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IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ENDO INTERNATIONAL PLC, et al., Defendants.	CIVIL ACTION Case No. 2017-02081-MJ

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Plaintiff Public Employees' Retirement System of Mississippi ("Plaintiff" or "Mississippi PERS"), on behalf of itself and all other members of the proposed Settlement Class, respectfully submits this brief in support of its motion for: (i) final approval of the proposed Settlement of the above-captioned class action (the "Action"); (ii) approval of the proposed plan of allocation for distributing the proceeds of the Settlement to eligible claimants (the "Plan of Allocation"); and (iii) final certification of the Settlement Class.[1]

The Motion is based on the following memorandum of law and the Declaration of Serena P. Hallowell in Support of (I) Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Plaintiff's Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, (the "Hallowell Declaration"), submitted herewith.[2] A proposed final order and judgment, negotiated by the Parties as part of the Settlement, is also submitted herewith.

PRELIMINARY STATEMENT AND HISTORY OF THE CASE

As set forth in the Stipulation, Plaintiff has agreed to settle all claims asserted in the Action against Defendants[3] or that could have been asserted arising out of the Company's

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated June 27, 2019 (the "Stipulation"), filed with the Court on June 28, 2019.

[2] The Hallowell 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, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation; among other things. Citations to "¶" in this memorandum refer to paragraphs in the Hallowell Declaration.

[3] "Defendants" are Endo International plc. ("Endo" or "the Company"), Rajiv Kanishka Liyanaarchchie De Silva, Suketu P. Upadhyay, Daniel A. Rudio, Roger H. Kimmel, Shane M. Cooke, John J. Delucca, Arthur J. Higgins, Nancy J. Hutson, Michael Hyatt, William P. Montague, Jill D. Smith, William F. Spengler (collectively, the "Individual Defendants" and with Endo, the "Endo Defendants"); and Goldman Sachs & Co. LLC (named as Goldman, Sachs & Co.), J.P. Morgan Securities LLC, Barclays Capital Inc., Deutsche Bank Securities Inc., RBC *(. . . continued)*

secondary public offering of common stock that occurred on or about June 5, 2015 ("Released Claims") against the Released Defendant Parties, in exchange for the payment of $50,000,000 (the "Settlement Amount"), for the benefit of the Settlement Class. The terms of the Settlement are detailed in the Stipulation, which was executed by the Parties on June 27, 2019, after a rigorous mediation process overseen by a highly regarded and respected mediator, the Hon. Layn R. Phillips (Ret.). ¶¶39-43.

As described below and in the accompanying Hallowell Declaration, the decision to settle was well-informed by more than two years of contentious and hard-fought litigation that involved a comprehensive investigation before the filing of two complaints; briefing on Defendants' removal challenge that included litigation in the U.S. District Court for the Eastern District of Pennsylvania (the "District Court"); opposing Defendants' motion to stay the case in light of the U.S. Supreme Court's anticipated decision in *Cyan, Inc. v. Beaver County Employees' Retirement Fund*, No. 15-1439; briefing on Defendants' comprehensive preliminary objections to the amended complaint, which were overruled by the Court; fact discovery (involving the analysis of approximately 130,000 pages of documents produced by Defendants and third parties); consultations with experts; and moving for class certification. *See generally* Hallowell Decl. at §§III-V.

The $50 million recovery represents between approximately 19% and 34% of likely aggregate damages estimated by Plaintiff's consulting loss causation and damages expert, assuming the Settlement Class was able to establish Defendants' liability through trial and

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Capital Markets, LLC, Citigroup Global Markets Inc. (named as Citigroup Global Markets, LLC), Morgan Stanley & Co. LLC, SunTrust Robinson Humphrey, Inc., TD Securities (USA) LLC, and MUFG Securities Americas Inc. (f/k/a Mitsubishi UFJ Securities (USA) Inc.) (collectively, the "Underwriter Defendants," and with the Endo Defendants, the "Defendants").

appeals, and crediting Defendants' negative causation arguments. *See* ¶¶5, 60. Plaintiff's Counsel, which have extensive experience and expertise in prosecuting securities class actions, believe that the Settlement represents a very favorable resolution of this complex litigation in light of the specific risks of continued litigation, particularly the challenges regarding materiality, falsity, traceability, negative causation, and damages. Indeed, based on extensive research, Class Counsel believes the Settlement would be the largest class action settlement obtained in any court pursuant to the Securities Act of 1933 (the "Securities Act") for allegedly misleading offering documents in a secondary public offering**.** Plaintiff, which was actively involved during the course of the Action, diligently represented the Settlement Class and has approved the Settlement. *See* Declaration of Jaqueline H. Ray on behalf of Mississippi PERS, Ex. 1.[4]

