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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re BANK OF NOVA SCOTIA	)	No. 3:20-cv-11059-MAS-RLS
SPOOFING LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	LEAD COUNSEL'S
	)	MEMORANDUM OF LAW IN
ALL ACTIONS.	)	SUPPORT OF MOTION FOR AN
	)	AWARD OF ATTORNEYS' FEES
_____	)	AND EXPENSES AND SERVICE
	)	AWARDS FOR NAMED
	)	PLAINTIFFS

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## **I. INTRODUCTION**

Lead Counsel respectfully submit this memorandum of law in support of their motion for award of attorneys' fees and expenses, as well as service awards to the named plaintiffs.<sup>1</sup> Counsel is concurrently submitting its motion for final approval of the Settlement in this matter. Should the Court grant final approval, all Class Members who submit a valid claim will receive a *pro rata* share of the Settlement Fund after reduction for attorneys' fees, expenses, service awards, administrative costs, and taxes.

## **II. THE REQUEST FOR ATTORNEYS' FEES AND EXPENSES SHOULD BE APPROVED**

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The ultimate determination of the proper amount of attorneys' fees rests within the sound discretion of the court based on the facts of the case. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009).

Here, Lead Counsel request attorneys' fees of one-third of the Settlement Amount (\$2.2 million) and litigation expenses of \$285,011.00, plus interest earned

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<sup>1</sup> Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation and Agreement of Settlement ("Settlement Agreement") entered into on November 2, 2022 (ECF 79-3). All internal citations are omitted unless otherwise indicated.

on these amounts at the same rate and for the same period as earned by the Settlement Fund.<sup>2</sup> See accompanying Declaration of James E. Cecchi in Support of Motion for an Award of Attorneys' Fees and Expenses and Service Awards for Named Plaintiffs ("Cecchi Decl."), ¶3. Plaintiffs also request service awards of \$2,500 for each named plaintiff.

This fee request is in line with fee awards in other cases of similar complexity and size. See, e.g., *In re Valeant Pharms. Int'l, Inc. Third-Party Payor Litig.*, 2022 WL 525807, at \*7 (D.N.J. Feb. 22, 2022) (Shipp, J.) ("Here, starting with the percentage-of-recovery approach, the Court finds Lead Counsel's fees reasonable. Lead Counsel requests fees equal to 30% of the Settlement Fund, which falls comfortably within the customary recovery range."); *In re N.J. Tax Sales Certificates Antitrust Litig.*, 2016 WL 5844319, at \*10 (D.N.J. Oct. 3, 2016) (Shipp, J.) (approving 30% fee award on settlement of \$9.585 million and finding "that both the risk of non-payment and the amount of time devoted to the litigation justify the award"); *Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626, at \*9 (D.N.J. Oct. 23, 2017) ("The one-third fee is within the range of fees typically awarded within the

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<sup>2</sup> "Lead Counsel" includes Robbins Geller Rudman & Dowd LLP, Scott+Scott Attorneys at Law LLP, Korein Tillery LLC, Nussbaum Law Group, P.C., and Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. Other Plaintiffs' Counsel assisted in the prosecution of the action. "Counsel" includes all counsel with time and expenses in the action.



Third Circuit through the percentage-of-recovery method; the Circuit has observed that fee awards generally ranged from 19% to 45% of the settlement fund. . . . Thus, the requested fee in this matter [of one-third of the settlement fund] is within the normal range.”); *Marchbanks Truck Serv., Inc. v. Comdata Network, Inc.*, 2014 WL 12738907, at \*2 (E.D. Pa. July 14, 2014) (“fee awards of one-third of the settlement amount are commonly awarded in this Circuit”); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at \*8 (D.N.J. Dec. 4, 2009) (noting that “[c]ourts within the Third Circuit often award fees of 25% to 33 $\frac{1}{3}$ % of the recovery”); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) (“Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent.”).<sup>3</sup>

