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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE EROS INTERNATIONAL PLC SECURITIES LITIGATION	C. A. No. 19-cv-14125-ES-JSA **MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES**

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Court-appointed Lead Counsel, Glancy Prongay & Murray LLP ("GPM" or "Lead Counsel"), and Court-appointed Liaison Counsel, Carella Byrne Cecchi Olstein Brody & Agnello, PC ("Carella Byrne") (collectively, "Class Counsel"), respectfully submit this memorandum of law in support of their motion for an award of attorneys' fees and reimbursement of Litigation Expenses.[1]

I. INTRODUCTION

Class Counsel have succeeded in obtaining a $25,000,000 non-reversionary, all cash settlement (the "Settlement") for the benefit of the Settlement Class in the above-captioned action (the "Action"). This is an outstanding result in the face of substantial risks that was the result of Class Counsel's vigorous, persistent, and skilled efforts. Class Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund (*i.e.*, $8,333,333, plus interest earned thereon), and reimbursement of $194,323.49 in Litigation Expenses. The Litigation Expenses consist of $164,323.49 in out-of-pocket costs incurred by Class Counsel while prosecuting the Action, and an aggregate of $30,000 (or

[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated April 4, 2023 ("Stipulation"; ECF No. 81-3), or in the concurrently filed Joint Declaration of James E. Cecchi and Kara M. Wolke in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Joint Declaration"). Citations to "¶__" or "Ex. __" in this memorandum refer to paragraphs in, or exhibits to, the Joint Declaration.

$15,000 each) to Court-appointed Lead Plaintiffs Opus Chartered Issuances S.A., Compartment 127 ("Opus") and AI Undertaking IV ("AI"; and together with Opus, "Lead Plaintiffs"), for reimbursement of the reasonable costs (including the cost of time spent) incurred in prosecuting the Action on behalf of the Settlement Class pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4).

As detailed below and in the accompanying Joint Declaration, the Settlement represents an excellent recovery for the Settlement Class. In the absence of the Settlement, the litigation would likely have continued for many years, through class certification, fact discovery, expert discovery, summary judgment, trial, and likely appeals. Lead Plaintiffs and their counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Settlement Class.

Achieving the Settlement was not easy. Defendants were represented by highly skilled litigators, and Class Counsel faced numerous hurdles and risks from the outset, including the PSLRA's heightened pleading standards and automatic stay of discovery, the complex nature of the claims at issue, which hinged in large part on highly subjective and technical accounting standards, the high cost of experts and investigators needed to litigate a complex securities fraud case, and a substantial risk of non-payment. These are not idle risks. "To be successful, a securities class-action

plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J. sitting by designation).[2] As a result, a significant number of cases are dismissed at the outset or, like this one, are dismissed in large part.[3] *See In re Eros Int'l plc Sec. Litig.*, 2021 WL 1560728, at *16 (D.N.J. Apr. 20, 2021) ("only the allegations pertaining to the June 6 press release and the two post-CARE downgrade statements about Eros' strong financial profile survive the motion to dismiss."); *see also In re Xcel Energy, Inc. Sec., Derivative & "ERISA" Litig.,* 364 F. Supp. 2d 980, 1003 (D. Minn. 2005) ("The court needs to look no further than its own order dismissing the . . . litigation to assess the risks involved.").

Nor do the risks end at the pleading stage. Even when a plaintiff is successful at trial, payment is far from guaranteed. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting

[2] Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

[3] *See* Ex. 6 (excerpt from Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023) ("NERA Report") at p. 11 (Fig. 11) (finding motion to dismissed filed in 96% of securities class action lawsuits, with a decision reached in 73% of the cases, and stating that "[a]mong the cases where a decision was reached, 61% were granted (with or without prejudice) and only 20% were denied.").

firm reversed on appeal on loss causation grounds and judgment entered for defendant).[4]

The riskiness and expense of this complex action was further exacerbated by the international dimensions of the case. Many of the Defendants and witnesses reside in India and elsewhere internationally, and Eros had subsidiaries based all over the world, including in India, Dubai and London. Class Counsel also knew that even if Lead Plaintiffs were to prevail at trial, it could prove difficult to execute on a judgment against Defendants and their overseas assets. There was, therefore, a strong possibility that the case would yield little or no recovery after many years of costly litigation. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (observing that "Defendants prevail outright in many securities suits."); *In re Ocean Power Tech., Inc., Sec. Litig.*, 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain.").

[4] *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing jury verdict awarding investors $2.46 billion on loss causation and damages grounds, and remanding for new trial on these issues), *reh'g denied* (July 1, 2015); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1235 (10th Cir. 1996) (overturning securities-fraud class-action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *In re Apple Computer Sec. Litig.*, 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions).

Despite facing long odds, Class Counsel vigorously pursued this case for approximately four and a half years—working 3,676.85 hours and advancing $164,323.49 in out-of-pocket expenses, all on a fully continent basis. Among other things, Class Counsel:

- drafted a motion for consolidation and appointment of lead plaintiffs pursuant to the PSLRA;
- conducted an extensive investigation of the claims asserted in the Action, which included, among other things: (a) reviewing and analyzing (i) Eros' U.S. Securities and Exchange Commission ("SEC") filings, (ii) public reports, blog posts, research reports prepared by securities and financial analysts, and news articles related to Eros, (iii) investor call transcripts, (iv) EIML's[5] public filings and press releases; and (v) other litigation and publicly available material concerning Eros; (b) researching relevant International Financial Reporting Standards ("IFRS") and GAAP accounting standards; and (c) retaining and working with private investigators in India and the U.S. who conducted investigations in the two countries that involved, *inter alia*, numerous interviews of former Eros employees and other sources of potentially relevant information;
- consulted extensively with experts in the fields of accounting, loss causation, and damages;
- utilized the comprehensive investigation and additional research to draft and file the 66-page Consolidated Class Action Complaint for Violations of the Federal Securities Laws ("FAC"), which asserted violations of the Securities Exchange Act of 1934 (the "Exchange Act");
- researched, drafted, and filed an opposition to Defendants' motion to dismiss the FAC, which led to the Court partially sustaining the FAC;
- engaged in an unsuccessful mediation process overseen by a highly experienced third-party mediator, Jed Melnick, Esq., of JAMS, which involved an exchange of written submissions concerning the facts of the case, liability and damages, and a full-day formal mediation session;

[5] EIML refers to Eros International Media Limited, a publicly traded subsidiary of Eros, which trades in India.

