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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re VALEANT PHARMACEUTICALS INTERNATIONAL, INC. SECURITIES LITIGATION This Document Relates To: SECURITIES CLASS ACTION.	Master No. 3:15-cv-07658-MAS-LHG CLASS ACTION Judge Michael A. Shipp Magistrate Judge Lois H. Goodman Special Master Dennis M. Cavanaugh, U.S.D.J. (ret.) REPLY IN SUPPORT OF MOTIONS FOR FINAL APPROVAL OF: (1) CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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Lead Plaintiff and Lead Counsel submit this combined reply in further support of both the (1) Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Motion for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4).

I. PRELIMINARY STATEMENT

This Court has granted preliminary approval to a $1,210,000,000.00 all-cash recovery for the Class, which is the ninth largest securities class action settlement in history and the largest in this District in almost two decades. ECF No. 539-1 (the "Final Approval Brief") at 1.[1] The recovery is all the more remarkable when considered in light of the complexity of the Litigation and the uncertainty of Valeant's financial condition. The recovery represented almost 150% of Valeant's cash and required Valeant to issue debt to fund the Settlement. *Id.* at 24-30; ECF No. 539-2 (the "Fee Brief") at 11-13, 17-24. Market analysts publicly noted the Settlement was "much larger" than expected, providing an independent and objective view of the outsized result obtained for the Class. Fee Brief at 13. The COVID-19 pandemic has only served to underscore the risk and uncertainty of continued litigation, as Valeant's stock price has declined approximately 40% since the time the Settlement was reached. *See* Ex. A.

[1] Citations to "Ex. __" refer to the exhibits to the Reply Declaration of Christopher A. Seeger, submitted herewith. Emphasis is added and citations are omitted unless otherwise noted.

Lead Counsel obtained this result through tireless effort, leveraging its skill and experience to convince Defendants that Valeant should pay hundreds of millions of dollars more than its cash balance before exhausting all legal challenges. In the opening briefs, Lead Plaintiff demonstrated that the Settlement and Plan of Allocation ("POA") warrant final approval under all the Rule 23(e)(2) and Third Circuit's *Girsh* factors, and that the requested 13% fee (the "Fee Request"), negotiated *ex ante* by Lead Plaintiff, is both presumptively reasonable and supported by every Third Circuit *Gunter* factor used to assess attorneys' fees in common fund class action settlements. *See* Final Approval Brief, §§IV-V; Fee Brief, §§III-V.

Now, after 478,304 Notice packets have been sent to potential Class Members, it is clear the Settlement, POA, and Fee Request have the overwhelming support of the Class. Significantly, despite a large number of institutional investors in the Class, not a single institutional investor objected to the fairness of the amount of the Settlement or the Fee Request. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming 27.5% fee award over objection by individual investor and noting securities classes are comprised predominantly of institutional investors that "help to protect the interests of class members with smaller stakes" and no institution objected to the fee despite having "in-house counsel with fiduciary duties to protect the beneficiaries"). Notably, five other institutional investors moved to be appointed lead plaintiff in this case, and none of

them objected to any aspect of the Settlement or Fee Request. *See* ECF Nos. 23-25, 29.

There were just four objections received, an extraordinarily low number given the size of the Class and the stakes involved. *Cf., e.g.*, *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 438 (3d Cir. 2016), as amended (May 2, 2016) (finding reaction of the class "weigh[ed] in favor of settlement approval" where there were 95 objections representing "only approximately 1% of class members").[2] The four objections here represent less than 0.0009% of potential Class Members. And, in any event, each is without merit.

The four objections boil down to generic and legally unsupported contentions that the Settlement should be larger, the fee should be smaller, or the options investors' portion should be bigger. More specifically, one *pro se* objection claims that the Settlement should be increased to roughly $25 billion, ignoring the impossibility of Valeant being able to pay anywhere near that sum. And the other suggests that the fee TIAA negotiated with Lead Counsel should be reduced to 0.5%, far below fees typically awarded in these cases.

[2] *See also Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313, n.15 (3d Cir. 1993) (finding 30 objectors out of 1.1 million shareholders was "an infinitesimal number" that supported approval); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) (finding 29 objections out of class of 281 supported approval).

The two other objections are lawyer driven and frivolous. Objector Cathy Lochridge is a serial objector represented by the Bandas Law Firm, P.C. (the "Bandas Firm"), which has been sued for filing frivolous objections to extort fees, enjoined by a federal district court, denied *pro hac* admission in this District, and the subject of repeated scathing criticisms by courts across the country. *See* ECF No. 558. And Timber Hill's objection represents its third attempt to insert its counsel into this Litigation and is also meritless. They challenge provisions of the POA and Notice that are routinely used and approved by courts across the country, including in prior settlements involving Timber Hill's own counsel and expert.

In summary, the Settlement, POA, and fee and expense awards have the support of the Lead Plaintiff and more than 99.999% of the Class. Lead Plaintiff and Lead Counsel respectfully request that the Court overrule the objections, grant the final approval motions, and enter the proposed orders.

II. THE SETTLEMENT, PLAN OF ALLOCATION, AND FEE AND EXPENSE AWARDS WARRANT THIS COURT'S APPROVAL

In its opening briefs, Lead Plaintiff showed that the Settlement, POA, and Fee Request satisfy all relevant factors and warrant final approval. Final Approval Brief, §§IV-V; Fee Brief, §§III-V. The Notice process has confirmed that each also has the overwhelming support of the Class and, therefore, should be approved.

A. The Overwhelmingly Positive Reaction of the Class Supports Final Approval of the Settlement and POA

The Third Circuit instructs district courts to consider the "'reaction of the class to the settlement.'" *Girsh v. Jepson,* 521 F.2d 153, 157 (3d Cir. 1975). Courts recognize that objections are filed in "nearly every class action settlement today." *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, No. 1:08-WP-65000, 2016 WL 5338012, at *21 (N.D. Ohio Sept. 23, 2016). Thus, under this second *Girsh* factor, courts consider whether "the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable." *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08-397 (DMC)(JAD), 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013).

Here, 478,304 copies of the Notice were sent to potential Class Members and nominees. *See* Supplemental Declaration of Ross D. Murray Regarding Notice Dissemination, Requests for Exclusion Received to Date, and Limitations on Exchange-Traded Options Claims ("Murray Supplemental Declaration"), ¶4, filed herewith. In addition, the Summary Notice was transmitted over *Business Wire* and published in *The Wall Street Journal*. *See* ECF No. 539-24, ¶12. The Notice, Proof of Claim and Release form, Stipulation of Settlement, Preliminary Approval Order, and other relevant documents, were also posted to the website dedicated to the Litigation and Settlement. *See id.*, ¶14.

The May 6, 2020 deadline for objections has now passed, and there have been just four objections: two relating to the Fee Request, one to the amount of the Settlement, and one to the POA. Given the size of the Settlement and the Class, the receipt of just one objection to the Settlement and one to the POA, representing less than 0.0005% of the potential Class Members receiving Notice, is extraordinarily low. *See supra* §I & n.2. When the number of objections is this low, the "vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption . . . in favor of the Settlement." *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (affirming final approval where there were only three objections to the settlement and one to the plan of allocation). Thus, since all of the factors under Rule 23 and *Girsh* have been met, including receiving the overwhelming support of the Class, the Settlement and POA should be approved.

B. Plaintiffs' Requested Awards and Lead Counsel's Fees and Expenses Should Also Be Approved

Plaintiffs' requested awards pursuant to 15 U.S.C. §78u-4(a)(4) and Lead Counsel's requested fees and expenses also have the overwhelming support of the Class. *See In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 435 (D.N.J. 2004) (approving fee over nine objections and stating that "the lack of a significant number of objections is strong evidence that the fees request is reasonable"). For the reasons stated herein and in the Fee Brief, these requests should also be approved.

1. There Were No Objections to 15 U.S.C. §78u-4(a)(4) Awards or to Counsel's Expenses

Since there were no objections to Plaintiffs' requested awards under 15 U.S.C. §78u-4(a)(4) and no objections to Lead Counsel's expenses, they should be approved. Notably, the final amounts requested for each are lower than the amounts reserved in the Notice and approved in other cases. *See* Fee Brief at 34-35, 37-38.

