UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK MICHOLLE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. OPHTHOTECH CORPORATION, DAVID R. GUYER and SAMIR PATEL, Defendants.	Civil Action No. 1:17-cv-00210-VSB-GWG **(Consolidated)** CLASS ACTION

DECLARATION OF ERIN W. BOARDMAN IN SUPPORT OF: (1) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

I, ERIN W. BOARDMAN, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of New York and before this Court. I am a partner of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), counsel for Lead Plaintiff Sheet Metal Workers' Pension Plan of Southern California, Arizona and Nevada (the "Fund" or "Lead Plaintiff") and the Class in the above-captioned action (the "Action or "Litigation").[1]

2. I submit this declaration, pursuant to Rule 23 of the Federal Rules of Civil Procedure, in support of: (i) Lead Plaintiff's motion for final approval of the all-cash settlement of $29,000,000 (the "Settlement Amount") and approval of the proposed Plan of Allocation; and (ii) Lead Counsel's motion for an award of attorneys' fees and expenses and an award to Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4).

3. I have personal knowledge of the matters set forth herein based on my active participation in all material aspects of the prosecution and resolution of this Action. If called upon, I could and would competently testify that the following facts are true and correct.

I. INTRODUCTION AND OVERVIEW

4. The Settling Parties have entered into a settlement of the Class's claims alleged in this securities class action against defendants IVERIC bio, Inc. f/k/a Ophthotech Corporation ("Ophthotech" or the "Company"), David R. Guyer, and Samir Patel (collectively, "Defendants").

5. The Settlement is a very favorable result for the Class. The Stipulation provides for the non-reversionary payment of $29,000,000 in cash to the Class in exchange for a release of the Released Claims (as defined in the Stipulation) against Defendants and their Related Parties. As described herein, the Settlement is the product of Lead Plaintiff's and Lead Counsel's careful

[1] Unless otherwise indicated, all capitalized terms herein have the meanings ascribed to them in the Stipulation of Settlement, dated September 8, 2021 (the "Stipulation"). *See* ECF 129.

analysis and vigorous litigation of the claims, as well as extensive arm's-length settlement negotiations between the parties, which took place during and after a mediation session supervised by the Hon. Layn Phillips (Ret.), a nationally renowned mediator experienced in securities class actions.

6. The benefit to the Class must be weighed against the significant chance that it might obtain a much smaller recovery after years of protracted litigation – or none at all. If at any stage of the Litigation, Defendants were to prevail on their various arguments disputing liability or seeking to reduce or eliminate the Class's damages, the Class would have been left with little or no recovery. The Settlement Amount represents a recovery of approximately 9% of reasonably recoverable damages, assuming Lead Plaintiff was able to establish liability – or more if any of Defendants' arguments regarding causation and damages had been successful. In sum, the Settlement provides for a substantial monetary benefit to the Class now, and is an excellent recovery in light of the significant risks involved in continued litigation.

7. As detailed herein, the Settlement is the product of a comprehensive investigation, detailed analysis, and extensive arm's-length negotiations by experienced counsel, which involved the assistance of an experienced mediator. Lead Counsel, working closely with Lead Plaintiff, negotiated the Settlement with a thorough understanding of the strengths and weaknesses of the claims asserted against each of the Defendants. This understanding was based on Lead Counsel's vigorous efforts, which included, *inter alia*, (a) successfully moving for the Fund's appointment as Lead Plaintiff; (b) undertaking an extensive investigation of the facts alleged in the Consolidated Amended Complaint for Violations of the Federal Securities Laws (ECF 63) (the "Complaint"); (c) successfully opposing Defendants' motion to dismiss; (d) moving for class certification; (e) conducting extensive fact discovery, including the review and analysis of more than 2.8 million

pages of documents produced by Defendants and numerous third parties; (f) deposing fact witnesses; (g) responding to document requests propounded by Defendants; and (h) drafting a detailed mediation statement. As a result of these efforts, Lead Counsel and Lead Plaintiff were fully informed regarding the strengths and weaknesses of the case against each of the Defendants before agreeing to the Settlement.

8. As discussed herein, Lead Plaintiff faced serious risks in going forward with the Litigation. Lead Plaintiff faced the significant risk that Defendants could ultimately be successful in showing, among other things, that: (i) they did not make any actionable misstatements or omissions; (ii) they did not act with the requisite scienter; and (ii) the Class's damages were caused by non-actionable factors unrelated to the alleged misstatements and omissions. Accordingly, while Lead Counsel believes that the Class's claims have merit, there was a significant chance that one or more of Defendants' arguments may have ultimately proved insurmountable – and the Class may have ended up with little or no recovery. The significance of these risks was heightened by the prospect of continued, costly litigation, including the completion of remaining fact depositions, expert discovery, dispositive motions, a trial, and likely ensuing appeals. The Settlement avoids these and other risks while providing a substantial and immediate monetary benefit to the Class.

9. The other terms of the Settlement are the product of careful negotiations between the parties and are set forth in the Stipulation. For all of the reasons stated herein, Lead Counsel believes that the Settlement is fair, reasonable and adequate, is in the best interests of the Class, and should be approved. Furthermore, the Settlement has the full support of the Lead Plaintiff.

10. Lead Counsel seeks attorneys' fees of 30% of the Settlement Amount, plus litigation expenses of $265,231.29, with interest thereon earned at the same rate as the Settlement Fund. The fee request has Lead Plaintiff's full support. The requested fee amounts to a slight multiple of Lead

Counsel's collective "lodestar" (*i.e.*, Lead Counsel's hourly rates multiplied by the hours spent on prosecuting and settling this Action).

11. Pursuant to the Court's Order Granting Preliminary Approval Pursuant to Fed. R. Civ. P. 23(e)(1) and Permitting Notice to the Class, dated March 17, 2022 (ECF 137) (the "Preliminary Approval Order"), the Notice and Proof of Claim and Release were mailed to all Class Members who could be identified with reasonable effort, and the Summary Notice was published once in *The Wall Street Journal*, and transmitted over *Business Wire*.

12. The Notice advised all recipients of, among other things: (i) the terms of the Settlement; (ii) the definition of the Class; (iii) their right to exclude themselves from the Class; (iv) their right to object to any aspect of the Settlement, including the Plan of Allocation and Lead Counsel's request for attorneys' fees and expenses; and (v) the procedures and deadline for submitting a Proof of Claim and Release in order to be eligible for a payment from the proceeds of the Settlement.

