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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 COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES

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Plaintiff's Counsel, Labaton Sucharow LLP ("Labaton Sucharow") and Goldman Scarlato & Penny, P.C., hereby respectfully request, in connection with the proposed settlement of the above-captioned class action: (i) an award of attorneys' fees in the amount of 16% of the Settlement Fund, including accrued interest; (ii) payment of litigation expenses incurred by Plaintiff's Counsel in the amount of $251,825.17, plus accrued interest; and (iii) an award of $21,602.50 to Plaintiff Mississippi PERS for its efforts on behalf of the proposed 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

Plaintiff's Counsel have vigorously litigated this case for more than two years on an entirely contingent basis against a tenacious and well-resourced defense. The $50 million

[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 litigation efforts; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Hallowell Declaration.

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.

proposed Settlement, if approved by the Court, represents an excellent outcome for the Settlement Class. In fact, based on extensive research, Class Counsel believes the Settlement is 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. The Settlement is particularly beneficial in light of the significant litigation risks present in this case. As discussed below, and detailed in the accompanying Hallowell Declaration, Defendants advanced powerful defenses to Plaintiff's claims and there was considerable uncertainty throughout the case as to whether Plaintiff would be able to achieve a meaningful recovery, if litigation continued.

To achieve the recovery here, Plaintiff's Counsel devoted substantial resources to this litigation by, among other things: (i) conducting a thorough investigation concerning the allegedly fraudulent misrepresentations and omissions made by Defendants in connection with the Company's June 5, 2015 Offering, including gathering and analyzing information about the market for Endo's generic and hydrocodone-based medicines, Endo's acquisition of DAVA pharmaceuticals, and the Company's sales practices; (ii) preparing and filing a detailed amended class action complaint; (iii) overcoming a removal challenge that included litigation in the U.S. District Court for the Eastern District of Pennsylvania (the "District Court"); (iv) opposing a motion to stay the action in light of the Supreme Court's anticipated decision in *Cyan, Inc. v. Beaver County Employees' Retirement Fund*; (v) researching and drafting an opposition to Defendants' comprehensive preliminary objections to the amended complaint, which were overruled by the Court; (vi) moving for class certification; (vii) engaging in extensive and diligent fact discovery, including analyzing approximately 130,000 pages of discovery documents produced by Defendants and third parties; (viii) consulting with experts on damages,

causation, and insurance issues; and (ix) engaging in settlement discussions under the guidance of a highly regarded and experienced mediator. *See generally* Hallowell Decl. at §§III-V. Plaintiff's Counsel undertook these efforts and achieved the proposed Settlement in the face of substantial challenges with respect to establishing Defendants' liability, particularly with respect to proving materiality, falsity, traceability of the class's shares to the Offering, damages, and overcoming a negative causation defense.

As discussed below, the 16% fee requested for these efforts is well-below the range of fees awarded in comparable class action settlements by many courts in Pennsylvania and within the Third Circuit. Additionally, the requested fee is based on a pre-settlement agreement with Mississippi PERS, a sophisticated institutional investor, and has its full support. *See* Ex. 1 at ¶¶7, 11.

Finally, the reaction of the Settlement Class to date supports the request. Pursuant to the Court's Preliminary Approval Order, 35,418 copies of the Notice have been mailed to potential Settlement Class Members and nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*. Ex. 2 at ¶¶2-10. The Notice advised potential Settlement Class Members that Plaintiff's Counsel would seek fees in an amount not to exceed 16% of the Settlement Fund and payment of litigation expenses in an amount not to exceed $400,000. *See* Ex. 2-A. While the September 30, 2019 deadline for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the attorneys' fees or expenses set forth in the Notice have been filed.

QUESTIONS PRESENTED

1. Whether the Court should award Plaintiff's Counsel attorneys' fees in the amount of 16% of the Settlement Fund?

A. Suggested Answer: Yes

2. Whether the Court should approve payment of Plaintiff's Counsel's litigation expenses in the amount of $251,825.17?

A. Suggested Answer: Yes

3. Whether the Court should award Mississippi PERS $21,602.50 for its efforts on behalf of the proposed Settlement Class in the above-captioned Action?

