

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE PTC THERAPEUTICS, INC.
SECURITIES LITIGATION

Civil Action No. 16-1224 (KM)(MAH)

**BRIEF IN SUPPORT OF CO-LEAD COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
PAYMENT OF LITIGATION EXPENSES**

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PRELIMINARY STATEMENT

After more than two years of litigation, Labaton Sucharow LLP and Levi & Korsinsky LLP, Court-appointed Co-Lead Counsel for Lead Plaintiffs Boston Retirement System (“Boston”) and Si Nguyen, Hong-Luu Nguyen, John Nguyen, and the Si Tan Nguyen Trust (the “Nguyen Family”), and the Settlement Class have successfully negotiated a favorable settlement of this class action with PTC Therapeutics, Inc. (“PTC” or “the Company”), Shane Kovacs, and Stuart Peltz, Ph.D. (collectively, “Defendants”) in the amount of \$14,750,000 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, Co-Lead Counsel request: (i) an award of attorneys’ fees in the amount of 29% of the Settlement Fund; (ii) payment of litigation expenses incurred in prosecuting the Action, in the amount of \$107,250.22; and (iii) reimbursement of the Lead Plaintiffs’ costs, in the aggregate amount of \$10,287.30, pursuant to the Private Securities Litigation Reform Act of 1995.

As set forth in detail in the accompanying Joint Declaration,² the Settlement was achieved through the skill, experience, and effective advocacy of Co-Lead Counsel. Co-Lead

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 March 1, 2018 (ECF No. 84-3) (the “Stipulation”) or in the Joint Declaration of James W. Johnson and Nicholas I. Porritt in Support of: (I) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Co-Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses (the “Joint Declaration” or “Joint Decl.”), filed herewith. “Plaintiffs’ Counsel” consists of Co-Lead Counsel Labaton Sucharow and Levi & Korsinsky; Liaison Counsel Carella, Byrne, Cecchi, Olstein, Brody and Agnello, P.C.; The Thornton Law Firm LLP, additional counsel to Lead Plaintiff Boston; and Kirby McInerney LLP, counsel to named plaintiff Retail Wholesale Department Store Union Local 338 Retirement Fund.

² The Joint 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 Plaintiffs’ Counsel provided for the benefit of the Settlement Class; the nature of the claims; the negotiations leading

Counsel, with the assistance of other Plaintiffs' Counsel, vigorously pursued the claims in this Action for the benefit of the Settlement Class by reviewing and analyzing: (i) documents filed publicly by the Company with the Securities Exchange Commission ("SEC"); (ii) publicly available information, including 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) other publicly available information and data concerning the Company, including information concerning several major clinical trials conducted by the Company and submitted to the United States Food & Drug Administration ("FDA") and the European Medicines Agency ("EMA"); (v) FDA briefing documents and rules related to the FDA new drug approval process, including documents related to PTC Therapeutics' drug candidate, Translarna; (vi) new drug applications filed by competitor drug manufacturers; (vii) pleadings filed in other pending litigations naming certain Defendants herein as defendants or nominal defendants; (viii) documents produced by Defendants in connection with the mediation; and (ix) the applicable law governing the claims and potential defenses. Co-Lead Counsel also interviewed 25 former PTC Therapeutics employees and other persons with relevant knowledge, defended against Defendants' motion to dismiss, and consulted with experts on FDA and EMA approval, valuation, damages, and loss causation issues.

Co-Lead Counsel were unaided by any governmental investigation of the alleged wrongdoing. Counsel's efforts to date have been without compensation of any kind and the fee has been wholly contingent upon the result achieved. It is respectfully submitted that 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

to the Settlement; the risks and uncertainties of the litigation; and the facts and circumstances underlying Co-Lead Counsel's requests for fees and expenses.

the litigation; and (iii) the amount of fees awarded by courts within the Third Circuit and this district in comparable cases.

Furthermore, Lead Plaintiffs Boston, a sophisticated institutional investor that actively supervised the Action, and the Nguyen Family have evaluated the request for fees and expenses and have authorized it as reasonable. *See* Declaration of Timothy J. Smyth, Executive Officer of the Boston Retirement System (Ex. 1) at ¶¶2, 7-8 and the Declaration of the Nguyen Family (Ex. 2) at ¶¶2, 7, 13.³

Finally, pursuant to the Preliminary Approval Order, 36,692 copies of the Notice have been mailed to potential Settlement Class Members and their nominees through August 1, 2018, 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 Adam D. Walter Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections (the "Mailing Decl."), attached as Exhibit 3 to the Joint Declaration, at ¶¶2-9. The Notice advised potential Settlement Class Members that Co-Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed \$200,000. *See* Ex. 3-A at ¶¶5, 41. The fees and expenses sought by Co-Lead Counsel do not exceed the amounts set forth in the Notice. While the deadline set by the Court for Settlement 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.