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<sup>3</sup> See also *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 499-500 (3d Cir. 2017) (affirming percentage-of-recovery fee award of 28% after deduction of costs); *Lupian v. Joseph Cory Holdings*, 2019 WL 3283044, at \*6 (D.N.J. July 22, 2019) (“Such [one-third] percentage awards are consistent with fees in this District in contingency cases.”) (citing *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at \*9 (D.N.J. Feb. 9, 2010) (“*Merck/Vytorin*”) (approving one-third fees); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 101-02 (D.N.J. 2001) (same and collecting cases)); *In re Ductile Iron Pipe Fittings Direct Purchaser Antitrust Litig.*, 2018 WL 2722458, at \*2 (D.N.J. May 10, 2018) (“The Court finds that the requested fee of one-third of the total amount of the McWane Settlement is fair and reasonable and within the range of fees ordinarily awarded in this district and throughout the Third Circuit.”); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) (approving 33% fee award in MDL 1663); see also *In re Liquid Aluminum Sulfate Antitrust Litig.*, 2018 WL 7108059, at \*1 (D.N.J. Dec. 3, 2018) (awarding attorney fee of one-third (plus expenses) in common fund of \$10.7 million); *Merck/Vytorin*, 2010 WL 547613, at \*9-\*11 (awarding attorney fee of one-third (plus expenses) in RICO common fund of \$41.5 million); *Stoner v. CBA Info.*

The request for expenses is also in line with precedent. *See Valeant*, 2022 WL 525807, at \*9 (“Regarding costs, the Court finds Lead Counsel’s request proper. ‘Expenses are recover[able] if they are adequately documented.’”). Here each firm has submitted details regarding the expenses incurred. The notice informed Class Members that expenses would be sought with approval from the Court. To date, no objections regarding fees, expenses or service awards have been received.

The expenses here are reasonable in nature. “In a certified class action, the court may award . . . nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P 23(h); *see In re Certain Teed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 226 (E.D. Pa. 2014) (“[C]ounsel in common fund cases [are] entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.”); *see, e.g., Li v. Aeterna Zentaris Inc.*, 2021 WL 2220565, at \*2 (D.N.J. June 1, 2021); *Wood v. AmeriHealth Caritas Servs., LLC*, 2020 WL 1694549, at \*10 (E.D. Pa. Apr. 7, 2020); *Martin v. Altisource Residential Corp.*, 2020 WL 9763240, at \*2 (D.V.I. Feb. 14,

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*Servs.*, 352 F. Supp. 2d 549, 553 (E.D. Pa. 2005) (“most fees awarded by this court under the percentage-of-recovery method in settlements under \$100 million have ranged from 15% to 40%”); *Percentage-Fee Awards*, Ann. Manual Complex Lit. §14.121 (4th ed.) (attorney fees awarded under percentage method are often between 25% and 30% of fund).

2020); *De Vito v. Liquid Holdings Grp., Inc.*, 2020 WL 9763133, at \*2 (D.N.J. Jan. 10, 2020).

These requests are fair and reasonable, and within the range of fees, expenses, and service awards typically granted in similar matters. The Settlement is a good result for the Class in the face of significant risks. This Action involved substantial outlays of costs and attorney and staff time, with no guarantee of any ultimate recovery. Further, Counsel brought substantial experience to their work on this Action, and skillfully overcame defense counsel's determined opposition. For these reasons, and those detailed below, Counsel respectfully request that the attorneys' fees, expenses, and service awards be approved.

**A. Attorneys' Fees Should Be Awarded Based on a Percentage of the Common Fund**

It is well established that an attorney "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); *see, e.g., In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at \*15 (E.D. Pa. Jan. 25, 2016) (same). "Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed on the class." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995); *see also In re Cendant Corp. Sec. Litig.*, 404 F.3d

173, 205 (3d Cir. 2005) (“[W]e agree with the long line of common fund cases that hold that attorneys ‘whose efforts create, discover, increase, or preserve a [common] fund’ are entitled to compensation.”).