Accordingly, Plaintiff respectfully requests that the Court grant final approval of the Settlement and certify the Settlement Class. In addition, the Plan of Allocation, which was developed with the assistance of Plaintiff's consulting loss causation and damages expert, is a fair and reasonable method for distributing the Net Settlement Fund and should also be approved by the Court.

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On July 2, 2019, the Court entered an order preliminarily approving the Settlement and approving the proposed forms and methods of providing notice to the Settlement Class (the "Preliminary Approval Order"). Pursuant to and in compliance with the Preliminary Approval Order, through records maintained by Endo's transfer agent and information provided by

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

brokerage firms and other nominees, the Court-appointed Claims Administrator A.B. Data Ltd. ("A.B. Data"), caused, among other things, the Notice and Claim Form (together, the "Notice Packet") to be mailed by first-class mail to potential Settlement Class Members. *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, dated September 12, 2019, Ex. 2 at ¶¶2-9. A total of 35,418 Notice Packets have been mailed as of September 12, 2019. *Id*. at ¶9. On July 31, 2019, the Summary Notice was published in *The Wall Street Journal* and was disseminated over the internet using *PR Newswire*. *Id*. at ¶10 and Exhibits B and C attached thereto. The Notice and Claim Form were also posted, for review and easy downloading, on the website established by A.B. Data for purposes of this Settlement, as well as Labaton Sucharow's website. *Id*. at ¶12.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 2-A. The Notice also gave the deadlines for objecting, seeking exclusion, submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. While the deadline (September 30, 2019) for requesting exclusion or objecting to the Settlement has not yet passed, to date there have been no requests for exclusion and no objections to the proposed Settlement or the Plan of Allocation have been filed.[5]

[5] Should any objections or requests for exclusion be received, Plaintiff will address them in its reply papers, which are due to be filed with the Court on October 14, 2019. The reply papers will also include information about the claims submitted.

QUESTIONS PRESENTED

1. Whether the Court should grant final approval to the proposed class action Settlement?

A. Suggested Answer: Yes

2. Whether the Court should finally certify the Settlement Class, for purposes of the Settlement only?

A. Suggested Answer: Yes

3. Whether the Court should approve the proposed Plan of Allocation for distributing the proceeds of the Settlement to eligible Settlement Class Members?

A. Suggested Answer: Yes

LEGAL ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

A. The Standards for Final Approval of a Class Action

"[S]ettlements are favored in class action lawsuits." *Dauphin Deposit Bank & Trust Co. v. Hess*, 727 A.2d 1076, 1080 (Pa. 1999). As the United States Court of Appeals for the Third Circuit Court has recognized, "[t]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004);[6] *accord, In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig*., 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.");[7] *see also Moore v. Comcast Corp.*, No. 08-773, 2011 U.S. Dist.

[6] Pennsylvania state courts have looked to federal courts in the context of complex class action litigation. *See, e.g*., *Milkman v. Am. Travellers Life Ins. Co.,* No. 011925, 2002 WL 778272, at *24 (Pa. Com. Pl. Apr. 1, 2002) (citing to Third Circuit and other federal case law when assessing a class action settlement).

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

LEXIS 6929, at *3 (E.D. Pa. Jan. 24, 2011) ("Settlement of complex class action litigation conserves valuable judicial resources, avoids the expense of formal litigation, and resolves disputes that otherwise could linger for years.")

Pennsylvania Rule of Civil Procedure 1714(a) provides that "no class action shall be compromised, settled or discontinued without the approval of the court after hearing." In *Brophy v. Phila. Gas Works*, 921 A.2d 80 (Pa. Commw. 2007), the court explained that "a trial court's approval of a class action settlement as fair involves a two-step process." *Id*. at 88. Given the Court's preliminary approval of the Settlement, entry of the Preliminary Approval Order, and dissemination of the notice, we are now at the second-step, the Court's consideration of final approval.