³ All exhibits referenced herein are annexed to the Joint 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 Joint Declaration, Co-Lead Counsel respectfully submit 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.

LEGAL ARGUMENT

I. CO-LEAD COUNSEL ARE 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.”).

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*

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

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”).

Co-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 PTC common stock.

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

Co-Lead Counsel respectfully submit 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.*, 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 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. §77z-1(a)(6) and § 78u-4(a)(6) (emphasis added). 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 29% of the Settlement Fund 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.”); *Louisiana Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, No. 03- CV-4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. 2009) (same); *see also Rite Aid*, 396 F.3d at 298 (taking note of statistical studies showing that the average fee award in securities class actions with settlements over \$10 million was 31% and that median fee award rates in several federal district courts ranged from 27% to 30%).

A review of attorneys’ fees awarded in class actions with comparably sized settlements in the Third Circuit supports the reasonableness of the requested fee. *See 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 (DMC) (JAD), 2012 WL 1964451, at *6-7 (D.N.J. May 31, 2012) (awarding 33.3% of \$12.25 million settlement); *Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 154-56 (awarding 33% of \$10.5 million settlement); *Par Pharm.*, 2013 WL 3930091, at *11 (awarding 30% of \$8.1 million settlement); *In re Heckmann Corp. Sec. Litig.*, No. 1:10-cv-00378-LPS-MPT, slip op. at 2 (D. Del. June 26, 2014), ECF No. 308 (awarding 33.3% of \$27 million settlement) (Ex. 10)⁵; *Esslinger v. HSBC Bank Nev., N.A.*, No. 10-3213, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) (“a fee award of 30% of the [\$23.5 million] settlement here is reasonable and in keeping with similar precedent”); *In re Veritas Software Corp. Sec. Litig.*, No. 1:04-cv-00831-

⁵ All unreported decisions are submitted herewith in a compendium, attached to the Joint Decl. as Ex. 10.

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); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 464-66 (E.D. Pa. 2008) (awarding 30% of \$14 million settlement).⁶ Awards of 30% 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).

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 reasonable and to avoid a "windfall" to counsel. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.⁷

⁶ The requested fee is also well within the range of percentage fee awards that have been granted in comparable securities class actions in other Circuits. *See, e.g., 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. 10) (awarding 30% of \$12.8 million settlement); *Klugmann v. Am. Capital Ltd.*, No. 8:09-CV-00005-PJM, slip op. at 9 (D. Md. June 12, 2012) (Ex. 10) (awarding 33.3% of \$18 million settlement); *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of \$27 million settlement); *In re L.G. Philips LCD Co. Sec. Litig.*, No. 1:07-cv-00909-RJS, slip op. at 1 (S.D.N.Y. Mar. 17, 2011) (Ex. 10) (awarding 30% of \$18 million settlement).

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.

Here, Plaintiffs' Counsel devoted an aggregate total of 3,599.60 hours on the prosecution and resolution of this Action. Joint Decl. ¶70; Ex. 8 (Summary of Lodestars and Expenses); and Exs. 4–A, 5-A, 6-A, and 7-A. Plaintiffs' Counsel's lodestar – which is derived by multiplying their hours spent on the litigation by each firm's current hourly rates for attorneys, paralegals and other professional support staff – is \$2,153,499.25. *Id.* Accordingly, the requested 29% fee, which equates to \$4,277,500 (plus interest on that amount at the same rate as earned by the Settlement Fund), represents a multiplier of 1.99 on counsel's lodestar. Joint Decl. ¶70.

This multiplier is within the parameters used within the Third Circuit and is additional evidence that the requested attorneys' fee is reasonable. Lodestar multipliers of one to four are often used in common fund cases. *In re Prudential Inc. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341(3rd 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); *Ikon*, 194 F.R.D. at 195 (awarding 2.7 multiplier and noting that it was "well within the range of those awarded in similar cases").

Accordingly, the 29% 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). Indeed in cases involving large settlement awards, district courts may give some of the *Gunter* factors less weight, and emphasize (1) the complexity and duration of the case and (2) awards in similar cases. *Rite Aid*, 396 F.3d at 301.