The Supreme Court has recognized that it is appropriate to award counsel a reasonable percentage of the common fund as a fee. *See Boeing*, 444 U.S. at 478-79. This is because the percentage method aligns counsel’s interests with those of the Class. *See Ins. Brokerage Antitrust Litig.*, 579 F.3d at 280 (“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund “in a manner that rewards counsel for success and penalizes it for failure.””); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd’s, London Members*, 2019 WL 4877563, at \*6-\*9 (D.N.J. Oct. 3, 2019) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006) (same)). The lodestar method, by contrast, has been criticized in the class action context for incentivizing billing “excessive hours” and drawing out litigation, while failing to incentivize lawyers to seek the largest recovery possible. *In re Cendant Corp. Litig.*, 264 F.3d 201, 256 (3d Cir. 2001). Accordingly, courts in this Circuit continue to recognize that the percentage-of-recovery method is preferred in common fund cases because it rewards counsel for success and penalizes it for failure. *See Valeant*, 2022 WL 525807, at \*7; *see also Hall v. Accolade, Inc.*, 2020 WL 1477688, at \*10 (E.D. Pa. Mar. 25, 2020).

**B. The Requested Fee Is Fair and Reasonable Under the *Gunter* Factors**

When evaluating proposed fee awards, courts in the Third Circuit consider the following factors:

(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 v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). These factors “need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest.” *Id.* Here, each factor supports the requested fee.

**1. The Size of the Common Fund Created and the Number of Persons Benefited by the Settlement**

In awarding fees, the “most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Viropharma*, 2016 WL 312108, at \*16 (same). To assess this factor, courts “consider[] the fee request in comparison to the size of the fund created and the number of class members to be benefitted.” *Harshbarger v. Penn Mut. Life Ins. Co.*, 2017 WL 6525783, at \*3 (E.D. Pa. Dec. 20, 2017) (quoting *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at \*18 (D.N.J. Aug. 26, 2011)).

Here, the \$6.6 million recovery is a good result that provides an immediate cash recovery to the Class. For these reasons, the first *Gunter* factor weighs in favor of approving the requested fee.

## **2. Reaction of Class Members to the Fee Request**

Notice of this Settlement, including the fee request, has been provided to the Class. *See* Declaration of Jack Ewashko on behalf of A.B. Data, Ltd. Regarding Notice Administration (ECF 87-1). To date, counsel have received no objections to the fee request. Thus, the reaction of the Class weighs in favor of approval of the requested fee. *See Cendant*, 264 F.3d at 235 (stating that “[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement”); *see also High St. Rehab., LLC v. Am. Specialty Health Inc.*, 2019 WL 4140784, at \*4 (E.D. Pa. Aug. 29, 2019) (“A low number of objectors or opt-outs is persuasive evidence of the proposed settlement’s fairness and adequacy.”).

## **3. The Skill and Efficiency of Counsel**

The third *Gunter* factor – the skill and efficiency of the attorneys involved – is measured by the “quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the

performance and quality of opposing counsel.”” *Viropharma*, 2016 WL 312108, at \*16. Here, each of these considerations demonstrates the skill and efficiency of Counsel and supports the requested fee.

Lead Counsel worked with a group of other counsel appearing in the Action, “Plaintiffs’ counsel,” to achieve the result here. Lead Counsel ensured that work assignments were not duplicative and that resources were efficiently allocated. Lead Counsel oversaw all projects and believe the results obtained would not have occurred but for the efforts of all Plaintiffs’ counsel. Plaintiffs’ counsel were opposed by highly sophisticated defense counsel, who skillfully pressed every available argument at each stage of the litigation. Lead Counsel also engaged in multiple rounds of negotiations that ultimately resulted in a resolution of this Action.

This outstanding result was only possible due to Counsel’s experience and expertise. *See* ECF 79-2, ¶31.<sup>4</sup> Ultimately, this outstanding result is the best indicator of the skill and expertise that Counsel brought to this matter. *See In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 436 (D.N.J. 2004) (“Indeed, ‘the results obtained’ for a class evidence the skill and quality of counsel.”).

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<sup>4</sup> *See* Cecchi Decl., Exs. A-H.

