT

The Supreme Court, and Circuit Courts across the country, has long recognized 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); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 197 (3d Cir. 2005) ("attorneys whose efforts create, discover, increase, or preserve a [common] fund are entitled to compensation"); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, 540 (3d Cir. 2009).[4]

Courts within the Third Circuit have consistently adhered to these teachings. *See, e.g.*, *Schuler v. Meds. Co.*, No. CV 14-1149 (CCC), 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) ("Under the common fund doctrine, 'a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees.'") (quoting *Diet Drugs*, 582 F.3d at 540); *In re Par Pharm. Sec. Litig.*, No. 06-3226 (ES), 2013 WL 3930091, at *9 (D.N.J. July 29, 2013); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefits they have bestowed on class members.").

[4] All internal quotations and citations are omitted unless otherwise noted.

Courts have emphasized that the award of attorneys' fees from a common fund serves to encourage skilled counsel to represent classes of persons who otherwise may not be able to retain counsel to represent them in complex and risky litigation. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (goal of percentage fee awards is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation"). Indeed, the Supreme Court has repeatedly recognized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions," brought by the U.S. Securities and Exchange Commission ("SEC"). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provided "a most effective weapon in the enforcement' of the securities laws and are a necessary supplement to [SEC] action").

Lead Counsel's efforts in the present case exemplify the importance of such private cases. No other investigation or proceeding has yielded any monetary recovery for investors in Dr. Reddy's ADSs.

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class. In the Third Circuit, the percentage-of-recovery method is "generally favored" in cases involving a settlement that creates a common fund. *See Sullivan v. DB Invs. Inc.,* 667 F.3d 273, 330 (3d Cir. 2011) (favoring percentage of recovery method "because it allows courts to award fees from the [common] fund in a manner that rewards counsel for success and penalizes it for failure"); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300

(3d Cir. 2005). 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 Rite Aid*, 396 F.3d at 300; *In re Valeant Pharms. Int'l, Inc. Sec. Litig*., 3:15-CV-07658-MAS-LHG, 2020 WL 3166456, at *11 (D.N.J. June 15, 2020) (noting that the percentage-of-recovery method is "generally favored in common fund cases"); *In re Ocean Power Techs., Inc. Sec. Litig.*, No. 3:14-CV-3799, 2016 WL 6778218, at *24 (D.N.J. Nov. 15, 2016).

The Third Circuit has "several times reaffirmed that the application of a percentage-of-recovery method is appropriate in common-fund cases." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 734 (3d Cir. 2001) (citing *Gunter*, 223 F.3d at 195 n.1). While the Third Circuit recommends that the percentage award be "cross-checked" against the lodestar method to ensure its reasonableness, *Sullivan*, 667 F.3d at 330, "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T*, 455 F.3d at 164.

Additionally, the PSLRA, which governs this Action, specifies 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," thus also supporting the use of the percentage-of-recovery method. PSLRA, 15 U.S.C. §78u-4(a)(6) . Courts have concluded that, in using this language, Congress expressed a preference for the percentage method, rather than the lodestar method, in determining attorneys' fees in securities class actions. *See Cendant*, 404 F.3d at 188 n.7; *Rite Aid*, 396 F.3d at 300; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 354-55 (S.D.N.Y. 2005).

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-Recovery Method

The requested fee of 25% of the Settlement Amount is reasonable under the percentage-of- recovery method. While there is no general rule, courts in the Third Circuit have observed that fee awards generally range from 19% to 45% of the settlement fund. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995); *Ikon*, 194 F.R.D. at 194) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."). Fees most commonly range from 25% to one-third of the recovery. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery."); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, No. 03- CV-4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. 2009) (same).