An analysis of 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, Co-Lead Counsel, on behalf of Lead Plaintiffs, have secured a Settlement that provides for a substantial and certain payment of \$14,750,000. The Settlement is well-above the \$6 million median settlement amount in securities cases in 2017.⁸ Furthermore, as detailed in the Joint Declaration, Lead Plaintiffs estimate maximum aggregate damages, using the full Settlement Class Period, of approximately \$390 million. However, recoverable maximum damages at trial, applying the shortened class period upheld by the Court, are estimated at approximately \$185 million, assuming Lead Plaintiffs prevailed on all of their remaining claims. Joint Decl. ¶52. Measured against these yardsticks, the Settlement recovers between approximately 4% and 8% of maximum damages – a very favorable recovery in light of the procedural posture of the case, 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 §III.H.

The Settlement will also benefit a large number of investors. To date, the Claims Administrator has mailed 36,392 Notice Packets to potential Settlement Class Members and their nominees. See Ex. 3 at ¶8. Accordingly, while the deadline for submission of the Claim Forms

⁸ See Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*, at 30 (NERA Jan. 2018) (“NERA Report”) (reporting median settlement value of \$6 million in 2017), attached as Ex. 11 to the Joint Decl.

is not until September 27, 2018 a large number of Settlement Class Members can be expected to benefit from the Settlement Fund. *See 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, which was sent to more than 36,000 potential Settlement Class Members and their nominees and disseminated over the internet, provided a summary of the terms of the Settlement and stated that Co-Lead Counsel would apply for an award of attorneys’ fees in an amount not to exceed 30% of the Settlement Fund. *See Ex. 3-A at ¶¶5, 41.* The Notice also advised Settlement Class Members that they could object to Settlement or fee request and explained the procedure for doing so. *See id.* at ¶¶42-44. While the deadline set by the Court for Settlement Class Members to object has not yet passed, to date, no objections have been received.⁹

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 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).

⁹ The deadline for submitting objections is August 17, 2018. As provided in the Preliminary Approval Order, Lead Plaintiffs and Co-Lead Counsel will file reply papers no later than August 31, 2018, addressing any objections that may be received.

It required considerable skill to achieve the proposed Settlement for the benefit of the Settlement Class. Co-Lead Counsel were required to contend with, among others, issues particular to the pharmaceutical industry and regulatory scheme, difficult material falsity issues and scienter allegations, and damages issues. In particular, there were substantial risks to establishing material falsity and scienter given Defendants' alleged belief in Translarna and its approval by the EMA and, particularly, to proving scienter in a highly complex, scientifically based case relying only on circumstantial evidence presented through adverse witnesses and highly technical expert testimony. *See* Joint Decl. ¶¶43-55.

With respect to “the experience and expertise” of counsel, as set forth in the firm resumes attached to the respective declarations of Plaintiffs' Counsel (*see* Exs. 4-E, 5-D, 6-D, and 7-D), Co-Lead 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* Joint Decl. ¶¶73-74.

“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). Co-Lead Counsel was opposed in this litigation by one of the nation's most elite law firms. Here, Defendants were represented ably by Goodwin Procter LLP, a prominent firm with undeniable experience and skill in the securities arena. The ability of Co-Lead Counsel to obtain a favorable outcome for the Settlement Class in the face of this formidable legal opposition further confirms the quality of Co-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., 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 Joint Declaration, the Action alleged violations of the Securities and Exchange Act of 1934 (“Exchange Act”), raising a panoply of difficult legal and factual issues that required creativity and sophisticated analysis. Joint Decl. ¶¶14-18, 43-55. The motion to dismiss was hotly contested, and the investigation required careful review and analysis of FDA briefing documents and rules related to the FDA new drug approval process, documents related to Translarna, and new drug applications filed by competitor drug manufacturers. *Id.* ¶¶19-26. Continued litigation would have included exhaustive discovery relating to matters typical for establishing securities claims but also to FDA and EMA regulatory practice, clinical trial procedures, the Company’s clinical trials of Translarna, and the treatment of nonsense-mutation Duchenne Muscular Dystrophy.