#### 4. The Complexity and Duration of the Action

As detailed herein and in the Declaration of James E. Cecchi (ECF 79-2) submitted in support of preliminary approval, this Action has spanned three years and involved complex issues of law and fact. The complaint alleged that Defendants unlawfully and intentionally manipulated Precious Metals Futures contracts traded on the COMEX and/or the NYMEX and Options on Precious Metals Futures contracts from at least January 1, 2008 through at least July 31, 2016 (the “Class Period”) in violation of the Commodity Exchange Act, 7 U.S.C. §1, *et seq.*, and the common law. *See* ECF 79-2, ¶17. Defendants filed a motion to dismiss the consolidated complaint on June 18, 2021. *Id.*, ¶21. Plaintiffs opposed, with briefing concluding on September 15, 2021. *Id.* Defendants raised numerous complex issues, including Article III standing, timeliness, and failure to state a claim. *Id.*

Another factor that added to the complexity of the litigation as well as its risk was the pendency in *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.*, No. 14-MD-2548 (VEC) (S.D.N.Y.) (“*Gold Fix*”). In *Gold Fix*, the BNS defendants attempted to release a significant portion of their liability here. Counsel contacted defendants’ and plaintiffs’ counsel in *Gold Fix* to carve this matter from the release from the settlement they had negotiated. When those discussions proved futile, Lead Counsel objected to the *Gold Fix* settlement, filed a brief, and argued at a hearing held by the *Gold Fix* court. On November 2, 2022,



the parties in this Action entered into the present settlement. This rendered the objection moot, and it was withdrawn.

### **5. The Risk of Non-Payment**

Counsel prosecuted this Action entirely on a contingency fee basis. *See* Cecchi Decl., ¶4. Thus, without a settlement or a trial victory, they would go unpaid. *Id.*, ¶5. This created an incentive to litigate the Action aggressively and seek the best recovery possible. “Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *High St. Rehab.*, 2019 WL 4140784, at \*13; *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at \*7 (D.N.J. May 31, 2012) (“*Schering-Plough I*”) (approving 33.3% fee; noting that “the risk created by undertaking an action on a contingency fee basis militates in favor of approval”).

### **6. The Significant Time Devoted to This Action**

The significant time that counsel devoted to this Action favors approval of the requested attorneys’ fees. Counsel collectively invested 4,098.66 hours of attorney and support staff time over the course of three years and incurred approximately \$285,011.00 in expenses prosecuting this Action for the benefit of the Class, without promise of payment of attorneys’ fees or expenses if Plaintiffs did not prevail on their claims. *See* Cecchi Decl., ¶¶3-5 (setting out Counsel’s time and expenses).

## 7. The Range of Fees Typically Awarded

“While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund.” *Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at \*12 (E.D. Pa. Sept. 16, 2021) (holding that this factor weighs in favor of approval where 33% fee request “falls in the middle” of the range of fees granted in comparable securities class actions in the Third Circuit); *see also Viropharma*, 2016 WL 312108, at \*17 (noting that in this Circuit, awards of thirty percent are not uncommon in class actions) (citing cases).

In evaluating attorneys’ fee requests, courts in the Third Circuit have also considered factors such as whether the fee award “reflects commonly negotiated fees in the private marketplace,” and any benefit received from the efforts of government agencies. *See Merck/Vytorin*, 2010 WL 547613, at \*12-\*13. These additional factors also favor approval of the requested fee here; *see also id.* at \*13 (noting that contingent fees in the private marketplace are commonly 30% to 40%).

Because the requested fee is reasonable in relation to fees typically awarded in similar cases, this factor favors approval of the requested fee award.

**C. The Requested Fee Is Reasonable Under a Lodestar Cross-Check**

Courts in the Third Circuit may also use a “lodestar cross-check” to confirm the reasonableness of a percentage fee. *See Moore v. GMAC Mortg.*, 2014 WL 12538188, at \*2 (E.D. Pa. Sept. 19, 2014) (stating that the “lodestar cross-check is ‘suggested,’ but not mandatory”). If used, the lodestar cross-check “should not displace a district court’s primary reliance on the percentage-of-recovery method.” *AT&T Corp.*, 455 F.3d at 164. Placing too much emphasis on the lodestar method “may encourage attorneys to delay settlement or other resolution to maximize legal fees” and “may also compensate attorneys insufficiently for the risk of undertaking complex or novel cases on a contingency basis.” *Ikon*, 194 F.R.D. at 193. Given its limited value, some courts consider a lodestar review “an inevitable waste of judicial resources.” *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000).