The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement falls within a "range of reasonableness" after considering the following seven factors: (1) the risks of establishing liability and damages; (2) the range of reasonableness of the settlement in light of the best possible recovery; (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation; (4) the complexity, expense, and likely duration of the litigation; (5) the state of proceedings and the amount of discovery completed; (6) the recommendations of competent counsel; and (7) the reaction of the class to the settlement. *Dauphin Deposit Bank & Trust Co.*, 727 A.2d at 1078; *accord Buchanan v. Century Fed. Sav. & Loan Ass'n*., 393 A.2d 704, 709 (Pa. Super. 1978) (citing *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975)).[8]

[8] Federal Rule of Civil Procedure 23(e), to the extent its consideration is helpful to the Court, was also recently amended to, among other things, specify that in considering approval of a settlement, courts should assess whether: (i) the class representatives and class counsel have adequately represented the class; (ii) the settlement was negotiated at arm's-length; (iii) the relief *(. . . continued)*

Since a settlement is a compromise, the trial court should not decide the merits of the case. *See Buchanan*, 393 A.2d at 710-11. Moreover, the trial court should not attempt to substitute its own judgment for that of the parties, but rather must consider all relevant factors and view the negotiated settlement as a whole. *See e.g.*, *Dauphin*, 727 A.2d at 1078 ("As with valuation problems in general, there will usually be a difference of opinion as to the appropriate value of a settlement. For this reason, judges should analyze a settlement in terms of a 'range of reasonableness' and should generally refuse to substitute their business judgment for that of the proponents.").

B. Application of the Relevant Factors Supports Final Approval of the Settlement

1. The Risks Associated with Continued Litigation

"One very significant factor in determining whether a settlement is reasonable is the risk involved in proving liability and damages." *Treasurer of State v. Ballard, Spahr, Andrews & Ingersoll LLP*, 866 A.2d 479, 484 (Pa. Commw. 2005). "The risks surrounding a trial on the merits are always considerable." *Milkman*, 2002 WL 778272, at *13. A reviewing court "must recognize the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id*. Although Plaintiff believes that the case against Defendants is very strong, that confidence must be tempered by the fact that the Settlement is certain and that every case involves significant risk of no recovery, particularly in a complex case such as the one at bar. Here, there was no Company admission, or parallel

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is adequate given "the costs, risks, and delay of trial and appeal," "the effectiveness of distributing the relief to the class", "the terms of any proposed award of attorney's fees," and "any agreements required to be identified under Rule 23(e)(3); and whether (iv) the settlement treats class members equitably relative to each other. *See* amendments to Rule 23(e)(2)(A)-(D). Many of these considerations are already among the factors that courts within Pennsylvania weigh and each are readily satisfied here, as discussed below.

governmental proceeding, which would have aided Plaintiff in proving key elements of the case. There is no question that to prevail here, Plaintiff would have confronted a number of legal and factual challenges, while trying to prove difficult securities claims.

(a) Risks Concerning Liability

The claims in the Action arise from Sections 11, 12(a)(2), and 15 of the Securities Act. To prevail, Plaintiff would need to prove the existence of material omissions, misrepresentations, or undisclosed known trends and uncertainties at the time of the Company's secondary public offering of common stock that occurred on or about June 5, 2015, in contravention of Item 303 of Regulation S-K, 17 C.F.R. §229.303 ("Item 303").

Defendants have vigorously contested these claims and would have continued to argue and present evidence that the Offering Documents did not contain material omissions or misrepresentations and that Plaintiff could not establish that, at the time of the Offering, Endo was experiencing undisclosed negative trends in its sales of hydrocodone, generic, and DAVA products or that Defendants were engaged in unsustainable sales practices to meet investor expectations. Defendants would also have argued that even if Plaintiff could establish the existence of these trends at the time of the Offering, Plaintiff would be unable to establish that the trends needed to be disclosed to investors, either because they were immaterial, or because Defendants did not have actual knowledge of the purported trend, as required to prove a violation of Item 303. Even if Plaintiff did establish that the trends existed at the time of the Offering, Defendants would likely argue that at the time of the Offering, any shortfalls in sales were not sufficiently lengthy to constitute a trend under Item 303. While Plaintiff would be prepared to counter Defendants' arguments and evidence by asserting, for example, that Item 303 turns on the quantitative aspect of the alleged undisclosed trend, not on the qualitative length of the trend,

there is no guarantee that the Court, at summary judgment, or a jury would find in favor of Plaintiff on this issue. ¶¶47-51.