For example, although Co-Lead Counsel believe that the Lead Plaintiffs have a strong case for liability, the claims against the Defendants presented unique challenges given the highly technical nature of the alleged fraud. To prove their case, Lead Plaintiffs would need to show

that Defendants made false or misleading material statements about what the ACT DMD trial demonstrated, and Translarna's ability to pass FDA review, and that they knew or were severely reckless in disregarding the risk that their statements would mislead the investing public as to whether the ACT DMD results met FDA efficacy standards. *Id.* ¶¶44-50. These alleged violations, which related to, among other things, the conduct of clinical trials in general and the conduct of the Translarna clinical trials, might not be understood by a jury and were vigorously disputed by Defendants who would offer plausible alternative explanation 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* Joint Decl. ¶¶44-46. In this regard, in the Order denying, in part, the motion to dismiss, the Court wrote, “there is something to be said for the defendants’ account” (*i.e.*, that PTC believed that FDA would accept the Translarna NDA for filing and full substantive review, given the significant unmet medical need in the DMD community), and that “plaintiff’s version of events is [not] factually bulletproof.” *In re PTC Therapeutics, Inc. Sec. Litig.*, No. 16 Civ. 1124, 2017 WL 3705801, at *19 (D.N.J. Aug. 28, 2017).

Had this litigation continued, Lead Plaintiffs, through Co-Lead Counsel, would have been required to conduct extensive factual document and deposition discovery and substantial expert discovery (including preparation of expert reports and expert depositions). After the close of discovery, Defendants would undoubtedly have moved for summary judgment and would have vigorously challenged Lead Plaintiffs’ experts’ testimony. Substantial time and expense would need to be expended in preparing the case for trial, filing and responding to *in limine* motions, and the trial itself would be extensive 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 – Co-Lead Counsel’s fee request is reasonable.

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

Co-Lead Counsel undertook this 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 this risk 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., Inc. 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).

In undertaking this responsibility, counsel were 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, Plaintiffs' Counsel received no compensation during the course of this two year litigation and advanced or incurred \$107,250.22 in expenses in prosecuting this Action for the benefit of the Settlement Class.

The risk of no recovery in complex cases of this type is real. Indeed, even if Lead Plaintiffs 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. Co-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.¹⁰ 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).

¹⁰ 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) (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 Joint Declaration and the individual declarations submitted by Plaintiffs' Counsel who contributed to the prosecution of the Action, Exs. 4 – 7, Plaintiffs' Counsel have collectively devoted 3,599.60 hours to the prosecution and resolution of the Action. *See* Ex. 8.

Since the initiation of the Action, Plaintiffs' Counsel have vigorously pursued the claims, conducting a thorough investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action. This process included reviewing and analyzing: (i) publicly available information, including SEC filings, press releases, news articles, and other public statements issued by or concerning the Company and the Defendants; (ii) analyst reports; (iii) other publicly available information and data concerning the Company, including information concerning other major clinical trials conducted by the Company and submitted to the FDA and EMA; (iv) FDA briefing documents and rules related to the new drug approval process, including documents related to Translarna; (v) competitors' NDAs; (vi) pleadings filed in other pending litigations naming certain Defendants herein as defendants or nominal defendants; and (vii) documents produced by Defendants in connection with the mediation. *See* Joint Decl. ¶¶4, 15. Co-Lead Counsel also interviewed 25 former PTC Therapeutics employees and other persons with relevant knowledge, and consulted with experts on FDA and EMA approval, valuation, damages, and causation issues. *Id.* Co-Lead Counsel also: (i) researched and drafted a thorough and detailed amended complaint; (ii) fully briefed and successfully

overcame, in part, Defendants' motion to dismiss; (iii) exchanged initial discovery disclosures with Defendants; and (iv) participated in thorough settlement negotiations, including a mediation session facilitated by a private mediator. *Id.* ¶¶14-36.

As noted above, Plaintiffs' Counsel have expended nearly 3,600 hours through July 15, 2018 investigating, prosecuting and resolving this Action, resulting in a combined "lodestar" amount of \$2,153,499.25 at Plaintiffs' Counsel's regular and current billing rates.¹¹ *See* Ex. 8; Exs. 4-A, 5-A, 6-A, and 7-A. Counsel's time is also broken down by various litigation tasks, such as investigative work, pleadings, motions, and discovery. Exs. 4-B, 5-B, 6-B, and 7-B. With respect to counsel's rates, which range from \$650 to \$995 per hour for partners, \$600 to \$650 for of counsels/senior counsels, and \$455 to \$675 for associates. Co-Lead Counsel submit that they are comparable or less than those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2017, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. *See* Joint Decl. ¶69; Ex. 9. Co-Lead Counsel's efforts for the benefit of the Settlement Class will continue, if the Court approves the Settlement. Co-Lead Counsel will continue to work through the settlement administration process, assisting Class Members, and the distribution process, without seeking any additional compensation.