When used, the Third Circuit has recognized that the lodestar cross-check “need entail neither mathematical precision nor bean-counting,” and that “district courts may rely on summaries submitted by the attorneys and need not review actual billing records.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005); *see also In re Valeant Pharms. Int’l, Inc. Sec. Litig.*, 2021 WL 358611, at \*9 (D.N.J. Jan. 31, 2021) (Shipp, J) (approving attorneys’ fees after performing lodestar crosscheck).

The lodestar cross-check involves simply comparing counsel’s “lodestar” to the fee resulting from the requested percentage award and assessing the reasonableness of the resulting multiplier. The appropriate multiplier varies based on the specifics of each case and “need not fall within any pre-defined range, provided that the [d]istrict [c]ourt’s analysis justifies the award.” *Id.* at 307. However, the Third Circuit has recognized that percentage awards that result in multipliers “ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” *In re Veritas Software Corp. Sec. Litig.*, 396 F. App’x 815, 819 (3d Cir. 2010); *see also Stevens v. SEI Invs. Co.*, 2020 WL 996418, at \*13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16; noting that “multiples ranging from 1 to 8 are often used in common fund cases” to “compensate counsel for the risk of assuming the representation on a contingency fee basis”).

Here, Counsel have spent a total of 4,098.66 hours of attorney and paraprofessional time on this matter, for a total lodestar amount of \$3,702,803. *See Cecchi Decl.*, ¶¶5-6. The resulting overall lodestar multiplier is 0.59 which falls within the range of reasonableness based on the cases cited above. Here the multiplier is negative, highlighting the reasonableness of the award requested.

**D. Reasonably Incurred Litigation Expenses Should Be Reimbursed**

Counsel also request payment of expenses incurred in connection with the prosecution of this Action in the aggregate amount of \$285,011.00. *See Cecchi*

Decl., ¶5. Counsel in class actions “are entitled to reimbursement of expenses that were ‘adequately documented and reasonable and appropriately incurred in the prosecution of the class action.’” *Viropharma*, 2016 WL 312108, at \*18 (quoting *Abrams v Lightolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *Schering-Plough I*, 2012 WL 1964451, at \*8 (approving litigation expenses and noting that “[t]his type of reimbursement has been expressly approved by the Third Circuit”).

The expenses borne by Counsel are documented in the accompanying firm declarations.<sup>5</sup> These expenses consist of the typical categories, such as travel, document hosting and production, research costs, expert fees, filing fees, postage, copying, and delivery. These expenses were reasonable and necessary to the prosecution of the claims and achieving the Settlement and are of the same type routinely approved in class actions. *See Viropharma*, 2016 WL 312108, at \*18 (approving costs and expenses for, among other things, experts, travel, copying, postage, telephone, filing fees, and online and financial research); *Yedlowski v. Roka*

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<sup>5</sup> *See* Declaration of Alexandra S. Bernay Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys’ Fees and Expenses, Declaration of Daryl F. Scott Filed on Behalf of Scott+Scott in Support of Application for Award of Attorneys’ Fees and Expenses, Declaration of Christopher M. Burke Filed on Behalf of Korein Tillery in Support of Application for Award of Attorneys’ Fees and Expenses, Declaration of Linda Nussbaum Filed on Behalf of Nussbaum Law Group, P.C., and Declaration of James Cecchi of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, PC, Declaration of Jennifer Sprengel of Cafferty Clobes Meriwether & Sprengel LLP, Declaration of Joseph H. Meltzer of Kessler Topaz Meltzer & Check and Declaration of Anthony E. Maneiro of Kirby McInerney LLP attached to the Cecchi Decl. as Exs. A-H.