A review of attorneys' fees awarded in securities class actions with comparably sized settlements in the Third Circuit supports the reasonableness of the requested fee. *See, e.g., In re PTC Therapeutics, Inc. Sec. Litig.*, Civil Action No. 16-1224, slip op. at 2 (D.N.J. Sept. 10, 2018) (awarding 25% of $14.75 million settlement) (Ex. 7)[5]; *In re Commvault Sys., Inc. Sec. Litig.*, Master File No. 3:14-CV-05628, slip op. at 2 (D.N.J. May 21, 2018) (awarding 25% of $12.5 million settlement); *Milliron v. T-Mobile USA, Inc.*, No. 08-4149, 2009 WL 3345762 (D.N.J. Sept. 14, 2009) (awarding 33% of $13.5 million settlement); *In re Schering-Plough Corp. ENHANCE ERISA Litig.*, No. 08-1432, 2012 WL 1964451, at *6-7 (D.N.J. May 31, 2012) (awarding 33.3% of $12.25 million settlement); *Par Pharm.*, 2013 WL 3930091, at *11

[5] All unreported decisions are submitted herewith in a compendium attached to the Rogers Declaration as Ex. 7.

(awarding 30% of $8.1 million settlement); *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, No. CV 13-6731, 2017 WL 4167440, at *8 (E.D. Pa. Sept. 20, 2017) (awarding 25% of $30 million settlement and noting, "a fee award of 25% of the total settlement here is reasonable and in keeping with similar precedent"); *In re Veritas Software Corp. Sec. Litig.*, No. 1:04-cv-00831-SLR, slip op. at 2 (D. Del. Aug. 5, 2008) *aff'd*, 396 F. App'x. 815 (3d Cir. 2010) (awarding 30% of $21.5 million settlement); *W. Pa. Elec. Emps.' Pension Fund v. Alter*, No. 2:09-cv-04730-CMR, 2014 WL 12618202, at *1 (E.D. Pa. Aug. 4, 2014) (awarding 30% of $13.25 million settlement).[6] Awards of greater than 25% are also common in cases with much larger settlement amounts. *See, e.g., In re Aetna Inc. Sec. Litig.*, No. CIV. A. MDL 1219, 2001 WL 20928, at *14 (E.D. Pa. Jan. 4, 2001) (awarding 30% of $82.5 million settlement net of expenses); *Ikon*, 194 F.R.D. at 192-97 (awarding 30% of $111 million settlement net of expenses).

Accordingly, the requested fee is comparable to fees awarded in similar cases.

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Cross-Check

The Third Circuit recommends that district courts use counsel's lodestar as a "cross-check" to determine whether the fee that would be awarded under the percentage approach is

[6] The requested fee is also well within the range of percentage fee awards, if not lower, that have been granted in comparable securities class actions in other Circuits. *See*, *e.g.*, *Ronge v. Camping World Holdings, Inc.*, No. 18-cv-07030, slip op. at 2 (N.D. Ill. July. 1, 2020) (awarding 30% of $12.5 million settlement) (Ex. 7); *In re KBR, Inc. Sec. Litig*., Case No. 4:14-cv-01287, slip op. at 2 (S.D. Tex. Aug. 24, 2017) (awarding fee of 25% of $10.5 million settlement) (Ex. 7); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *12-13 (S.D.N.Y. May 9, 2014) (awarding 33% of $15 million settlement fund), *aff'd*, *Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015); *Public Pension Fund Grp. v. KV Pharm. Co.*, No. 4:08-cv-1859 (CEJ), slip op. at 2 (E.D. Mo. Apr. 23, 2014) (Ex. 7) (awarding 30% of $12.8 million settlement); *In re Spectranetics Corp. Sec. Litig*., No. 08-cv-02048, slip op. at 3 (D. Colo. Apr. 4, 2011) (awarding 28% of $8.5 million settlement) (Ex. 7).

reasonable and to avoid a "windfall" to counsel. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.[7]

Here, Plaintiff's Counsel devoted a total of 5,600.15 hours to the prosecution and resolution of the Action. Ex. 5 (Summary of Lodestars and Expenses) and Exs. 3-A and 4-A. Plaintiff's Counsel's lodestar – which is derived by multiplying the hours spent on the litigation by each firm's current hourly rates for attorneys, paralegals and other professional support staff – is $3,525,315.50. *Id.* Accordingly, the requested 25% fee, which equates to $2,250,000 (plus interest on that amount at the same rate as earned by the Settlement Fund), represents a *negative* "multiplier" of .64 on counsel's lodestar – meaning Plaintiff's Counsel are seeking 64% of their lodestar. ¶ 77.

