

**COHN LIFLAND PEARLMAN HERRMANN
& KNOFF LLP**

PETER S. PEARLMAN (Atty. No. 243551970)
AUDRA DEPAOLO (Atty. No. 020321995)
MATTHEW F. GATELY (Atty. No. 025452009)
Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, NJ 07663
Telephone: 201/845-9600

Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

LEO SHUMACHER, Individually and on Behalf of All Others Similarly Situated,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: SOMERSET COUNTY
Plaintiff,	:	DOCKET NO. SOM-L-000540-19
	:	(Consolidated)
vs.	:	CIVIL ACTION
OSMOTICA PHARMACEUTICALS PLC, et al.,	:	
Defendants.	:	

JEFFREY TELLO and JASON GELLATI, Behalf of All Others Similarly Situated,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: SOMERSET COUNTY
Plaintiffs,	:	DOCKET NO. SOM-L-617-19
	:	
vs.	:	
OSMOTICA PHARMACEUTICALS PLC, BRIAN MARKISON, ANDREW EINHORN, DAVID BURGSTAHLER, SRIRAM VENKTARAMAN, CARLOS SIELECKI, JUAN VERGEZ, JEFFERIES LLC, BARCLAYS CAPITAL INC., RBC CAPITAL MARKETS, LLC, and WELLS FARGO SECURITIES, LLC,	:	
Defendants.	:	

x

MEMORANDUM OF LAW SUPPORT OF PLAINTIFFS' COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE STANDARDS GOVERNING THE AWARD OF ATTORNEYS' FEES IN COMMON FUND CASES.....	3
A. Plaintiffs' Counsel Are Entitled to a Fee From the Common Fund They Created	3
B. The Court Should Award Attorneys' Fees Using the Percentage Approach.....	4
III. THE REQUESTED 33-1/3% FEE IS FAIR AND REASONABLE UNDER THE PERCENTAGE-OF-RECOVERY METHOD	6
IV. THE REQUESTED 33-1/3% FEE IS FAIR AND REASONABLE UNDER THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT'S <i>GUNTER</i> FACTORS	7
A. The Size and Nature of the Common Fund Created and the Number of Persons Benefited by the Settlement.....	7
B. The Skill and Efficiency of Plaintiffs' Counsel.....	9
C. The Complexity and Duration of the Litigation	11
D. The Risk of Non-Payment	12
E. The Time Devoted to This Case by Plaintiffs' Counsel Was Significant.....	14
F. The Requested Fee of 33-1/3% of the Settlement Fund is Consistent with Fees Typically Awarded in Actions of This Nature	15
G. The Absence of Objections to the Requested Attorneys' Fee Award	15
V. THE REQUESTED FEE IS REASONABLE UNDER THE LODESTAR CROSS-CHECK.....	16
A. Hours Reasonably Expended by Counsel.....	17
B. Calculating the "Base" Lodestar.....	18
C. The Lodestar Multiplier	18
D. Performing the Lodestar Cross-Check.....	19
VI. PLAINTIFFS' COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED	20
VII. AWARDS TO PLAINTIFFS ARE APPROPRIATE.....	21

VIII. CONCLUSION.....21

TABLE OF AUTHORITIES

	Page
CASES	
<i>Abrams v. Lightolier Inc.</i> , 50 F.3d 1204 (3d Cir. 1995).....	20
<i>Bateman Eichler, Hill Richards, Inc. v. Berner</i> , 472 U.S. 299 (1985).....	3
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	4, 17
<i>Bodnar v. Bank of Am., N.A.</i> , No. 14-3224, 2016 WL 4582084 (E.D. Pa. Aug. 4, 2016).....	19
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	3, 4
<i>Bredbenner v. Liberty Travel, Inc.</i> , No. 09-905(MF), 2011 WL 1344745 (D.N.J. Apr. 8, 2011)	16
<i>Camden I Condo. Ass'n, Inc. v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991)	6
<i>Cent. R.R. & Banking Co. v. Pettus</i> , 113 U.S. 116 (1885).....	3
<i>Cullen v. Whitman Med. Corp.</i> , 197 F.R.D. 136 (E.D. Pa. 2000).....	15, 20
<i>Dartell v. Tibet Pharms., Inc.</i> , No. 14-3620 (JM), 2017 WL 2815073 (D.N.J. June 29, 2017)	5, 7
<i>Demaria v. Horizon Healthcare Servs., Inc.</i> , No. 2:11-cv-07298 (WJM), 2016 WL 6089713 (D.N.J. Oct. 18, 2016).....	19
<i>Dolgow v. Anderson</i> , 43 F.R.D. 472 (E.D.N.Y. 1968), <i>rev'd on other grounds</i> , 438 F.2d 825 (2d Cir. 1970).....	3
<i>Eaton v. Halifax PLC</i> , No. MON-L-2365-03, slip op. (N.J. Super. Ct. Law Div. May 26, 2011).....	15, 21

	Page
<i>Florin v. Nationsbank of Georgia, N.A.</i> , 34 F.3d 560 (7th Cir. 1994)	6
<i>Gottlieb v. Barry</i> , 43 F.3d 474 (10th Cir. 1994)	6
<i>Gunter v. Ridgewood Energy Corp.</i> , 223 F.3d 190 (3d Cir. 2000).....	4, 6, 7, 16
<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994)	20
<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983).....	7, 17
<i>Hubbard v. BankAtlantic Bancorp, Inc.</i> , 688 F.3d 713 (11th Cir. 2012)	13
<i>In re AremisSoft Corp. Sec. Litig.</i> , 210 F.R.D. 109 (D.N.J. 2002).....	4, 5
<i>In re AT&T Corp. Sec. Litig.</i> , 455 F.3d 160 (3d Cir. 2006).....	4, 5, 16
<i>In re Cendant Corp. Litig.</i> , 264 F.3d 201 (3d Cir. 2001).....	5
<i>In re Cendant Corp. Sec. Litig.</i> , 404 F. 3d 173 (3d Cir. 2005).....	6
<i>In re Computron Software, Inc., Sec. Litig.</i> , 6 F. Supp. 2d 313 (D.N.J. 1998)	4
<i>In re Equifax, Inc. Customer Data Sec. Breach Litig.</i> , No. 1:17-md-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 27, 2020), <i>aff'd in part, rev'd in part on other grounds</i> , 999 F.3d 1247 (11th Cir. 2021)	19
<i>In re EquiMed, Inc. Sec. Litig.</i> , No. 98-cv-5374 (NS), 2003 WL 735099 (E.D. Pa. Mar. 3, 2003).....	15
<i>In re Fine Paper Antitrust Litig.</i> , 751 F.2d 562 (3d Cir. 1984).....	17, 18
<i>In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.</i> , 55 F.3d 768 (3d Cir. 1995).....	4, 6, 7, 15