- conducted substantial additional investigation and research and drafted the 88-page Amended Consolidated Class Action Complaint for Violations of the Federal Securities Law ("SAC") and the 146-page Third Amended Consolidated Class Action Complaint for Violations of the Federal Securities Law ("TAC");
- researched, drafted, and filed an omnibus opposition to the separate motions to dismiss the TAC filed by (a) defendant Prem Parameswaran ("Parameswaran"); and (b) defendants Eros International PLC ("Eros"), Andrew Warren ("Warren") and Kishore Lulla ("Lulla");
- engaged in numerous meet and confer discussions with Defendants' Counsel concerning, *inter alia*, the lifting of the PSLRA automatic stay of discovery as well as resolution of this Action;
- negotiated for Defendants to produce documents prior to a second mediation, reviewed and analyzed the approximately 16,516 pages of documents produced by Defendants, and engaged in a mediation process overseen by David Murphy, Esq. of Phillips ADR, which involved an exchange of written submissions concerning the facts of the case, liability and damages, a formal mediation session, and weeks of further negotiations that culminated in a mediator's recommendation to resolve the Action for $25 million in cash;
- worked with a consulting damages expert to craft a plan of allocation that treats Lead Plaintiffs and all other members of the proposed Settlement Class fairly;
- prepared the initial draft, and negotiated the terms, of the Stipulation (including the exhibits thereto) and the Supplemental Agreement;
- drafted the preliminary approval motion and supporting papers;
- worked with the Court appointed Claims Administrator to provide notice to the Settlement Class; and
- drafted the final approval motion and supporting papers. *See* ¶7.

As compensation for their significant efforts and achievements on behalf of the Settlement Class, Class Counsel respectfully request a fee award in the amount of 33⅓% of the Settlement Fund. The requested fee is consistent with fee awards in

comparable class action settlements, whether considered as a percentage of the Settlement or in relation to Class Counsel's lodestar. Indeed, the requested fee represents a multiplier of 3.04 on Class Counsel's lodestar, which is well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one. *See In re Interpublic Sec. Litig.*, 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) ("In recent years multipliers of between 3 and 4.5 have been common in federal securities cases."); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. 2005) (awarding fee equating to 6.96 multiplier).

Class Counsel also seek reimbursement of $164,323.49 in out-of-pocket litigation expenses incurred in prosecuting the Action. *See* ¶¶95-96. This amount is below the $245,000 limit on Litigation Expenses disclosed in the Notice—which, by definition, included PSLRA awards to Lead Plaintiffs. The expenses are reasonable in amount and were necessarily incurred in the successful prosecution of the Action. Accordingly, they should be approved.

Finally, Class Counsel respectfully request PSLRA awards in the aggregate amount of $30,000 to compensate Lead Plaintiffs for the time and effort they have expended on behalf of the Settlement Class. Ex. 4 ("Opus Decl."); Ex. 5 ("AI Decl."). Each Lead Plaintiff, *inter alia*, reviewed the pleadings and briefs filed in the Action, as well as court orders; regularly communicated with Lead Counsel about the litigation and the strengths and weaknesses of the case; were involved in

settlement negotiations; and, after extensive discussions with Lead Counsel, authorized settlement of the case. Ex. 4 at ¶¶4-6; Ex. 5 at ¶¶4-6. But for their "commitment to pursuing these claims, the successful recovery for the Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

For all the reasons set forth herein, and in the Joint Declaration, Class Counsel respectfully request that the Court award attorneys' fees of 33⅓% of the Settlement Fund, approve reimbursement of $164,323.49 in out-of-pocket litigation expenses, and grant PSLRA awards of in the aggregate amount of $30,000 (or the equivalent of $15,000 to each Lead Plaintiff).

II. SUMMARY OF FACTUAL AND PROCEDURAL HISTORY

The Joint Declaration is an integral part of this submission. For the sake of brevity, the Court is respectfully referred to it for a more detailed description of, *inter alia*: (i) the factual and procedural history of the Action; (ii) the nature of the claims asserted; (iii) the extensive negotiations leading to Settlement and the Parties' signing of the Amended Stipulation; (iv) the risks and uncertainties of continued litigation; and (v) a description of the services Class Counsel provided for the benefit of the Settlement Class. ¶¶12-76.

III. THE COURT SHOULD APPROVE THE FEE REQUEST

A. Class Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

The Supreme Court "has recognized consistently that 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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Third Circuit and courts within this circuit have reached the same conclusion. *E.g.*, *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("[W]e agree with the long line of common fund cases that hold that attorneys 'whose efforts create, discover, increase, or preserve a [common] fund' . . . are entitled to compensation."); *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.").

Common fund fee awards, such as the 33⅓% of the Settlement Fund requested here, encourage and support meritorious class actions and thus promote private enforcement of, and compliance with, the federal securities laws, as well as representation of those seeking redress for damages inflicted on entire classes of persons. *See, e.g.*, *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (stating that goal of awarding fees from common fund is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel

litigation"); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 750-51 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("Fair awards . . . encourage and support other prosecutions, and thereby forward the cause of securities law enforcement and compliance."). Indeed, the Supreme Court has emphasized that private securities cases, such as this Action, are "an indispensable tool with which defrauded investors can recover their losses – a matter crucial to the integrity of domestic capital markets." *Tellabs, Inc. v. Makor Issues & Rights. Ltd.*, 127 S. Ct. 2499, 2508 n.4 (2007); *see also Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 478 (2013) (recognizing that "Congress, the Executive Branch, and this Court, moreover, have recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions").