This "multiplier" is additional evidence that the requested attorneys' fee is reasonable. Lodestar multipliers of one to four are often awarded in common fund cases. *In re Prudential Inc. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341(3d Cir. 1998); *see also AT&T*, 455 F.3d at 172 (approving a 1.28 multiplier and noting the Third Circuit's prior "approv[al] of a lodestar multiplier of 2.99 in . . . a case [that] was neither legally nor factually complex"); *Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *8 (awarding 1.6 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) and *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding multiplier of between 4.5 and 8.5 on 2001 settlement and multiplier of 6.96 on the 2005 settlement); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (awarding 4.3 multiplier).

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[7] Under the full "lodestar method," a court multiplies the number of hours each timekeeper spent on the case by the hourly rate, then adjusts that lodestar figure by applying a multiplier to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorneys' work. The multiplier is intended to "account for the contingent nature or risk involved in a particular case and the quality" of the work. *Rite Aid*, 396 F.3d at 305-06.

Courts have noted that a percentage fee that falls below counsel's lodestar strongly supports the reasonableness of the award. *See Stagi v. Nat'l R.R. Passenger Corp.*, 880 F. Supp. 2d 564, 572 (E.D. Pa. 2012) (where fee resulted in a 0.89 lodestar multiplier it was "well under the generally acceptable range and provides strong additional support for approving the attorneys' fee request"); *In re Bear Stearns Cos. Sec. Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (approving fee with a negative multiplier and noting that the negative multiplier was a "strong indication of the reasonableness of the [requested] fee"); *In re Marsh & McLennan, Co. Sec. Litig.*, No. 04-8144, 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009) (reasoning that where the multiplier is negative, the lodestar cross-check "unquestionably supports the requested percentage fee award. . . .").

Accordingly, the 25% fee request here is reasonable and would not provide counsel with a windfall.

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The Third Circuit has set forth the following criteria for courts to consider when reviewing a request for attorneys' fees in a common fund case:

> (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.

Gunter, 223 F.3d at 195, n.1. The Third Circuit has also suggested three other factors that may be relevant to the Court's inquiry: (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 [non-class] contingent fee agreement at the time

counsel was retained;" and (3) any "innovative terms of settlement." *AT&T*, 455 F.3d at 165 (citing *Prudential*, 148 F. 3d at 338-40). The fee award factors "'need not be applied in a formulaic way' because each case is different, 'and in certain cases, one factor may outweigh the rest.'" *AT&T*, 455 F.3d at 165 (citing *Rite Aid*, 396 F.3d at 301).

An analysis of the relevant factors further confirms that the fee requested here is fair and reasonable and should be approved.

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request

The result achieved is one of the primary factors to be considered in assessing the propriety of an attorneys' fee award. *Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016). Here, Lead Counsel, on behalf of Lead Plaintiff and with the assistance of Liaison Counsel, has secured a Settlement that provides for a substantial and certain payment of $9,000,000 for the benefit of the Settlement Class. As detailed in the Rogers Declaration, using the Settlement Class Period of November 28, 2014 through September 15, 2017—the original class period in the Action—Lead Plaintiff's damages expert has estimated maximum aggregate damages of approximately $245 million. ¶ 59. However, the most likely recoverable damages at trial, applying the shortened class period upheld by the Court, are estimated to be between $38 million and $59 million, assuming Lead Plaintiff prevails on all remaining claims, and taking into account "disaggregation," or parsing out, of non-fraud related price decreases on certain of the corrective disclosures and netting gains on pre-class period purchases. *Id.* Estimated damages without disaggregation are between approximately $78 million and $84 million. *Id.* Accordingly, the Settlement recovers between approximately 11% and 24% of reasonable damages - a very favorable recovery in light of

Defendants' countervailing arguments, and the risk that continued litigation might result in a vastly smaller recovery or no recovery at all. *Id.*; *see also* Brief In Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation at §I.D.7.