2. Lead Counsel Received Overwhelming Support from the Class for its Fee Request

The requested attorneys' fees, negotiated *ex ante* by Lead Plaintiff and approved by all named plaintiffs, are entitled to a presumption of reasonableness. *Id.* at 10-32. As explained in the Fee Brief, the Fee Request is also supported by each of the Third Circuit *Gunter* factors. *Id.* at 10-29. For example, the fee was wholly contingent and subject to considerable risk due to the complexity of issues and Valeant's uncertain financial condition; the result achieved was excellent; the result was obtained through hard-fought litigation by skilled and experienced counsel; and the requested fee is at or well below fee percentage awards in numerous comparable cases cited therein. *See id.* at 11-14, 15-29.

In addition, in assessing attorneys' fees, courts consider "the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel." *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). In particular, courts look to whether there are

objections by "'sophisticated' institutional investors," which have "considerable financial incentive to object [if] they believed the requested fees were excessive." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005).

Here, the Class's overwhelming support of the Fee Request is evidenced by the fact that not a single institutional investor objected to the Fee Request even though more than 1,300 institutions reported ownership of Valeant common stock during the Class Period and five institutions moved to be appointed lead plaintiff. *See supra* §II.A; ECF No. 539-12 at 8. After 478,304 Notice packets were sent out, only two individual investors objected to the Fee Request. This overwhelmingly positive reaction of the Class confirms the fee should be approved. *See Rite Aid*, 396 F.3d at 305 (noting lack of objection by institutional investors and stating that two objections out of 300,000 receiving notice was a "'rare phenomenon'").[3]

While rare, the level of support is not surprising because the fee structure here was negotiated *ex ante* by a large, sophisticated institutional investor and is

[3] *See also In re Merck & Co., Inc. Sec., Derivative & ERISA Litig.*, No. 05-1151 (SRC) (CLW), 2016 WL 11575090, at *5-*8 (D.N.J. June 28, 2016) (approving 20% fee on $1.062 billion settlement over four objections, which were filed as ECF Nos. 1002-3, 1002-9, 1002-12, 1002-13); *Schering-Plough*, 2013 WL 5505744, at *40 (stating two objections to the fee request was "an exceptionally low number" and noting the "shareholder base consists of a substantial number of institutional holders" that had incentive to object if the fees were excessive); *City of Pontiac Gen. Emps.' Ret. Sys. v. Wal-Mart Stores, Inc.*, No. 5:12-cv-5162, 2019 WL 1529517, at *2 (W.D. Ark. Apr. 8, 2019) (approving 30% fee over five individual and one institutional investor objections).

significantly lower than comparable fee awards. *See* Fee Brief at 26-28 (identifying 24 large settlements with fee awards from 13% to 33%); *see also* Appendix A hereto (identifying nearly 100 class action settlements of at least $100 million with fees of at least 13%). As discussed in the opening brief, the Fee Request is supported by all of the factors applied by courts in the Third Circuit and should be granted. Fee Brief, §§III-V.

III. THE FOUR OBJECTIONS SHOULD BE OVERRULED

The generic objections in this case – that the Settlement could be larger or fee smaller, or a request to favor a particular individual class member – could be lodged against any settlement, but lack merit in this case. *See In re Cendant Corp. Litig.*, 182 F.R.D. 144, 148 (D.N.J. 1998) (denying objections and stating "notwithstanding every plaintiff's undeniable interest in an outcome most favorable to his or her position, every warrior in this battle cannot be a general"); *supra* §§II.A-B.

A. The *Pro Se* Objections Are Without Merit

Two *pro se* objectors filed cursory objections that provide no legal, factual, or evidentiary support. Their objections should be overruled.

1. Mr. Lakhat's Objection to the Settlement

Jaskirat Lakhat objected to the amount of the Settlement based on his desire for a larger personal recovery, but unsupported requests for larger recoveries are meritless objections. *See Bodnar v. Bank of Am., N.A.*, No. 14-3224, 2016 WL 4582084, at *4 (E.D. Pa. Aug. 4, 2016) (stating "[a] complaint that a settlement

should have somehow been better is not proper grounds for objecting to a settlement"); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 411-12 (S.D.N.Y. 2018) (rejecting objection that "d[id] not articulate a legal basis for the[] objection" and instead complained that the objector "never received any where [sic] near the amount I lost").

Mr. Lakhat assumes the Court can simply adjust the Settlement Amount upward and proposes "a variance or deviation of $45.00 per share as an equitable settlement," which would total roughly $25 billion. ECF No. 539-20. Mr. Lakhat ignores not only the significant litigation risks to establishing liability for and obtaining a judgment in that amount, but he also does not, and cannot, show that Valeant is capable of paying anywhere near that sum. Valeant has $25 billion in debt, and the Settlement Amount was almost 150% of Valeant's cash balance at the time the case was settled. *See* Final Approval Brief at 16-17. Valeant is also subject to several additional lawsuits, and the Company's market capitalization has declined almost 50% since the Settlement was reached. *See id.*; Ex. A.

The $1.21 billion recovery obtained here is not just the ninth largest PSLRA recovery in history, it is a result that was "much larger" than expected, and has the overwhelming support of the Class. *See* Final Approval Brief at 28-30; Fee Brief at 11-13, 23-25; *Facebook*, 343 F. Supp. 3d at 410 (stating "[t]hat not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness");

In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 261 (D.N.H. 2007) (finding the reaction of the class was "almost entirely positive" where "[n]one of the institutional investors have objected" and "[o]nly a small number of individual investors have argued that the settlement should be larger"). Thus, the objection should be overruled.

2. The Frommes' Objection to Attorneys' Fees

Don and Pam Fromme (the "Frommes") suggest that fees should be awarded at 3-5 times expenses, but they offer no evidence that this is a common compensation practice for lawyers, or even doctors, accountants, or any other professionals. ECF No. 539-20. The Frommes' suggestion to award fees as a multiple of expenses would create a perverse incentive to increase expenses to the detriment of the Class and is contrary to Third Circuit law providing that "the percentage of common fund approach is the proper method of awarding attorneys' fees." *Rite Aid*, 396 F.3d at 306. Moreover, their suggested fee would amount to roughly 0.5% of the Settlement, which is far below the fee percentages commonly awarded in these cases. *See* Fee Brief at 26-28; Appendix A. This objection should also be overruled.

B. The Lawyer-Driven Objections Are Frivolous

The two other objections – one by serial objector Ms. Lochridge and her notorious counsel and one by Timber Hill – are lawyer driven and meritless.

1. The Lochridge Objection

Ms. Lochridge and her son have been utilized by the Bandas Firm to advance meritless objections, having appeared in at least four prior cases. *See* ECF No. 558 at 19-20. Of course, each time they lost. *See id.* Being routinely criticized for unethical practices apparently does not dissuade the Bandas Firm from trying to extract unearned fees through filing improper objections. *See id.* at 4-15. The Bandas Firm has admitted to "unethical, improper, and misleading conduct" in objecting only for "personal gain." *Id.* at 10. The objection should be overruled because the Bandas Firm's prior misconduct, and Ms. Lochridge's association with the Bandas Firm, indicate that the objection is being used to extort fees rather than for a legitimate purpose. *See In re Gen. Elec. Co. Sec. Litig.*, 998 F. Supp. 2d 145, 156 (S.D.N.Y. 2014) (finding that an objector's "relationship with Bandas, a known vexatious appellant, further supports a finding that [the objector] brings this appeal in bad faith").