13. The Court-ordered deadline for filing objections to the Settlement was August 1, 2022, and the deadline for requesting exclusion from the Class is August 18, 2022. No objections to any aspect of the Settlement were filed on or before August 1, 2022, and to-date, only two requests for exclusion from the Settlement have been received.

14. Gilardi & Co. LLC ("Gilardi"), which has been retained by Lead Counsel and approved by the Court as Claims Administrator, has advised that as of August 3, 2022, a total of 55,701 copies of the Notice and Proof of Claim and Release have been mailed to potential Class Members and their nominees. Additionally, the Notice and Proof of Claim and Release, Stipulation, and Preliminary Approval Order have been posted on the website established for the Settlement: www.OPHSecuritiesSettlement.com.

15. The following is a summary of the principal events that occurred during the course of the Litigation and the legal services provided by Lead Counsel.

II. LEAD PLAINTIFF'S PROSECUTION OF THE CASE

A. The Commencement of the Action and Appointment of Lead Plaintiff and Lead Counsel

16. On January 11, 2017, the initial class action complaint in this Litigation was filed in the United States District Court for the Southern District of New York (the "Court"), alleging violations of Sections 10(b) and 20(a) of the Exchange Act. ECF 1. A separate action was filed with the Court on March 9, 2017, making similar allegations.

17. In accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA"), notice of the pendency of the action was published, and on March 13, 2017, the Fund moved for appointment as lead plaintiff. ECF 30. Seven other movants also sought lead plaintiff appointment. On March 27, 2017, the Fund filed an opposition to the competing motions, arguing that other lead plaintiff movants: (i) had overstated their losses; (ii) were atypical; (iii) did not purchase stock during the putative class period; (iv) constituted an improper grouping of unrelated individuals; or (v) suffered smaller recoverable losses than the Fund. ECF 44. The Fund filed a reply in further support of its lead plaintiff motion on April 3, 2017, addressing the arguments made in the competing movants' opposition briefs. ECF 54.

18. On March 13, 2018, the Court issued an Opinion & Order consolidating the two related actions, appointing the Fund as Lead Plaintiff, and approving its selection of Robbins Geller as Lead Counsel. ECF 56.

B. Lead Counsel's Investigation and Filing of the Complaint

19. Lead Counsel conducted an extensive investigation prior to filing the Complaint. This investigation included, but was not limited to, a review and analysis of: (i) Ophthotech's public

filings with the SEC; (ii) transcripts of Ophthotech's public conference calls; (iii) Ophthotech's press releases; (iv) reports of securities analysts following Ophthotech; (v) independent media reports regarding Ophthotech; (vi) publicly available information concerning wet AMD and Fovista, including scientific articles and presentations; (vii) economic analyses of Ophthotech's stock price movement and pricing and volume data; and (viii) other publicly available information. As part of its investigation, Lead Counsel, with the assistance of its in-house investigators, also located and interviewed former Ophthotech employees. Additionally, Lead Counsel consulted with two industry experts.

20. Based on this investigation, Lead Counsel prepared a detailed amended Complaint on behalf of Lead Plaintiff and all persons, other than Defendants and other excluded individuals and entities, who purchased the common stock of Ophthotech during the period from March 2, 2015 and December 12, 2016, inclusive (the "Class Period"). Lead Plaintiff filed the Complaint on June 4, 2018. ECF 63.

C. The Complaint and a Summary of the Class's Allegations

21. The Complaint alleged that, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, Defendants made materially false and misleading statements concerning Ophthotech's clinical trials of Fovista, the Company's leading drug candidate designed to treat a degenerative eye disease known as wet AMD. In particular, Lead Plaintiff alleged that Defendants misrepresented and omitted material facts concerning the likelihood that Ophthotech's phase 3 clinical trials of Fovista would be able to replicate the apparent success of the Company's previous phase 2b trial.

22. According to the Complaint, during the Class Period, Defendants falsely represented that they had made "***no meaningful changes***" to the enrollment criteria for the phase 3 trials from

those used in the phase 2b trial, when in truth, they had made a significant change. Whereas the phase 2b trial had categorized patients according to "classic" and "occult" lesion subtypes and excluded patients with occult lesions, eligibility for the phase 3 trials was based solely upon the presence of a newly-discovered type of abnormal tissue known as "SHRM." Lead Plaintiff further alleged that SHRM could be present in patients with either classic or occult lesions. Therefore, the change meant that up to 40% of the wet AMD patients estimated to have occult lesions – who had been excluded from the phase 2b trial – were potentially eligible to participate in the phase 3 trials.

23. The Complaint alleged that by making a significant change to the enrollment criteria for the phase 3 trials from the criteria used in the phase 2b trial, Defendants increased the risk that the purportedly favorable results of the phase 2b trial would not be repeated by the phase 3 trials. Defendants, however, knowingly or recklessly failed to disclose this increased risk to investors, and instead misrepresented that the enrollment criteria for the phase 3 trials were essentially identical to the enrollment criteria for the phase 2b trial.[2] Lead Plaintiff further alleged that Guyer and Patel each sold the majority of their personally-held Ophthotech stock during the Class Period, providing a motive for the fraud.

24. According to the Complaint, the truth about the risks posed by the changed enrollment criteria between the phase 2b and phase 3 trials was revealed on December 12, 2016, when Ophthotech announced that the phase 3 trials had failed. In response to this news, the price of Ophthotech common stock plummeted approximately 86%, causing significant losses for Lead Plaintiff and other Class Members.

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[2] The Complaint also alleged that Defendants misled investors about the significance of the reported results of the phase 2b trial, by failing to disclose that the results were likely skewed by the fact that patients receiving Fovista had less advanced symptoms (*i.e.*, smaller lesions and better vision) at the start of the trial. However, the Court dismissed those allegations.

D. Defendants' Motion to Dismiss

25. On July 27, 2018, Defendants moved to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b), and the PSLRA. ECF 69-70. Defendants argued, among other things, that the Complaint failed to plead any materially false or misleading statements concerning the change in enrollment criteria for the phase 3 trials because Defendants had adequately disclosed the change to requiring SHRM. Defendants further contended that the change was not "meaningful" because it did not have the effect of making occult patients eligible for the phase 3 trials, and even if it did, the inclusion of occult patients did not increase the risk that the phase 3 trials would fail. Defendants also argued that the Complaint failed to plead falsity with respect to their statements about the results of the phase 2b trial because they disclosed the allegedly omitted facts, Lead Plaintiff failed to adequately allege that the results of the trial were skewed, and Defendants were not obligated to depict the results of the phase 2b trial in a negative light.