The Settlement will also benefit a large number of investors. To date, the Claims Administrator has mailed 25,638 Claim Packets to potential Class Members and their nominees. *See* Ex. 2 at ¶ 10. Accordingly, while the deadline for submission of the Claim Forms is not until September 22, 2020 a large number of Class Members can be expected to benefit from the Settlement. *See, e.g., In re Linerboard Antitrust Litig.*, MDL 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004), order amended by, MDL 1261, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (size of benefitted population "is best estimated by the number of entities that were sent the notice describing the [Settlement]").

B. The Absence of Objections to Date Supports Approval of the Fee Request

The Notice provided a summary of the terms of the Settlement and stated that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount, plus accrued interest. *See* Ex. 2-A at ¶¶ 4, 37. The Notice also advised Class Members that they could object to the Settlement, Plan of Allocation, or fee request and explained the procedure for doing so. *See id.* at ¶¶ 38-41. While the deadline set by the Court for Class Members to object has not yet passed, to date, no objections have been received.[8]

C. The Skill and Efficiency of the Attorneys Involved Support the Fee Request

The skill and efficiency of counsel is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise

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[8] The deadline for submitting objections is September 8, 2020. As provided in the Preliminary Approval Order, Lead Plaintiff and Lead Counsel will file reply papers no later than September 22, 2020, addressing any objections that may be received.

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).

It required considerable skill to achieve the proposed Settlement. Plaintiff's Counsel were required to contend with, among other things, issues particular to the pharmaceutical industry and regulatory standards, including current good manufacturing practice ("cGMP"), that govern the Company's manufacturing operations and FDA actions. There were also difficult materiality, falsity, scienter, and damages challenges. In particular, there were substantial risks to establishing material falsity and scienter given Defendants' belief that Dr. Reddy's was in full compliance with cGMP standards during the class period, as well as the difficulties of proving scienter in a highly complex, industry-specific case relying only on circumstantial evidence presented through adverse witnesses and highly technical expert testimony. *See* Rogers Decl. at §VII.

With respect to "the experience and expertise" of counsel, as set forth in the firm resumes attached to the respective declarations of Plaintiff's Counsel, Plaintiff's Counsel are highly experienced and skilled firms in the securities litigation field, and each firm has a long and successful track record in securities cases throughout the country. *See* Exs. 3-D and 4-C; ¶¶ 79-80. *See also Valeant Pharms.,* 2020 WL 3166456, at *8 (noting the skill of counsel, as further demonstrated by the biographies of the firms).

"The quality of opposing counsel is also important in evaluating the quality of counsel's work." *Hall*, 2010 WL 4053547, at *19; *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *7 (D.N.J. Nov. 28, 2007). Lead Counsel was opposed in this litigation by one of the nation's most elite law firms. Defendants were represented ably by Jones

Day, a prominent firm with undeniable experience and skill in the securities arena. The ability of Lead Counsel to obtain a favorable outcome for the Settlement Class in the face of this formidable legal opposition further confirms the quality of Lead Counsel's representation.

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

Securities litigation is regularly acknowledged to be particularly complex and expensive litigation, usually requiring expert testimony on multiple issues, including loss causation and damages. *See, e.g.*, *Valeant Pharms.*, 2020 WL 3166456, at *15 (approving counsel's fee request and noting that "[s]ecurities litigation is tough stuff"); *Fogarazzo v. Lehman Bros., Inc.*, No. 03-5194 (SAS), 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re Genta Sec. Litig.*, No. 04-2123 (JAG), 2008 WL 2229843, at *3 (D.N.J. May 28, 2008) ("This [securities fraud] action involves complex legal and factual issues, and pursuing them would be costly and expensive."); *Datatec*, 2007 WL 4225828, at *3 ("[R]esolution of [accounting and damages issues] would likely require extensive and conceptually difficult expert economic analysis. . . . Trial on [scienter and loss causation] issues would be lengthy and costly to the parties.").

As discussed in detail in the Rogers Declaration, the Action alleged violations of the Securities and Exchange Act of 1934 ("Exchange Act"), raising a panoply of difficult legal and factual issues, routed within the pharmaceutical industry, that required creativity and sophisticated analysis. *See* Rogers Decl. at §VII. Continued litigation would have included additional briefing on class certification, as well as the completion of fact and expert discovery, and it is unknown whether Lead Plaintiff would withstand class certification and a summary judgment challenge, as well as whether Lead Plaintiff would be able to convince a jury to accept its theories over Defendants' competing narrative.