A. Suggested Answer: Yes

LEGAL ARGUMENT

I. PLAINTIFF'S COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND CREATED BY THEIR EFFORTS

It is well settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has recognized that "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);[3] *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 197 (3d Cir. 2005) ("attorney[s] whose efforts create, discover, increase, or preserve a [common] fund are entitled to compensation").[4]

Pennsylvania courts have consistently adhered to these teachings. *See, e.g., In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 193 (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 benefit 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

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

[4] 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 attorneys' fees in a class action).

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").

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER THE PERCENTAGE OF RECOVERY METHOD OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees are Reasonable Applying the Percentage of Recovery Method

In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class. . . ." *Id*. at 900 n.16. Many courts have recognized that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fees on a percentage-of-the fund basis is the preferred approach. *See, e.g., In re Prudential Ins. Co. Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3d Cir. 1998) ("[t]he percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure"').

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); *see also In re CIGNA Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, *4 (E.D. Pa. July 13, 2007) ("For many years, both the Supreme Court and Third Circuit have favored calculating attorneys' fees as a percentage of the class recovery.").

The rationale for compensating counsel in common fund cases on a percentage basis is sound. Principally, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time. Indeed, one of the nation's leading scholars in the field of class actions and attorneys' fees, Professor Charles Silver of the University of Texas School of Law, has concluded that the percentage method of awarding fees is the only method of fee awards that is consistent with class members' due process rights. Professor Silver notes:

> ***The consensus that the contingent percentage approach creates a closer harmony of interests between class counsel and absent plaintiffs than the lodestar method is strikingly broad.*** It includes leading academics, researchers at the RAND Institute for Civil Justice, and many judges, including those who contributed to the Manual for Complex Litigation, the Report of the Federal Courts Study Committee, and the report of the Third Circuit Task Force. Indeed, it is difficult to find anyone who contends otherwise. No one writing in the field today is defending the lodestar on the ground that it minimizes conflicts between class counsel and absent claimants.
>
> In view of this, it is as clear as it possibly can be that judges should not apply the lodestar method in common fund class actions. The Due Process Clause requires them to minimize conflicts between absent claimants and their representatives. The contingent percentage approach accomplishes this.

Charles Silver, Class Actions In The Gulf South Symposium, *Due Process and the Lodestar Method: You Can't Get There From Here*, 74 Tul. L. Rev. 1809, 1819-20 (2000) (emphasis added and footnotes omitted).

The requested fee of 16% here is ***well-below*** the range of percentage fees typically awarded by courts in Pennsylvania and within the Third Circuit. "Awards of between 20 to 30 percent are quite common." *Milkman,* 2002 WL 778272, at *28; *see also 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."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 298 (3d Cir. 2005) (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%); *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").

A review of attorneys' fees awarded in class actions with comparably sized settlements in both Pennsylvania state and federal courts also supports the reasonableness of the requested fee. *See, e.g., In re Bridgeport Fire Litig.,* 8 A.3d 1270, 1289 (Pa. Super. 2010) (affirming award of 33.3% of $35 million settlement); *W. Palm Beach Police Pension Fund v. DFC Global Corp.,* No. 13-6731, 2017 WL 4167440, at *7-9 (E.D. Pa. Sept. 20, 2017) (awarding 25% of $30 million settlement); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431-34 (E.D. Pa. 2001) (court awarded $16 million fee, which was one-third of $48 million settlement).[5]

Moreover, well-regarded empirical studies support the overall reasonableness of the requested 16% fee. In a study by Professors Theodore Eisenberg, of Cornell Law School, and Geoffrey Miller, of New York University, of attorneys' fees awarded in class action settlements

[5] *See also Rodriguez v. Fulton Bank, N.A.*, No. 1303748, 2016 WL 7163262 (Pa. Com. Pl. Mar. 7, 2016) (approving a fee of 40% of the cash fund); *Smith v. Upto65.com*, No. GD 08-00651, 2008 WL 4453493 (Pa. Com. Pl. Apr. 11, 2008) (approving fee calculated as forty percent of recovery, in a case where plaintiffs sought to recover funds that were misappropriated by defendants through an online Ponzi scheme).

from 1993 to 2008, the average fee in securities settlements was 23% and the median was 25%. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Studies 248, 262 (2010), Ex. 8. For settlements between $38.3 million and $69.6 million, the average fee was 20.5% and the median was 21.9%, with a standard deviation of 10. *Id*. at 265. Similarly, in a study by Professor Brian Fitzpatrick, Vanderbilt Law School, of every federal class action settlement in 2006 and 2007, Professor Fitzpatrick found that the average fee award in securities settlements was 24.7% and the median was 25%. *See* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Studies 811, 835 (2010), Ex. 9.