Even if the Court were to ignore the Bandas Firm's history of misconduct, the objection has no merit for several reasons. First, the objection argues for the lodestar based approach to awarding fees that was used by Judge Hellerstein in *In re American Realty Cap. Props., Inc. Litig.*, No. 1:15-mc-00040-AKH (S.D.N.Y.), a case from outside the Third Circuit. ECF No. 546 at 1-5; *see* Ex. B (excerpt from Hearing Tr. at 178:13-17, *American Realty*, No. 1:15-mc-00040 (S.D.N.Y. Jan. 23, 2020) ("I understand some [courts] give lodestar and some give percentages . . . I

give lodestar. I don't give percentages.")). Judge Hellerstein has himself acknowledged that his approach is contrary to Third Circuit law. *See Klein ex rel. SICOR, Inc. v. Salvi*, No. 02 Civ.1862(AKH), 2004 WL 596109, at *6 n.4 (S.D.N.Y. Mar. 30, 2004) (Hellerstein, J.) (applying lodestar method and stating "I note that the Third Circuit appears to have abandoned the lodestar method in favor of the percentage approach"), *aff'd sub nom. Klein v. Salvi*, 115 F. App'x 515 (2d Cir. 2004); Fee Brief at 5-7, 29-30 (collecting cases stating that percentage awards incentivize counsel to maximize the recovery and criticizing lodestar awards as incentivizing billing hours and dragging out litigation).

The negotiated fee produced the outsized recovery in this case and exemplifies why courts in the Third Circuit recognize that "[t]he percentage-of-recovery method is preferred in common fund cases because it 'rewards counsel for success and penalizes it for failure.'" *Dartell v. Tibet Pharm., Inc.*, No. 14-3620 (JMV), 2017 WL 2815073, at *8 (D.N.J. June 29, 2017) (citing cases).[4] Objections that "the fee award

[4] Recognizing that fee awards must incentivize counsel to obtain the best possible recovery for the Class, courts have also rejected declining fee scales for large settlements. *See, e.g.*, *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718-21 (7th Cir. 2001) (stating declining percentage fee awards "ensur[e] that at some point attorneys' opportunity cost will exceed the benefits of pushing for a larger recovery, even though extra work could benefit the client"); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 196-97 (E.D. Pa. 2000) (stating declining fee scales fail to "give sufficient weight to the fact that 'large attorneys' fees serve to motivate capable counsel to undertake these actions'"); *Rite Aid*, 396 F.3d at 303 (holding "there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund").

should be based on the lodestar method" is "a position incompatible with well-settled controlling Third Circuit case law." *See Schering-Plough*, 2013 WL 5505744, at *35. Notably, even the Second Circuit, where Judge Hellerstein is located, recently relied on a percentage approach to affirm a 13% fee on a larger, $2.3 billion, settlement. *Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019).[5]

Second, the objection presumes that the result in *American Realty* was better and had equal or greater risk. *See* ECF No. 546 at 16-18. As for litigation risks, in *American Realty*, the settlement was reached *after* the company's Chief Financial Officer and the company's Chief Accounting Officer – key defendants in the securities class action – were convicted of criminal securities fraud and two other defendants had settled securities fraud claims with the SEC. *See* Ex. C (Department of Justice press release); Ex. D (SEC press releases showing $30 million in civil penalties). Here, the government has yet to allege, much less prove, that any Defendant engaged in wrongdoing. *See P. Van Hove BVBA v. Universal Travel Grp., Inc.*, No. 11-2164, 2017 WL 2734714, at *12-*14 (D.N.J. June 26, 2017) (awarding 33% fee and noting lead counsel's efforts were not aided by any

[5] The objection's request that the fee be paid over time (*see* ECF No. 546 at 19) is also unsupported by Third Circuit law and should be rejected. *See In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 174 (3d Cir. 2006) (rejecting objector request to stagger payout and affirming single payment of attorneys' fees and expenses).

government investigation producing an admission of fault).[6] To the contrary, Valeant's former employee, a non-defendant in this case, was convicted of a kickback scheme in which the government alleged Valeant was the *victim,* an argument that Defendants repeatedly emphasized in defending this case. *See, e.g.*, Fee Brief at 20; ECF No. 539-10 at 5. Accordingly, the "value of the benefits accruing to class members is properly attributable to the efforts of class counsel" in this case. *AT&T Corp.*, 455 F.3d at 173. The following chart shows that the result here compares favorably to cases facing less risk:[7]

Case	Government Findings	SEC/DOJ Recovery	Class Settlement	Company Payment as % Cash
In re BP plc	Guilty Plea SEC Settlement	$525 mil	$175 mil	0.8%
American Realty	Guilty Plea and Verdict SEC Settlements	$30 mil	$1.05 bil	72%
Merck	Guilty Plea DOJ Civil Settlement	$950 mil	$1.06 bil	12%
Valeant	**None**	**$0**	**$1.21 bil**	**146%**

[6] Lochridge erroneously claims that Lead Counsel relied on an SEC investigation because the complaint "purports to rely" on SEC filings. Yet, that language refers only to Valeant's public filings with the SEC. ECF No. 546 at 17.

[7] *See* Ex. E (American Realty financials); Ex. F (BP financials); Fee Brief at 12 & n.3; Sixth Amended Complaint at ¶186, *In re Merck & Co. Inc. Sec. Litig.*, No. 2:05-cv-02367 (D.N.J. June 20, 2013) (ECF No. 545) (citing criminal probe and $950 million payment); Third Consolidated Amended Complaint at ¶415, *In re BP plc Sec. Litig.*, No. 4:10-md-02185, (S.D. Tex. July 24, 2014) (ECF No. 928) (alleging more than $90 billion in losses).

Third, without experience actually litigating securities fraud cases, the Bandas Firm claims PSLRA cases are not risky, particularly after a motion to dismiss has been denied. ECF No. 546 at 16-17. But many cases have survived a motion to dismiss only to be lost at summary judgment or trial. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050, at *1 (N.D. Cal. June 19, 2009) (granting summary judgment to defendants after Robbins Geller spent eight years litigating with an approximate lodestar of $40 million and over $6 million in unreimbursed expenses), *aff'd*, 627 F.3d 376 (9th Cir. 2010); Fee Brief at 21-22 (citing additional examples). Similarly, the Bandas Firm tries to minimize the result achieved and risks in this case by suggesting *Lucent* was riskier and its "$517 million settlement *was* the greatest judgment the company could withstand." ECF No. 546 at 18. But the *Lucent* settlement was only 12% (vs. 146%) of Lucent's $4.3 billion (vs. Valeant's $0.8 billion) cash balance and Lucent had only $4.7 billion (vs. Valeant's $25 billion) in debt. *See* Ex. G (Lucent financials). Thus, the comparison actually reinforces the extraordinary nature of the result achieved in this case.

Fourth, the Bandas Firm's challenges to Lead Counsel's lodestar are both wrong and of no consequence. Bandas cites cases in other districts that did not permit contract attorney rates to be marked up for overhead, but it has been permitted by courts in the Third Circuit. *See, e.g.*, *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-CV-01833, 2020 WL 1922902, at *30-*32 (E.D. Pa. Apr. 21, 2020)

(approving rates and noting significant work "done at the contract attorney level").[8] Other courts also calculate lodestar using proposed market rates, rather than cost, for contract attorneys because even paralegal, associate, and partner rates are not limited to "cost" but include a markup for overhead. *See, e.g.*, *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 265 (E.D. Va. 2009) (stating the court had "absolutely no trouble finding that the contract attorneys should be billed at market versus cost," as they are "part of the team brought in to benefit the class"); *Tyco*, 535 F. Supp. 2d at 272 (holding a contract attorney "is still an attorney" and "[i]t is therefore appropriate to bill a contract attorney's time at market rates").

Moreover, under the percentage approach adopted by the Third Circuit, the lodestar cross-check need not be exhaustive. *See* Fee Brief at 29-30. Any proposed reductions to lodestar suggested by the Bandas Firm would likely be more than offset by additions, since the Litigation is ongoing and, contrary to the Bandas Firm's suggestion, courts have considered future time. Fee Brief at 32-33. And, even if the lodestar multiplier were increased to roughly 4.4 as suggested, many cases have held

[8] Motion for an Award of Attorneys' Fees and Expenses, *Vista Healthplan, Inc. v. Cephalon, Inc.*, No. 2:06-CV-01833 (E.D. Pa. Dec. 16, 2019) (ECF No. 600-6) (submitting lodestar for "contract attorneys" at $400 to $410 per hour); Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 2:08-397 (DMC) (JAD) (D.N.J. July 2, 2013) (ECF No. 424-6), Ex. 1 (counsel submitting lodestar for "contract attorneys" at rates of $455 to $490 per hour).

that such multipliers are appropriate for larger settlements and cases handled efficiently, particularly given the excellent result achieved in face of the considerable risks faced in this case.[9] Thus, the objection should be denied.