Defendants would also argue that Plaintiff could not establish Defendants' actual knowledge of the purported trend, arguing that at the time of the Offering, Defendants did not reasonably expect that the issues alleged in the Amended Complaint would have a material impact on the Company's net sales, revenues, or income, as required under Item 303. Among other things, Defendants would likely put forth evidence that Defendants expected the trends to be temporary or part of seasonal demand fluctuations and expected to make up any shortfalls in other product categories in future quarters. ¶52; *see also Blackmoss Inv. Inc. v. ACA Capital Holdings, Inc*., No. 07-cv-10528, 2010 WL 148617, at *9 (S.D.N.Y. Jan. 14, 2010) (Item 303 disclosure obligation requires "facts establishing that the defendant had actual knowledge of the purported trend").

Importantly, Defendants would also continue to argue that Plaintiff would not be able to prove that shares traded during the relevant period were actually traceable to the Offering, pursuant to Section 11. Defendants would argue that, under Section 11, a purchaser may recover only for damages related to shares bought pursuant to the challenged registration statement and not to shares purchased in an aftermarket pursuant to any earlier offerings. Here, Defendants would point out that at the time of the Offering, millions of Endo shares were already being traded in the market, and therefore Plaintiff could not demonstrate with certainty that a share purchased in the aftermarket was from the Offering, and not one of the millions of other shares. Furthermore, Defendants would argue that many of the investors who were allocated shares in the Offering already owned Endo shares and continued to buy non-Offering shares in June 2015 in the aftermarket. The Offering shares would therefore be commingled with non-Offering

shares in those investors' accounts, further complicating any attempt to trace the shares that were allocated to them back to the Offering. While Plaintiff believes that traceability would be established, particularly given the evidence adduced to date, there is no certainty as to how the Court, at summary judgment, or a jury would come out on this issue. ¶¶62-63.

(b) Risks Concerning Negative Causation and Damages

Even assuming that Plaintiff successfully established each of the elements of liability at trial (and the verdict was upheld on appeal), Plaintiff still faced substantial obstacles to proving damages and overcoming Defendants' "negative-causation" defense. As set forth in the Hallowell Declaration, in raising a negative causation defense, Defendants would likely argue that the alleged materially misleading statements in the Offering Documents did not cause a substantial portion of the damages Plaintiff claimed, because most of the decline in the stock price after the Offering was not caused by the alleged misstatements and omissions. ¶54.

More specifically, Plaintiff alleges that that Endo revealed the sales problems facing its hydrocodone products and the Qualitest portfolio, and the negative impact they had on the Company's finances, on February 29, 2016, March 17, 2016, and May 5, 2016. Following these three announcements, the Amended Complaint alleges that the Company's stock price dropped substantially. With respect to the February 29, 2016 price drop, Defendants would likely argue that Plaintiff cannot recover for the decline that took place between the Offering and the February 29, 2016 price drop because Plaintiff would not be able to point to any corrective disclosure prior to the February 2016 disclosure. Defendants would also argue that Plaintiff cannot recover the full amount of the decline that occurred following the February 29, 2016 corrective disclosure because the full drop in price was only partly due to the sales misses in the Company's hydrocodone-containing products and the Qualitest portfolio. Defendants would

argue that the Company's results were due to other issues that they fully disclosed on February 29, 2016. ¶¶55-56.

Defendants would also argue that Plaintiff cannot recover any damages for any decline after February 29, 2016 because, to the extent that any material information regarding sales of Qualitest products or hydrocodone-containing products was omitted from the Offering Documents, that negative information was fully revealed by the February 29, 2016 disclosure, if not before. Thus, Defendants would have contended that the March 17, 2016, and May 5, 2016 alleged corrective disclosures were not actionable, and that any decline in Endo's share price on those dates could not have been caused by the disclosures of allegedly undisclosed problems at the time of the Offering. Defendants would also argue that, even if the March and May 2016 disclosures disclosed new information or were otherwise actionable, Plaintiff cannot recover the full value of the declines after these disclosures, because, as with the February 29, 2016 disclosure, the Company attributed its negative results and reduced guidance, in part, to problems that were not alleged in the Amended Complaint. ¶¶57-58.

Defendants would also likely have argued that the trading pattern of Endo's shares was evidence that many purchasers in the Offering sold those shares in the days following the Offering—or "flipped" them—without incurring any losses. Defendants would have sought to adjust the damages analysis to account for "flipping." ¶59.