	Page
<i>In re Ikon Office Sols., Inc., Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000).....	<i>passim</i>
<i>In re JDS Uniphase Corp. Sec. Litig.</i> , No. C-02-1486 CW (EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007).....	13
<i>In re MobileMedia Sec. Litig.</i> , No. 96-5723 (AJL), slip op. (D.N.J. Feb. 15, 2000).....	15
<i>In re New Jersey Tax Sales Certificates Antitrust Litig.</i> , No. 12-1893(MAS)(TJB), 2016 WL 5844319 (D.N.J. Oct. 3, 2016).....	7
<i>In re Oracle Corp. Sec. Litig.</i> , No. C01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19m 2009), <i>aff'd</i> , 627 F.3d 376 (9th Cir. 2010)	13
<i>In re Prudential-Bache Energy Income P'ships</i> , No. 888, 1994 WL 202394 (E.D. La. May 18, 1994).....	12
<i>In re Prudential Ins. Co. Am. Sales Pracs. Litig. Agent Actions</i> , 148 F.3d 283 (3d Cir. 1998).....	5, 7, 18
<i>In re Rent-Way Sec. Litig.</i> , 305 F. Supp. 2d 491 (W.D. Pa. 2003).....	16
<i>In re Residential Doors Antitrust Litig.</i> , No. 94-3744, 1998 WL 151804 (E.D. Pa. Apr. 2, 1998)	20
<i>In re Rite Aid Corp. Sec. Litig.</i> , 146 F. Supp. 2d 706 (E.D. Pa. 2001)	10
<i>In re Rite Aid Corp. Sec. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	16, 17, 18
<i>In re Safety Components, Inc. Sec. Litig.</i> , 166 F. Supp. 2d 72 (D.N.J. 2001)	20
<i>In re Schering-Plough Corp. Enhance ERISA Litig.</i> , No. 08-1432 (DMC)(JAD), 2012 WL 1964451 (D.N.J. May 31, 2012)	14, 16
<i>In re Schering-Plough Corp. Enhance Sec. Litig.</i> , No. 08-397(DMC)(JAD), 2013 WL 5505744 (D.N.J. Oct. 1, 2013).....	16, 21

	Page
<i>In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.</i> , 56 F.3d 295 (1st Cir. 1995).....	5
<i>In re Veritas Software Corp. Sec. Litig.</i> , 396 F. App'x 815 (3d Cir. 2010)	17
<i>In re Viropharma Inc. Sec. Litig.</i> , No. 12-2714, 2016 WL 312108 (E.D. Pa. Jan. 25, 2016)	7, 9
<i>In re Warner Commc'ns Sec. Litig.</i> , 618 F. Supp. 735 (S.D.N.Y. 1985), <i>aff'd</i> , 798 F.2d 35 (2d Cir. 1986)	10, 11, 18
<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 19 F.3d 1291 (9th Cir. 1994)	6
<i>J.I. Case Co. v. Borak</i> , 377 U.S. 426 (1964).....	3
<i>Lindy Bros. Builders, Inc. of Philadelphia v. Am. Radiator & Standard Sanitary Corp.</i> , 487 F.2d 161 (3d Cir. 1973).....	5, 16, 17
<i>Lindy Bros. Builders v. Am. Radiator & Standard Sanitary Corp.</i> , 540 F.2d 102 (3d Cir. 1976)	5, 16
<i>Maley v. Del Glob. Techs. Corp.</i> , 186 F. Supp. 2d 358 (S.D.N.Y. 2002).....	10
<i>Mills v. Elec. Auto-Lite Co.</i> , 396 U.S. 375 (1970).....	3
<i>Missouri v. Jenkins</i> , 491 U.S. 274 (1989).....	18
<i>New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.</i> , 234 F.R.D. 627 (W.D. Ky. 2006), <i>aff'd sub nom. Fidel v. Farley</i> , 534 F.3d 508 (6th Cir. 2008).....	20
<i>Rawlings v. Prudential-Bache Props., Inc.</i> , 9 F.3d 513 (6th Cir. 1993)	6
<i>Schuler v. Meds. Co.</i> , No. 14-1149(CCC), 2016 WL 3457218 (D.N.J. June 24, 2016)	17, 19, 21

	Page
<i>Sprague v. Ticonic Nat'l Bank</i> , 307 U.S. 161 (1939).....	3
<i>Stevens v. SEI Invs.</i> , No. 18-4205, 2020 WL 996418 (E.D. Pa. Feb. 28, 2020).....	18, 19
<i>Sutton v. Bernard</i> , 504 F.3d 688 (7th Cir. 2007)	12
<i>Swedish Hosp. Corp. v. Shalala</i> , 1 F.3d 1261 (D.C. Cir. 1993).....	6
 STATUTES, RULES AND REGULATIONS	
15 U.S.C. §77z-1(a)(6)	6
 SECONDARY AUTHORITIES	
1 Alba Conte, <i>Attorney Fee Awards</i> (2d ed. 1993) §2.02.....	4
Report of the Third Circuit Task Force, <i>Court Awarded Attorney Fees</i> , 108 F.R.D. 237 (Oct. 8, 1985)	4, 5
Third Circuit Task Force Report, <i>Selection of Class Counsel</i> , 208 F.R.D. 340 (Jan. 15, 2002).....	5

I. INTRODUCTION

Plaintiffs' Counsel have succeeded in obtaining a Settlement Fund of \$5.25 million, plus all interest earned thereon, for the benefit of the Settlement Class.¹ This is a highly favorable result in the face of great risk and is a credit to Plaintiffs' Counsel's vigorous, persistent, and skilled efforts. Plaintiffs' Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 33-1/3% of the Settlement Fund, plus payment of their litigation expenses incurred in prosecuting the Action in the amount of \$28,538.13, plus interest on both amounts.²

The requested fee is within the range of percentages awarded in class actions throughout the country, and is the appropriate method of compensating counsel.³ The amount requested is warranted in light of the recovery obtained for the Settlement Class in light of the recovery relative to maximum estimated damages, the extensive efforts of counsel in obtaining this favorable result, and the significant risks in bringing and prosecuting the Action. Absent this Settlement, continued litigation through class certification, merits and expert discovery, summary judgment, trial and appeals would have likely taken several more years at considerable expense without the Settlement Class receiving the benefits of the Settlement, thus creating the very real risk that the Settlement Class would ultimately receive less, or even no recovery.

¹ Submitted herewith in support of approval of the proposed Settlement is the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Brief").

² Unless otherwise noted all terms used herein are defined in the Stipulation of Settlement (the "Stipulation"), filed on May 18, 2021. Emphasis is added and internal citations are omitted throughout unless otherwise noted.

³ Attached hereto as Exhibit A is a listing of cases where courts in class actions have awarded fees of 33% or more of the settlement fund.

This litigation has been vigorously litigated and fiercely contested for more than two years. Prosecution of this case was undertaken by Plaintiffs' Counsel on a wholly contingent basis and was extremely risky and difficult from the outset.