Additionally, a recent analysis by NERA Economic Consulting of securities class action settlements found that from 2014-2018, the median attorneys' fee award was 25% for settlements of between $25 million and $100 million. *See* Ex. 7 at 41.

In sum, the percentage fee requested here is reasonable and significantly ***below*** percentage fees awarded in Pennsylvania courts and in connection with similar settlements.

B. The Requested Attorneys' Fees Are Reasonable Applying the Lodestar Method

"Courts will often use more than one method to ensure that an award that would be acceptable under one approach is not entirely inappropriate under another approach." *Milkman,* 2002 WL 778272, at *24-25 (noting that courts in Pennsylvania use both the lodestar and the percentage of recovery method, and applying both.); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.,* 55 F.3d 768, 820 (3d Cir. 1995) ("it is sensible for a court to use a second method of fee approval to cross check its conclusion under the first method").

"Under [the lodestar] approach, the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation

times a reasonable hourly rate. Adjustments to that fee then may be made as necessary in the particular case." *Milkman*, 2002 WL 778272, at *26. Courts in Pennsylvania have recognized that a court may consider the "discretionary application of a fee enhancement to reflect the contingent risk of the particular claim at issue." *Milkman*, 2002 WL 778272, at *27.

In *Milkman*, the Court of Common Pleas of Pennsylvania considered the degree of risk in the case, the fact that the case was brought on a contingency basis, as well as the relief obtained, in ultimately awarding a 3.0 multiplier on counsel's lodestar. *Id*. at *28. Likewise, other courts within Pennsylvania have frequently awarded multiples on counsels' lodestars. *See, e.g., Prudential*, 148 F.3d at 341 ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *In re Rite Aid Corp. Sec. Litig.,* 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding multiplier of 6.96).

Here, Plaintiff's Counsel collectively expended 7,504.30 hours in the prosecution of this case. ¶84; Exs. 3-A and 4-A, and Ex. 5 (Summary Table of Lodestars and Expenses). Based on Plaintiff's Counsel's hourly rates, the total lodestar is $3,659,960.00 for work through August 30, 2019.[6] *See id*. The hourly rates of Plaintiff's Counsel range from $725 to $975 for partners, $675 to $750 for of counsels, and $335 to $625 for associates and other attorneys. ¶83; Exs. 3-A and 4-A. Accordingly, the requested fee of $8,000,000 would represent a reasonable "multiplier" of 2.19 on this lodestar.

It is respectfully submitted that the hourly rates used in Plaintiff's Counsel's lodestar calculation are reasonable in light of prevailing market rates for lawyers with comparable levels of experience and expertise in securities litigation and other complex class action litigation.

[6] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989).

Plaintiff's Counsel submit that the rates are less than, or comparable to, those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2018, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceeded these rates. *See* ¶83; Ex. 6 (table aggregating hourly rates of more than a dozen defense firms).

Accordingly, it is respectfully submitted that the lodestar approach also supports the requested attorneys' fee.

III. THE REQUESTED FEES ARE REASONABLE PURSUANT TO THE FACTORS SET FORTH UNDER PENNSYLVANIA RULE OF CIVIL PROCEDURE 1716

In determining the reasonableness of a fee request, Pennsylvania courts consider the following five factors: (1) the time and effort reasonably expended by the attorney in the litigation; (2) the quality of the services rendered; (3) the results achieved and benefits conferred upon the class or upon the public; (4) the magnitude, complexity and uniqueness of the litigation; and (5) whether the receipt of a fee was contingent on success. *See* Pa. R. Civ. P. 1716 ("Rule 1716"); *In re Bridgeport Fire Litig.,* 8A. 3d at 1289 (setting forth the Rule 1716 factors); *Milkman,* 2002 WL 778272, at *24 (same).

As set forth below, an analysis of the Rule 1716 factors militate in favor of approving the requested 16% fee.