Class Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class, and utilize a lodestar cross-check to confirm that the fee is reasonable. The percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (stating that in common fund cases "a reasonable fee is based on a percentage of the fund bestowed on the class"); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (the percentage of recovery method "is generally

favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.").[6]

A percentage-of-the-fund fee award is also consistent with the PSLRA, which 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" recovered for the class. 15 U.S.C. § 78u-4(a)(6); *see also Rite Aid I*, 396 F.3d at 300 ("Consistent with past jurisprudence, the percentage-of-recovery method was incorporated in the Private Securities Litigation Reform Act of 1995.").[7] Thus, "[f]or the past [three] decade[s], counsel fees in securities litigation have generally been fixed on a percentage basis rather than by the so-called lodestar method." *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001).

Use of the percentage method does not, however, render the lodestar irrelevant. The Third Circuit has recommended that the percentage award be "cross-checked" against the lodestar method to ensure its reasonableness. *Sullivan*, 667 F.3d at 330; *see also Rite Aid I*, 396 F.3d 294, at 300 ("we do not believe the

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[6] *Accord In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("*Rite Aid I*"); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333; *Gunter*, 223 F.3d at 195.

[7] *See also Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 643 (5th Cir. 2012) ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such a calculation.").

[PSLRA] precludes the use of the lodestar method as a check on the percentage-of-recovery calculation."). Of course, a cross-check is just that, and "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T Corp.*, 455 F.3d at 164.

As demonstrated below, Class Counsel's requested award of attorneys' fees of 33⅓% of the Settlement Fund is fair and reasonable. It should, therefore, be approved.

B. Application of the *Gunter* and *Prudential* Factors Supports Class Counsel's Request for a 33⅓% Fee

In reviewing an attorneys' fee award request in a class action settlement, the Third Circuit looks at a number of factors known as the "*Gunter* factors" and the "*Prudential* factors." *AT&T Corp.*, 455 F.3d at 165. The *Gunter* factors include:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Id. at 165. The *Prudential* factors include:

> (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any "innovative" terms of settlement.

Id. Analysis of the relevant factors supports the requested award.[8]

1. The Size of the Fund Created and the Number of Persons Benefited

"The first *Gunter* factor analyzes the size of the fund created and the number of persons benefitted." *Hall v. AT & T Mobility LLC*, 2010 WL 4053547, at *16 (D.N.J. Oct. 13, 2010). The sufficiency of the result achieved is one of the primary factors to be considered in assessing the propriety of an attorneys' fee award. *Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *6 (D.N.J. Dec. 31, 2009) (finding this factor "[m]ost important"); *In re Merck & Co., Sec., Derivative & "ERISA" Litig.*, 2016 WL 11686450, at *8 (D.N.J. June 3, 2016) ("The size of the fund is indicative of the success obtained through a settlement, and, accordingly, a significant consideration in evaluating the reasonableness of an award for attorneys' fees.").

The result achieved—a Settlement Amount of $25 million—is an excellent result for the Settlement Class that will provide Settlement Class Members with an immediate cash recovery, while avoiding the substantial expense, delay, risk, and uncertainty of further litigation. Lead Plaintiffs' consulting damages expert estimates that ***if*** Lead Plaintiffs had fully survived Defendants' motions to dismiss,

[8] In application, it is well-established that "courts may give some of these [*Gunter/Prudential*] factors less weight in evaluating a fee award." *Id.* at 166.

prevailed on their claims at both summary judgment and after a jury trial, ***if*** the Court certified the same class period as the Settlement Class Period, ***and if*** the Court and jury accepted Lead Plaintiffs' damages theory, including proof of loss causation as to each of the stock price drop dates alleged in this case—*i.e.*, Lead Plaintiffs' best-case scenario—estimated total ***maximum*** class wide damages would be approximately $389.2 million. Under this scenario, the recovery is approximately 6.4% of classwide damages.

This case was not, however, risk free and there were meaningful barriers to recovery, including, but certainly not limited to, Eros's deteriorating financial condition and delisting from the NYSE, as well as the PSLRA's heightened pleading standard and automatic stay of discovery. Indeed, the Court had already dismissed the majority of Lead Plaintiffs' claims and could do so again. *See In re Eros*, 2021 WL 1560728. If only the current claims were successful, maximum recoverable damages were only approximately $31.3 million, which equates to a recovery of about 80%. A recovery in the range of 6.4-80% is well above the 1.8% median recovery in securities class actions settled in 2022, and approximately ***2.7 to 15.4 times higher*** than the 2.4%-5.2% median recovery in securities cases with similar damages that settled between December 2011-December 2022. *See* Ex. 6 (NERA Report, at 18 (Fig. 19) (median recovery in securities class actions in 2022 was approximately 1.8% of estimated damages); at 17, Fig. 18 (median recovery for

securities class actions that settled between December 2011 and December 2022 was 2.4% for cases with estimated damages between $200-$399 million, and 5.2% for those with estimated damages of $20-$49 million)). Given the range of possible results in this litigation—including no recovery at all—there can be no question that the Settlement constitutes a considerable achievement and weighs heavily in favor of the requested attorneys' fee award.

Furthermore, the Settlement will benefit a significant number of investors. The Settlement Class consists of all persons and entities who or which purchased or otherwise acquired Eros Securities between July 28, 2017, and August 3, 2021, inclusive, and were damaged thereby (excluding certain limited sub-categories of purchasers and acquirers). Stipulation, ¶1(ss). The Claims Administrator has mailed approximately 22,860 copies of the Notice and Claim Form to potential Settlement Class Members. *See* Ex. 1 ("Mahn Mailing Declaration") at ¶10. While the claims filing deadline does not end until December 6, 2023—and the vast majority of claims will be filed on or near the deadline—as of October 18, 2023, approximately 329 Claims have been submitted. *Id*. at ¶¶12. Based on past experience, Class Counsel expect that the Settlement will benefit hundreds, if not thousands, of investors. *Id*. Thus, the size of the fund and the number of persons benefitted support approving the requested fee.