For example, although Lead Counsel believes that Lead Plaintiff has a strong case for liability, the claims against Defendants presented unique challenges given the highly technical nature of the alleged fraud. To prove its case, Lead Plaintiff would need to show that Defendants made false or misleading material statements about the Company's compliance with cGMP and its implementation of a remediation plan, and that they knew of or were severely reckless with respect to the allegedly on-going violations of cGMP or slowdowns in production as a result of remediation. These alleged violations would be difficult for a jury to assess and were vigorously disputed by Defendants, who would offer plausible alternative explanations supported by experts. There was a very real risk that a jury would conclude that the Defendants did not act with the requisite scienter. *See AT&T*, 455 F.3d at 170 (re-emphasizing that "the difficulty of proving actual knowledge under §10(b) of the Securities Exchange Act . . . weighed in favor of approval of the fee request"); *see also* ¶¶ 51-57.

Had this litigation continued, Lead Plaintiff, through Lead Counsel, would have been required to conduct further extensive factual document and deposition discovery and substantial expert discovery (including preparation of expert reports and expert depositions). Moreover, Defendants are primarily Indian nationals, and many of the documents and witnesses relating to the claims are located overseas. As a result, even assuming substantial evidentiary support exists, Lead Plaintiff faced significant hurdles and risks in obtaining the discovery needed to prove its claims.

After the close of discovery, Defendants would undoubtedly have moved for summary judgment and would have vigorously challenged Lead Plaintiff's experts' testimony. Substantial time and expense would need to be expended in order to prepare the case for trial, filing and responding to myriad *in limine* motions, and the trial itself would be protracted 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. Indeed, in complex securities cases, even a victory at the trial stage does not guarantee a successful outcome. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 747-48 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("Even a victory at trial is not a guarantee of ultimate success . . . . An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."). Considering the magnitude, expense, and complexity of this securities case – especially when compared against the significant and certain recovery achieved by the Settlement – Lead Counsel's fee request is reasonable.

E. The Risk of Non-Payment Supports Approval of the Fee Request

Plaintiff's Counsel undertook the Action on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no or potentially little recovery and leave them uncompensated for their investment of time, as well as for their substantial expenses. This Court and others have consistently recognized that the risk of non-payment is an important factor favoring an award of attorneys' fees. *See*, *e.g.*, *Schering-Plough*, 2012 WL 1964451, at *7 ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval."); *In re Merck & Co., Vytorin ERISA Litig.*, No. 08-CV-285, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (finding "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees" where counsel accepted the action on a contingent-fee basis); *Sealed Air*, 2009 WL 4730185, at *8 (same); *In re Suprema Specialties, Inc. Sec. Litig.*, No. 02-168 (WHW), 2008 WL 906254, at *11 (D.N.J. Mar. 31, 2008) (same); *see also Valeant Pharms.*, 2020 WL 3166456, at *8 (noting that the risk of nonpayment weighed in favor of the requested fee, where, among other things, the "recovery was uncertain due to the difficulty of prevailing in securities cases generally").

In undertaking this responsibility, counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for cases of this type to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiff's Counsel received no compensation during the course of the litigation and advanced or incurred $314,531.64 in expenses for the benefit of the Settlement Class.

The risk of no recovery in complex cases of this type is real. Indeed, even if Lead Plaintiff had prevailed at trial on both liability and damages, no judgment would have been secure until after the rulings on the inevitable post-judgment motions and appeals became final – a process that would likely take years. Lead Counsel know from experience that despite the most vigorous and skillful efforts, a firm's success in contingent litigation, such as this, is not assured, and there are many class actions in which plaintiffs' counsel expended tens of thousands of hours and millions in expenses and received ***nothing*** for their efforts.[9] Indeed, even judgments initially affirmed on appeal by an appellate panel are no assurance of a recovery. *See, e.g.*, *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after 11 years of litigation, and following a jury verdict for plaintiffs and an affirmance by a First Circuit panel, plaintiffs' claims were dismissed by an *en banc* decision and plaintiffs recovered nothing).