*Bioscience, Inc.*, 2016 WL 6661336, at \*23 (D.N.J. Nov. 10, 2016) (approving costs and expenses for experts, investigation, mediation, publishing notice, and online legal research, and noting that “[c]ourts have held that all of these items are properly charged to the [c]lass”).

The requested expense amount is significantly lower than the expenses approved in many other class actions. *See, e.g., AT&T Corp.*, 455 F.3d at 169 (approving expenses of nearly \$5.5 million); *In re Merck & Co., Inc. Sec., Derivative & ERISA Litig.*, 2016 WL 11575090, at \*5 (D.N.J.

No. 2:00-cv-00621, ECF 236 at 1 (D.N.J. July 23, 2004) (approving award of \$3.5 million in expenses).

For all of these reasons, the requested expense award should be approved.

#### **E. Service Awards Here Are Proper**

The Third Circuit “favors encouraging class representatives, by appropriate means, to create common funds and to enforce laws.” *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at \*37 (D.N.J. Oct. 1, 2013) (“*Schering-Plough II*”). “Service awards are regularly granted to ‘compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation and . . . reward the public service of contributing to the enforcement of mandatory laws.’” *Stechert v. Travelers Home & Marine Ins. Co.*, 2022 WL 2304306, at \*15 (E.D. Pa. June 27, 2022) (quoting *Sullivan v. DB Invs.*,

*Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011)). *See New Jersey Tax Sales Certificates Antitrust Litig.*, at \*11 (approving awards of \$3,500 per named plaintiff where “the named plaintiffs played an active role in this litigation and protected the interests of the Class by monitoring the litigation, reviewing pleadings, motion papers, and settlements, and in some instances, traveling to observe Court proceedings”).

Plaintiffs engaged in many activities directly related to representing the Class, including: (a) consulting with counsel regarding the litigation and the Court’s orders; (b) reviewing and commenting upon pleadings, motions, and briefs; (c) reviewing correspondence and status reports from counsel; (d) conferring with counsel concerning litigation strategy; and (e) monitoring settlement negotiations.

The requested class representative service awards, totaling \$22,500, are reasonable, and are less than or equal to awards in many similar cases. *See, e.g., In re CIGNA Corp. Sec. Litig.*, No. 2:02-cv-08088, ECF 288 at 1-2 (E.D. Pa. July 13, 2007) (Baylson, J.) (approving awards to four lead plaintiffs totaling more than \$130,000); *Schering-Plough II*, 2013 WL 5505744, at \*37 (approving awards to four lead plaintiffs totaling more than \$102,000); *id.* at \*56-\*57 (in related matter, approving awards to four separate lead plaintiffs totaling more than \$109,000); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at \*11 (D.N.J. July 29, 2013) (approving

award to lead plaintiff of \$18,000); *Aeterna Zentaris* 2021 WL 2220565, at \*2 (approving awards of \$17,000 to each of the three lead plaintiffs).<sup>6</sup>

### III. CONCLUSION

Counsel did significant work to achieve the good result in this case. The fee request is in line with other, similar cases and the expenses are reasonable and have been properly detailed and should be recovered. Further, the service awards requested for the named plaintiffs are reasonable and amount to a small fraction of the aggregate percentage of recovery. For these reasons, Lead Counsel respectfully request the Court grant them a fee equal to one-third of the Settlement Amount, approve the expense requests, and grant each named plaintiff a service award of \$2,500.

DATED: September 7, 2023

Respectfully submitted,

CARELLA, BYRNE, CECCHI, OLSTEIN,  
BRODY & AGNELLO, P.C.

*/s/ James E. Cecchi*

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JAMES E. CECCHI

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<sup>6</sup> Further buttressing the requested service awards' reasonableness is that their aggregate percentage of the \$6.6 million recovery – 0.34% – is lower than the same measurement when utilized in granting class representative service awards in prior Third Circuit class actions. *See, e.g., Stechert*, 2022 WL 2304306, at \*16 (1.1% when measured against class recovery); *Sweda v. Univ. of Pa.*, 2021 WL 5907947, at \*8 (E.D. Pa. Dec. 14, 2021) (1.15% of the class recovery).



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