2. The Timber Hill Objection

Given the size of class actions, "a Plan of Allocation need not be, and cannot be, perfect" so courts "will not invalidate the Plan of Allocation where certain shareholders, seeking advantageous treatment, fail to demonstrate that on the whole the plan is unreasonable." *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 272 (D.N.J. 2000), *aff'd*, 264 F.3d 201 (3d Cir. 2001) (granting final approval of

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[9] *See* Fee Brief at 30-31; *Stevens v. SEI Invs. Co.*, No. 18-4205, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving 6.16 multiplier and stating "multiples ranging from 1 to 8 are often used in common fund cases"); *Bodnar*, 2016 WL 4582084, at *5-*6 (approving 4.69 multiplier as "appropriate and reasonable" where counsel was able to negotiate the settlement "at the early stages" of the litigation); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (approving 6.96 multiplier); *Demaria v. Horizon Healthcare Servs.*, No. 2:11-cv-07298 (WJM), 2016 WL 6089713, at *5 (D.N.J. Oct. 18, 2016) (approving 4.3 multiplier); *In re Daimlerchrysler AG Sec. Litig.*, No. 00-993, 2004 U.S. Dist. LEXIS 31774, at *57 (D. Del. Jan. 28, 2004) (approving 4.2 multiplier); *In re Credit Default Swaps Antitrust Litig.*, No. 12md2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (approving multiplier "just over 6" on $1.86 billion settlement). Despite these authorities, Bandas inaccurately suggests the Third Circuit vacated a 5.1 multiplier as a matter of law in *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 342 (3d Cir. 1998). However, there the Third Circuit noted its prior approval of a 9.3 multiplier and only "questioned" the lack of supporting explanation given that counsel's work may have been duplicative of a "blueprint" created in other litigation, a concern not present in this case. *Id.* at 341. Bandas also attempts to distinguish the larger 5.2 multiplier in *Enron* as appropriate due to it being a larger settlement against a company that was also at risk of bankruptcy. ECF No. 546 at 10. But that settlement was mostly paid by highly solvent banks sued under a theory of scheme liability, which is no longer available as it has since been rejected by the Supreme Court. *See* Fee Brief at 23 n.7.

settlement and plan of allocation over objections). Rather, "courts give great weight to the opinion of qualified counsel." *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-1432 (DMC)(JAD), 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) (approving plan of allocation). Here, the POA is supported by Lead Counsel, and similar to those used in prior cases, and Timber Hill's objection should be denied.

a. Timber Hill's Lawyer-Driven Motive

Two years after the lead plaintiff deadline, Timber Hill sought to have its counsel appointed to represent a subclass of options investors. *See* ECF No. 323 at 4; ECF No. 329-1. The Timber Hill complaint was mostly a cut-and-paste of Lead Plaintiff's complaint (ECF No. 323 at 6) and Judge Shipp agreed that "many sections of Timber Hill's complaint appear to be taken nearly verbatim from the Consolidated Complaint." ECF No. 392 at 10. The Court denied Timber Hill's attempted intervention stating "this is not a case that requires separate lead plaintiffs" because Lead Plaintiff TIAA also had significant losses from options transactions so "there is a great incentive for TIAA to pursue those damages." *Id.* at 12-14.

Timber Hill recently attempted the same backdoor tactic to insert its counsel into another case, but was again rejected. *See Hedick v. Kraft Heinz Co.*, No. 19-cv-1339, 2019 WL 4958238, at *9 (N.D. Ill. Oct. 8, 2019) (denying motion to appoint co-lead counsel for options subclass after rejecting "conflicts" argument as "merely speculative and hypothetical"). Then, after the Settlement was publicly announced

in this case, Timber Hill's counsel contacted Lead Counsel with another unsolicited bid to represent options traders during the settlement process.

Timber Hill's counsel wrote, "our desired allocation for the derivatives investors" and "our expert analysis showed an appropriate allocation in the 5.35% range and that we were targeting an allocation of $60-70m for the derivatives investors." Ex. H. Lead Counsel responded that the POA *already* provided for an allocation of up to 5% to options claimants. ECF No. 522 at 6-7; Ex. H.

On January 21, 2020, Special Master Cavanaugh held a preliminary fairness hearing and stated his intention to grant preliminary approval. Timber Hill's counsel was present for the hearing and did not object. ECF No. 539-9 at 6, 12-14. Later that night, Timber Hill's counsel sent a letter to the Special Master falsely claiming they had not received notice of the hearing and asking the Special Master to hold entry of the order in abeyance, so they could "work through" issues with Lead Counsel. ECF No. 522-3 at 2. But there was nothing to negotiate so Lead Counsel opposed the delay and pointed out that Timber Hill's counsel not only received the same notice as every other lawyer, but attended the hearing. ECF No. 522-4 at 2. The Special Master entered the Preliminary Approval Order. ECF No. 510.

Undeterred by its written admission that its "expert analysis" showed the "desired allocation" for options investors was roughly 5%, Timber Hill and its expert brazenly *increased* their options allocation to 9.5% and belatedly objected to the

Preliminary Approval Order. ECF No. 517. Lead Plaintiff responded that Timber Hill lacked standing to object to preliminary approval, that option caps of 5% (and less) were standard features of securities class action settlements and used by Timber Hill's counsel, and that Timber Hill's counsel had previously admitted that an allocation of 5% "or maybe less" would be appropriate. *See* ECF No. 522 at 6-7. Timber Hill did not deny it made those statements but erroneously claimed they were protected by Fed. R. Evid. 408. *See infra* §III.B.2.b. The Court denied the objection and stated adoption of the Preliminary Approval Order "was not clearly erroneous or contrary to law." ECF No. 544 at 3 n.3.

Timber Hill has now repeated its objection based on its manipulated expert analysis claiming options investors should get 9.5% of the Net Settlement Fund. ECF No. 557. But, like the Bandas Firm's objection, the real purpose is clear. *See, e.g.*, Advisory Committee Notes to the 2018 Amendments to Federal Rule of Civil Procedure 23(e)(5)(B) (stating that "some objectors may be seeking only personal gain, and using objections to obtain benefits for themselves rather than assisting in the settlement-review process"); *In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 294-95 (S.D.N.Y. 2010) (requiring class objectors to post appeal bond and criticizing objectors for "disrupting [the] settlement in the hopes of extorting a greater share of the settlement for themselves and their clients").

b. Timber Hill's Objection Is Refuted by Its Prior Admission and the Past Practice of Its Counsel and Expert

Timber Hill admitted the POA is fair and reasonable when it admitted its "expert analysis" supported a "desired allocation" for options investors of approximately 5%. *See supra* §III.B.2.a; Ex. H; ECF No. 522 at 6-7. This alone is sufficient to deny its objection. *See generally In re Ocean Power Techs., Inc.*, No. 3:14-CV-3799, 2016 WL 6778218, at *16 (D.N.J. Nov. 15, 2016) (overruling objection and noting objector's dramatic change in position from initial emails with lead counsel to the objection).[10] Similarly, Timber Hill's claims that options investors need separate counsel, an options cap is unfair, and there is no economic basis for an options cap (*see* ECF No. 557), are refuted by the prior settlements supported by its counsel and expert.

[10] Timber Hill has not denied making these admissions despite having two chances, so the fact is conceded. *See* ECF Nos. 526 & 557; *Sportscare of Am., P.C. v. Multiplan, Inc.*, No. 2:10-4414, 2011 WL 589955, at *1 (D.N.J. Feb. 10, 2011) (noting that "failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver" particularly where the issue is "highly fact-intensive, rather than pure legal questions"). The admissions are not protected by Fed. R. Evid. 408, as "Rule 408 does not apply to Objector's correspondence with Lead Plaintiff . . . because it does not relate to the settlement or compromise of any claim or actual dispute between the parties." *Ocean Power*, 2016 WL 6778218, at *16. An "[o]bjector does not purport to have a claim against Lead Plaintiff" but is "only threatening to attempt to delay the settlement." *Id.* Further, even if there were "'settlement communications,'" courts "would be permitted to consider them in evaluating the reasonableness of the settlement . . . as a purpose not proscribed by the Rule." *Id.*

First, in *In re Dollar General Corp. Sec. Litig.*, No. 01-0388 (M.D. Tenn.), Timber Hill's counsel settled a securities case without separate counsel for options and used an options cap (albeit much lower than 5%). *See* ECF No. 522-5 at 1-2, 10 (plan of allocation). As set forth in the joint declaration signed by Timber Hill's counsel in that case, the plan of allocation was created with "recognized experts" regarding "causation and damages in connection with securities class actions" and capped the allocation to call option claimants at 1.5% and to put option claimants at 0.5%, a fraction of the cap used here.[11] Ex. I, ¶¶24, 28.