A. Time and Effort Expended on the Action

The time and effort expended by Plaintiff's Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As explained in the Hallowell Declaration, Plaintiff's Counsel, among other things: (i) conducted a thorough investigation concerning the allegedly fraudulent misrepresentations and omissions in connection with the Company's June 5, 2015 Offering, including gathering and analyzing information about the market for Endo's generic and hydrocodone-based medicines, Endo's acquisition of DAVA pharmaceuticals, and

the Company's sales practices; (ii) prepared and filed a detailed amended class action complaint; (iii) overcame a removal challenge that included litigation in the District Court; (iv) opposed a motion to stay the action in light of the Supreme Court's anticipated decision in *Cyan*; (v) researched and drafted an opposition to Defendants' comprehensive preliminary objections to the amended complaint, which were overruled by the Court; (vi) moved for class certification; (vii) engaged in extensive and diligent fact discovery, including analyzing approximately 130,000 pages of discovery documents produced by Defendants and third parties; (viii) consulted with experts; and (ix) engaged in settlement discussions under the guidance of a highly regarded and experienced mediator. *See generally* Hallowell Declaration at §§III-V.

In light of the above efforts, Plaintiff's Counsel expended more than 7504 hours prosecuting this Action with a lodestar value of $3,659,960.00. *See* Ex. 5. At all times, Class Counsel took care to staff the matter efficiently and to avoid duplication of effort. The substantial time and effort devoted to this case by Plaintiff's Counsel, and their efficient and effective management of the litigation, was critical to obtaining the favorable result achieved by the Settlement. Plaintiff's Counsel's efforts for the benefit of the Settlement Class will continue, if the Court approves the Settlement. Counsel will also work through the settlement administration process, assist Settlement Class Members, and distribute the Settlement proceeds, without seeking any additional compensation.

Accordingly, the amount of time and effort devoted to this Action by Plaintiff's Counsel and the efficient and effective management of the litigation confirm that the fee award requested is reasonable.

B. Skill and Quality of Plaintiff's Counsel

The quality of the legal representation also supports the requested fee award. The Explanatory Comment to Rule 1716 explains, in discussing the "quality of services rendered"

factor, that "[c]ounsel who possess or are reputed to possess more experience, knowledge and legal talent are entitled to and generally command compensation superior to counsel who are less endowed." *See also In re ViroPharma Inc. Sec. Litig.*, No. CV 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (the skill and efficiency of attorneys are measured by, among other things, "the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel").

Class Counsel Labaton Sucharow LLP has earned a national reputation for excellence through many years of litigating complex civil actions, particularly the prosecution of securities class actions. As set forth in the firm résumés filed concurrently herewith, Plaintiff's Counsel's experience, resources, and high-quality attorneys have allowed them to obtain significant recoveries throughout the country on behalf of their clients. *See* Exs. 3-C and 4-C.

The quality of opposing counsel is also important in evaluating the quality of the work done by Plaintiff's Counsel. *See, e.g.*, *In re ViroPharma*, 2016 WL 312108, at *16. Plaintiff's Counsel were opposed in this Action by experienced and skilled counsel from the law firms of Latham & Watkins LLP; Milbank LLP; Morgan, Lewis & Bockius LLP; and Cozen O'Connor P.C., all excellent law firms with well-deserved reputations for vigorous advocacy on behalf of their clients. In the face of such knowledgeable and experienced opposition, Plaintiff's Counsel were able to develop a case that was sufficiently strong to persuade Defendants to settle for an amount that Plaintiff's Counsel believe is highly favorable to the Settlement Class.

C. The Result Achieved

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re ViroPharma Inc.,* 2016 WL 312108, at *16. Here, Plaintiff's Counsel, on behalf of Plaintiff, have secured a Settlement that provides for

a substantial and certain payment of $50,000,000. The Settlement is believed to be the largest class action settlement obtained in any court pursuant to Securities Act claims relating to a secondary public offering. The Settlement is also well-above the $6 to $13 million median settlement amount in securities class actions over the past ten years and the $13 million median in 2018.[7]

Furthermore, as detailed in the Hallowell Declaration, according to Plaintiff's consulting loss causation and damages expert, reasonable aggregate damages in the Action are estimated to be approximately $257 million, assuming Plaintiff was able to establish liability and factoring in Defendants' negative causation arguments. The Settlement recovers, therefore approximately 19% of Plaintiff's expert's estimate – 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. ¶¶5, 60; *see also* Memorandum of Law in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation at 12-13.