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[9] For illustrative examples, *see*, *e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversal of jury verdict of $81 million against accounting firm after a 19-day trial); *Bentley v. Legent Corp.*, 849 F. Supp. 429 (E.D. Va. 1994), *aff'd*, 50 F.3d 6 (4th Cir. 1995) (directed verdict after plaintiffs' presentation of its case to the jury); *Landy v. Amsterdam*, 815 F.2d 925 (3d Cir. 1987) (directed verdict for defendants after five years of litigation); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict following two decades of litigation); *In re Apple Comput. Sec. Litig.*, No. C-84-20148, 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions); *In re JDS Uniphase Corp. Sec. Litig.*, No. CO2-1486 CW, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (case tried by Labaton Sucharow, defense verdict after four weeks of trial).

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result, and that such a result would be realized only after considerable and difficult effort. This strongly favors approval of the requested fee.

F. The Time Devoted to this Case by Counsel Supports Approval of the Fee Request

As discussed above and detailed in the Rogers Declaration and the individual declarations submitted by Plaintiff's Counsel who contributed to the prosecution of the Action, Exs. 3 and 4, Plaintiff's Counsel have devoted 5,600.15 hours to the prosecution and resolution of the Action. *See* Ex. 5.

The time and effort expended by Plaintiff's Counsel in prosecuting this Action and achieving the Settlement show that the requested fee is justified. As set forth in greater detail in the Rogers Declaration, Plaintiff's Counsel:

- conducted an extensive factual investigation, which included a thorough review of, among other things, (i) documents filed publicly by the Company with the SEC and the BSE; (ii) press releases, news articles, and other public statements issued by or concerning the Company and the Defendants; (iii) research reports issued by financial analysts concerning the Company; (iv) industry and regulatory standards including cGMP that govern the Company's manufacturing operations; (vi) FDA inspection reports known as Form 483s and other regulatory filings; (vii) pleadings filed in other pending litigations naming certain Defendants herein as defendants; (viii) interviews with 10 individuals who were former Dr. Reddy's employees that were familiar with the Company's Indian manufacturing operations and other potentially relevant knowledge (¶ 15);
- drafted and filed a detailed amended Complaint (¶¶ 14-19);
- successfully opposed, in part, Defendants' motion to dismiss the Complaint (¶¶ 20-30);
- moved for class certification (¶¶ 31-33);
- defended four depositions, including those of Lead Plaintiff, Lead Plaintiff's investment manager, and Lead Plaintiff's class certification expert (¶¶ 32, 37);
- engaged in fact discovery, including Lead Counsel's analysis of approximately 132,000 pages of documents produced by Defendants (¶ 36); and
- drafted mediation statements and engaged in extensive mediation efforts with an experienced mediator (¶¶ 38-40).

As noted above, Plaintiff's Counsel have expended 5,600.15 hours through August 15, 2020, investigating, prosecuting and resolving the Action, resulting in a combined "lodestar" amount of $3,525,315.50 at Plaintiffs' Counsel's current hourly rates.[10] *See* Exs. 3-A, 4-A, and 5. With respect to counsel's rates, which range from $775 to $1,100 per hour for partners, $725 to $775 per hour for of counsels/senior counsels, and $375 to $675 per hour for associates, Lead Counsel submits that the rates are comparable or less than those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2019 gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. Ex. 6; ¶ 76. Lead Counsel's efforts for the benefit of the Settlement Class will continue, if the Court approves the Settlement. Lead Counsel will continue to work through the settlement administration process and the distribution process, without seeking any additional compensation.

Lead Counsel respectfully submits that this *Gunter* factor weighs in favor of the requested attorneys' fee.

G. The Requested Fee of 25% of the Settlement Amount Is within the Range of Fees Typically Awarded in Actions of this Nature

As discussed above in Section III.A, the requested fee of 25% of the Settlement Amount is within the range of fees awarded in comparable cases, when considered as a percentage of the fund or on a lodestar basis. Accordingly, this factor supports approval of the requested fee.