The prosecution and settlement of this litigation against Defendants required great skill and extensive efforts by Plaintiffs' Counsel. During the course of the Action, Plaintiffs' Counsel: (1) conducted an exhaustive investigation into the facts alleged; (2) drafted specific complaints; (3) thoroughly researched the law pertinent to the claims and defenses asserted; (4) litigated, briefed and argued a complicated motion to stay discovery, a motion to dismiss, and reconsideration of that dismissal order; (5) reviewed documents produced by Defendants; (6) participated in arm's-length settlement negotiations; and (7) negotiated the final terms of the Settlement contained in the Stipulation.⁴ Indeed, Plaintiffs' Counsel and their paraprofessionals combined have expended over 2,600 hours in the prosecution of the Action with a resulting lodestar of slightly more than \$1.6 million. Therefore, the fee award requested by Plaintiffs' Counsel (33-1/3% or \$1,750,000) is slightly more than the lodestar in the case and results in a modest 1.08 multiplier.

Plaintiffs' Counsel firmly believe that the Settlement is the result of their creative and diligent efforts, as well as their reputations as attorneys who are unwavering in their dedication to the interests of the class and unafraid to zealously prosecute a meritorious case through trial and subsequent appeals. In a case asserting claims based on complex legal and factual issues which were opposed by highly skilled and experienced defense counsel, Plaintiffs' Counsel succeeded in

⁴ The efforts of counsel in achieving this Settlement are set forth in greater detail in the accompanying Certified Statement of Noam Mandel in Support of: (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs ("Mandel Cert.").

securing a highly favorable result for the Settlement Class under difficult and challenging circumstances.

For all the reasons set forth herein, in the Mandel Cert., and in the Settlement Brief, Plaintiffs' Counsel respectfully submit that the requested attorneys' fees are fair and reasonable under the applicable legal standards and therefore should be awarded by the Court. Moreover, the expenses requested are modest and reasonable in amount and were necessarily incurred for the successful prosecution of the litigation and therefore should be approved.

II. THE STANDARDS GOVERNING THE AWARD OF ATTORNEYS' FEES IN COMMON FUND CASES

A. Plaintiffs' Counsel Are Entitled to a Fee From the Common Fund They Created

It is well-settled that an attorney who maintains a suit that results in the creation of a fund or benefit in which others have a common interest may obtain fees from that common fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”). *See also Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392-93 (1970); *Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161 (1939).

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys’ fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature. *See, e.g., Dolgow v. Anderson*, 43 F.R.D. 472, 481-84 (E.D.N.Y. 1968), *rev’d on other grounds*, 438 F.2d 825 (2d Cir. 1970). Indeed, the United States Supreme Court has emphasized that private securities actions, such as the instant action, provide “‘a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to

[SEC] action.” *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).

Courts in New Jersey and throughout the Third Circuit have consistently adhered to these teachings. *See, e.g., In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 128 (D.N.J. 2002) (“Attorneys who represent a class and aid in the creation of a settlement fund are entitled to compensation for legal services offered to the settlement fund under the common fund doctrine.”) (citing *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d Cir. 1995) (“*GMC Trucks*”)); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) (“[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.”); *In re Computron Software, Inc., Sec. Litig.*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998) (same).

The ultimate determination of the proper amount of attorneys’ fees, of course, rests within the sound discretion of the court. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000); *GMC Trucks*, 55 F.3d at 821; *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 168-69 (3d Cir. 2006); *AremisSoft*, 210 F.R.D. at 128.

B. The Court Should Award Attorneys’ Fees Using the Percentage Approach

The United States Supreme Court has also consistently held that where a common fund has been created for the benefit of a class as a result of counsel’s efforts, the award of counsel’s fees should be determined as a percentage of the fund. *See, e.g., Boeing*, 444 U.S. at 478-79. Indeed, by 1984 this point was so well established that the United States Supreme Court needed no more than a footnote to address it in *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (“[U]nder the ‘common fund doctrine,’ . . . a reasonable fee is based on a percentage of the fund bestowed on the class.”). *See also* Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 242 (Oct. 8, 1985) (“Task Force Report”) (fee awards in common fund cases have

historically been computed based upon a percentage of the fund); 1 Alba Conte, *Attorney Fee Awards* §2.02, at 31-32 (2d ed. 1993) (same).

The United States Court of Appeals for the Third Circuit and district courts within it have repeatedly approved the percentage-of-recovery method of awarding fees in common fund cases. *See, e.g., AT&T*, 455 F.3d at 164 (“In common fund cases such as this one, the percentage-of-recovery method is generally favored.”). In *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001), the court noted, “[f]or the past decade, counsel fees in securities litigation have generally been fixed on a percentage basis rather than by the so-called lodestar method.” In *In re Prudential Ins. Co. Am. Sales Pracs. Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998), the court stated “[t]he percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’” *See also Dartell v. Tibet Pharms., Inc.*, No. 14-3620 (JM), 2017 WL 2815073, at *8 (D.N.J. June 29, 2017) (recognizing that “[t]he percentage-of-recovery method is preferred in common fund cases because it ‘rewards counsel for success and penalizes it for failure’”); *AremisSoft*, 210 F.R.D. at 128 (“the percentage-of-recovery method is used in common fund cases on the theory that class members would be unjustly enriched if they did not adequately compensate counsel responsible for generating the fund”).⁵

⁵ A second method for calculating attorneys’ fee awards, the lodestar/multiplier method, by which courts multiply the number of hours spent on the case by each attorney’s reasonable hourly rate and then adjust that figure (by applying a multiplier) to reflect such factors as risk, the contingent nature of the litigation, the result obtained, and the quality of the attorney’s work (*see, e.g., Lindy Bros. Builders, Inc. of Philadelphia v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167-69 (3d Cir. 1973) (“*Lindy I*”), subsequently refined in *Lindy Bros. Builders v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116-18 (3d Cir. 1976) (*en banc*) (“*Lindy II*”), has been discredited by two different task forces of prominent judges and practitioners convened to consider fees in class action cases by the United States Court of Appeals for the Third Circuit, first in 1985, and again in 2002. *See* Task Force Report, 108 F.R.D. at 238; Third Circuit Task Force Report, *Selection of Class Counsel*, 208 F.R.D. 340 (Jan. 15, 2002).

Consistent with the above law on fees in common fund cases, the Private Securities Litigation Reform Act of 1995 (“PSLRA”) also expressly provides that “[t]otal attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount of any damages and prejudgment interest actually paid to the class.” 15 U.S.C. §77z-1(a)(6). Courts therefore recognize that “the PSLRA has made percentage-of-recovery the standard for determining whether attorneys’ fees are reasonable.” *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n.7 (3d Cir. 2005).

III. THE REQUESTED 33-1/3% FEE IS FAIR AND REASONABLE UNDER THE PERCENTAGE-OF-RECOVERY METHOD

Courts have considerable discretion in setting an appropriate percentage-based fee award in traditional common fund cases. *See, e.g., Gunter*, 223 F.3d at 195 (“We give [a] great deal of deference to a district court’s decision to set fees.”); *GMC Trucks*, 55 F.3d at 821.