26. Defendants contended that the Complaint likewise failed to plead a strong inference of scienter because it did not adequately allege that Defendants knew or had access to information inconsistent with their public statements. Defendants further argued that Lead Plaintiff's motive allegations failed because Guyer and Patel's stock sales were consistent with their prior trading patterns and were made pursuant to Rule 10b5-1 trading plans. Finally, Defendants argued that the Complaint did not adequately allege loss causation because there was no link between the alleged corrective disclosure – the failure of the phase 3 trials – and the subject matter of the alleged misstatements.

27. On October 12, 2018, Lead Plaintiff filed its opposition to the motion to dismiss. ECF 74. In the opposition, Lead Plaintiff rebutted Defendants' arguments that they had adequately disclosed the change in enrollment criteria for the phase 3 trials, explaining why each of Defendants'

purported disclosures was inadequate and insufficient to counterbalance their false statements on the same topics. Lead Plaintiff further contended that Defendants improperly disputed the truth of the Complaint's allegations, and in any event, the Complaint adequately alleged that: (i) the change to SHRM increased the risk that the phase 3 trials would not replicate the results of the phase 2b trial; and (ii) Defendants failed to disclose that increased risk.[3]

28. The opposition also explained that the Complaint pled a strong inference of scienter by alleging that Guyer and Patel were aware of the omitted facts, given that they made the change to the phase 3 trials' enrollment criteria and were in possession of the phase 2b trial data – yet they knowingly or recklessly made public statements contradicting that information. Lead Plaintiff further contended that Guyer and Patel's insider sales provided a motive for the fraud because their pre-Class Period sales, and their adoption of Rule 10b5-1 trading plans, all took place at times when they were in possession of the same non-public information about the trials.

29. Finally, Lead Plaintiff argued that the Complaint adequately pled loss causation under a "materialization of risk" theory, by alleging that: (i) Defendants' misrepresentations and omissions concealed the true extent of the risk that the phase 3 trials would fail to demonstrate Fovista's efficacy; and (ii) that risk materialized when Defendants announced that the phase 3 trials had in fact failed. Lead Counsel spent significant time and resources performing the legal and factual research necessary to address Defendants' arguments and draft an effective opposition which demonstrated that the Complaint satisfied the strict pleading burden imposed by the PSLRA.

30. Also on October 12, 2018, Lead Plaintiff moved to strike certain exhibits submitted by Defendants in support of their motion to dismiss, arguing that those exhibits: (i) were not

[3] Lead Plaintiff also argued that Defendants' positive characterizations of the phase 2b trial results created a duty to disclose the imbalances in patients' lesion size and visual acuity, and that Defendants' disclosure on those topics were insufficient.

incorporated by reference or relied upon in the Complaint; (ii) were not subject to judicial notice; and (iii) were improperly relied upon by Defendants for the truth of their contents. ECF 75-77.

31. On November 19, 2018, Defendants filed a reply brief in support of their motion to dismiss the Complaint. ECF 83. Defendants also filed an opposition to Lead Plaintiff's motion to strike. ECF 82. Lead Plaintiff filed its reply in support of its motion to strike on December 10, 2018. ECF 86.

E. The Court Sustains the Complaint

32. On September 17, 2019, the Court issued an Opinion & Order granting in part and denying in part Defendants' motion to dismiss. ECF 89. In particular, the Court upheld the alleged misstatements concerning the change in enrollment criteria for the phase 3 trials, but dismissed the alleged misstatements concerning the results of the phase 2b trial. *Id*. at 15-16. The Court rejected Defendants' arguments that they had adequately disclosed the change to SHRM, reasoning that "although Defendants disclosed a change in the 'methodology' used to determine a patient's eligibility to participate in the Phase 3 Trial, they described this change in complex and opaque terms and then repeatedly insisted that, practically speaking, the modification had no material effect on the trial's enrollment criteria." *Id*. at 27. The Court explained that "[t]his emphasis on the lack of a material effect diminishe[d] the impact of Defendants' disclosure." *Id*. The Court also found that Lead Plaintiff had alleged facts "which call[ed] Defendants' characterization into question and which suggest[ed] that the change in methodology may well have led to a corresponding change in the pool of individuals eligible to participate in Phase 3 of the Fovista clinical trials." *Id*.

33. With respect to scienter, the Court determined that, while Lead Plaintiff did not adequately allege that Defendants' insider sales provided a motive for the fraud (*id*. at 34), Lead Plaintiff did plead a strong inference of scienter under a theory of conscious misbehavior or

recklessness. *Id*. at 35-36. The Court explained that "[t]he fact that Defendants had in their possession information suggesting that there was an overlap between" occult patients, who "would have been *ineligible* to participate in Phase 2b," and patients with SHRM, who "would have been *eligible* to participate in Phase 3," was "sufficient to demonstrate . . . that Defendants were reckless in representing that they had 'changed nothing' between Phase 2b and Phase 3[.]" *Id*. at 35-36.

34. The Court further held that Lead Plaintiff's "allegations that Defendants' misrepresentations concealed an increased risk that the Phase 3 Trial would fail, followed by the actual failure of that trial," were "sufficient to plead loss causation . . . ." *Id*. at 40. Finally, the Court granted in part Lead Plaintiff's motion to strike.

35. Defendants filed their Answer to the Complaint on November 18, 2019, which denied Lead Plaintiff's substantive allegations and set forth 15 separate affirmative defenses. ECF 93.

F. Fact Discovery

36. As set forth herein, Lead Plaintiff was relentless in its discovery efforts throughout the Litigation. These efforts included requesting, negotiating for, obtaining and reviewing more than 2.8 million pages of documents; engaging in an extensive meet and confer process; raising discovery disputes with the Court; taking three fact depositions and preparing to take additional depositions; and seeking discovery from 17 non-parties.

37. By vigorously pursuing discovery, Lead Counsel developed the evidence that it believed was necessary to establish the elements of Lead Plaintiff's claims and to fully evaluate a negotiated resolution.

1. Discovery Directed to Defendants

38. Following entry of the Court's Opinion & Order, Lead Counsel immediately commenced formal discovery efforts. On October 23, 2019, Lead Counsel met and conferred with counsel for Defendants pursuant to Federal Rule of Civil Procedure 26(f) concerning case

management, pre-trial scheduling, and fact discovery. Lead Counsel also negotiated and prepared a Proposed Case Management Plan and Scheduling Order, which the parties submitted to the Court on November 6, 2019. ECF 92-1. The same day, the parties exchanged Initial Disclosures pursuant to Fed. R. Civ. P. 26(a).