Though Plaintiff would have counterarguments to the above, Plaintiff's consulting loss causation and damages expert analyzed these anticipated negative causation arguments and estimated that that if such arguments were successful, aggregate damages would be approximately $257 million. This estimate assumes liability were established with respect to the claims and that all the disclosures were actionable. Factoring in Defendants' "flipping"

argument, were Defendants successful, damages could be further reduced to approximately $146 million. ¶60.

Though Plaintiff believes that Defendants' arguments take too narrow a view of the connection between the allegations and the price declines and that Defendants would be unable to meet their burden of proving that factors other than the allegedly omitted and misstated information caused the price declines, there was no certainty that Plaintiff would prevail. As the case proceeded, the Parties' respective damages experts would strongly disagree with each other's assumptions and their respective methodologies, and there was no certainty concerning which expert would be credited by the jury, or the Court. Accordingly, the risk that the jury would credit Defendants' damages position over that of Plaintiff had considerable consequences, even assuming liability was proven. *See*, *e.g.*, *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 492 (E.D. Pa. 2003) ("The conflicting damage theories of defendants and plaintiffs would likely have resulted in an expensive battle of the experts and it is impossible to predict how a jury would have responded.").

2. The Range of Reasonableness of the Settlement in Light of the Best Possible Recovery and all the Attendant Risks of Litigation Support Approval of the Settlement

As described above, Plaintiff's consulting loss causation and damages expert analyzed Defendants' anticipated negative causation arguments and estimated that that if those arguments were successful, and assuming liability were established in full, aggregate damages would be approximately $257 million. Defendants' "flipping" argument would reduce damages to approximately $146 million. ¶60. The Settlement, therefore, recovers between approximately 19% and 34% of likely maximum damages, if each disclosure were found to be actionable. *Id*. This recovery falls well above the range of reasonableness that courts regularly approve in similar circumstances. *See, e.g.*, *In re Merrill Lynch & Co. Inc. Research Reports Sec. Litig.*,

No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving $40.3 million settlement representing approximately 6.25% of estimated damages and noting was at the "higher end of the range of reasonableness of recovery in class actions securities litigation"); *In re Merrill Lynch & Co. Research Reports Sec. Litig*., 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving $125 million settlement that was "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions"); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement recovering 7% of estimated damages was fair and adequate); *In re Omnivision Techs, Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) ($13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *Int'l Bhd. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc*., No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving $12.5 million settlement recovering about 3.5% of the maximum damages that plaintiffs believe could be recovered at trial and noting that the amount is within the median recovery in securities class actions settled in the last few years).

The Settlement also presents a very favorable recovery considering that, over the past ten years, median securities settlement values have ranged from $6 million to $13 million. *See* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (NERA Jan. 29, 2019) at 30, Ex. 7. And, as mentioned above, Class Counsel believes that the Settlement would be ***the largest*** class action settlement obtained in any court pursuant to the Securities Act for allegedly misleading offering documents in a secondary public offering.

Plaintiff respectfully submits that the Settlement is squarely within the range of reasonableness in light of the best possible recovery and the attendant risks of the litigation.

3. Complexity, Expense, and Duration of Continued Litigation

Final approval is also supported by the complexity, expense, and likely duration of continued litigation. In evaluating the settlement of securities class actions, courts have repeatedly recognized that such litigation is complex and uncertain. *See, e.g.*, *In re Rent–Way Sec. Litig*., 305 F. Supp. 2d 491, 501 (W.D. Pa. 2003) ("[T]his has been, and will continue to be, a very expensive case to prosecute and defend in light of the complexity of the issues and necessity for expert witnesses."); *In re Suprema Specialties, Inc. Sec. Litig.,* No. 02-168, 2008 WL 906254, at *5 (D.N.J. Mar. 31, 2008) (finding complexity of the securities class action supports final approval). As the court noted in *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 179 (E.D. Pa. 2000), which is equally applicable here:

> [i]n the absence of a settlement, this matter will likely extend for . . . years longer with significant financial expenditures by both defendants and plaintiffs. This is partly due to the inherently complicated nature of large class actions alleging securities fraud: there are literally thousands of shareholders, and any trial on these claims would rely heavily on the development of a paper trail through numerous public and private documents.

Id at 179.