2. There Have Been No Objections by Settlement Class Members

The reaction of the Settlement Class to the requested fee is also important. Courts consider "the presence or absence of substantial objections by members of the class to the settlement and/or fees requested by counsel." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *9 (D.N.J. July 29, 2013) (Salas, J.).

While the deadline for objections is not until November 7, 2023, and thus has not yet passed, there have been no objections to the request for attorneys' fees and Litigation Expenses included in the Notice.[9] ¶92; Mahn Mailing Decl. ¶23. "[T]he absence of substantial objections by class members to the fee requests weigh[s] in favor of approving the fee request." *Rite Aid I*, 396 F.3d at 305; *Dartell v. Tibet Pharm., Inc.*, 2017 WL 2815073, at *9 (D.N.J. June 29, 2017) ("To date, no class member has objected to the requested fees. Accordingly, the reaction from the class supports the fee request.").

3. The Skill and Efficiency of Class Counsel Supports the Request

The skill and efficiency of counsel 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 the counsel, the skill and professionalism with

[9] Any objections or requests for exclusions received after the date of this submission will be addressed in the reply brief, which will be filed with the Court by November 13, 2023.

which counsel prosecuted the case and the performance and quality of opposing counsel." *Hall*, 2010 WL 4053547, at *19.

Class Counsel are nationally known leaders in the fields of securities class actions and complex litigation. *See* Ex. 2-C (GPM firm resumé); Ex. 3-C (Carella Byrne firm resumé); *see also* ECF No. 20 at 24-25 ("both firms [GPM and Carella Byrne] have substantial experience litigating securities fraud class actions and are thus competent to fulfill the duties of lead counsel and liaison counsel."). The quality of the representation is demonstrated by the substantial benefit achieved for the Settlement Class and the efficient, effective prosecution and resolution of the Action. The significant recovery obtained for the Settlement Class is a direct result of the efforts of highly skilled and specialized attorneys who possess extensive experience in the prosecution of complex securities class actions. From the outset of the action, Class Counsel engaged in a concerted effort to obtain the maximum recovery for the putative class and committed considerable resources and time in the research, investigation, and prosecution of the case. Based upon Class Counsel's diligent efforts and their skill and reputation, they were able to negotiate a highly favorable result under difficult and challenging circumstances. Such quality, efficiency, and dedication support the requested fee. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) (noting "the single clearest factor

reflecting the quality of class counsels' services to the class are the results obtained.").

"The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsel's work." *Hall*, 2010 WL 4053547, at *19. Here, Class Counsel were opposed by Levine Lee LLP and Kasowitz Benson Torres LLP, highly qualified defense firms that zealously represented the interests of their clients and were prepared to litigate this case through trial and appeals. In the face of this experienced, well-financed, determined opposition, who aggressively disputed the issues in this case, Class Counsel were nonetheless able to achieve an outstanding result. The fact that Class Counsel achieved this Settlement "in the face of formidable legal opposition further evidences the quality of their work." *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003); *see also In re Mercedes-Benz Emissions Litig.*, 2021 WL 7833193, *13 (D.N.J. Aug. 2, 2021) ("The competence of opposing counsel favors a finding that Class Counsel prosecuted this case with skill and efficiency."). Accordingly, "this factor strongly weighs in favor of approving the fee request." *Par Pharm.*, 2013 WL 3930091, at *9.

4. The Complexity and Duration of the Litigation Support the Request

The fourth *Gunter* factor is "the complexity and duration of the litigation." *Gunter*, 223 F.3d at 195 n.1; *see also P. Van Hove BVBA v. Universal Travel Grp.*,

Inc., 2017 WL 2734714, at *12 (D.N.J. June 26, 2017) ("The fourth factor captures the probable costs, in both time and money of continued litigation."). Numerous courts—including this one—have recognized that "securities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *Par Pharm.*, 2013 WL 3930091, at *10; *In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 WL 9447623, at *17 (D.N.J. Dec. 9, 2008) ("Federal securities class actions by definition involve complicated issues of law and fact."); *In re GNC S'holder Litig.*, 668 F. Supp. 450, 451 (W.D. Pa. 1987) ("The complexity and concomitant expense of the instant litigation is beyond peradventure."). This Action was no exception.

In addition to the normal difficulties involved in prosecuting a securities class action under the PSLRA,[10] this case involved: (a) almost four and half years of litigation; (b) complicated accounting issues that are inherently subjective and required an understanding of both GAAP and IFRS; (c) Defendants and witnesses located in India and elsewhere internationally; (d) the need to engage investigators in both the U.S. and India; I wasting insurance; (f) a corporate defendant facing delisting and financial hardship; (g) extensive consultation with experts in the fields

[10] *See In re AT&T*, 455 F.3d at 170 (noting that "the difficulty of proving actual knowledge under §10(b) of the Securities Exchange Act . . . weighed in favor of approval of the fee request."); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007) (commenting on the "formidable task of proving scienter and loss causation" and the risk to proving damages in a securities class action).

of accounting, loss causation, and damages; (h) the drafting of multiple complaints as a result of a changing factual landscape, including the 146-page TAC; (i) several rounds of motion to dismiss briefing; (j) review and analysis of the approximately 16,516 pages of documents produced by Defendants; and (k) two mediations with two different extremely sophisticated mediators; all of which added to the complexity. *See Rite Aid I*, 396 F.3d at 305 ("Given the complexity of the accounting matters at issue, . . . the shifting factual sands that required several amended complaints . . . the duration of the litigation, and the necessity of resorting to mediation to reach a final settlement, we see no abuse of discretion in the District Court's finding the matter was a complex one.").[11] Thus, even for a securities class action, this case was extremely complex, and had Class Counsel not devoted the necessary resources and attention to the difficult questions raised in the Action, they would not have prevailed. *See In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 632 (D. Colo. 1976) (securities litigation presents "unique and substantial issues of law in the technical area of SEC Rule 10b-5 . . . difficult, complex, and oft-disputed class action questions, and difficult questions regarding computation of damages.").

