UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SEB INVESTMENT MANAGEMENT AB, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENDO INTERNATIONAL PLC, *et al.*, Defendants.	Civ. A. No. 2:17-CV-3711-TJS ELECTRONICALLY FILED

LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Pursuant to Federal Rule of Civil Procedure 23(h), Lead Counsel, Kessler Topaz Meltzer & Check, LLP, hereby moves this Court, before the Honorable Timothy J. Savage, on December 11, 2019 at 10:00 a.m. in Courtroom 9A of the James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA, 19106, or at such other location and time as set by the Court, for entry of an Order awarding attorneys' fees and reimbursement of Litigation Expenses.[1]

This Motion is based upon the accompanying Declaration of Sharan Nirmul in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, the Memorandum of

[1] All capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 22, 2019.

Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and all other papers and proceedings herein.

Dated: November 1, 2019

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

s/ Sharan Nirmul
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Counsel for Lead Plaintiff SEB Investment Management AB and the Settlement Class

CERTIFICATE OF SERVICE

I, Sharan Nirmul, hereby certify that on November 1, 2019, a true and correct copy of the foregoing motion and supporting documents has been electronically filed with the Clerk of Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's ECF system to all counsel of record.

s/ Sharan Nirmul
Sharan Nirmul

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SEB INVESTMENT MANAGEMENT AB, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENDO INTERNATIONAL PLC, *et al.*, Defendants.	Civ. A. No. 2:17-CV-3711-TJS ELECTRONICALLY FILED

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Pursuant to Federal Rule of Civil Procedure ("Rule") 23(h), Court-appointed Lead Counsel Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz" or "Lead Counsel") respectfully submits this memorandum of law in support of its motion for: (i) an award of attorneys' fees in the amount of 20% of the Settlement Fund; (ii) reimbursement from the Settlement Fund of $962,916.92 for Litigation Expenses that were reasonably and necessarily incurred by Lead Counsel in prosecuting and resolving the Action; and (iii) an award of $32,074.20 to Court-appointed Lead Plaintiff, SEB Investment Management AB ("SEB IM" or "Lead Plaintiff"), for its costs directly related to representing the Settlement Class, as authorized by the Private Securities Litigation Reform Act of 1995 ("PSLRA").[1]

I. PRELIMINARY STATEMENT

After nearly two years of dedicated litigation efforts, Lead Counsel has successfully negotiated a settlement of this securities class action with Defendants. The proposed Settlement, if approved by the Court, will resolve this case in its entirety in exchange for $82.5 million in cash. Based on Lead Counsel's and Lead Plaintiff's thorough understanding of the risks and uncertainties in this litigation, the assessment of approximate class wide damages, and the ability of Defendants to withstand a greater judgment at some point in the future, this recovery is an outstanding result for the Settlement Class. It exceeds the average recovery in securities class action lawsuits and, in fact, represents a substantial portion of the Settlement Class's potential

[1] All capitalized terms used herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 22, 2019 (ECF No. 83-2) ("Stipulation") or in the Declaration of Sharan Nirmul in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Nirmul Declaration" or "Nirmul Decl."), filed herewith. Citations to "¶ __" herein refer to paragraphs in the Nirmul Declaration and citations to "Ex. __" herein refer to exhibits to the Nirmul Declaration. Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

aggregate damages ($380 million to $722.5 million)[2] under various potential litigation outcomes assuming the Settlement Class prevailed on all or a portion of its claims.[3]

The benefits of the Settlement are clear when weighed against the risk that the Settlement Class might recover less than the Settlement Amount (or nothing) if the Action were litigated through further discovery, summary judgment, trial, and any appeals. In addition, Lead Counsel was concerned about Endo's exposure to opioid-related multi-district litigation, alleged price-fixing anti-competitive multi-district litigation, and other securities litigation, and retained an expert to advise it on Endo's financial condition. The Settlement eliminates this risk as well as the additional litigation risks Lead Plaintiff would face in proving the Settlement Class's claims if the Action continued.