Second, the sworn statement by Timber Hill's expert, Michael A. Marek, that "I am aware of no economic basis for limiting the aggregate recovery of Recognized Losses for Options Class members to a maximum of 5% of the Net Settlement Fund" (ECF No. 554-3 at 9) is contradicted by sworn declarations by him and his then partner at Financial Markets Analysis, LLC ("FMA") in prior cases, which provided the economic bases for limits on the aggregate recovery of options class members. For example, in *In re Luminent Mortgage Capital, Inc. Sec. Litig.*, No. 07-4073 (N.D. Cal.), Mr. Marek submitted a sworn declaration in support of a 50% reduction of the recognized losses for options claimants but not stock claimants. *See* Ex. J,

[11] Without any legal authority, Timber Hill previously claimed its counsel's use of a cap in *Dollar General* was no longer appropriate because options caps are an obsolete "decades old" practice. ECF No. 517 at 13. But eighteen cases from the past ten years, including five from this District, prove otherwise. *See* Appendix B.

¶¶8-9, 12. Mr. Marek explained the limit had an economic basis "because (i) option prices include a time premium that diminishes over time independent of the underlying common stock price, and (ii) the expected additional volatility of derivative securities such as common stock options makes it more difficult to prove that all losses sustained on the purchase or sale on such securities are causally related to the alleged wrongdoing, as opposed to non-actionable causes." *Id.*

Similarly, in *In re Veritas Software Corp. Sec. Litig.*, No. 03-0283 (N.D. Cal.), Mr. Marek's then partner at FMA, Bjorn Steinholt, submitted a sworn declaration in support of a 2% options cap, citing similar economic reasons as Mr. Marek, including the "far more variables [for options] than stocks or bonds, making it very difficult to translate the common stock allocation into a similar allocation for the option purchasers." Ex. K, ¶¶14-15.[12] Mr. Marek's partner explained that because of the difficulties and expense of using inflation-related losses for options, the "best and most reasonable" approach was to recognize options claimants' entire market losses. *Id.*, ¶17. But, since such calculations would be "overly generous to the option holders because they are getting 100 percent of their losses," rather than only

[12] In addition to its counsel and expert, Timber Hill has also acknowledged the differences in calculating options losses derive from "at least five different variables: (1) value of the underlying asset . . . (2) strike price; (3) interest rate; (4) time to expiration (maturity); and (5) volatility of [the] common stock." Memorandum of Law in Further Support of its Motion for Appointment as Lead Plaintiff at 9, *Hedick v. Kraft Heinz Co., et al.*, No. 1:19-cv-01339(N.D. Ill. May 15, 2019) (ECF No. 92).

the inflation-adjusted losses for stock claimants, Mr. Marek's partner determined it was appropriate to "adjust for this inequity" by applying a 2% cap. *Id.*[13]

Lead Plaintiff's expert helped develop the POA in this case and considered the same economic reasons that Timber Hill, its counsel, and its expert identified in prior cases as supporting options caps or the reduction of recognized losses. *See* Declaration of Steven P. Feinstein, Ph.D/CFA ("Feinstein Decl."), ¶¶13-19, 25-35, submitted herewith. Notably, Mr. Marek used an options cap in *Luminent* and, although it was 10%, he started by reducing the recognized loss for options by 50%. Ex. J, ¶12. Here, the POA allows options claimants to recognize ***100% of their market losses*** and then applies a cap, that may not be reached. In other words, if Mr. Marek's "modified" analysis were correct that options investors account for 9.5% of the class-wide recognized losses, options claimants will do better using a 5% cap than using Mr. Marek's approach of automatically reducing options losses by 50%, *i.e.*, less than 5%. *See* Feinstein Decl., ¶32. Moreover, the Claims Administrator confirms that options caps are not typically reached, suggesting it is largely a hypothetical concern. *See* Murray Supplemental Decl., ¶7. Thus, the objection is without merit.

[13] *See also* Ex. L (plan with 3% options cap developed with Mr. Marek's partner); Ex. M (plan with 50% reduction for call option losses ***and*** a 5% cap for all options developed with Candace Preston of Mr. Marek's firm, FMA).

c. The POA Contains Standard Provisions

Having now been afforded three briefs on the subject, Timber Hill has not cited a single case upholding any of its objections. In contrast, Lead Plaintiff cited many cases approving each challenged feature of the POA. ECF No. 522 at 16-21.

As a preliminary matter, Timber Hill's argument that options investors need separate counsel has been rejected by this Court and others. *See supra* §III.B.2.a*; see also In re XM Satellite Radio Holdings Sec. Litig.*, 237 F.R.D. 13, 20 (D.D.C. 2006) (denying motion to appoint separate counsel for options because "'[t]he fact that plaintiffs might have different types of securities does not require a separate class or co-lead plaintiffs'"). Timber Hill has failed to cite a single case on point and instead relies on distinguishable cases involving conflicts between those suffering past and future harms or where some members would not recover at all.[14]

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[14] *See* ECF No. 557 at 18-20 (citing, *e.g.*, *Amchem Prods. v. Windsor*, 521 U.S. 591, 626-27 (1997) (vacating settlement that combined those who suffered past harm with those seeking recovery for potential future injuries); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 856-57 (1999) (same); *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 184 (3d Cir. 2012) (vacating settlement that provided recovery to some members only if there was money left over after paying the others); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 797 (3d Cir. 1995) (vacating settlement providing only non-cash relief that some may not be able to use); *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1190 (11th Cir. 2003) (vacating class certification where class included members that benefitted from the misconduct). Timber Hill's reliance on *In re Allergan, Inc. Proxy Violation Sec. Litig.*, No. 8:14-cv-02004(DOC)(KESx) (C.D. Cal.), was unpersuasive in its motion for relief from consolidation. ECF No. 392. It fares no better at this stage because in *Allergan*, unlike here, the lead plaintiff said it would not represent options investors. *See* ECF No. 322-3, at 58-59, 77-78. Timber Hill's citation to

Next, prior objections to the use of an options cap have been rejected because it is a common and fair practice. *See, e.g.*, *In re Veritas Software Corp. Sec. Litig.*, No. C-03-0283 MMC, 2005 WL 3096079, at *9 (N.D. Cal. Nov. 15, 2005) (rejecting objection to 2% options cap because stocks investors' recognized loss was limited to inflation adjusted amounts but "options traders . . . [we]re entitled to recover 100% of their [market] losses"), *vacated in part on other grounds*, 496 F.3d 962 (9th Cir. 2007); *see also* Appendix B (citing 23 cases applying options caps of 5% and less). Timber Hill has no response to these standard practices nor does it cite any law refuting that "derivative securities suffer from much greater volatility than stocks and bonds, making it more difficult to establish loss causation." *Tyco*, 535 F. Supp. 2d at 264 (rejecting objection to ***1% options cap*** on $3.2 billion settlement).[15]

Deutschman v. Beneficial Corp., 841 F.2d 502 (1988) is likewise misplaced because it does not support any of its objections and only held that options investors have standing to pursue securities claims. And *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 648 (E.D. Pa. 2015) did not even involve securities claims or options.