D. The Magnitude, Complexity and Uniqueness of the Litigation

Here, at every turn, the litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. As one court stated, "[s]ecurities litigation is tough stuff." *W. Palm Beach Police Pension Fund*, 2017 WL 4167440, at *8; *see also In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. at 179 (noting the "inherently complicated nature of large class actions alleging securities fraud…").

For example, approximately one month after its commencement, Defendants removed the Action to federal court. ¶17. Plaintiff then filed a motion in the District Court to remand the

[7] *See* Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, at 30 (NERA Jan. 2019), attached as Ex. 7 to the Hallowell Declaration.

Action arguing, as a matter of first impression in the District Court, that that the Securities Act forbids the removal of cases brought in state court asserting claims under the Securities Act. ¶18. 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. As detailed in the Hallowell Declaration, the Action alleged violations of the Securities Act, raising a panoply of difficult legal and factual issues that required sophisticated analysis of the Offering Documents, Endo's sales patterns and practices, the demand for Endo's products, the DAVA acquisition, the upscheduling of hydrocodone-containing products from Schedule III to Schedule II of controlled substances, and Endo's financial results. *See* ¶¶47-53.

Additionally, Defendants would have continued to raise and press difficult traceability issues and a strong "negative causation" defense, arguing 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 declines in the stock prices after the Offering were not caused by the alleged omissions and misrepresentations. *See* ¶¶54-61.

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. *See W. Palm Beach Police Pension Fund,* 2017 WL 4167440, at *8 (noting that the complexity of the case and duration of the litigation weighed in favor of requested fee where "significant discovery was still left to be conducted… and motion practice and jury preparation was on the horizon").

E. Whether the Receipt of a Fee was Contingent on Success

Plaintiff's Counsel undertook this Action on a wholly contingent-fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. Courts have consistently recognized that this risk is an important factor favoring an award of attorneys' fees. *See*, *e.g.*, *Milkman,* 2002 WL 778272, at *25 ("The risk to Class Counsel in this matter was great, as receiving attorneys' fees was entirely contingent on a successful outcome of the litigation."); *see also W. Palm Beach Police Pension Fund,* 2017 WL 4167440, at *8 ("There is a greater risk of nonpayment for cases taken on a contingent fee basis."); *In re ViroPharma*, 2016 WL 312108, at *16 ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.").

The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc.*, 472 U.S. at 310. Indeed, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingency basis, expended thousands of hours and dollars, yet received no remuneration whatsoever despite their diligence and expertise. *See* ¶¶85-93. Class Counsel tried *In re JDS Uniphase Securities Litigation*, Case No. C-02-1486 CW (EDL) slip op, (N.D. Cal. Nov. 27, 2007) through to a disappointing verdict for the defendants, receiving no compensation and expending millions of dollars in time and expenses. ¶90. *See also In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight years of litigation, and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing a lodestar of approximately $48 million). Plaintiff's Counsel are aware of many other hard-fought lawsuits where, because of the discovery of facts unknown when the case was

commenced, changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by members of the plaintiff's bar produced no fee for counsel. *See, e.g.*, *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); ¶91. Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. *See, e.g., Glickenhaus & Co. v. Household Int'l, Inc*., 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011)); ¶91.

Here, because Plaintiff's Counsel's fee was entirely contingent, the only certainty was that there would be no fee without a successful result and that such result would only be realized after significant amounts of time, effort, and expense had been expended. Unlike counsel for the Defendants, who were paid and reimbursed for their out-of-pocket expenses on a current basis, Plaintiff's Counsel have received no compensation for their efforts during the course of the Action. Plaintiff's Counsel have risked non-payment of $251,825.17 in expenses and $3,659,960.00 in time worked on this matter, knowing that if their efforts were not successful, no fees or expenses would be paid.

For all the foregoing reasons, Plaintiff's Counsel respectfully request that the Court award them attorneys' fees in the amount of 16% of the Settlement Fund.

IV. PLAINTIFF'S COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Plaintiff's Counsel have incurred expenses in the aggregate amount of $251,825.17 in prosecuting the Action. *See* Exs. 3-B, 4-B, and 5. These expenses are outlined in Plaintiff's Counsel's individual fee and expense declarations submitted to the Court concurrently herewith. *Id*.

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 W. Palm Beach Police Pension Fund,* 2017 WL 4167440, at *9 ("counsel are entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action"); *ViroPharma*, 2016 WL 312108, at *18 (same); *Hall v. AT&T Mobility LLC.*, No. 07-5325, 2010 WL 4053547, at *23 (D.N.J. Oct. 13, 2010) ("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.