[11] *Universal Travel*, 2017 WL 2734714, at *7 (noting that "this case has an additional degree of difficulty because much of the relevant evidence is likely located in China" and that "[g]athering evidence in [a foreign country] for litigation that is occurring in the United States is a difficult and expensive process."); *In re Datatec Sys.*, 2007 WL 4225828, at *7 ("securities fraud class actions involving alleged violations of accounting principles are complex actions to prosecute").

Moreover, in the absence of the Settlement, the litigation would inevitably involve substantially more time and money—for continued fact and expert discovery, pre-trial motions (including class certification and summary judgment), trial, post-trial motions, and the appellate process—which would have necessitated thousands of additional attorney hours, extensive use of judicial resources, and hundreds of thousands of more dollars.[12] Consequently, by reaching the Settlement, Class Counsel has obtained "a substantial benefit undiminished by further litigation expenses, without the delay, risk and uncertainty of continued litigation." *In re Computron Software, Inc., Sec. Litig.*, 6 F. Supp. 2d 313, 318 (D.N.J. 1998). Under such circumstances, the "Complexity and Duration" factor plainly weighs in favor of the requested fee. *See Universal Travel*, 2017 WL 2734714, at *12 ("In light of the potential length, the likely additional costs of this securities class action, and the fact that the Defendants have wasting insurance policies, a one-third fee is reasonable.").

5. The Risk of Nonpayment Supports the Requested Fee

"Courts in the Third Circuit have consistently recognized that the attorneys' contingent fee risk is an essential factor in determining a fee award." *In re*

[12] As noted above, Lead Plaintiffs engaged in informal discovery in conjunction with the second mediation. "Informal discovery leading to an early settlement that avoids [litigation] costs favors approval of the fee application." *In re AremisSoft*, 210 F.R.D. at 133.

Mercedes-Benz, 2021 WL 7833193, at *14; *see also Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval." (collecting cases)); *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *21 (D.N.J. Nov. 10, 2016) ("Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees.").

Here, Class Counsel undertook this class action on a ***fully*** contingent basis. ¶86. Thus, for nearly four and a half years, Class Counsel have carried both the substantial out-of-pocket costs of litigation and the risk of not being paid for their services. Contingency risk alone is a factor supporting the requested fee. This is because "[l]awyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 138[2] (5th Cir. 1981) overruled on other grounds by *Int'l Woodworkers of Am., AFL-CIO & its Local No. 5-376 v. Champion Int'l Corp.*, 790 F.2d 117[4] (5th Cir. 1986); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) ("[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success."); *Hall*, 2010 WL 4053547, at *20.

Further, the risk of loss in this case was not illusory. Securities fraud cases are extremely complicated, subject to the heightened pleading standard and automatic stay of discovery of the PSLRA, and success is never assured. *See Yedlowski*, 2016 WL 6661336, at *21 ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain."); *see also Goldstein v. MCI WorldCom*, 340 F.3d 238 (5th Cir. 2003) (affirming dismissal with prejudice of securities fraud class action complaint against Bernard Ebbers and WorldCom arising out of a massive securities fraud that resulted in a $685 million write-off of accounts receivable, for which Ebbers was later convicted). This case was no different. Class Counsel faced significant pleading challenges, as well as the substantial risks of establishing liability and damages. *See* ¶¶14-55; Lead Plaintiffs' Memorandum in Support of Final Approval of Settlement, §§III.C.1.-III.C.3.; *see also Par Pharm*., 2013 WL 3930091, at *10. Had Lead Plaintiffs won at trial, there was still the risk of loss on post-trial motions and appeal. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1446, 1449 (11th Cir. 1997) (reversing judgment in plaintiffs' favor and entering judgment in favor of defendant).[13]

[13] *See also In re BankAtlantic Bancorp, Inc. Sec. Litig.*, Case No. 07-61542-Civ., 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants after jury returned verdict for plaintiffs), *aff'd sub nom., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (where the class won a substantial jury verdict and motion for judgment N.O.V. was denied; on appeal, the judgment was reversed and the case was dismissed – after 11 years of litigation).

It is also important to note that even if Lead Plaintiffs ultimately prevailed after several more years of litigation, collecting on a judgment was not guaranteed. Eros has been delisted from the NYSE, has not filed audited financial statements with the SEC in approximately three (3) years (last audited financials filed 10-30-2020), its officers' and directors' insurance policies were wasting, and the Defendants' assets are disbursed throughout the world. *See* ¶53; *see also Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000) (finding "[t]he risk of nonpayment in this case was acute" where, *inter alia*, the corporate defendant "lacked significant unencumbered hard assets against which plaintiffs could levy had a judgment been obtained" and there was "the risk that the wasting policy would run out by the time a trial was over").

Despite the risk that Class Counsel's significant commitment of time, money and effort could go uncompensated, Class Counsel vigorously prosecuted the Settlement Class's claims and never wavered in their commitment to the case. Class Counsel's willingness to accept the risk of loss is perhaps best evidenced by their decision not to settle for what they considered an inadequate recovery at the first mediation, and to instead continue litigating. *See* ¶¶21-22. Consequently, this factor weighs in favor of approving Lead Counsel's fee request. *See Rowe v. E.I. Dupont De Nemours and Co.*, 2011 WL 3837106, at *20-*21 (D.N.J. Aug. 26, 2011) (finding this factor weighed in favor of the requested fee where counsel diligently

prosecuted class members' claims despite the risk that counsel's significant time and efforts could go uncompensated); *see also Barnes v. Winking Lizard, Inc.*, 2019 WL 1614822, at *5 (N.D. Ohio Mar. 26, 2019) ("Class Counsel provided representation on a purely contingency fee basis, advancing all litigation costs and receiving no payment unless there was a recovery, and should be compensated for that risk.").