39. On November 27, 2019, Lead Plaintiff served requests for the production of documents on Defendants, consisting of 58 discrete requests germane to the claims and defenses asserted by the parties. Defendants served their responses and objections to Lead Plaintiff's document requests on January 10, 2020. Thereafter, the parties began negotiating the relevant topics for discovery, sources to be searched, relevant time period, custodians, and search terms.

40. Lead Counsel also drafted a comprehensive protective order to govern the treatment of confidential evidence, and negotiated with Defendants' counsel over the terms of the proposed order. The parties filed a Stipulation and Proposed Protective Order on March 10, 2020, which the Court entered the following day. ECF 98-99.

41. From the outset, the parties vigorously disputed the appropriate scope of fact discovery, in light of the Court's Opinion & Order dismissing the alleged misstatements concerning the results of the phase 2b trial. In particular, Defendants objected to producing any documents that did not concern: (i) the enrollment criteria for the phase 2b or phase 3 trials; (ii) the imaging technology used during the phase 2b and phase 3 trials; or (iii) the results of the phase 3 trials.

42. For more than eight months, the parties conducted numerous meet-and-confers and exchanged counterproposals through detailed written correspondence and telephonic conferences. On April 20, 2020, Defendants began producing documents to Lead Plaintiff on a rolling basis, while the parties continued to work to resolve their outstanding disagreements.

43. As Lead Counsel reviewed and assessed Defendants' productions, it made additional requests for the production of documentary evidence, and continued to meet and confer with counsel for Defendants regarding apparent deficiencies in Defendants' productions. For example, Lead Plaintiff sought and obtained documents from additional custodians, and Defendants ultimately agreed to run additional search terms and to produce patient-level data from the phase 3 trials.

44. Lead Counsel also devoted substantial time to reviewing and analyzing Defendants' privilege logs, to identify documents that may have been improperly withheld from Lead Plaintiff.

45. In addition, Lead Plaintiff served interrogatories on Defendants on February 16, 2021, and met and conferred with Defendants concerning their responses and objections to the interrogatories.

2. Third-Party Discovery

46. A significant amount of relevant information in this Litigation was in the possession, custody, or control of third parties. Commencing on March 17, 2020, Lead Counsel served document subpoenas on 17 third parties, as follows:

Person/Entity	Date	Relationship to Litigation
Duke Reading Center	3/17/2020	Reading Center for Patient Retinal Images
The Retinal Vascular Foundation	4/23/2020	Clinical Trial Site for Defendants
International Drug Development Institute, Inc.	5/26/2020	International Clinical Trial Sponsor for Defendants
Retina Associates of Cleveland, Inc.	6/22/2020	Clinical Trial Site for Defendants
SmithSolve LLC	7/8/2020	Consultant to Defendants
The Blackstone Group, Inc.	8/7/2020	Financial Advisor to Defendants
United States Food And Drug Administration	9/29/2020	Government Regulator of Clinical Trials
Jupiter Point Pharma Consulting, LLC	10/6/2020	Consultant for Defendants in Clinical Trial Process

Person/Entity	Date	Relationship to Litigation
Fleming Consulting, Inc.	10/6/2020	Statistical Consultant for Defendants in Clinical Trial Process
Carmen Puliafito	10/6/2020	Former Employee of Defendants
Genentech, USA Inc.	10/6/2020	Competitor and Sponsor of Fovista
Novartis Pharmaceuticals Corporation	10/6/2020	Competitor and Sponsor of Fovista
Retinal Consultants of Arizona, Ltd.	10/30/2020	Clinical Trial Site Connected to former Employee of Defendants
Dr. Pravin U. Dugel	10/30/2020	Former Employee of Defendants
Novartis Pharma AG	12/30/2020	International Commercialization Agent for Defendants
Dr. Jonathan L. Prenner	1/25/2021	Consultant for Defendants
SV Health Investors, LLC	3/19/2021	Investor and Board Observer for Defendants

47. Lead Counsel engaged in numerous meet-and-confers with the subpoenaed non-parties to discuss their objections to the subpoenas, negotiate the scope of the document requests, and arrange for the production of responsive documents. In total, Lead Plaintiff's third-party document subpoenas and subsequent negotiations resulted in the production of 113,226 pages of documents. Lead Counsel expended significant resources obtaining, reviewing, and analyzing these documents.

48. Lead Counsel also sought relevant documents from the U.S. Food and Drug Administration ("FDA") through the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). After the FDA denied the FOIA request, Lead Counsel appealed the decision and obtained a remand of the denial. Lead Counsel ultimately obtained documents from the FDA after negotiating a production pursuant to a separate subpoena.

49. In addition, Lead Counsel pursued foreign discovery from Novartis Pharma AG ("Novartis"), a relevant non-party based in Switzerland, by submitting a Letter of Request pursuant

to the Hague Convention for the Taking of Evidence Abroad, and retained Swiss counsel to assist with that process. Lead Counsel also conferred with a consultant regarding the implications of the European Union's General Data Protection Regulations.

3. Lead Counsel's Review and Analysis of Discovery Materials

50. As a result of Lead Counsel's extensive discovery efforts, Defendants made 19 productions, comprised of more than 2.8 million pages of documents. Careful examination and analysis of these documents required a considerable effort by Lead Counsel.

51. To facilitate the cost and time-efficient nature of the document review process, all of the documents were placed in an electronic database, known as Relativity, maintained in-house by Robbins Geller, for significantly less than an outside vendor would charge. This database allowed Lead Counsel to more efficiently search for and review documents through the use of search terms, date filters, custodian fields, and other metadata.

52. Lead Counsel analyzed the documents to assess their relevance and compiled the documents most likely to be used in depositions and at summary judgment and trial – whether by Lead Plaintiff or Defendants. Lead Counsel also identified relevant witnesses for depositions and additional discovery requests, and established procedures for finding deficiencies in the document productions. Throughout the document review process, Lead Counsel worked diligently to assemble the evidence needed to support Lead Plaintiff's claims and to rebut Defendants' defenses.

4. Depositions

53. In preparation for summary judgment and trial, Lead Counsel took the depositions of three current or former Ophthotech employees. Lead Counsel expended significant time and effort in preparing for these depositions by identifying and analyzing documents to use in its examination and preparing questions. Due to the COVID-19 pandemic, the depositions took place remotely, and so Lead Counsel negotiated and entered into a protocol with Defendants to govern the conduct of the

remote depositions. Further, at the time that the parties agreed to settle the Action, Defendants had agreed to an extension of the Fed. R. Civ. P. 30(a)(2)(A)(i) ten deposition limit, to allow Lead Plaintiff take at least ten additional depositions, and Lead Counsel had already begun preparing for many of those depositions.