Nonetheless, in exercising that broad discretion, the United States Court of Appeals for the Third Circuit has also noted that a lower court should consider “among other things,” the following factors in determining a fee award, including:

1. the size of the fund created and the number of persons benefited;

Since the issuance of the Task Force Report in 1985, virtually every other circuit court has joined that Circuit and the United States Supreme Court in approving use of the percentage-of-the-fund method in common fund cases. *See, e.g., In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995) (permitting use of percentage method, “[c]ontrary to popular belief, it is the lodestar method, not the [percentage] method, that breaks from precedent”); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994) (authorizing percentage and holding that use of lodestar/multiplier method was abuse of discretion); *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 564-65 (7th Cir. 1994); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir. 1994); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993). In fact, two United States Circuit Courts of Appeal have held that the percentage method is mandatory in common fund cases. *See Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993) (“a percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees award in common fund cases”); *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (rejecting the lodestar approach in all common fund cases and holding that the percentage method is mandatory).

2. the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel;
3. the skill and efficiency of the attorneys involved;
4. the complexity and duration of the litigation;
5. the risk of nonpayment;
6. the amount of time devoted to the case by plaintiffs' counsel; and
7. awards in similar cases.

Gunter, 223 F.3d at 195 n.1 (citing *Prudential*, 148 F.3d at 336-40; *GMC Trucks*, 55 F.3d at 819-22). *Accord In re New Jersey Tax Sales Certificates Antitrust Litig.*, No. 12-1893(MAS)(TJB), 2016 WL 5844319, at *10 (D.N.J. Oct. 3, 2016). These fee award factors “need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest.” *Gunter*, 223 F.3d at 195 n.1.

Applying these factors to the present case, a 33-1/3% fee award to Plaintiffs' Counsel for achieving this highly favorable settlement is both justified and appropriate.

IV. THE REQUESTED 33-1/3% FEE IS FAIR AND REASONABLE UNDER THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT'S *GUNTER* FACTORS

A. The Size and Nature of the Common Fund Created and the Number of Persons Benefited by the Settlement

Plaintiffs' Counsel have secured a Settlement that provides for a substantial and certain cash payment of \$5,250,000, plus interest, for the benefit of the Settlement Class. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *In re Viropharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (same). In *Ikon*, the court stated “[t]he most significant factor in this case is the quality of representation, as measured by ‘the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing,

experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” 194 F.R.D. at 194. *See also Dartell*, 2017 WL 2815073, at *9 (in assessing this factor, courts ““consider the fee request in comparison to the size of the fund created and the number of class members to be benefitted””).

The \$5,250,000 cash Settlement here provides a substantial and certain benefit to the thousands of members of the Settlement Class. This favorable Settlement was achieved as a direct result of the skill and tenacity of Plaintiffs’ Counsel in the prosecution of the Action on behalf of the Settlement Class. There is no question that Plaintiffs’ Counsel overcame numerous obstacles and took significant risks in obtaining this favorable result (approximately 25% of maximum estimated damages) for the Settlement Class. *See generally* Mandel Cert.

While Plaintiffs believe that their claims have substantial merit, if litigation were to proceed there is, nonetheless, a significant risk that the Settlement Class could recover less than the amount of the Settlement or nothing. Throughout the litigation, Defendants have consistently maintained that Plaintiffs could not establish liability or damages, and have otherwise challenged virtually every factual and legal issue in this litigation in an effort to defeat Plaintiffs’ claims. Despite Defendants’ extensive efforts, Plaintiffs were able to achieve an excellent result for the Settlement Class under difficult and challenging circumstances. The Settlement will provide Settlement Class Members compensation for their losses in their investment in Osmotica’s IPO and avoid the substantial expense, delay and uncertainty of continued litigation. The \$5.25 million recovery for the Settlement Class strongly supports the requested fee award.

Moreover, the number of persons benefited is undeniably large; the Settlement Class includes all persons who acquired Osmotica common stock pursuant and/or traceable to the Registration Statement or IPO. Excluded from the Settlement Class are Defendants, the officers

and directors of Osmotica and the Underwriter Defendants (at all relevant times), members of Defendants' immediate families, Defendants' legal representatives, heirs, successors, and assigns, and any entity in which any Defendant has a majority ownership interest. Also excluded from the Settlement Class will be those Settlement Class Members who timely and validly exclude themselves therefrom in accordance with the instructions set forth in the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), mailed to all Settlement Class Members. As of the date of this memorandum, not a single Settlement Class Member has opted out of the Settlement Class. The Notice and Proof of Claim form have been mailed to more than 7,000 potential Settlement Class Members and nominees.⁶ It is therefore reasonable to conclude that thousands of Settlement Class Members will participate in and benefit from this Settlement.

B. The Skill and Efficiency of Plaintiffs' Counsel

This Gunter factor is measured by the "quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Viropharma*, 2016 WL 312108, at *16. It took a great deal of skill to achieve what counsel did for the benefit of the Settlement Class. The recovery obtained for the Settlement Class (approximately 25% of the maximum estimated damages) in approximately two years is the direct result of the significant efforts of highly skilled and specialized attorneys who possess substantial experience in the prosecution of complex class actions.⁷ Plaintiffs' Counsel's

⁶ See ¶¶4-11 to the Certification of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Cert."), dated August 16, 2021, submitted herewith.

⁷ The experience of the law firms that represent Plaintiffs here are set forth in the accompanying certifications of Plaintiffs' Counsel. As those submissions show, Plaintiffs' Counsel are highly regarded and practice extensively in the highly specialized field of complex litigation.

reputations as attorneys who will zealously carry a meritorious case through the trial and appellate levels as well as their efforts in this litigation enabled them to negotiate the outstanding recovery for the benefit of the Settlement Class.

Unlike those cases where plaintiffs' counsel were able to "free ride" on the work of others (such as the Securities and Exchange Commission ("SEC") or other governmental agency), here Plaintiffs' Counsel – and only Plaintiffs' Counsel – developed the case against Defendants. There was never an SEC or other governmental agency investigation. As a result, Plaintiffs' Counsel's efforts in achieving this favorable Settlement should be accorded greater weight because it was achieved without the benefit of any governmental investigation.⁸

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by plaintiffs' counsel. *See, e.g., Ikon*, 194 F.R.D. at 194; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Defendants were represented by Ropes & Gray LLP, Goodwin Procter LLP and Saiber LLC, prominent firms with undeniable experience and skill. The ability of Plaintiffs' Counsel to obtain a favorable settlement for the Settlement Class in the face of such formidable legal opposition further confirms the superior quality of Plaintiffs' Counsel's representation.

⁸ *See In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (in awarding 25% of a \$193 million settlement fund, the court noted the skill and efficiency of plaintiffs' counsel and outstanding results "in a litigation that was far ahead of public agencies like the [SEC] and the United States Department of Justice, which long after the institution of this litigation awakened to the concerns that plaintiffs' counsel first identified"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (In awarding 33-1/3% of the settlement fund, the court noted, "[i]n this Action, Plaintiffs' Class Counsel did not 'piggy back' on any prior governmental action Plaintiffs' Class Counsel developed, litigated and successfully negotiated this Action by themselves, expending substantial time and effort.").