Here, at every turn, the litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. The complexity, expense, and duration of continued litigation through further briefing on class certification, summary judgment, preparing and trying the case before a jury, subsequent post-trial motion practice, and a likely appeal of the Court's rulings on class certification, summary judgment, post-trial motions, and a jury verdict would be significant. Barring a settlement, there is no question that this case would be litigated for years, taking a considerable amount of court time and costing millions of additional dollars, with the possibility that the end result would be no better for the class, and might be worse.

The Settlement, therefore, provides sizeable and tangible relief to the Settlement Class now, without subjecting Settlement Class Members to the risks, duration, and expense of continuing litigation.

4. State of the Proceedings

The state of the proceedings and the amount of discovery completed are also factors courts consider in determining the fairness, reasonableness, and adequacy of a settlement. "Through this lens, the court can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *Milkman*, 2002 WL 778272, at *18.

The Action has been hotly contested from its inception, more than two years ago. Accordingly, at the time the Parties agreed to settle, Plaintiff and Plaintiff's Counsel had a thorough and realistic understanding of the strengths and weaknesses of the claims and defenses asserted. Their knowledge was based on, among other things, Plaintiff's Counsel's rigorous investigation before filing the two complaints; the briefing on Defendants' removal challenge that included litigation in the District Court; the briefing and order on Defendants' stay motion and comprehensive challenges to the Amended Complaint; an independent investigation involving the identification of 109 former employees of the Company with potentially relevant knowledge, of whom 84 were contacted and 19 were interviewed on a confidential basis; fact discovery, including analyzing more than 130,000 pages of documents produced by Defendants and third parties; and arduous settlement discussions and a formal mediation, under the auspices of the foremost mediator for these types of cases, Judge Phillips (Ret.).[9] *See generally* Hallowell Declaration at §§III-V.

[9] *See In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) (speaking of Judge Phillips, "the Court and the parties have had the added benefit of *(. . . continued)*

In sum, Plaintiff and its counsel had a full understanding of the likelihood of success and the potential recovery at trial at the time the Settlement was entered into.

5. Recommendation of Competent Counsel

In evaluating the fairness of a settlement, the "opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super Ct. 1984); *Shaev v. Sidhu*, 2009 Phila. Ct. Com. Pl. LEXIS 63, at *30 (Pa. Com. Pl. Mar. 5, 2009) ("Although a judge must take care that there is no collusion between the proponents of the proposed class action settlement, if no indicia of collusion are present, and while there was extensive, adversarial discovery, then 'the recommendations and opinions of counsel are entitled to substantial consideration.'"); *see also Alves v. Main,* No. 01-cv-789, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) *aff'd by,* 559 F. App'x. 151 (3d Cir. 2014) ("[C]ourts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class."); *In re Prudential Ins. Co. of Am. Sales Practices Litig.,* 962 F. Supp. 450, 543 (D.N.J. 1997) *aff'd*, 148 F.3d 283 (3d Cir. 1998) ("[T]he Court credits the judgment of Plaintiffs' Counsel, all of whom are active, respected, and accomplished in this type of litigation.").

The Settlement was negotiated by counsel who are experienced in complex securities litigation and who were acting in an informed manner. *See* ¶¶39-43; Exs. 3-C, and 4-C. As discussed above and in the Hallowell Declaration, Plaintiff's Counsel conducted a thorough investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Action, including reviewing documents produced by Defendants and interviewing

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(continued . . .)
the insight and considerable talents of a former federal judge who is one of the most prominent and highly skilled mediators of complex actions…").

almost two dozen former employees. Plaintiff's Counsel also: (i) researched and drafted a thorough and detailed amended complaint; (ii) briefed Defendants' preliminary objections, answers, and new matter; (iii) moved for class certification; and (iv) participated in thorough mediated settlement negotiations. *See generally* Hallowell Decl. at §§III-V.

As a result, Plaintiff and Plaintiff's Counsel had a sound basis for assessing the strengths and weaknesses of the claims and Defendants' defenses when they entered into the arm's-length Settlement. Their judgment that the Settlement is in the best interest of the Settlement Class should therefore be given substantial weight.