54. The three depositions that Lead Counsel took in connection with fact discovery are as follows:

Deponent	**Position**	**Date**
Evelyn Harrison	Chief Clinical Operations Officer	3/19/2021
Loni Da Silva	Former Senior Vice President of Regulatory Affairs	3/24/2021
Keith Westby	Chief Operations Officer	4/16/2021

55. These depositions were essential to analyzing the complex factual and legal issues that were integral to Lead Plaintiff's claims and Defendants' potential defenses. The depositions, and the documents discussed therein, provided Lead Counsel with a solid foundation from which to understand the risks and strengths of the case. In addition, these depositions were critical in providing the foundational admissibility of documentary evidence.

5. Discovery Disputes

56. In addition, Lead Counsel vigorously advocated for the Class by requesting Court intervention in several discovery issues. Beginning on March 17, 2021, the parties submitted letter briefs to the Court concerning the following disputes on which they had reached an impasse: (1) Defendants' privilege assertions over certain categories of documents; (2) Lead Plaintiff's subpoena to Dr. Pravin Dugel, a consultant subsequently employed by Ophthotech; and (3) Defendants'

contention that Lead Counsel was improperly seeking discovery concerning the phase 2b trial and Guyer and Patel's insider sales. ECF 114, 118-119.

57. On March 19, 2021, Magistrate Judge Gabriel W. Gorenstein issued an Order addressing the privilege dispute, directing the parties to engage in substantive meet and confer discussions regarding disputed entries in Defendants' privilege logs, and "remind[ing] [Defendants] that ultimately they have the burden of sustaining" their claims of privilege. ECF 117.

58. On March 30, 2021, the parties participated in a telephonic hearing, during which Judge Gorenstein heard arguments from the parties, and issued rulings from the bench on the remaining discovery disputes. With respect to the subpoena to Dr. Dugel, the parties disputed, among other things, whether it was unduly burdensome to search for and produce documents from his personal email account. Judge Gorenstein directed Dr. Dugel to make a "limited production," and to provide Lead Counsel with opportunities to propose search terms. ECF 121 at 39:4-40:3. Judge Gorenstein also provided guidance on the contours of discovery concerning the phase 2b trial, acknowledging that "there has to be some discovery about the enrollment criteria of 2b to understand the change in Phase 3." *Id*. at 12:9-11. Finally, Judge Gorenstein found that "limited discovery" concerning Guyer and Patel's insider sales was "appropriate," given the relevance to scienter. *Id*. at 26:7-16.

6. Discovery Is Stayed in Light of the Mediation

59. On April 22, 2021, the parties informed the Court that they had scheduled a mediation, and requested that the Court stay all discovery deadlines, to allow the parties to focus their efforts on the mediation and to conserve judicial resources. ECF 123. The Court granted the request the following day. ECF 125.

G. Lead Plaintiff's Document Production and Motion for Class Certification

60. While fact discovery was ongoing, the parties concurrently briefed Lead Plaintiff's motion for class certification.

61. In anticipation of Lead Plaintiff's motion for class certification, Defendants served requests for the production of documents on Lead Plaintiff on November 27, 2019. Lead Plaintiff responded and objected to Defendants' document requests on January 10, 2020, and the parties subsequently met and conferred, resolving their disputes. Lead Plaintiff searched for and collected documents potentially responsive to Defendants' requests, and produced responsive, non-privileged documents to Defendants on June 4, 2020.

62. On June 12, 2020, Lead Plaintiff filed a motion for class certification, which requested that the Court certify the putative Class, appoint the Fund as class representative, and appoint Robbins Geller as class counsel. ECF 101-103. The motion for class certification addressed all of the requirements of Federal Rule of Civil Procedure 23, as well as the "fraud-on-the-market" presumption of reliance endorsed by the Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) and *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 268 (2014).

63. In support of its motion, Lead Plaintiff submitted an expert report from Professor Steven P. Feinstein, Ph.D., CFA. *See* ECF 103-1. Professor Feinstein's 48-page report (plus exhibits) explained why all five of the *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989) and all three of the *Krogman v. Sterritt*, 202 F.R.D. 467 (N.D. Tex. 2001) factors – which courts routinely consider in addressing class certification – were met; detailed the event study he undertook concerning Ophthotech's stock price movement; and concluded that Ophthotech common stock traded in an efficient market throughout the Class Period. Professor Feinstein also opined that

damages consistent with Lead Plaintiff's theory of liability could be determined on a class-wide basis. Lead Counsel spent substantial time consulting with Professor Feinstein on his report.

64. On August 11, 2020, Defendants filed a notice of non-opposition to Lead Plaintiff's motion for class certification – thereby conceding that class certification was appropriate. ECF 104. At the time the parties entered into the Settlement, however, the Court had not yet entered an order on class certification. *Id*.

H. Experts and Consultants

65. As noted above, Lead Plaintiff retained Professor Feinstein to establish market efficiency, and to provide evidence on class-wide damages at class certification. Professor Feinstein is the founder and president of Crowninshield Financial Research, Inc. and an Associate Professor of Finance at Babson College. Professor Feinstein has had academic research published in peer-reviewed journals and presented research at professional and academic conferences. In addition, he has provided numerous expert reports and testimony in class action securities litigations, such as this one, as well as in litigation concerning business solvency and valuation.

66. Professor Feinstein expended a significant amount of time reviewing the record, including publicly available information concerning Ophthotech. Professor Feinstein then conducted an economic analysis to show that each of the relevant factors supported a finding that Ophthotech's common stock traded in an efficient market. In addition, Professor Feinstein brought to bear his extensive financial expertise to opine on the ability to calculate class-wide damages consistent with and pursuant to Lead Plaintiff's allegations.

67. Professor Feinstein also prepared and analyzed multiple damages models used for the purpose of mediation and in connection with Lead Counsel's investigation of this case.

68. In addition, Lead Counsel retained the services of several experts and consultants to assist with investigating and proving Lead Plaintiff's claims and navigating the complex scientific issues involved in this matter. During the course of fact discovery, Lead Counsel consulted with: (i) Philip T. Lavin, an expert biostatistician and regulatory strategist; (ii) Roger A. Goldberg, M.D., M.B.A., an ophthalmologist with Bay Area Retina Associates in Walnut Creek, California; and (iii) Nicholas P. Jewell, Ph.D., a Professor of Biostatistics and Statistics at the School of Public Health at the University of California, Berkeley.