C. The Complexity and Duration of the Litigation

There can be no dispute regarding the overall complexity and duration of this class action. This was a complex class action involving complex legal and factual issues alleging violations of the federal securities laws arising out of Osmotica's IPO.

The Action has been vigorously prosecuted and defended for more than two years. At every stage of the litigation, counsel for Defendants have aggressively defended the Action and expressed their belief that the Settlement Class would not prevail. Even if Plaintiffs obtained class certification and got past summary judgment and were successful against Defendants at trial and obtained a significant judgment for the Settlement Class, Plaintiffs' efforts to establish liability and damages in the litigation in all likelihood would not end with a judgment in this Court, but would continue through one or more levels of appellate review. In complex and substantial cases such as this, it must be recognized that even a victory at the trial stage does not guarantee ultimate success. Both trial and judicial review are unpredictable and could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself. Indeed, as the court observed in *Warner Commc'ns*:

Even a victory at trial is not a guarantee of ultimate success. If plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself.

618 F. Supp. at 747-48 (citing numerous examples).

In sum, this highly complex case has been extensively litigated and vigorously contested over an extended period of time. Despite the novelty and difficulty of the issues raised, counsel secured an excellent result for the Settlement Class. As a result, this factor strongly supports the requested award.

D. The Risk of Non-Payment

Plaintiffs' Counsel undertook this litigation on a fully contingent fee basis, assuming a significant risk that the litigation would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for any time or expense since this case began in 2019. Since that time, Plaintiffs' Counsel have expended over 2,600 hours in the prosecution of this litigation with a resulting lodestar of slightly more than \$1.6 million and incurred \$28,538.13 in litigation expenses. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. For example, in awarding counsel's attorneys' fees in *In re Prudential-Bache Energy Income P'ships*, the court noted the risks that plaintiffs' counsel had taken:

Although today it might appear that risk was not great based on Prudential Securities' global settlement with the Securities and Exchange Commission, such was not the case when the action was commenced and throughout most of the litigation. Counsel's contingent fee risk is an important factor in determining the fee award. Success is never guaranteed and counsel faced serious risks since both trial and judicial review are unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.

No. 888, 1994 WL 202394, at *6 (E.D. La. May 18, 1994).

The United States Court of Appeals for the Seventh Circuit has confirmed that the risk of loss is real and should be considered in a motion for attorneys' fees. It reversed the district court's order that had rejected counsel's contention that lawyers faced the risk of nonpayment. *Sutton v. Bernard*, 504 F.3d 688, 694 (7th Cir. 2007) ("Because the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated.").

As noted herein and in more detail in the Settlement Brief and Mandel Cert., Defendants steadfastly maintained that they did nothing wrong and offered evidence to support their position.

Assuming Plaintiffs were able to obtain class certification, overcome Defendants' inevitable motions for summary judgment, and prove liability at trial, they still would have faced significant risks in proving damages. The determination of damages is a complicated and subjective process, involving the analysis of many subjective factors. Because of the complex nature of establishing damages, expert testimony is almost always necessary to establish the amount – and indeed the existence – of actual damages. The damage assessments of the parties' respective experts would likely be polar opposites and the determination of the amount, if any, of damages suffered by the Settlement Class at trial would have turned into a "battle of the experts." To the extent Defendants could prevail on issues relating to liability or show that any assumptions made by Plaintiffs' experts were incorrect or unreliable, Plaintiffs' claimed damages could be significantly reduced or none at all.

There are numerous cases where plaintiffs' counsel in contingent cases such as this, after the expenditure of thousands of hours, have received no compensation. Plaintiffs' Counsel are aware of (and have been counsel in) many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel. For example, in a case against JDS Uniphase Corporation, after a lengthy trial involving securities claims, the jury reached a verdict in defendants' favor. *See In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW (EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007). In *In re Oracle Corp. Sec. Litig.*, No. C01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), the Court granted 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); *see also Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment

as a matter of law for defendants nearly five years after the case was filed following a jury verdict partially in plaintiffs' favor).

Because the fee in this matter was entirely contingent, the only certainties were that there would be no fee without a successful result and that such a result would be realized only after considerable and difficult effort. The risk of nonpayment in this case was particularly high. As noted herein, this litigation was very risky from the outset as the defenses deployed against the claims were vigorously asserted, and would likely continue to be so. There was never any admission of wrongdoing and no assistance from any governmental investigation. Plaintiffs also faced significant risks in proving liability as well as the amount, if any, of damages suffered by the Settlement Class at trial. Thus, in addition to the very significant risks of nonpayment attendant to complex litigation of this type in general, there were very specific risks attendant to this particular litigation. Notwithstanding this very real specter of nonpayment, Plaintiffs' Counsel committed significant resources of both time and money to the vigorous and successful prosecution of the Action. The fee was well earned in this case and "the risk created by undertaking an action on a contingency fee basis militates in favor of approval." *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-1432 (DMC)(JAD), 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("*Schering-Plough I*") (approving 33.3% fee).

E. The Time Devoted to This Case by Plaintiffs' Counsel Was Significant

To date, Plaintiffs' Counsel and their paraprofessionals have expended over 2,600 hours and incurred \$28,538.13 in expenses prosecuting this litigation for the benefit of the Settlement Class since its initiation.⁹ As discussed above and in the Mandel Cert., this Action has been extensively litigated and vigorously defended since its inception. Defendants fought Plaintiffs at

⁹ See the accompanying certifications of Plaintiffs' Counsel supporting an award of attorneys' fees and expenses.

every step of the litigation in an effort to defeat Plaintiffs' claims. In short, the successful conclusion of this litigation required Plaintiffs' Counsel to commit a very significant amount of time, personnel and expenses to this litigation. Moreover, Plaintiffs' Counsel will incur additional time and expenses following final approval of the Settlement by working with Settlement Class Members and the Claims Administrator during the administration process, and will bring any challenged claims to the Court for final determination. No additional fees or expenses will be sought for that work.

F. The Requested Fee of 33-1/3% of the Settlement Fund Is Consistent with Fees Typically Awarded in Actions of This Nature

There is no general rule as to what percentage of the common fund should be awarded as attorneys' fees. The United States Court of Appeals for the Third Circuit has observed that fee awards range from 19% to 45% of the settlement fund. *GMC Trucks*, 55 F.3d at 822; *see also Ikon*, 194 F.R.D. at 194. Indeed, numerous courts have awarded fees of 30% or more of the recovery. *See, e.g., Eaton v. Halifax PLC*, No. MON-L-2365-03, slip op. at 1 (N.J. Super. Ct. Law Div. May 26, 2011) (awarding 33-1/3%); *In re EquiMed, Inc. Sec. Litig.*, No. 98-cv-5374 (NS), 2003 WL 735099 (E.D. Pa. Mar. 3, 2003) (awarding 33-1/3%); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136 (E.D. Pa. 2000) (awarding 33-1/3%); *In re MobileMedia Sec. Litig.*, No. 96-5723 (AJL), slip op. at 13 (D.N.J. Feb. 15, 2000) (awarding 33-1/3%). *See also* Exhibit A hereto.