6. Class Counsel Devoted Significant Time to the Case

To date, Class Counsel have expended over 3,676.85 hours and advanced over $164,323.49 in out-of-pocket expenses on this case. ¶¶80, 95. These numbers reflect Class Counsel's commitment to vigorously pursuing this Action for the benefit of Lead Plaintiffs and the Settlement Class. Furthermore, additional hours and resources will necessarily be expended assisting Settlement Class Members with their Proof of Claim forms, responding to Settlement Class Members' inquiries, shepherding the claims process to conclusion, and filing a distribution motion. No additional compensation will be sought for this work. Accordingly, this factor supports approval of the requested attorney fees. *See Leach v. NBC Universal Media, LLC*, 2017 WL 10435878 at ¶49 (S.D.N.Y. Aug. 24, 2017) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request.").

7. Approval of Similar Awards in Similar Cases Supports the Request

With respect to the final *Gunter* factor, "the court must (1) compare the award requested with other awards in comparable settlements; and (2) ensure that the award is consistent with what the attorney would have received had the fee been negotiated on the open market." *Hall*, 2010 WL 4053547, at *21.[14] As to the first prong of the inquiry, numerous courts within the Third Circuit, including the District of New Jersey, have awarded fees of 33⅓% of the recovery, even in cases involving much larger settlement funds than the instant case. *See In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee percentage [of] 31.71%" with a median value that "turns out to be one-third"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *12 (D.N.J. Nov. 9, 2005) (one-third of $75 million); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (awarding 33⅓% of $41,500,000 settlement fund and noting that "awards in similar common fund cases appear analogous" and award was "consistent with other similar cases"); *Bodnar v. Bank of America, N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016) (awarding 33% of $27.5 million settlement fund and "find[ing] that an

[14] The second prong of this *Gunter* factor is substantially similar to the second *Prudential* factor. *See AT&T Corp.*, 455 F.3d at 165 (listing factors).

award of 33% of the Settlement Fund is consistent with similar awards throughout the Third Circuit."); *Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at *28 (E.D. Pa. Apr. 21, 2020) (awarding 33⅓% of $65,877,600 settlement fund); *In re General Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (awarding one-third of $48 million); *Bradburn Parent Teacher Store, Inc. v. 3M (Minnesota Mining and Manufacturing Company)*, 513 F.Supp.2d 322, 338 (E.D. Pa. 2007) (awarding 35% of $39,750,000 settlement fund, plus expenses).[15]

"The requested fee of 33⅓% is also consistent with a privately negotiated contingent fee in the marketplace." *Hall*, 2010 WL 4053547, at *21. "Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation." *Remeron Direct Purchaser*, 2005 WL 3008808, at *16; *see also In re Orthopedic Bone Screw Prods. Liab. Litig.*, 2000 WL 1622741,

[15] *See also* Ex. 7 (collecting cases); *Lincoln Adventures, LLC v. Those Certain Underwriters At Lloyd's, London Members of Syndicates*, 2019 WL 13159891, at *1 (D.N.J. Oct. 3, 2019) (awarding one-third of $21,900,000 settlement fund and stating "the amount of attorneys' fees is consistent with awards in similar cases"); *In re Virgin Mobile USA IPO Litig.*, No. 07-cv-5619 (SDW), ECF No. 146 at ¶17 (D.N.J. Dec. 8, 2010) (awarding 33⅓% of $19.5 million settlement) (Ex. 9); *Johnson v. Community Bank, N.A.*, 2013 WL 6185607, at *8 (M.D. Pa. Nov. 25, 2013) ("An award of one-third of the settlement is consistent with this Court's prior decisions and with cases decided throughout the Third Circuit."); *Myers v. Jani-King of Philadelphia, Inc.*, 2019 WL 4034736, at *11 (E.D. Pa. Aug. 26, 2019) ("the requested fee of one-third (1/3) of the settlement amount is reasonable in comparison to awards in other cases."); *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) ("courts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses.").

at *7 (E.D. Pa. Oct. 23, 2000) (noting that "plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery."); *Tibet Pharm.*, 2017 WL 2815073, at *11 (similar); *Rowe*, 2011 WL 3837106, at *22 (awarding 33⅓% as "consistent with a privately negotiated contingent fee in the marketplace").

Finally, given that this is a PSLRA case, it also important to note that both Lead Plaintiffs are sophisticated institutional investors, that the attorneys' fee request is consistent with the retainer agreements that Lead Plaintiffs entered with GPM at the start of this litigation (¶¶93, 103), and that Lead Plaintiffs support the attorneys' fee request. *See* Ex. 4 (Opus Decl.), ¶10; Ex. 5 (AI Decl.), ¶10. This is because, "under the PSLRA, courts should accord a presumption of reasonableness to any fee request submitted pursuant to a retainer agreement that was entered into between a properly selected lead plaintiff and a properly selected . . . lead counsel." *In re Cendant Corp.*, 264 F.3d at 282-83 ; *see also In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("We expect, however, that district courts will give serious consideration to negotiated fees because PSLRA [L]ead [P]laintiffs often have a significant financial stake in the settlement, providing a powerful incentive to ensure that any fees resulting from that settlement are reasonable."). Thus, the requested fee award is strongly supported by both subparts of the final *Gunter* factor, and second *Prudential* factor.

8. The Settlement Is Solely Attributable to the Efforts of Lead Plaintiff and Plaintiff's Counsel

The Third Circuit has also advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement actions concerning the alleged wrongdoing because this can indicate whether counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338 (instructing district court to determine what benefits of the settlement were created by class counsel and what benefits came from a federal or state agency investigation).