69. These experts and consultants analyzed numerous documents pertaining to the Fovista clinical trials, including trial protocols, patient-level data, and trial results. Based on their analyses, they provided insights to Lead Counsel concerning, among other things, the potential impact of the enrollment criteria changes on the outcome of the phase 3 trials. The work performed by these experts and consultants provided valuable insight to Lead Counsel in evaluating the merits of the case, and the prospects for settlement.

I. Mediation and Settlement Efforts

70. The Settlement is the product of intense and hard-fought negotiations, which were conducted at arm's length between experienced counsel and supervised by the Honorable Layn Phillips (Ret.) of Phillips ADR, a former United States District Court judge and a nationally-renowned mediator with extensive experience in mediating securities class actions.

71. In advance of the mediation, on June 4, 2021, the parties submitted to Judge Phillips and exchanged mediation statements with detailed descriptions of the evidence and law supporting their claims and defenses. Lead Plaintiff's opening mediation statement included 69 exhibits totaling 408 pages. On June 14, 2021, the parties submitted and exchanged reply mediation statements in support of their respective positions. Lead Plaintiff's reply addressed each of

Defendants' arguments in their opening statement and identified additional evidence in support of Lead Plaintiff's positions.

72. Following completion of the briefing, Judge Phillips sent each side a list of targeted questions probing the strengths and weaknesses of the parties' arguments. Lead Plaintiff submitted detailed responses to those questions prior to the mediation. Lead Counsel also participated in a pre-mediation teleconference with Judge Phillips and his staff.

73. On June 21, 2021, the parties participated in a full-day mediation session with Judge Phillips via Zoom. During the mediation, Lead Counsel vigorously advocated Lead Plaintiff's positions regarding liability and damages. Although the parties made progress, they disagreed on the value of Lead Plaintiff's claims, and no settlement was reached at the conclusion of the mediation.

74. Thereafter, the parties engaged in post-mediation negotiations, with the assistance of Judge Phillips. On June 29, 2021, Judge Phillips made a "mediator's recommendation" that the case settle for $29 million. Lead Counsel discussed the mediator's recommendation with Lead Plaintiff, and after careful deliberation, Lead Plaintiff accepted the recommendation. Defendants also accepted the mediator's recommendation, and on July 1, 2021, the parties reached an agreement-in-principle to resolve the Litigation, subject to the negotiation of mutually acceptable terms of a settlement agreement.

75. Once the key terms of the Settlement were agreed upon, Lead Counsel continued to negotiate at arm's length with Defendants' counsel to work out the details of the Settlement and the Stipulation, and drafted the Stipulation and supporting documents. These negotiations continued until September 8, 2021, when the parties executed the Stipulation.

J. Preliminary Approval of the Settlement

76. On September 10, 2021, Lead Plaintiff filed its Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of the Class, and Approval of Notice to the Class. ECF 127-128. In connection therewith, Lead Plaintiff requested that the Court: (i) preliminarily approve the Settlement; (ii) certify the proposed Class; (iii) approve the form and manner of the settlement notices to Members of the Class; and (iv) schedule a hearing on the final approval of the Settlement, proposed Plan of Allocation and Lead Counsel's application for an award of attorneys' fees and litigation expenses. ECF 128.

77. The Court granted Lead Plaintiff's motion for preliminary approval on March 14, 2022. ECF 135. On March 17, 2022, the Court issued a separate order setting the final settlement hearing for September 8, 2022 at 2:00 pm. ECF 137.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND WARRANTS APPROVAL

78. The Settlement of $29,000,000 was the result of extensive, arm's-length negotiations between the parties, with the assistance of an experienced mediator. The Settlement reflects the strengths and weaknesses of the case, and would not have been achieved without Lead Counsel's efforts described herein.

79. As set forth below and in the Motion for Final Approval, the Settlement is a favorable result for the Class when evaluated in light of the risks of continued litigation and all of the other circumstances that courts consider when determining whether to grant final approval of a proposed class action settlement under Rule 23(e) of the Federal Rules of Civil Procedure.

80. The Settlement avoids the hurdles Lead Plaintiff would have to clear, not only with respect to proving the full amount of the Class's damages but liability as well, and avoids the significant costs associated with further litigation of this complex securities action, particularly

summary judgment and trial. In view of the significant risks and additional time and expense involved in continuing to litigate this Action, Lead Counsel respectfully submits that the Settlement is fair, reasonable and adequate and warrants the Court's final approval.

A. The Risks to Establishing Falsity and Scienter

81. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants are meritorious, they also recognize that there were considerable risks that made the outcome of this Litigation uncertain. Lead Counsel carefully considered these risks throughout the Litigation and in recommending that Lead Plaintiff settle this matter.

82. For example, Lead Plaintiff faced significant risks in proving that Defendants' alleged statements and omissions were materially false and misleading. Defendants would have continued to argue, as they did in their motion to dismiss, that Lead Plaintiff would be unable to prove falsity because Defendants adequately disclosed the nature of the changes to the enrollment criteria for the phase 3 trials.

83. Defendants would also continue to argue that they did not act with the requisite scienter. According to Defendants, Lead Plaintiff would be unable to demonstrate that any Defendant knew or should have known that the inclusion of occult patients in the phase 3 trials increased the risk that the trials would fail. Defendants would further argue that they had no rational motive to sabotage the phase 3 trials' prospects for success, and that their stock sales did not provide a motive to defraud investors because those sales were made pursuant to Rule 10b5-1 trading plans and were consistent with Defendants' pre-Class Period sales. While the parties disagreed about the merits of these arguments, Lead Plaintiff recognized that if the Court at summary judgment or a jury at trial found them compelling, the Class would recover nothing.

B. The Risks to Establishing Loss Causation and Damages

84. Even if Lead Plaintiff succeeded in overcoming these arguments and establishing falsity and scienter, Defendants' arguments and defenses relating to loss causation and damages presented additional obstacles. Indeed, Defendants' primary defense to liability was that Lead Plaintiff could not prove loss causation, and Defendants were adamant that the Court would grant their anticipated motion for summary judgment on loss causation grounds. According to Defendants, the failure of the phase 3 trials was entirely unrelated to any changes that Defendants made to the enrollment criteria. Therefore, Defendants would argue that any misrepresentations about changes to the enrollment criteria did not cause Lead Plaintiff and Class Member's losses when the failure of the trials was announced. Defendants further asserted that even if Lead Plaintiff prevailed at summary judgment, it would be unable to prove loss causation at trial.