As fully set forth in the Settlement Memorandum, the litigation risks in this complex case were substantial, both from a liability, damages, and loss causation perspective. Lead Counsel assumed all of those risks in litigating the Action by taking this case on a fully contingent basis and devoted substantial resources to prosecuting the Action against highly-skilled opposing counsel in order to achieve the Settlement. To succeed in this litigation, Lead Counsel deployed a large, extremely dedicated group of professionals to develop and aggressively pursue the Action.

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[2] *See* Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement ("Settlement Memorandum") at 1-2, submitted herewith.

[3] *See, e.g.*, Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2018 Review and Analysis*, Cornerstone Research, 6 (2019), https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2018-Review-and-Analysis (finding median securities class action settlement amount to be 4.2% of estimated damages for cases with estimated damages between $250 million and $499 million and 3.3% of estimated damages for cases with estimated damages between $500 million and $999 million). Had these average recoveries been obtained in the instant matter, the Court would be reviewing a settlement ranging between $15.96 million to $23.84 million, instead of the $82.5 million Settlement.

These individuals included not only skilled litigators in the areas of securities litigation, but highly experienced investigators, paralegals, administrative staff, and others to support the litigation effort.

Among other work detailed in the Nirmul Declaration, Lead Counsel: (i) conducted an extensive investigation into the Settlement Class's claims, including reviewing the voluminous public record (e.g., SEC filings, analyst reports, transcripts of Endo's earnings and investor conference calls, regulatory filings, and pleadings and other public filings in proceedings against Endo involving its Opana ER franchise), submitting a Freedom of Information Act request to the FDA, and contacting former Endo employees and potential witnesses (¶¶ 31-32); (ii) consulted with financial and industry experts in connection with evaluating loss causation and damages issues throughout the Action (¶¶ 31, 76-80); (iii) drafted the detailed Amended Complaint (¶¶ 31-34); (iii) briefed and presented oral argument on Defendants' Motion to Dismiss (¶¶ 35-41); (iv) engaged in expansive party and non-party discovery, which included extensive negotiations with Defendants regarding the scope and volume of discovery, the review and analysis of a substantial portion of the more than 415,000 documents produced by Defendants and nonparties, gathered, reviewed, and produced discovery on behalf of the Lead Plaintiff, defended the deposition of the Lead Plaintiff and prepared for depositions scheduled to be taken at the time of settlement (¶¶ 46-75); (v) filed and fully briefed Lead Plaintiff's Motion to Certify (¶¶ 81-86); (vi) exchanged expert reports addressing class certification issues (¶¶ 82, 85); (vii) opposed Defendants' Motion to Exclude (¶¶ 87-89); (viii) defended the deposition of Lead Plaintiff's class certification expert and deposed Defendants' class certification expert (¶¶ 77, 85); and

(ix) reviewed analyses of Endo's current and future financial condition that Lead Plaintiff's damages consultant prepared (¶ 79).[4]

Lead Counsel also engaged in protracted and hard-fought settlement negotiations with Defendants, including a formal mediation overseen by an experienced and highly respected mediator, retired United States District Judge Layn R. Phillips. ¶¶ 92-100. The settlement negotiations proceeded over several months in parallel with the Parties' extensive discovery efforts, preparation of expert reports and class certification briefing. Four days before the first of five confirmed depositions was set to commence (of the seventeen potential depositions that were contemplated), the Parties reached an agreement in principle to resolve the Action.

For the extraordinary commitment to bringing this litigation to a successful conclusion, Lead Counsel requests a fee of 20% of the Settlement Fund. Through October 16, 2019, Lead Counsel has devoted over 18,500 hours, with a resulting lodestar of $7,488,433.00, to the investigation, prosecution, and resolution of the Action. ¶ 159. If approved, Lead Counsel's fee request would result in a lodestar multiplier of 2.2 which is directly in line with multipliers routinely awarded by courts in this Circuit. *See In re Prudential Ins. Co., Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied") (alteration in original); *see also Bodnar v. Bank of Am. N.A.*, 2016 WL 4582084, at *6 (E.D. Pa. Aug. 4, 2016) (finding positive 4.69 multiplier "appropriate and reasonable"). Moreover, Lead Counsel's fee