[15] *See also* ECF No. 522 at 20 & n.7 (citing case explaining loss causation issues regarding options); *Bricklayers of W. Pa. Pension Plan v. Hecla Mining Co.*, No. 2:12-cv-00042-BLW, 2012 WL 2872787, at *3-*4 (D. Idaho July 12, 2012) (noting that proving loss causation for options is complex because "it is impossible to say whether the [plaintiffs] would have purchased the options had they known about the alleged fraud; they may have merely purchased the options under different terms"); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 116 (D.N.J. 2012) (approving plan of allocation in antitrust case "based on the relative strengths" of the two categories of claimants and rejecting objection seeking subclasses).

d. Timber Hill's Request for Duplicative Insider Trading Calculations Is Equally Meritless

Timber Hill argues that the POA is unfair because stock claimants get a §20A "insider-trading enhancement" but options claimants do not. ECF No. 557 at 12. But the §20A "enhancement" only allows stock claimants to submit market losses, rather than inflation adjusted-losses, for those specific affected transactions, whereas options claimants already get to do so for all transactions. Thus, it is duplicative. *See* Feinstein Decl., ¶33; ECF No. 522 at 20-21. Like all of Timber Hill's objections, this one is legally unsupported and contrary to previously approved plans of allocation. *See In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 999 (N.D. Ohio 2016) (overruling objection that provided "no analysis or factual support" for its suggested changes); Feinstein Decl., ¶33; Order Approving Plan of Allocation at 1, *Turocy v. El Pollo Loco Holdings, Inc.*, No. 8:15-cv-01343(C.D. Cal. Aug. 27, 2019) (ECF No. 218) (approving plan of allocation for §10(b) and §20A claims (ECF No. 206 at 13) without duplicative §20A calculations for options).

e. The Notice Was Adequate

Timber Hill's only objection to the Notice is that it did not include an "expected recovery for Valeant Options Investors." ECF No. 557 at 22. But the PSLRA only requires that Notice include the "average amount of damages ***per share***," without any reference to option contracts. 15 U.S.C. §78u-4(a)(7)(B); ECF

No. 557 at 22 (Timber Hill acknowledging the same). Including per share estimates for stock but not per contract estimates for options is common given the complexity and uniqueness of all the potential option contracts at issue, as discussed herein, and it is consistent with notices previously approved in securities class actions. *See* Ex. N (attaching excerpts of notices from approved settlements). Notably, the notices endorsed by Timber Hill's counsel in *Dollar General* and its expert in *Luminent* did not include an estimated recovery per options transaction. *See* ECF No. 522-5 at 2; Ex. J, ¶14. Even the notice Timber Hill attached to its objection did not have an estimated recovery for options, or any securities. ECF No. 554-6. And, the final nail in the coffin of this meritless argument is that Timber Hill's suggested "redlined" notice does not even include an estimated per option recovery. ECF No. 554-4 at 4, 6; *see also, e.g.*, *Cendant*, 109 F. Supp. 2d at 255 (rejecting "unsupported allegation that the notice is not understandable").

f. No Other Options Investor Has Objected

Tellingly, despite Timber Hill's exaggerated claims that the Settlement was unfair to options investors in two publicly-filed objections (ECF Nos. 517 & 557), not one other options investor has objected. The lack of a single other objection, particularly given Timber Hill's claim that such investors comprise a very large portion of the Class, further confirms that the Settlement and POA have the support of the Class, including options investors, and the objection is without merit. *See*

Cendant, 109 F. Supp. 2d at 272 (overruling objection to plan of allocation and finding it "[c]ompelling" that "while a large number of Cendant shareholders" were impacted by the portion complained of, no one else objected).

IV. CONCLUSION

For the reasons set forth herein and in the previously submitted memoranda and declarations, Lead Plaintiff and Lead Counsel respectfully request that this Court approve the Settlement, Plan of Allocation, Plaintiffs' requested awards, and Lead Counsel's requested fees and expenses. For the Court's convenience, proposed findings of fact and report and recommendations regarding (1) Judgment and final approval of the Settlement; (2) final approval of the Plan of Allocation; and (3) award of attorneys' fees and expenses and awards to Plaintiffs, are being submitted herewith.

DATED: May 20, 2020

Respectfully submitted,

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APPENDIX A

	THIRD CIRCUIT CASES	SETTLEMENT (millions)	FEE%
1	*In re Merck & Co., Inc. Sec., Derivative & ERISA Litig.*, MDL No. 1658 (SRC) (D.N.J. Jun. 28, 2016)	$1,062	20%
2	*In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340-SLR, ECF No. 543 (D. Del. Apr. 23, 2009)	$250	33%
3	*In re Linerboard Antitrust Litig.*, No. CIV.A. 98-5055, 2004 WL 1221350 (E.D. Pa. June 2, 2004), amended, No. CIV.A.98-5055, 2004 WL 1240775 (E.D. Pa. June 4, 2004)	$203	30%
4	*In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000)	$111	30%
5	*In re: Merck & Co Inc Vytorin/Zetia Sec. Litig.*, No. 08-CV-02177, ECF No. 352 (D.N.J. Oct. 1, 2013)	$215	28%
6	*In re Wilmington Trust Corp. Sec. Litig*, No. 10-cv-00990, ECF No. 842 (D. Del. Nov. 19, 2018)	$210	28%
7	*In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109 (D.N.J. 2002)	$194	28%
8	*King Drug Co. of Florence v. Cephalon, Inc.*, Civil Action No. 06-cv-01797-MSP, Dkt. 870 (E.D. Pa. Oct. 15, 2015)	$512	27.5%
9	*Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-1519 (AET), ECF No. 405 (D.N.J. Jan. 30, 2013)	$164	27.5%
10	*In re Rite Aid Corp. Sec. Litig.*, 269 F. Supp. 2d 603 (E.D. Pa. 2003) and 146 F. Supp. 2d 706 (E.D. Pa. 2001).	$320	25%
11	*Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011)	$295	25%
12	*In re Rite Aid Corp. Sec. Litig.*, MDL No. 1360, 2005 WL 697461 (E.D. Pa. Mar. 24, 2005)	$127	25%
13	*In re Schering-Plough Corp. Sec. Litig.*, No. 01-CV-0829 (KSH/MF), 2009 WL 5218066 (D.N.J. Dec. 31, 2009)	$165	23%

14	*In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ), ECF No. 971 (D. Del. Feb. 5, 2004)	$300	22.5%
15	*In re AT & T Corp.*, 455 F.3d 160 (3d Cir. 2006)	$100	21.25%
16	*In re Honeywell Int'l Inc. Sec. Litig.*, No. 00-cv-03605, ECF No. 256 (D.N.J. Aug 16, 2004)	$100	20%
17	*In re Bristol-Myers Squibb Sec. Litig.*, No. 06-2964, 2007 WL 2153284 (3d Cir. July 27, 2007)	$185	19.77%
18	*In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426 (D.N.J. 2004)	$517	17%
19	*In re: Schering-Plough Corp/Enhance Sec. Litig.*, No. 08-CV-00397, ECF No. 439 (D.N.J. Oct. 1, 2013)	$473	16.92%
	ADDITIONAL CASES OVER $500 MILLION	**SETTLEMENT (millions)**	**FEE%**
1	*In re Syngenta AG MIR 162 Corn Litig.*, 257 F. Supp. 3d 1094 (D. Kan. 2018)	$1,510	33%
2	*In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (D. Kan. July 29, 2016)	$835	33%
3	*In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	$586	33%
4	*Dahl v. Bain Capital Partners*, LLC, No. 07-CV-12388, ECF No. 1095 (D. Mass. Feb 2, 2015).	$590.5	33%
5	*Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1241 (S.D. Fla. 2006)	$1,075	31%
6	*In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900 (N.D. Cal. Apr. 3, 2013)	$1,080	28.6%
7	*In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016)	$576.75	27.5%

8	*Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc., et al.*, No. 02 C-5893, ECF No. 2265 (N.D. Ill. Nov. 10, 2016)	$1,575	24.68%
9	*In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752 (S.D. Ohio 2007)	$600	18%
10	*Carlson v. Xerox Corp.*, 355 F. App'x 523 (2d Cir. 2009)	$750	16%
11	*In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249 (D.N.H. 2007)	$3,200	14.5%
12	*Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942 (E.D. Tex. 2000)	$1,100	14%
13	*In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465 (S.D.N.Y. 1998)	$1,027	14%
14	*In re Credit Default Swaps Antitrust Litig.*, No. 13md2476 (DLC), 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016)	$1,860	13.6%
15	*Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019)	$2,300	13%
	ADDITIONAL CASES OVER $100 MILLION	**SETTLEMENT (millions)**	**FEE%**
1	*In re Vitamins Antitrust Litig.*, No. MDL 1285, 2001 WL 34312839 (D.D.C. July 16, 2001)	$359	34%
2	*In re Buspirone Antitrust Litig.*, MDL No. 1413 (JGK), 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003)	$220	33%
3	*In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012)	$145	33%
4	*Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-xc-01152, ECF No. 844 (N.D. Tex. Apr. 25, 2018)	$100	33%
5	*In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011)	$410	30%