85. Moreover, Defendants would contend that even if their loss causation argument did not eliminate damages, it severely limited them. Defendants intended to argue that Lead Plaintiff and the Class were only entitled to recover the portion of the stock price decline on December 12, 2016, if any, that Lead Plaintiff could prove was attributable to the increased risk of failure caused by the enrollment criteria changes. According to Defendants, that amount was, at best, a small fraction of the total stock price decline. Defendants would further argue that Lead Plaintiff could not disaggregate the risk that the phase 3 trials would have failed absent the alleged fraud.

86. While Lead Plaintiff would have had the burden of identifying and isolating the fraud-related damages suffered by Class Members, Defendants only had to identify a flaw with the methodology utilized by Lead Plaintiff's expected experts and prevail on a *Daubert* motion or win the inevitable, and inherently unpredictable, "battle of the experts" between the parties' loss causation and damages experts before the jury. Defendants would have argued that the case either

should not reach a jury or that the jury had no choice but to determine that there were little or no cognizable damages.

87. Although Lead Plaintiff is confident that it would have been able to support its claims with qualified and persuasive expert testimony, jury reactions to competing experts are difficult to predict, and Defendants would surely have put forth well-credentialed experts in an effort to prove their loss causation and damages arguments. These risks could not be eliminated until after a successful trial and the exhaustion of all appeals. Accordingly, in the absence of a settlement, there was a very real risk that the Class would have recovered an amount significantly less than the total Settlement Amount – or even nothing at all.

88. In short, the parties disagreed on the merits of this case, including whether or not damages were suffered and recoverable. Defendants strongly defended this lawsuit with experienced attorneys and consistently denied that they were liable in any respect. Recovery of any amount at trial was far from certain.

C. The Complexity, Expense, and Likely Duration of the Litigation

89. The continuation of this Action would be long, complex, and costly to all parties involved. It has already been pending since January 2017. Were the Litigation to proceed, the completion of fact and expert discovery, summary judgment motions, trial, and possible appeals would be lengthy and would entail considerable additional costs.

90. Assuming Lead Plaintiff prevailed at trial, it is likely that Defendants would file post-trial motions and appeals to limit or overturn any verdict in Lead Plaintiff's favor. The post-trial motion and appeals process would likely span several years, during which time the Class would receive no payment. In addition, an appeal of any verdict would carry with it the risk of reversal, in which case the Class would receive no payment despite having prevailed on the claims at trial.

While Lead Counsel had developed strong documentary and testimonial evidence, it faced both factual and legal challenges in presenting this matter to a jury and potentially on appeal.

D. Additional Factors

91. Even if Lead Plaintiff prevailed and obtained a judgment, it likely would have been years before the Class received a recovery, if any, and whether Ophthotech's successor, IVERIC bio, Inc. would still have been a viable company with sufficient assets to satisfy a judgment is unknown. The limited insurance policies – which are being used to fund the Settlement – would have been further depleted. The Settlement avoids these risks and expenditures and provides an immediate recovery for the Class.

92. The experience of Lead Counsel also favors the Settlement. Robbins Geller is nationally recognized for its experience and expertise in complex class action and securities litigation. Our reputations as attorneys who are willing to zealously carry a meritorious case through trial and appeals gave us a strong negotiating position, even under the challenging circumstances presented here. *See* Declaration of Erin W. Boardman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Fee Decl."), Ex. E, submitted herewith (firm résumé).

93. Finally, the lack of opposition to the Settlement also militates in favor of the Settlement. As outlined below, notice has already been widely disseminated to potential Class Members. The absence of any objections to the Settlement, and only two requests to opt out of the Class, weigh in favor of the Settlement.

94. Based on all of these factors, Lead Counsel and Lead Plaintiff respectfully submit that the Settlement, which provides a very substantial recovery to Class Members, outweighs the risks of continued litigation. The Settlement provides Class Members with a substantial benefit now, where

there is a significant likelihood of less recovery or no recovery at all if the Litigation were to continue.

IV. MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT

95. The Preliminary Approval Order, among other things, appointed Gilardi as the Claims Administrator and directed it to cause the mailing of the Notice and Proof of Claim and Release to all potential Class Members identifiable with reasonable effort, no later than April 7, 2022. ECF 137, ¶11.

96. The Preliminary Approval Order also directed Lead Counsel to cause the Summary Notice to be published once in *The Wall Street Journal*, and once over a national newswire service, no later than April 14, 2022. *Id.*, ¶12.

97. The Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Mailing Decl."), submitted herewith, states that 55,701 copies of the Notice and Proof of Claim and Release have been mailed to potential Class Members, banks, brokers, and nominees to date, and that the Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire* on April 14, 2022, in compliance with the Preliminary Approval Order. Mailing Decl., ¶¶11-12.

98. No timely objections to any aspect of the Settlement were received, and to-date, only two requests for exclusion have been received. *Id.*, ¶16.

V. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

99. The Plan of Allocation is set forth in the Notice (*see* Mailing Decl., Ex. A, Notice at 9-11), and provides that the Net Settlement Fund will be distributed to Class Members who submit a valid and timely Proof of Claim and Release form and whose claims for recovery have been permitted under the terms of the Stipulation ("Authorized Claimants"). The Plan of Allocation provides that a Class Member will be eligible to participate in the distribution of the Net Settlement

Fund only if the Class Member has an overall net loss on all of his, her or its transactions in Ophthotech common stock during the Class Period.

100. For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Lead Counsel conferred with its economics and damages expert, Professor Feinstein. The Plan of Allocation is premised on the out-of-pocket measure of damages and is designed to measure the difference between what Class Members paid for Ophthotech common stock during the Class Period and what the price of Ophthotech common stock would have been had the allegedly omitted and misstated information been accurately disclosed.

101. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Net Settlement Fund were required to submit a valid Proof of Claim and Release and all required information, postmarked or submitted online no later than July 6, 2022. As provided in the Notice, after deduction of taxes, approved costs, and attorneys' fees and expenses and an award to Lead Plaintiff, the Net Settlement Fund will be distributed, according to the Court-approved Plan of Allocation, to Authorized Claimants who are entitled to a distribution of at least $10.00.

102. Gilardi, as the Court-approved Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based on each Authorized Claimant's total Recognized Loss compared to the total Recognized Losses of all Authorized Claimants. Lead Plaintiff's losses will be calculated in the same manner.

103. Lead Counsel believes that the Plan of Allocation, which is similar to hundreds of plans approved by courts over decades, provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants. To date, not a single Class Member has

objected to the proposed Plan of Allocation. The Plan of Allocation is fair and reasonable, and should be approved.