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[10] Current hourly rates were used, as permitted by the United States Supreme Court and the other courts, to help compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *In re Rent-Way Sec. Litig*., 305 F. Supp. 2d 491, 517 n.10 (W.D. Pa. 2003); *Ikon*, 194 F.R.D. at 195.

H. The Lack of Government Investigation and the Fact that All Benefits of the Settlement Are Attributable to the Efforts of Counsel Support Approval of the Fee Request

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing, because this can indicate whether or not counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338. Here, there was no governmental civil or criminal investigation or prosecution of the alleged securities fraud that produced helpful testimony, admissions, or findings and, accordingly, the entire value of the Settlement is attributable to the efforts undertaken by Plaintiff's Counsel in this Action. This fact increases the reasonableness of the requested fee award. *See, e.g.*, *AT&T*, 455 F.3d at 173; *In re Cigna Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, at *6 (E.D. Pa. July 13, 2007); *In re Vicuron Pharms. Inc. Sec. Litig.* 512 Supp. 2d at 279, 287 (E.D. Pa. 2007).

I. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement Supports Approval of the Fee Request

The Third Circuit has also suggested that the requested fee be compared to "the percentage fee that would have been negotiated had the case been subject to a private [non-class] contingent fee agreement." *AT&T*, 455 F.3d at 165. A 25% fee is less than typical attorneys' fees in non-class contingent fee cases. *See Ocean Power*, 2016 WL 6778218, at *29. If this had been an individual action, the customary contingent fee would likely range from 30 to 40 percent of the recovery. *See, e.g.*, *Id.; Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."); *Blum v. Stenson*, 465 U.S. 886, 903 (1984) (Brennan, J., concurring) ("In tort suits, an attorney might receive one-third of whatever amount

the plaintiff recovers."). Lead Counsel's requested fee of 25% of the Settlement Amount is fully consistent with private standards.[11]

V. LEAD COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Lead Counsel also requests payment of $314,531.64 in expenses incurred in connection with the prosecution and settlement of this litigation. This is less than was reported in the Notice. Counsel's individual fee declarations attest to the amount and accuracy of their expenses. Exs. 3-B, 3-C, and 4-B. To date, there has been no objection to the request for expenses.

The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. "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." *See In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *ViroPharma*, 2016 WL 312108, at *18 (same); *Hall*, 2010 WL 4053547, at *23 ("Courts have generally approved expenses arising from photocopying, use of the telephone and fax, postage, witness fees, and hiring of consultants."). The categories of expenses for which counsel here seek payment are the type routinely billed to hourly clients and, therefore, should be paid out of the common fund.

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[11] Another factor the Third Circuit asks district courts to consider is whether the settlement contains "any innovative terms." *Diet Drugs*, 582 F.3d at 541; *Prudential*, 148 F.3d at 340. This Settlement does not, because Lead Counsel believes that an all cash recovery is the best remedy for the injury suffered by the Settlement Class. 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 Prods. Antitrust Litig.*, No. 08-md-2002, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012).

A significant component of Plaintiff's Counsel's expenses are the costs of experts and consultants, which total $219,100.53 or approximately 70% of total expenses. ¶ 94. Due to the complexity and specialized nature of the factual issues in this case, it was necessary for Lead Plaintiff to consult with highly qualified experts in the area of pharmaceutical manufacturing, FDA regulation, and damages. These experts were critical to developing Lead Plaintiff's claims. *Id.* For instance, as detailed in the Rogers Declaration, Lead Counsel's economic expert, Chad Coffman, C.F.A., prepared an expert report in connection with the class certification motion, assisted Lead Counsel during the mediation and settlement negotiations with Defendants, and assisted Lead Counsel with the development of the proposed Plan of Allocation. Additionally, Lead Counsel worked with investigators in India and has consulted with tax advisors in India concerning the taxability of the Settlement Amount and with respect to Indian tax filings. *Id.*

Lead Counsel were also required to travel in connection with this Action and incurred costs related to working meals, lodging, and transportation, which total $29,383.09 or approximately 9% of aggregate expenses. This primarily included travel to court hearings, witness interviews, and in connection with the mediation of the case, as well as working late hours. ¶ 95.