G. The Absence of Objections to the Requested Attorneys' Fee Award

Pursuant to the Court's June 11, 2021 Order, beginning on July 2, 2021, over 7,000 copies of the Notice were mailed to potential Settlement Class Members and nominees. *See Murray Cert.*, ¶¶5-11. The Notice specifically stated that Plaintiffs' Counsel would be applying for an award of attorneys' fees in an amount not to exceed 33-1/3% of the Settlement Fund and for payment of expenses in an amount not to exceed \$75,000. *See Notice*, page 5, attached as Exhibit A to the Murray Cert. The Notice also expressly advised Settlement Class Members that they could object

to the fee and expense application and explained the procedure for doing so. *Id.* Additionally, pursuant to this Court's Order, a Summary Notice was published on July 12, 2021, in *The Wall Street Journal* and transmitted over *Business Wire*, and prior to that date many of the relevant documents were posted to the Settlement website. The Summary Notice advised potential Settlement Class Members of their right to object to the fee and expense application in accordance with the provisions of the Notice and how they could obtain a copy of the Notice. Murray Cert., Ex. C. The time for filing objections expires on August 31, 2021, but to date, no objections to the fee have been received from any Settlement Class Members. The dearth of objections is especially noteworthy here since the Settlement Class includes thousands of investors in Osmotica's IPO. The lack of objections from the Settlement Class supports the reasonableness of the fee request. *Bredbenner v. Liberty Travel, Inc.*, No. 09-905(MF), 2011 WL 1344745, at *20 (D.N.J. Apr. 8, 2011) ("The absence of any objection weighs in favor of the fee request."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 515 (W.D. Pa. 2003) ("[T]he absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsels' request."). *See also In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08-397(DMC)(JAD), 2013 WL 5505744, at *40 (D.N.J. Oct. 1, 2013) ("*Schering-Plough II*") (overruling objection to fee on \$215 million settlement and noting lack of significant number of objections).

Accordingly, the application of the *Gunter* factors makes clear that Plaintiffs' Counsel's requested fee of 33-1/3% of the Settlement Fund is fair and reasonable.

V. THE REQUESTED FEE IS REASONABLE UNDER THE LODESTAR CROSS-CHECK

Although courts in the Third Circuit almost uniformly apply the percentage approach to determine attorneys' fees in common fund cases like this one, a court may also use a lodestar cross-check to confirm the reasonableness of the requested fee. *See In re Schering-Plough I*, 2012 WL

1964451, at *8 (using lodestar cross-check). If used, the lodestar cross-check “should not displace a district court’s primary reliance on the percentage-of-recovery method.” *AT&T*, 455 F.3d at 164. In this case, if the cross-check is applied, the requested fee of 33-1/3% is clearly fair and reasonable.

The lodestar method, as set forth in the seminal cases *Lindy I* and *Lindy II*, is a two-step process. The first step requires that the court ascertain the “lodestar” figure by multiplying the number of hours worked by the normal hourly rate of counsel. The second step permits the court to adjust the lodestar by applying a multiplier to take into account the contingent nature and risks of the litigation, the results obtained and the quality of the services rendered by counsel. *See Lindy I*, 487 F.2d at 167-68; *accord Hensley*, 461 U.S. 424. The appropriate multiplier on counsel’s lodestar varies based on the specifics of each case and it “need not fall within any pre-defined range, provided that the [d]istrict [c]ourt’s analysis justifies the award.” *Schuler v. Meds. Co.*, No. 14-1149(CCC), 2016 WL 3457218, at *10 (D.N.J. June 24, 2016). However, the Third Circuit has recognized that percentage awards that result in multipliers “ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” *See In re Veritas Software Corp. Sec. Litig.*, 396 F. App’x 815, 819 (3d Cir. 2010).

A. Hours Reasonably Expended by Counsel

Under the *Lindy* cases, the court’s determination of a reasonable fee begins with the number of hours expended in the prosecution of the action. Plaintiffs’ Counsel and their paraprofessionals here have spent, in the aggregate, 2,668 hours in the prosecution of this case. For the convenience of the Court and in conformity with practice, the hours of counsel and their paraprofessionals have

been submitted to the Court in a summarized form in the accompanying certifications of Plaintiffs' Counsel.¹⁰

B. Calculating the “Base” Lodestar

To arrive at the lodestar, the hours expended are typically multiplied by each attorney's respective hourly rate. The hourly rate to be applied in calculating the lodestar is that which is normally charged in the community where the attorney practices. *See Blum*, 465 U.S. at 895; *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 590-91 (3d Cir. 1984). In addition, the United States Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *Ikon*, 194 F.R.D. at 195.

In determining whether the rates are reasonable, the Court should take into account the attorneys' legal reputation, experience, and status. The accompanying certifications of Plaintiffs' Counsel include a description of the background and experience of the firms who worked on this case. These descriptions provide support for the hourly rates charged in this case.

C. The Lodestar Multiplier

“Calculation of the lodestar, however, is simply the beginning of the analysis.” *Warner Commc'ns*, 618 F. Supp. at 747. In the second step of the analysis, the court adjusts the lodestar to take into account, among other things, the result achieved, the quality of representation, the complexity and magnitude of the litigation, and public policy considerations. *Rite Aid*, 396 F.3d at 305-06; *Fine Paper*, 751 F.2d at 583; *Prudential*, 148 F.3d at 341. The court then applies the appropriate multiplier to the lodestar number to account for these additional factors.

¹⁰ *See Rite Aid*, 396 F.3d at 306-07 (“The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.”).

D. Performing the Lodestar Cross-Check

Finally, to perform the lodestar cross-check, the court should determine what the effective multiplier is, and then determine whether the resulting fee would be so unreasonable as to warrant a downward adjustment. The cumulative hours expended by Plaintiffs' Counsel and their paraprofessionals is 2,668 hours. The cumulative lodestar for the services performed by Plaintiffs' Counsel and their paraprofessionals in the Action is \$1,609,864.00. Plaintiffs' Counsel are seeking an award of 33-1/3% of the Settlement Fund which equals a fee of \$1,750,000. Therefore, the requested fee represents a multiple of slightly more than 1. This multiplier is much lower than multipliers applied in other complex cases, where multipliers of 3, 4, 5 or even more times the lodestar have been awarded to reflect the contingency fee risk and other relevant factors. *See Stevens v. SEI Invs.*, No. 18-4205, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16 and stating "multiples ranging from 1 to 8 are often used in common fund cases" to "compensate counsel for the risk of assuming the representation on a contingency fee basis"); *Bodnar v. Bank of Am., N.A.*, No. 14-3224, 2016 WL 4582084, at *5-*6 (E.D. Pa. Aug. 4, 2016) (approving 33% fee where counsel was able to negotiate the settlement "at the early stages" of the litigation and finding 4.69 multiplier was "appropriate and reasonable"); *Demaria v. Horizon Healthcare Servs., Inc.*, No. 2:11-cv-07298 (WJM), 2016 WL 6089713, at *5 (D.N.J. Oct. 18, 2016) (approving 33% fee resulting in lodestar multiplier of 4.3); *Schuler*, 2016 WL 3457218, at *9 (approving 33% fee resulting in 3.57 multiplier).