Here, rather than benefiting from a government investigation, the lack of government intervention would support Defendants' claims that they did nothing wrong. Defendants would be able to point to the fact that the Securities and Exchange Commission had at least ***twice*** before investigated Eros, but had not brought enforcement proceedings. Moreover, there were no convictions, no guilty pleas, no admissions, and no formal financial restatements. This lack of government enforcement could create additional challenges to proving the alleged claims, as a jury could have been persuaded that the lack of charges or convictions and other significant recoveries meant no fraud was perpetrated. *See In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *30 (D.N.J. Oct. 1, 2013) (granting fee request where the case was the antithesis of cases where liability is virtually certain due to a financial restatement); *In re Xcel*, 364 F. Supp. 2d at 995 (noting that

one of the many hurdles plaintiffs faced was the fact that the case did not involve a restatement of financials). Thus, the benefits accruing to the Settlement Class derive solely from the efforts of Class Counsel. *See Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *3 (N.D. Ill. May 7, 2012) (fee request supported by fact that "there were no governmental investigations or prosecutions related to the alleged fraud upon which Class Counsel could rest their theory of the case. Rather, they investigated the facts and developed their theory of liability from scratch, involving significant time and expense.").

9. There Are No Unusual Terms in the Settlement

The terms of the Settlement, providing a monetary benefit to the Settlement Class in return for releases, are otherwise standard, and thus, "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg Prods. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012); *In re Merck & Co.*, 2010 WL 547613, at *12 (finding factor neutral when no innovative terms are highlighted).

Accordingly, the *Gunter* and *Prudential* factors strongly favor approving the fee request.

C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Because application of the *Gunter/Prudential* factors demonstrate that the requested fee is not "clearly excessive," a lodestar cross-check is not required. *See*,

e.g., *In re Cendant Corp.*, 264 F.3d at 221. Still, courts may "cross-check the percentage award at which [it] arrive[s] against the 'lodestar' award method[.]" *Gunter*, 223 F.3d at 195 n.1; *see also Prudential*, 148 F.3d at 333. Here, application of a lodestar cross-check confirms that the requested 33⅓% fee is fair and reasonable.

A "lodestar award is calculated by multiplying the number of hours reasonably worked on a [] case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *Rite Aid I*, 396 F.3d at 305. The "cross-check" is then performed by dividing the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier. *AT&T*, 455 F.3d at 164 n. 4. "The multiplier is a device that attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work." *Rite Aid I*, 396 F.3d at 305-06; *see also Ikon*, 194 F.R.D. at 195 (multiplier may be used to "reflect the risks of nonrecovery, to reward an extraordinary result, or to encourage counsel to undertake socially useful litigation.").

In "cross-checking" the percentage of recovery award against the lodestar, the Third Circuit has emphasized that the calculation is "not a full-blown lodestar inquiry" and need not entail "mathematical precision" or "bean-counting." *AT&T*, 455 F.3d at 169, n.6 (*quoting Rite Aid I*, 396 F.3d at 306); 455 F.3d at 164 ("The

lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method."). Accordingly, "the district court[] may rely on summaries submitted by [counsel] and need not review [] billing records." *Rite Aid I*, 396 F.3d at 306-07.

Here, Class Counsel (including attorneys, paralegals, and professional support staff) collectively devoted a total of 3,676.85 hours to the prosecution of this Action, resulting in a lodestar of $2,740,008.50. ¶80.[16] Based on a 33⅓% fee (equal to $8,333,333), Lead Counsel's lodestar of yields a multiplier of 3.04. *Id*. This multiplier is well within the range of multipliers commonly awarded in securities class actions and other complex litigation. *See Rite Aid*, 146 F. Supp. 2d at 736 at n.44, and 362 F. Supp. 2d at 589 (awarding percentage equating to a multiplier of between 4.5 and 8.5 on 2001 settlement and multiplier of 6.96 on the 2005 settlement); *AremisSoft*, 210 F.R.D. at 135 (awarding percentage of the fund equating to 4.3 multiplier); *Bodnar*, 2016 WL 4582084, at *6 (awarding 33% of $27.5 million settlement fund that resulted in a multiplier of 4.69, and finding "that the multiplier is appropriate and reasonable, including when compared to awards in other cases in

[16] Class Counsel's rates range from $750 to $1,100 for partners, and $400 to $700 for non-partners (¶81), and "are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude." *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021) (approving GPM's ***2021*** rates of $600 to $995 for partners, and $500 to $750 for associates); *see also* Ex. 8 (chart of rates charged by peer plaintiff and defense counsel in complex litigation).

this court and Circuit."); *Schuler v. The Meds. Co.*, 2016 WL 3457218, at *9-*10 (D.N.J. June 24, 2016) (awarding one-third of settlement fund, resulting in 3.57 multiplier in case that settled ***before decision on motion to dismiss***); *AT&T*, 455 F.3d at 173 ("[W]e approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated 'was neither legally nor factually complex'" and that settled in 4 months); *Maley v. Del Global Techs Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country[]").[17]

Moreover, additional hours will be expended, *inter alia*, overseeing the claims process and filing a distribution motion. Because no additional compensation will be sought for this work, the multiplier will decrease by the time the Action concludes. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424,

[17] *See also In re Cendant Corp. Sec. Litig.*, 404 F.3d at 183 n.4 (noting that the fee award challenged on appeal "would appear to lead to a multiplier in the mid-single digits," and then affirming the award without further discussion of the multiplier); *Meijer, Inc. v. 3M*, 2006 WL 2382718 at *24 (E.D. Pa. Aug. 14, 2006) (approving a percentage fee award that translated to a 4.77 multiplier); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *Athale v. Sinotech Energy Ltd.*, 2013 WL 11310686, at *8 (S.D.N.Y. Sept. 4, 2013) (stating that courts routinely award lodestar multipliers of "between four and five"); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (awarding fee representing a multiplier of 5.2, which was "large, but not unreasonable."); *Burns v. Falconstor Software, Inc.*, 2014 WL 12917621, at *10 (E.D.N.Y. Apr. 10, 2014) (finding fee award of 33.3% "reasonable" based on cross-check multiplier of 4.75).

at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable.").