One of the main expenses here relates to work performed by Plaintiff's consulting experts ($95,014.35 or approximately 38% of total expenses). As discussed in the Hallowell Declaration, the services of consulting experts were necessary for preparing estimates of damages, analyzing causation and insurance issues, and assisting with the preparation of the Plan of Allocation. ¶99. Plaintiff's Counsel received crucial advice and assistance from such experts throughout the course of the Action and utilized these experts in order to efficiently frame the

issues, gather relevant evidence, make a realistic assessment of provable damages, and structure a resolution of the Action.

Plaintiff's Counsel seeks $81,002.38 (32%% of total expenses) in litigation support services, which were needed to host the electronic documents produced by Defendants and third parties and to produce Plaintiff's records to Defendants. ¶100.

Computerized research totals $32,673.51. These are the charges for computerized factual and legal research services, including PACER, Westlaw, LexisNexis Risk Solutions and LexisNexis. These services allowed counsel to perform media searches on the Company, obtain analysts' reports and financial data for the Company, and conduct legal research. It is standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues and reimbursement is proper. ¶101. Class Counsel also paid $14,688.75 in mediation fees assessed by the mediator in this matter. ¶103.

Plaintiff's Counsel also incurred costs related to travel and working late hours, such as working meals, lodging, and transportation, which total $12,515.60. ¶102.

The other expenses for which Plaintiff's Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, duplicating costs, long distance telephone and facsimile charges, court fees, and postage and delivery expenses. ¶104.

In sum, Plaintiff's Counsel's expenses, in an aggregate amount of $251,825.17, were reasonable and necessary to the prosecution of the Action and should be approved.

V. PLAINTIFF'S REQUEST FOR A SERVICE AWARD

Plaintiff Mississippi PERS seeks an award of $21,602.50, which is proportional to the eighty hours that it dedicated to serving as Plaintiff in the Action and ensuring that the Settlement Class was adequately represented. The service and time devoted to this Action by

Plaintiff are set forth in the declaration of Jaqueline Ray, filed concurrently herewith. *See* Ex. 1. at ¶¶4-5, 9-10.

Such awards have been regularly provided by Courts in Pennsylvania. *See, e.g., Milkman,* 2002 WL 778272, at *25 (awarding payment to class representatives, in the amounts of $10,000, $7,500, and $5,000); *Rodriguez v. Fulton Bank, N.A*., No. 1303748, 2016 WL 7163262 (Pa. Com. Pl. Mar. 7, 2016) (awarding class representative a service award of $5,000); *see also W. Palm Beach Police Pension Fund,* 2017 WL 4167440, at *10 (awarding lead plaintiffs $5,560, $7,080, and $9,000 for their work relating to the representation of the class).

Awards to lead plaintiffs in federal securities class actions are also regularly made. *In re Oppenheimer Rochester Funds Group Sec. Litig.*, No. 09-md-02063, slip op. at 5 (D. Colo. Nov. 6, 2017) (awarding $74,000 in lost wages and expenses to lead plaintiff) (Ex. 10);[8] *In re Satyam Comput. Servs. Ltd. Sec. Litig*., No. 09-MD-2027-BSJ, slip op. at 3-4 (S.D.N.Y. Sept. 13, 2011) (awarding $193,111 to lead plaintiffs) (Ex. 10); *In re Marsh & McLennan Co. Inc. Sec. Litig.*, No. 04-cv-08144 (CM), 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009) (awarding $144,657 to the New Jersey Attorney General's Office and $70,000 to the Ohio Funds). In fact, courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks v. Morgan Stanley & Co*., No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005).

For the foregoing reasons, it is respectfully submitted that an award of $21,602.50 to Mississippi PERS would be reasonable under the circumstances before the Court.

[8] Unreported "slip" opinions are provided in Exhibit 10 to the Hallowell Declaration.

CONCLUSION

For all the foregoing reasons, Plaintiff's Counsel respectfully request that the Court award attorneys' fees in the amount of 16% of the Settlement Fund, $251,825.17 in litigation expenses incurred in connection with the prosecution of the Action, and $21,602.50 to Plaintiff for its efforts on behalf of the Settlement Class.

Dated: September 16, 2019

Respectfully submitted,

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