Courts have also noted that it is appropriate to consider future time in the lodestar crosscheck, for example, time that will be needed in administering the settlement. *See In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT, 2020 WL 256132, at *39 (N.D. Ga. Mar. 27, 2020) (approving fee and noting that "[i]n addition to time spent through final approval, class counsel estimate they will spend" significantly more time "to implement and

administer the settlement” and calculating lodestar using past and future estimated time), *aff’d in part, rev’d in part on other grounds*, 999 F.3d 1247 (11th Cir. 2021); *SEI Invs.*, 2020 WL 996418, at *13 (approving fee with 6.16 multiplier where “Class Counsel is expected to perform additional work in connection with this case” and “the multiplier will likely be lower by the time the matter is closed and Class Counsel’s work is complete”). As noted above, Plaintiffs’ Counsel will incur additional time administering the Settlement. Thus, a 33-1/3% fee using a lodestar cross-check is plainly reasonable.

VI. PLAINTIFFS’ COUNSEL’S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Plaintiffs’ Counsel also request payment of modest expenses incurred by them in connection with the prosecution of this litigation. Plaintiffs’ Counsel have submitted separate certifications attesting to the accuracy of their expenses. Plaintiffs’ Counsel have incurred expenses in the aggregate amount of \$28,538.13 in prosecuting the Action.

The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.¹¹ The categories of expenses for which counsel seek payment here are the type of expenses routinely charged to hourly clients and, therefore, should be paid out of the common fund.

¹¹ See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of-pocket expenses that ‘would normally be charged to a fee paying client.’”); see also *New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) (“In determining whether the requested expenses are compensable, the Court has considered ‘whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.’”), *aff’d sub nom. Fidel v. Farley*, 534 F.3d 508 (6th Cir. 2008); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (citing *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *Cullen*, 197 F.R.D. at 151; *In re Residential Doors Antitrust Litig.*, No. 94-3744, 1998 WL 151804, at *11 (E.D. Pa. Apr. 2, 1998).

The largest component of the expenses is the mediator's fee, which represents Plaintiffs' share of the total amount charged by JAMS for Mr. Melnick's services. Plaintiffs' Counsel also incurred the costs of computerized research. These are the charges for computerized factual and legal research services, including LEXIS, Westlaw, Refinity, Bloomberg and Pacer Service Center. It is standard practice for attorneys to use these services to assist them in researching legal and factual issues.

Other expenses that were necessarily incurred in the prosecution of this litigation include expenses for travel, court reporters, and filing and witness fees. Because these were all necessary expenses incurred by Plaintiffs' Counsel, they should be paid from the Settlement Fund.

VII. AWARDS TO PLAINTIFFS ARE APPROPRIATE

Plaintiffs' Counsel seek awards for each of the Plaintiffs of \$2,500, for a total of \$7,500. The Notice informed Settlement Class Members that such awards might be sought. Such awards are reasonable and merited in this case. Each Plaintiff has actively participated in the litigation and was in regular contact with Plaintiffs' Counsel. *See* Plaintiff Certifications, submitted herewith. Courts routinely grant awards to plaintiffs who, through their efforts, bring a case and pursue it to a successful conclusion for the benefit of a class of people. *See Schering-Plough II*, 2013 WL 5505744, at *37 (citing cases); *Schuler*, 2016 WL 3457218, at *11 (approving award to lead plaintiffs, finding that they had performed "the types of activities courts have found to support reimbursement to class representatives"); *Halifax*, slip op. at 1-2. The amounts requested are reasonable under the circumstances, and should be approved. There have been no objections to these requests.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs' Counsel respectfully request that the Court approve Plaintiffs' Counsel's application for attorneys' fees and expenses, and award each of the Plaintiffs modest incentive payments for their service to the Settlement Class.

DATED: August 17, 2021

Respectfully submitted,

COHN LIFLAND PEARLMAN HERRMANN
& KNOPF LLP

s/Peter S. Pearlman

PETER S. PEARLMAN
AUDRA DEPAOLO
MATTHEW F. GATELY
Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, NJ 07663
Telephone: 201/845-9600
201/845-9423 (fax)
psp@njlawfirm.com
ad@njlawfirm.com
mfg@njlawfirm.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
MARY K. BLASY
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
mblasy@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
NOAM MANDEL
420 Lexington Avenue, Suite 1832
New York, NY 10170
Telephone: 212/432-5100
noam@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423
elleng@rgrdlaw.com

ROBBINS LLP
BRIAN J. ROBBINS
STEPHEN J. ODDO
JONATHAN D. BOBACK
5040 Shoreham Place
San Diego, CA 92101
Telephone: 619/525-3990
619/525-3991 (fax)
brobbins@robblinsllp.com
soddo@robblinsllp.com
jboback@robblinsllp.com

Attorneys for Plaintiff Leo Shumacher

HOLZER & HOLZER, LLC
COREY D. HOLZER
MARSHALL P. DEES
211 Perimeter Center Parkway, Suite 1010
Atlanta, GA 30346
Telephone: 770/392-0090
770/392-0029 (fax)
cholzer@holzerlaw.com
mdees@holzerlaw.com

*Attorneys for Plaintiffs Jeffrey Tello and Jason
Gellati*

EXHIBIT A

Cases In Which Award Of Fees
Equalled Or Exceeded 33% Of The Fund Plus Expenses
2010 to the Present