VI. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

104. The successful prosecution of this Action required Lead Counsel's attorneys, investigators, paraprofessionals, and staff to perform 9,827.05 hours of work and incur $265,231.29 in expenses. *See* Robbins Geller Fee Decl., Exs. A-B. Based on the extensive efforts on behalf of the Class, as described above, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and has requested a fee in the amount of 30% of the Settlement Amount, plus interest – a fee approved by Lead Plaintiff.

A. The Requested Fee Is Reasonable

105. In light of the nature and extent of the Litigation, the diligent prosecution of the Action, the complexity of the factual and legal issues presented, and the other factors described above and in the accompanying application for attorneys' fees and expenses, Lead Counsel believes that the requested fee of 30% of the Settlement Amount, plus interest, is fair and reasonable.

106. A 30% fee award is consistent with percentages awarded by courts in this District and around the country (*See* Fee Memorandum, III.C.), and is justified by the specific facts and circumstances in this case and the substantial risks that Lead Counsel had or in the future would have had to overcome at the summary judgment phase of the Litigation, and at trial, as set forth herein.

B. The Requested Fee Was Negotiated and Is Supported by Lead Plaintiff

107. Lead Plaintiff spent considerable time and effort fulfilling its duties and responsibilities in this case, including answering discovery requests, producing documents, and consulting with Lead Counsel concerning the merits of this Litigation. After the Settlement was reached, Lead Plaintiff negotiated with Lead Counsel regarding its fee request, concluding that 30%

of the Settlement was appropriate. Thus, throughout the Litigation, Lead Plaintiff actively monitored Lead Counsel and negotiated and supports its requested fee.

C. The Requested Fee Is Supported by the Effort Expended and Results Achieved

108. As set forth herein, the $29 million cash Settlement was achieved as a result of extensive investigative efforts, complicated motion practice, hard-fought discovery, analysis of voluminous evidence, and extensive mediation preparation.

109. As discussed in greater detail above, this case was fraught with significant risks concerning liability and damages. Lead Plaintiff's success was by no means assured. Defendants disputed whether the alleged misstatements and omissions were even actionable, asserted that they did not act with the requisite scienter, and sought to attribute any harm suffered to factors unrelated to the alleged fraud. Were this Settlement not achieved, and even if Lead Plaintiff prevailed at trial, Lead Plaintiff potentially faced years of costly and risky appellate litigation, with ultimate success far from certain. It is also possible that a jury could have found no liability or no damages.

110. As a result of this Settlement, Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement. These factors also support Lead Counsel's request for an award of attorneys' fees of 30% of the Settlement Amount, plus interest.

D. The Risk of Contingent Class Action Litigation Supports the Requested Fee Award

111. As set forth in the accompanying application for attorneys' fees and expenses, a determination of a fair fee should include consideration of the contingent nature of the fee, the time and labor expended by Lead Counsel, and the difficulties that were overcome in obtaining the Settlement.

112. This Action was prosecuted by Lead Counsel on a contingent fee basis. Lead Counsel committed 9,827.05 hours of attorney and professional time and incurred $265,231.29 in expenses in the prosecution of the Litigation, as set forth in the accompanying Robbins Geller Fee Declaration. Lead Counsel fully assumed the risk of an unsuccessful result. Lead Counsel has received no compensation for its services during the course of this Litigation and has incurred very significant expenses in litigating for the benefit of the Class. Any fees or expenses awarded to Lead Counsel have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result, and that such a result would be realized only after a lengthy and difficult effort.

113. Lead Counsel's efforts were performed on a wholly contingent basis, despite significant risk and in the face of determined opposition. Under these circumstances, Lead Counsel is justly entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained for the Class. A 30% fee, plus expenses and interest, is fair and reasonable under the circumstances present here.

114. There are numerous cases, including many handled by Robbins Geller, where class counsel in contingent fee cases such as this, after expenditure of thousands of hours of time and incurring significant costs, have received no compensation whatsoever. Class counsel who litigate cases in good faith and receive no fees whatsoever are often the most diligent members of the plaintiffs' bar. The fact that Defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in high-risk cases like this one gives rise to meaningful settlements in actions such as this. The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately received little

or no fee, should not be ignored. Lead Counsel knows from personal experience that despite the most vigorous and competent of efforts, success in contingent litigation is never assured.

115. Lawsuits such as this are expensive to litigate. Those unfamiliar with the efforts required to litigate class actions often focus on the aggregate fees awarded at the end but ignore the fact that those fees fund enormous overhead expenses incurred during the course of many years of litigation, are taxed by federal and state authorities, are used to fund the expenses of other contingent cases prosecuted by class counsel, and help pay the salaries of the firms' attorneys and staff.

VII. LEAD PLAINTIFF SEEKS AN AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4) BASED ON ITS REPRESENTATION OF THE CLASS

116. The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4).

117. Here, as explained in the accompanying Declaration of Vernon Shaffer in Support of Lead Plaintiff's Motion for Final Approval of Settlement ("Lead Plaintiff Decl."), Lead Plaintiff requests an award of $5,022.80 to compensate for its time and expenses related to its active participation in the Action. *See* Lead Plaintiff Decl., ¶7.

118. Many courts, including those in this Circuit, have approved reasonable payments to compensate class representatives for the time and effort devoted by them on behalf of a class.

119. Lead Counsel respectfully submits that the amount sought here is eminently reasonable based on Lead Plaintiff's active involvement in the Action, from its consideration of appointment as Lead Plaintiff to the Settlement, which included, among other things, reviewing the Complaint and other key litigation materials, searching for and producing documents, participating

in the mediation process, and communicating with Lead Counsel regarding the Action. As such, this request should be granted in its entirety.

VIII. CONCLUSION

120. For the reasons set forth above and in the accompanying Settlement and Fee Memoranda, Lead Counsel respectfully submits that: (i) the Settlement is fair, reasonable and adequate, and should be finally approved; (ii) the Plan of Allocation represents a fair method for the distribution of the Net Settlement Fund among Class Members and should also be approved; and (iii) the application for attorneys' fees of 30% of the Settlement Amount and expenses of $265,231.29, plus the interest earned on both amounts at the same rate and for the same period as that earned on the Settlement Fund until paid, and an award to Lead Plaintiff of $5,022.80 for its efforts on behalf of the Class, should be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of August, 2022, at Melville, New York.

s/Erin W. Boardman
ERIN W. BOARDMAN

CERTIFICATE OF SERVICE

I, Erin W. Boardman, hereby certify that on August 4, 2022, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ Erin W. Boardman

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