6	*Schuh v. HCA Holdings Inc.*, No. 3:11-cv-01033, ECF No. 563 (M.D. Tenn. Apr. 14, 2016)	$215	30%
7	*City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc. et al.*, No. 12-cv-05162, ECF No. 458 (W.D. Ark. Apr. 8, 2019)	$160	30%
8	*In re: Informix Corp. Sec. Litig.* No 97-CV-1289-CRB, ECF No. 471 (N.D. Cal., Nov 23, 1999)	$142	30%
9	*Anwar et al v. Fairfield Greenwich Limited et al*, No. 09-cv-0118, ECF No. 1457 (S.D.N.Y. Nov. 20, 2015)	$125	30%
10	*Kurzweil v. Philip Morris Cos.*, 1999 U.S. Dist. LEXIS 18378 (S.D.N.Y. Nov 24, 1999)	$123	30%
11	*In re Morgan Keegan Open-End Mutual Fund Litigation*, No. 07-cv-02784, ECF No. 435 (W.D. Tenn. Aug 2, 2016)	$110	30%
12	*In re Prison Realty Sec. Litig.*, No. 3:99–0458, 2001 U.S. Dist. LEXIS 21942 (M.D. Tenn. Feb. 9, 2001).	$104	30%
13	*In re Pfizer, Inc. Sec. Litig.*, No. 04-cv-09866, ECF No. 727 (S.D.N.Y. Dec, 21, 2016)	$486	28%
14	*In re Oxford Health Plans, Inc. Sec. Litig.*, MDL No. 1222 (CLB), 2003 U.S. Dist. LEXIS 26795 (S.D.N.Y. June 12, 2003)	$300	28%
15	*In re Genworth Fin. Inc. Sec. Litig.*, No. 3:14-cv-00682-JRS, 2016 WL 7187290 (E.D. Va. Sept. 26, 2016)	$219	28%
16	*In re Deutsche Telekom AG Sec. Litig.*, 2005 U.S. Dist. LEXIS 45798 (S.D.N.Y June 9, 2005)	$120	28%
17	*New Jersey Carpenters Health Fund v. DLJ Mortgage Capital, Inc.*, et al., No. 08-cv-05653, ECF No. 277 (S.D.N.Y. May 10, 2016)	$110	28%
18	*Knurr v. Orbital ATK, Inc. et al.*, No. 16-cv-01031, ECF No. 462 (E.D. Va 2019)	$108	28%

19	*Silverman v. Motorola, Inc.*, No. 07C4507, 2012 WL 1597388 (N.D. Ill. May 7, 2012), *aff'd sub nom. Silverman v. Motorola Sols., Inc.*, 739 F.3d 956 (7th Cir. 2013)	$200	27.5%
20	*Norma J Thurber, et al v. Mattel Inc, et al*, No. 99-cv-10368, ECF No. 193 (C.D. Cal., Sep. 29, 2003)	$122	27%
21	*In re Computer Assocs. Class Action Sec. Litig.*, No. 02-CV-1226 (TCP), 2003 WL 25770761 (E.D.N.Y. Dec. 8, 2003)	$133	25.3%
22	*Spartanburg Regional Health Servs. District, Inc. v. Hillenbrand Indus., Inc.*, No. 03-DV-2141, ECF No. 377 (D.S.C. Aug. 15, 2006)	$489	25%
23	*In re Williams Sec. Litig.*, No. 02-cv-72-SPF, ECF No. 1638 (N.D. Okla. Feb. 12, 2007)	$311	25%
24	*Christine Asia Co., Ltd. V. Jack Yun Ma*, No. 1:15-md-02631 (S.D. N.Y. 2019)	$250	25%
25	*In re Comverse Tech., Inc., Sec. Litig.*, No. 06- 1825, 2010 WL 2653354 (E.D.N.Y. June 24, 2010)	$225	25%
26	*In re Cobalt Int'l Energy, Inc. Securities Litig*, No. 14-cv-03428, ECF No. 366 (S.D. Tex. Feb. 13, 2019)	$173	25%
27	*Velez v. Novartis Pharm. Corp.*, No. 04 Civ. 09194 (CM), 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010)	$152	25%
28	*In re Broadcom Corp. Sec. Litig.*, No. 01-CV-00275, ECF No. 686 (C.D. Cal. Sept. 12, 2005)	$150	25%
29	*In re CVS Corp. Sec. Litig.*, No. 01-cv-11464, ECF No. 191 (D. Mass, Sep 7, 2005)	$110	25%
30	*Ciuffitelli v. Deloitte & Touche LLP*, No. 3:16-cv-00580-AC, 2019 WL 6893018 (D. Or. Nov. 26, 2019)	$235	24.6%
31	*In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156 (S.D.N.Y. 2007)	$133	24%

32	*In re CMS Energy Sec. Litig.*, No. 02-cv-72004, ECF No. 476 (E.D. Mich. Sept. 6, 2007)	$200	22.5%
33	*In re Mercury Interactive Corp. Sec. Litig.*, No. 05-cv-03395, ECF. No. 416 (N.D. Cal. Mar. 3, 2011)	$117	22%
34	*In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03-CIV-5755, 2006 WL 3378705 (S.D.N.Y. Nov. 16, 2006),	$455	21.4%
35	*In re Salix Pharmaceuticals, Ltd.*, No. 14-cv-08925, ECF No. 236 (S.D.N.Y. Aug. 18, 2017)	$210	21.24%
36	*In re Allergan, Inc. Proxy Violation Sec. Litig*, No. 8:14-cv-02004, ECF No. 637 (C.D. Cal. Aug. 14, 2018)	$250	21%
37	*In re JPMorgan Chase & Co. Sec. Litig.*, No. 12-cv-03852-GBD, ECF No. 211 (S.D.N.Y. May 10, 2016)	$150	21%
38	*Freedman v. Weatherford Int'l Ltd. et al*, No. 12-cv-02121, ECF No. 219, (N.D. Ill. Nov. 23, 2015)	$120	20.94%
39	*In re Dollar General Corp. Sec. Litig.*, No. 3:01-0388, ECF No. 209 (M.D. Tenn. May 24, 2002)	$162	20.9%
40	*New Jersey Carpenters Health Fund v. Residential Capital LLC*, No. 08-cv-8781-HB, ECF No. 353 (S.D.N.Y. July 31, 2015)	$335	20.75%
41	*Hefler v. Wells Fargo & Company et al.*, No. 16-cv-05479, ECF No. 254 (N.D. Cal. Dec. 20, 2018)	$480	20%
42	*Ohio Public Emps. Ret. Sys. v. Freddie Mac*, No. 03 Civ. 4261, 2006 U.S. Dist. LEXIS 98380 (S.D.N.Y. Oct. 26, 2006)	$410	20%
43	*In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig.*, 2019 WL 1752610 (9th Cir. 2019)	$208	20%
44	*Kohen v. Pacific Investment Management Co., et al.*, No. 05-cv-04681, ECF No. 572 (N.D. Ill. May 2, 2012)	$118	20%