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

¹¹ 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.

G. The Requested Fee of 29% of the Settlement Fund is within the Range of Fees Typically Awarded in Actions of this Nature

As discussed above in Part III.A., the requested fee of 29% of the Settlement Fund 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 strongly supports approval of the requested fee.

H. The Lack of Any Government Investigation and the Fact that All Benefits of the Settlement Are Attributable to the Efforts of Co-Lead 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 actions 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 such government investigation or prosecution that produced helpful evidence or generated a fine, penalty or other punishment and, accordingly, the entire value of the Settlement achieved is attributable to the efforts undertaken by Plaintiffs' 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); *Vicuron Pharms.*, 512 Supp. 2d at 287.

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 29% fee is consistent with typical attorneys' fees in non-class cases. *See Ocean Power*, 2016 WL 6778218, at *29. If this were an

individual action, the customary contingent fee would likely range between 30 and 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 29% of the Settlement Fund is fully consistent with these private standards.¹²

V. CO-LEAD COUNSEL’S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Co-Lead Counsel also request payment of \$107,250.22 in expenses incurred in connection with the prosecution of this litigation. This is less than was requested in the Notice. Counsel’s individual fee declarations attest to the amount and accuracy of their expenses. Joint Decl. Exs. 4-C, 5-C, 6-C, and 7-C. 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. *See In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (“[c]ounsel 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”) (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir.

¹² 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 Co-Lead Counsel believe that an all cash recovery is the best remedy for the injury suffered by the Settlement Class. In these 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).

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 seek payment here are the type of expenses routinely charged to hourly clients and, therefore, should be paid out of the common fund.

A significant component of Plaintiff’s Counsel’s expenses are the costs of experts, which total \$66,204.00 or approximately 62% of the total expenses. Joint Decl. ¶88. Due to the complexity and specialized nature of the factual issues in this case, it was necessary for Lead Plaintiffs to consult with highly qualified experts in the area of damages and FDA regulation. These experts were critical to developing Lead Plaintiffs’ claims. *Id.*

Additionally, Plaintiff’s Counsel paid \$6,100 in mediation fees assessed by the mediator in this matter. *Id.* ¶89. Plaintiff’s Counsel also incurred costs related to computerized research. These are charges for computerized factual and legal research services such as, Courtlink, LexisNexis, Westlaw, Pacer, and Thomson Financial. It is standard practice for attorneys to use these services to assist them in researching legal and factual issues. Such services allowed counsel to access PTC’s SEC filings, perform media searches about Defendants, obtain analysts’ reports, and allowed the investigators to locate and obtain information on witnesses and Defendants.

Other expenses that were necessarily incurred in the prosecution of this Action include: court reporting; duplicating; filing fees; postage and overnight delivery charges; and long distance telephone expenses. Because these were all necessary expenses incurred by Co-Lead Counsel, they should be paid from the Settlement Fund.

VI. LEAD PLAINTIFFS' REQUESTS 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 their respective declarations, attached as Exhibits 1 and 2 to the Joint Declaration, Lead Plaintiffs are seeking the aggregate amount of \$10,287.30 in expenses related to their active participation in the Action.

Many cases have approved reasonable payments to compensate class representatives for the time, effort, and expenses devoted by them on behalf of 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 Commvault, Systems, Inc. Sec. Litig.*, Civil Action No. 14-5628 (PGS)(LHG), slip op. at 3 (D.N.J. May 21, 2018) (Ex. 10) (awarding lead plaintiff \$7,290); *In re Veritas Software Corp.. Sec. Litig.*, No. 1:04-cv-00831-SLR, slip op. at 1 (D. Del. Aug. 5, 2008) (Ex. 10) (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 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 U.S. Dist. LEXIS 119702, at *89 (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).

Co-Lead Counsel and the Lead Plaintiffs respectfully submit that the amounts sought here are reasonable based on the requesting parties’ active involvement in the Action from inception to settlement. *See* Exs. 1 and 2.

CONCLUSION

For all the foregoing reasons, Co-Lead Counsel respectfully request that the Court award attorneys’ fees in the amount of 29% of the Settlement Fund, or \$4,277,500 plus interest at the same rate as earned by the Settlement Fund, \$107,250.22 for litigation expenses incurred in connection with the prosecution of the Action, and \$10,287.30 to reimburse the Lead Plaintiffs, pursuant to the PSLRA.

Dated: August 3, 2018

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