Another component of the litigation expenses was for litigation support services, which were needed to produce and host the electronic documents produced in the Action. These expenses amount to $19,961.66, or approximately 6% of total expenses. ¶ 96. The costs of electronic factual and legal research total $16,806.94 or approximately 5% of total expenses. ¶ 97. These are the costs of services such as LEXIS/Nexis, Westlaw, and Pacer. It is standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues.

Lead Counsel also incurred expenses in connection with the mediation, totaling $7,036.25 (or approximately 2% of total expenses). ¶ 98.

The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation. These expenses include, among others, work-related travel, duplicating costs, transcription costs, long distance telephone and conference call charges, and filing fees. ¶ 99.

The Notice informed potential Class Members that Lead Counsel would apply for payment of litigation expenses in an amount not to exceed $600,000. The amount of litigation expenses requested, $314,531.64, is well below the amount listed in the Notice and, to date, there has been no objection to the request for expenses

VI. LEAD PLAINTIFF'S REQUEST FOR PSLRA REIMBURSEMENT

The PSLRA, 15 U.S.C. § 78u-4(a)(4), limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides 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." Here, as detailed in its declaration, attached as Exhibit 1 to the Rogers Declaration, Lead Plaintiff is seeking $27,500 in expenses related to the 115 hours it dedicated to actively participating in the Action, which included proffering two witnesses for a 30(b)(6) deposition and attending the mediation in Los Angeles. Ex. 1 at ¶¶ 8-10.

Many cases have approved reasonable payments to compensate class representatives for the time, effort, and expenses they devoted to representing a class. *See, e.g., In re Royal Dutch/Shell Transp. Sec. Litig.,* No. 04-374 (JAP), 2008 WL 9447623, at *29 (D.N.J. Dec. 9, 2008) (awarding "$150,000 to Lead Plaintiffs to compensate them for their reasonable costs and

expenses directly relating to their representation of the Class"); *In re Veritas Software Corp. Sec. Litig.*, No. 1:04-cv-00831-SLR, slip op. at 1 (D. Del. Aug. 5, 2008) (Ex. 7) (awarding each lead plaintiff $15,000); *Par Pharm.*, 2013 WL 3930091, at *11 (awarding $18,000 to lead plaintiff); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08 Civ. 397, 2013 WL 5505744, at *37 (D.N.J. Oct. 1, 2013) (awarding $102,447.26 to four class representatives); *In re PTC Therapeutics, Inc. Sec. Litig.,* Civil Action No. 16-1224, slip op. at 3 (D.N.J. Sept. 10, 2018) (awarding $10,287.30 in the aggregate to two lead plaintiffs) (Ex. 7); *see also In re Am. Int'l Grp., Inc.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (awarding $30,000 to institutional lead plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"); *In re Flag Telecom Holdings Sec. Litig.*, No. 02-3400, 2010 WL 4537550, at *31 (S.D.N.Y. Nov. 8, 2010) (awarding $100,000 to lead plaintiff for time spent on the litigation). As explained in one decision, courts "award such costs and expenses to both reimburse named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as provide an incentive for such plaintiffs to remain involved in the litigation and incur such expenses in the first place." *Hicks v. Stanley*, No. 01 Civ. 10071(RJH), 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005).

Lead Counsel and Lead Plaintiff respectfully submit that the amount sought here is reasonable based on Lead Plaintiff's active involvement in the Action from inception to settlement. *See* Ex. 1.

CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 25% of the Settlement Amount, or $2,250,500 plus interest at the same rate as earned by the Settlement Fund, $314,531.64 for litigation expenses incurred in

connection with the prosecution of the Action, and $27,500.00 to reimburse Lead Plaintiff, pursuant to the PSLRA.

Dated: August 25, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 25, 2020, I caused the electronic filing of the foregoing Lead Counsel's Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Payment of Expenses, using the Court's CM/ECF system, which will be sent electronically to the registered participants as identified on the attached Electronic Mail Notice List.

/s/ Joel B. Strauss
Joel B. Strauss