6. Reaction of the Settlement Class to Date

Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, A.B. Data, began mailing copies of the Notice and Claim Form to potential Settlement Class Members and nominees on July 17, 2019. *See* Ex. 2 at ¶¶2-4. As of September 12, 2019, A.B. Data has mailed a total of 35,418 copies of the Notice Packet (consisting of the Notice and Claim Form) to potential Settlement Class Members and their nominees. *Id*. at ¶9. In addition, a Summary Notice was published in *The Wall Street Journal* and transmitted over the internet using *PR Newswire* on July 31, 2019. *Id*. at ¶10. The Notice set out the essential terms of the Settlement and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, as well as the procedure for submitting Claim Forms. While the September 30, 2019 deadline set by the Court for Settlement Class Members to exclude themselves or object has not yet passed, to date, no objections to the Settlement or the Plan of Allocation have been filed and no requests for exclusion from the Settlement Class have been received by the Claims Administrator. As provided in the Preliminary Approval Order, Plaintiff will file reply papers on October 14, 2019, addressing any requests for exclusion and any objections that may be submitted.

* * *

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval to the proposed Settlement.

II. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

The Court previously granted preliminary certification to the Settlement Class for settlement purposes. *See* Preliminary Approval Order at ¶¶2-4. Nothing has occurred since then to cast doubt on whether the applicable prerequisites of the Pennsylvania Rules of Civil Procedure have been met. Accordingly for all the reasons stated in Plaintiff's Unopposed Motion for (I) Preliminary Approval of Settlement, (II) Certification of the Settlement Class, and (III) Approval of the Notice to the Settlement Class, and Plaintiff's previously filed Motion to Certify the Class, Plaintiff requests that the Court reaffirm its determinations and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Pa. R. Civ. P. 1702, 1708 & 1709, appoint Mississippi PERS as Class Representative, Labaton Sucharow LLP as Class Counsel, and Goldman Scarlato & Penny, P.C. as Liaison Counsel.

III. THE PLAN OF ALLOCATION FOR DISTRIBUTING RELIEF TO THE SETTLEMENT CLASS IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

At the final Settlement Hearing, the Court will be asked to approve the proposed Plan of Allocation for distributing the proceeds of the Settlement to eligible claimants.

The proposed Plan of Allocation, which is reported in full in the Notice, was drafted with the assistance of Plaintiff's consulting loss causation and damages expert. It is designed to equitably distribute the Settlement proceeds among the members of the Settlement Class who were allegedly injured by Defendants' alleged misrepresentations and who submit valid Claim

Forms that are approved for payment. The plan is consistent with the statutory measure of damages under Section 11 of the Securities Act.

As explained in the Hallowell Declaration, the Claims Administrator will calculate claimants' "Recognized Losses" using the transactional information provided by claimants in their claim forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors, with hundreds of transactions, via e-mail to the Claims Administrator's electronic filing team. Because most securities are held in "street name" by the brokers that buy them on behalf of clients, the Claims Administrator, Plaintiff's Counsel, and Defendants do not have Settlement Class Members' transactional data and a claims process is required. Because the Settlement does not recover 100% of alleged damages, the Claims Administrator will determine each eligible claimant's *pro rata* share of the Net Settlement Fund based upon each claimant's total Recognized Losses. ¶73.

In general, the Recognized Loss Amounts calculated under the Plan are based on the statutory formula for damages under Section 11(e) of the Securities Act, 15 U.S.C. §77k(e). Using the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss Amount for each purchase of Endo common stock in or traceable to the Offering that is listed in the Claim Form and for which adequate documentation is provided. Purchases will be considered pursuant or traceable to the Offering if the shares were purchased or acquired during the period from June 5, 2015 through June 10, 2015 and (i) at the Offering price of $83.25 and/or (ii) directly from an Underwriter Defendant. ¶73.

Once the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, distributions will be made to eligible claimants in the form of checks and wire transfers. After an initial

distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution, Class Counsel will, if feasible and economical, re-distribute the balance among eligible claimants who have cashed their checks. These re-distributions will be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute. *See* Stipulation at ¶29. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of any outstanding Notice and Administration Expenses or Taxes, will be donated as follows: 50% of the unclaimed balance to the Pennsylvania Interest on Lawyers Trust Account Board and 50% of the unclaimed balance to the Mississippi Council on Economic Education, a private, non-profit, non-sectarian 501(c)(3) organization, or as otherwise approved by the Court. *Id*.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court finally approve the proposed Settlement, finally certify the Settlement Class for purposes of the Settlement only, and approve the proposed Plan of Allocation.

Dated: September 16, 2019

Respectfully submitted,

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