IV. CLASS COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

"'Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.'" *Universal Travel*, 2017 WL 2734714, at *13 (*quoting In re Cendant Corp.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002)).

Here, Class Counsel expended $164,323.49 in out-of-pocket costs, which are divided into categories and itemized in the declarations submitted by each individual firm. *See* ¶¶95-96; Ex. 2-B (breakdown of GPM's expenses) and Ex. 3-B (breakdown of Carella Byrne's expenses). These Litigation Expenses are well-documented, based on the books and records maintained by Plaintiff's Counsel, and reflect the costs of prosecuting this Action. *Id.* They include, among other things, fees for experts and investigators; mediation fees; online legal research costs; travel and lodging expenses; copying; mail; and telephone. Reimbursement of similar expenses is routinely permitted. *See In re Remeron End-Payor Antitrust Litig.*, 2005

WL 2230314, at *32 (D.N.J. Sept. 13, 2005) (approving reimbursement of "costs expended for purposes of prosecuting this litigation, including substantial fees for experts; … travel and lodging expenses; [and] copying costs"); *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, 2008 WL 4974782, at *18 (E.D. Pa. Nov. 21, 2008) (approving reimbursement of expenses for "duplication costs, online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, [and] transportation" based on declarations of counsel); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (similar).

The Notice informed Settlement Class Members that Lead Counsel would seek reimbursement of Litigation Expenses up to $245,000 (including the PSLRA awards to the Plaintiffs)—and to date, there have been no objections. ¶97; Mahn Mailing Decl., Ex. A (Notice) ¶¶ 5, 69. The requested Litigation Expenses should, therefore, be awarded. *See Rite Aid*, 146 F. Supp. 2d at 736 ("plaintiffs seek reimbursement of expenses . . . which they have detailed in their submissions to us. These out-of-pocket expenses . . . are compensable . . . they are also unobjected to and, in our judgment, reasonable").

V. LEAD PLAINTIFFS SHOULD BE GRANTED PSLRA AWARDS

In connection with their request for reimbursement of Litigation Expenses, Class Counsel also respectfully requests a PSLRA award to Lead Plaintiffs in the

aggregate amount of $30,000 (or $15,000 per Lead Plaintiff) for time spent prosecuting the Action. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

Here, each Lead Plaintiff, through its investment managers or employees thereof, *inter alia*, reviewed and authorized the filing of a case that was later consolidated into this one;[18] produced trading records to Lead Counsel; moved to be appointed as one of the lead plaintiffs in this Action; regularly communicated with Lead Counsel regarding the posture and progress of the case; reviewed all significant pleadings and briefs filed in the Action; reviewed the Court's orders and discussed them with counsel; consulted with counsel regarding the settlement negotiations; and evaluated and approved the proposed Settlement. *See* Opus Decl., ¶¶4-6; AI Decl., ¶¶4-6. These are "precisely the types of activities that support awarding reimbursement of expenses to class representatives[]" (*see In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009)); the

[18] That case, styled *Opus Chartered Issuances S.A., Compartment 127 v. Eros International PLC et al*, Case No. 2:19-cv-07242 (C.D. Cal.) (the "*Opus* action") was transferred to this Court, where it was assigned Case No. 2:19-cv-18547. By order dated April 14, 2020, this Court consolidated the *Opus* action and two other class actions, and recaptioned them as *In re Eros International Plc Securities Litigation*, Civil Action No. 19-cv-14125. ECF No. 21.

requests are eminently reasonable given the time each Lead Plaintiff dedicated to this matter (Opus Decl., ¶13; AI Decl., ¶13); and the amounts sought are consistent with awards in other complex cases. *See Par Pharm.*, 2013 WL 3930091, at *11 (awarding lead plaintiff $18,000 pursuant to PSLRA).[19] Consequently, Class Counsel respectfully requests that the Court approve the awards.

VI. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court grant their motion.[20]

[19] *See also Sun v. Han et al.*, No. 2:15-cv-00703-JMV-MF, ECF No. 77 at ¶6 (D.N.J. Mar. 6, 2018) (awarding lead plaintiff $20,000 out of $1.25 million settlement prior to class certification) (Ex. 10); *In re Virgin Mobile USA IPO Litig.*, No. 07-cv-5619 (SDW), ECF No. 146 at ¶19 (D.N.J. Dec. 8, 2010) (awarding co-lead plaintiffs $29,370, $29,205, $30,000, and $25,245 respectively, for a combined total of $113,820 out of $19.5 million settlement after commencement of discovery but prior to class certification) (Ex. 9); *San Antonio Fire and Police Pension Fund et al v. Dole Food Company Inc. et al*, No. 1:15-cv-1140-LPS, ECF No. 100 at ¶¶6-8 (D. Del. Jul. 18, 2017) (collectively awarding three lead plaintiffs $54,996.20 for their reasonable costs and expenses where settlement was reached shortly after discovery commenced) (Ex. 11); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *24 (S.D.N.Y. July 21, 2020) (collecting cases and awarding $25,410 to lead plaintiff).

[20] A proposed order will be submitted with Class Counsel's reply papers, after the deadlines for objections and seeking exclusion have passed.

Dated: October 23, 2023

Respectfully Submitted

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and the proposed Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2023, I caused the foregoing to be filed electronically with the Clerk of the Court using the ECF system, which will send notification of such filing to all parties.

Respectfully submitted,

October 23, 2023

/s/ James E. Cecchi
James E. Cecchi