1. *NECA-IBEW Pension Trust Fund (The Decatur Plan), et al. v. Precision Castparts Corp., et al.*, No. 3:16-cv-01756-YY (D. Or. May 7, 2021) (awarded 33.33% of \$21 million recovery, plus expenses);
2. *In re Menlo Therapeutics Inc. Sec. Litig.*, No. 18CIV06049 (San Mateo Sup. Ct. Aug. 14, 2020) (awarded 33.33% of \$9.5 million recovery, plus expenses);
3. *Plutte v. Sea Limited, et al.*, No. 655436/2018 (N.Y. Sup. Ct. Apr. 13, 2021) (awarded 33-1/3% of \$10.75 million recovery, plus expenses);
4. *In re ADT Inc. Shareholder Litig.*, No. 502018CA003494XXXXMB-AG (Palm Beach County, Fla. Cir. Ct. Jan. 7, 2021) (awarded 33-1/3% of \$30 million recovery, plus expenses);
5. *In re Allied Nevada Gold Corp., Sec. Litig.*, No. 3:14-cv-00175-LRH-WGC (D. Nev. Nov. 16, 2020) (awarded 33-1/3% of \$14 million recovery, plus expenses);
6. *In re Tezos Sec. Litig.*, No. 3:17-cv-06779-RS (N.D. Cal. Aug. 28, 2020) (awarded one-third (or 33.33%) of \$25 million recovery, plus expenses);
7. *In re Everquote, Inc. Sec. Litig.*, No. 651177/2019 (New York Cty. Sup. Ct. June 11, 2020) (awarded 33-1/3% of \$4.75 million recovery, plus expenses);
8. *In re Deutsche Bank AG Sec. Litig.*, No. 1:09-cv-01714-GHW-RWL (S.D.N.Y. June 11, 2020) (awarded one-third (or 33.33%) of \$18.5 million recovery, plus expenses);
9. *Switzer v. W.R. Hambrecht & Co., LLC, et al.*, No. CGC-18-564904 (San Fran. Cty. Sup. Ct. June 5, 2020) (awarded 33-1/3% of \$2.45 million recovery, plus expenses);
10. *The Hosp. Auth. of Metro. Gov't of Nashville & Davidson Cty., Tennessee v. Momenta Pharm., Inc., et al.*, No. 3:15-cv-01100 (M.D. Tenn. May 29, 2020) (awarded one-third of the \$120 million recover, plus expenses);
11. *Indiana State District Council of Laborers and HOD Carriers Pension and Welfare Fund v. Omnicare, Inc., et al.*, No. 2:06-cv-00026-WOB-CJS (E.D. Ky. June 27, 2019) (awarded one-third of the \$20 million recovery, plus expenses);
12. *In re: Syngenta AG MIR 162 Corn Litigation*, MDL No. 2591, Memorandum and Order (D. Kan. Dec. 7, 2018) (awarded fees of one-third (\$503,333,333.33) of \$1.51 billion recovery);
13. *In re Flowers Foods, Inc. Sec. Litig.*, No. 7:16-CV-00222(WLS) (M.D. Ga. Dec. 11, 2019) (awarded 33-1/3% of \$21 million recovery, plus expenses);

14. *In re Sunrun Inc. Shareholder Litig.*, No. CIV538215 (San Mateo County Super. Ct. Dec. 14, 2018) (awarded 33-1/3% of \$32 million recovery, plus expenses);
15. *Burges v. BancorpSouth, Inc.*, No. 3:14-cv-01564 (M.D. Tenn. Sept. 21, 2018) (awarded 33-1/3% of \$13 million recovery, plus expenses);
16. *In re Obalon Therapeutics, Inc. Sec. Litig.*, No. 3:18-cv-00352-AJB-AHG (S.D. Cal. Apr. 22, 2021) (awarded 33% of \$3.15 million recovery, plus expenses);
17. *Glock v. FTS International, Inc., et al.*, No. 4:20-cv-03928 (S.D. Tex. Apr. 13, 2021) (awarded 33% of \$9.875 million recovery, plus expenses);
18. *J Thompson v. 1-800 Contacts, Inc., et al.*, No. 2:16-cv-01183 (D. Utah Oct. 20, 2020) (awarded 33% of \$40 million recovery, plus expenses);
19. *Cervantes v. Invesco Holding Co. (US), Inc., et al.*, No. 1:18-cv-02551-AT (N.D. Ga. Aug. 13, 2020) (awarded 33% of \$3.47 million recovery, plus expenses);
20. *In re Banc of California Sec. Litig.*, No. SACV 17-00118 DMG (DFMx) (C.D. Cal. Mar. 16, 2020) (awarded 33% of \$19.75 million recovery, plus expenses);
21. *In re Patriot National, Inc. Sec. Litig.*, No. 1:17-cv-01866-ER (S.D.N.Y. Nov. 6, 2019) (awarded 33% of \$6.5 million recovery, plus expenses);
22. *In re AuthenTec, Inc. Shareholder Litig.*, No. 05-2012-CA-57589 (Brevard County Fla. Cir. Ct. Nov. 28, 2016) (awarded 33.33% of \$10 million recovery, plus expenses);
23. *In re Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-02343 (E.D. Tenn. June 30, 2014) (awarded fees of 33-1/3% of \$73 million recovery, plus expenses);
24. *North Port Firefighters' Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595 (M.D. Tenn. May 12, 2014) (awarded fees of 33-1/3% of \$3.25 million, plus expenses);
25. *Landmen Partners Inc. v. Blackstone Group*, No. 08-cv-03601-HB-FM (S.D.N.Y. Dec. 18, 2013) (awarded fees of 33-1/3% of \$85 million recovery, plus expenses);
26. *Eshe Fund v. Fifth Third Bancorp*, No. 1:08-cv-421 (S.D. Ohio Nov. 20, 2013) (awarded fees and expenses of 33-1/3% of \$16 million recovery);
27. *In re Constellation Energy Group, Inc. Sec. Litig.*, No. 1:08-cv-02854-CCB (D. Md. Nov. 4, 2013) (awarded fees of 33-1/3% of \$4 million recovery, plus expenses);
28. *Levine v. Atricure, Inc.*, No. 1:06-cv-14324-RJH (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of \$2 million recovery, plus expenses);
29. *In re Noah Educ. Holdings Ltd. Sec. Litig.*, No. 1:08-cv-09203 (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of \$1.75 million recovery, plus expenses);

30. *Eaton v. Halifax PLC*, No. MON-L-2365-03 (Monmouth Cnty. NJ Super. Ct. May 26, 2011) (awarded fees of 33-1/3% of \$8.6 million recovery, plus expenses);
31. *Menkes v. Stolt-Nielsen S.A.*, No. 3:03CV00409(DJS) (D. Conn. Jan. 25, 2011) (awarded fees of 33-1/3% of \$2 million recovery, plus expenses);
32. *Gupta v. Power Solutions International, Inc.*, No. 1:16-cv-9599 (N.D. Ill. May 13, 2019) (awarded 33% of \$8.5 million recovery, plus expenses);
33. *William Sponn v. Emergent Biosolutions, Inc., et al.*, No. 8:16-cv-02625-RWT (D. MD Jan. 25, 2019) (awarded fees of 33% of \$6.5 million recovery, plus expenses);
34. *In re MobileIron, Inc., S'holder Litig.*, No. 2015-1-CV-284001 (Santa Clara Sup. Ct. Aug. 21, 2017) (awarded 33% of \$7.5 million recovery, plus expenses);
35. *Firerock Global Opportunity Fund LP v. Rubicon Technology, Inc.*, No. 1:15-cv-03813 (N.D. Ill. May 20, 2016) (awarded 33% of \$2.5 million recovery, plus expenses);
36. *In re Walter Energy, Inc. Sec. Litig.*, No. 2:12-cv-00281-VEH (N.D. Ala. May 3, 2016) (awarded 33% of \$25 million recovery, plus expenses);
37. *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388-WGY (D. Mass. Feb. 2, 2015) (awarded 33% of \$590.5 million recovery, plus expenses);
38. *Conlee v. WMS Industries*, No. 1:11-cv-03503-JBZ (N.D. Ill. May 20, 2014) (awarded fees of 33% of \$3.7 million recovery, plus expenses);
39. *In re State Street Bank and Trust Co. Fixed Income Funds Inv. Litig.*, No. 1:08-cv-08235-PAC (S.D.N.Y. Sept. 6, 2012) (awarded fees of 33% of \$6.25 million recovery, plus expenses);