45	*In re Lernout & Hauspie Sec. Litig.*, (KPMG Settlement) No. 00-cv-11589, ECF No. 930 (D. Mass. Dec. 22, 2004)	$115	20%
46	*In re DPL Inc., Sec. Litig.*, 307 F. Supp. 2d 947 (S.D. Ohio 2004)	$110	20%
47	*In re Wells Fargo Mortg.-Backed Certificates Litig.*, No. 09-cv-01376, ECF No. 475 (N.D. Cal. Nov. 14, 2011).	$125	19.75%
48	*In re Healthsouth Corp. Sec. Litig.* (UBS Defendants), No. 05-cv-01500. ECF No. 1721 (N.D. Ala. Jul 26, 2010)	$117	19.5%
49	*Sullivan et al. v. Barclays plc et al.*, No. 13-cv-02811, ECF No. 500 (S.D.N.Y. 2019)	$309	19%
50	*In re: Libor-Based Financial Instruments Antitrust Litig.*, (Barclays and Citi Settlements) No. 11-md-2262, ECF No. 465 (S.D.N.Y. Aug 14, 2018)	$250	18.5%
51	*In re Healthsouth Corp. Sec. Litig* (EY Settlement), No. 05-cv-01500, ECF No. 1617 (N.D. Ala. Jun 12, 2009)	$109	18.5%
52	*In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061 (E.D. Mo. 2002), aff'd, 350 F.3d 747 (8th Cir. 2003)	$490	18%
53	*In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483 (E.D. Mich. 2008)	$284	18%
54	*In re Microstrategy, Inc. Sec. Litig.* 172 F Supp. 2d 778 (E.D. Va. 2001)	$192	18%
55	*In re Barrick Gold Sec. Litig.*, No. 13-cv-03851, ECF No. 194 (S.D.N.Y. Dec. 2, 2016)	$140	18%
56	*Maine State Ret. Sys. v. Countrywide Fin. Corp.*, No. 2:10-CV-00302 MRP, 2013 WL 6577020 (C.D. Cal. Dec. 5, 2013)	$500	17%
57	*Pub. Employees' Ret. Sys. of Mississippi v. Merrill Lynch & Co. Inc.*, No. 08-CV-10841-JSR-JLC, 2012 WL 13029280 (S.D.N.Y. May 8, 2012)	$315	17%

58	*In Re: Bristol-Meyers Squibb Co. Sec. Litig.*, No. 07-cv-05867, ECF No. 78 (S.D.N.Y. Dec. 9, 2009)	$125	17%
59	*In Re Global Crossing Ltd. Sec. Litig.*, 225 F.R.D. 436 (D. Md. Nov. 24, 2004)	$245	15.7%
60	*Wyatt v. El Paso Corp.*, No. 02-2717, ECF No. 376 (S.D. Tex. Mar. 9, 2007)	$285	15.3%
61	*In re Doral Financial Corp. Sec. Litig.*, No. MDL 1706, ECF No. 107 (S.D.N.Y. July 17, 2007)	$129	15.25%
62	*In Re Qwest Commc'ns Int'l Sec. Litig.* No. 01-cv-01451, ECF No. 1203 (D. Colo. May 27, 2009)	$445	15%
63	*In re General Motors Corp. Sec. & Derivative Litig.*, No. 06-md-1749, ECF No. 139 (E.D. Mich. Jan. 6, 2009)	$303	15%

APPENDIX B

	Case	Settlement ($ mil)	Options Cap [1]	Damages Expert
1	*In re Merck & Co., Inc. Sec., Derivative & ERISA Litig.*, No. 2:05-cv-02367, ECF No. 988-2 at 9 (D.N.J. Apr. 29, 2016)	$1,062	2%	David Tabak
2	*In re Schering-Plough Corp./Enhance Sec. Litig.*, No. 2:08-cv-00397, ECF No. 423-5 at 8 (D.N.J. July 2, 2013)	$473	2%	Chad Coffman (Global Economics)
3	*In re Merck & Co., Inc. Vytorin/Zetia Sec. Litig.*, No. 2:08-cv-02177, ECF No. 333-3 at 69 (D.N.J. July 2, 2013)	$215	3%	Gregg Jarrell (Global Economics)
4	*In re Virgin Mobile USA IPO Litig.*, No. 2:07-cv-05619, ECF No. 139-3 at 7 (D.N.J. Nov. 5, 2010)	$19.5	1%	Unidentified "damages consultant"
5	*Charatz v. Avaya, Inc.*, No. 3:05-cv-02319, ECF No. 68-1 (D.N.J. June 23, 2010)	$4.5	3%	Unidentified "damages consultant"
6	*In re Hovnanian Enters., Inc. Sec. Litig.*, 2:08-cv-00999, ECF No. 99-6 at 7 (D.N.J. Dec. 11, 2009)	$4	5% (up to 50% haircut)	Candace Preston (FMA)
7	*Turocy v. El Pollo Loco Holdings, Inc.*, No. 8:15-cv-01343, ECF No. 206 at 8 (C.D. Cal. July 17, 2019)	$20	5%	Steven Feinstein (Crowninshield)
8	*Pen. Tr. Fund for Op. Eng'rs v. DeVry Ed. Grp., Inc.*, No. 1:16-cv-05198, ECF No. 154-3 at 7 (N.D. Ill. Nov. 1, 2019)	$27.5	0.5%	Unidentified "damages expert"
9	*Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cv-00736, ECF No. 170-1 (E.D. Tex. Oct. 25, 2017)	$97.5	5%	Bjorn Steinholt (Caliber Advisors)
10	*Shankar v. Imperva, Inc.*, No. 4:14-cv-01680, ECF No. 154-1 (N.D. Cal. Dec. 20, 2017)	$19	3%	Bjorn Steinholt (Caliber Advisors)
11	*In re Amgen Inc. Sec. Litig.*, No. 2:07-cv-02536, ECF No. 591-3 at 12 (C.D. Cal. Sept. 20, 2016)	$95	5%	John Finnerty (FinnEcon)
12	*In re Viropharma Inc. Sec. Litig.*, No. 2:12-cv-02714, ECF No. 91-5 at 7 (E.D. Pa. Sept. 24, 2015)	$8	3%	Forensic Economics

[1] "Haircut" refers to the reduction of recognized losses for options claimants under the plan of allocation.

13	*In re St. Jude Med., Inc. Sec. Litig.*, No. 0:10-cv-00851, ECF No. 450-1 (D. Minn. May 8, 2015)	$50	3%	Atulya Sarin Santa Clara University
14	*Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, No. 3:09-cv-00882, ECF No. 457-1 (M.D. Tenn. Dec. 19, 2014)	$65	3%	Bjorn Steinholt (FMA)
15	*Constr. Workers Pension Tr. Fund – Lake Cty & Vicinity v. Genoptix*, No. 3:10-cv-02502, ECF No. 70-5 at 7 (S.D. Cal. May 8, 2014)	$7.7	3%	FMA
16	*Freudenberg v. E*TRADE Fin. Corp.*, No. 1:07-CV-08538, ECF No. 151-1 at 60 (S.D.N.Y Oct. 4, 2012)	$79	5% (50-75% haircut)	John Hammerslough
17	*In re Nuvelo, Inc. Sec. Litig.*, No. 3:07-cv-04056, ECF No. 159-4 at 7 (N.D. Cal. May 6, 2011)	$8.9	5%	Scott Hakala (CBIZ Valuation)
18	*Ross v. Abercrombie & Fitch Co.*, No. 2:05-cv-00819, ECF No. 411-4 at 6 (S.D. Ohio Aug. 27, 2010)	$12	3%	Steven Feinstein (Crowninshield)
19	*In re Teletech Litig.*, No. 1:08-cv-00913, ECF No. 77-2 (S.D.N.Y. May 21, 2010)	$11	3%	Scott Hakala (CBIZ Valuation)
20	*In re Luminent Mortg. Capital, Inc. Sec. Litig.*, No. 4:07-cv-04073, ECF No. 173-1 at 8 (N.D. Cal. Apr. 15, 2009)	$8	10% (50% haircut)	Michael Marek (FMA)
21	*In re. Tyco Int'l Ltd., Sec. Litig.*, No. 1:02-md-01335, ECF No. 1067-4 (D.N.H. Aug. 3, 2007)	$3,200	1% (50%-75% haircut)	Mark E. Zmijewski (Chicago Partners) Kenneth Gartrell
22	*In re Veritas Software Corp. Sec. Litig.*, 3:03-cv-00283, ECF No. 219 (N.D. Cal. July 15, 2005)	$35	2%	Bjorn Steinholt (FMA)
23	*In re Dollar General Corp. Sec. Litig.*, 3:01-0388 (M.D. Tenn. Apr. 3, 2002)	$162	0.5%/ 1.5%	Jane Nettesheim (Stanford Consulting)