[4] The Nirmul Declaration is an integral part of this submission and, for the sake of brevity in this memorandum of law, the Court is respectfully referred to it for a detailed description of, among other things: the nature of the claims asserted (¶¶ 13-24); the procedural history of the Action (¶¶ 25-91); the Settlement negotiations (¶¶ 92-100); the risks of continued litigation (¶¶ 105-132); and the services Lead Counsel provided for the benefit of the Settlement Class (¶¶ 26-102).

request is made pursuant to a retainer agreement entered into with Lead Plaintiff at the outset of the litigation and Lead Plaintiff—a sophisticated institutional investor that actively supervised the Action—fully supports this request.[5]

Pursuant to the Court's Preliminary Approval Order, more than 156,600 Postcard Notices have been disseminated to prospective Settlement Class Members and nominees, and the Summary Notice was published in both *Investor's Business Daily* and *The Wall Street Journal* and transmitted over *PR Newswire*.[6] The Postcard Notice, along with the long-form Notice mailed to Nominees and posted on the Settlement Website, advises recipients that Lead Counsel would be applying to the Court for an award of attorneys' fees in an amount not to exceed 20% of the Settlement Fund, and would seek reimbursement of Litigation Expenses in an amount not to exceed $1.3 million. Ex. 2, Exs. A & B. The fees and expenses that Lead Counsel now requests do not exceed these amounts. The notices further inform Settlement Class Members that they can object to the requests for attorneys' fees and expenses until November 22, 2019. *Id*. While the deadline to object has not yet passed, to date, no objections to the amount of attorneys' fees and expenses set forth in the notices have been received. ¶¶ 12, 148.[7]

For the reasons discussed herein, Lead Counsel respectfully submits that the requested fee is fair and reasonable under the applicable legal standards. In addition, Lead Counsel also respectfully submits that the Litigation Expenses for which it seeks reimbursement were reasonable and necessary for the successful prosecution of the Action, and that the request for

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5 *See* Declaration of Hans Ek on behalf of SEB IM ("Ek Declaration"), attached as Exhibit 1 to the Nirmul Declaration, ¶ 10; *see also infra* Section II.C.

6 *See* Declaration of Luiggy Segura on behalf of the Court-appointed Claims Administrator JND Legal Administration ("JND"), attached as Exhibit 2 to the Nirmul Declaration, ¶¶ 11-12.

7 If any objections are received, Lead Counsel will address them in a submission to be filed with the Court no later than seven calendar days prior to the Settlement Fairness Hearing.

reimbursement to Lead Plaintiff pursuant to the PSLRA for the time it dedicated to the Action on behalf of the Settlement Class is likewise reasonable and appropriate. Accordingly, Lead Counsel respectfully submits that its motion for attorneys' fees and expenses should be granted in full.

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

A. Lead Counsel Is Entitled to a Reasonable Fee from the Common Fund Created by the Settlement

The propriety of awarding attorneys' fees from a common fund is well established. *See The 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"); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *9 (D.N.J. July 29, 2013) ("[W]e agree with the long line of common fund cases that hold that attorneys whose efforts create, discover, increase, or preserve a common fun are entitled to compensation.") (alteration in original).

Courts have further recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund ensure that "competent counsel continue[s] to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000). Compensating plaintiffs' counsel for their risks is crucial, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005). Moreover, the Supreme Court has emphasized that private securities actions, such as this 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); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

B. The Court Should Award Attorneys' Fees Using the Percentage-of-Recovery Method

An award of attorneys' fees and the method used to determine that award are "within the discretion of the court." *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *6 (D.N.J. Feb. 9, 2010). The Third Circuit has consistently held, however, that in common fund cases such as this one, the percentage-of-recovery method is the preferred approach in calculating an award of fees. *See 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"); *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); *In re Cendant Corp. Litig.* ("*Cendant II*"), 264 F.3d 201, 220 (3d Cir. 2001) ("For the past decade, counsel fees in securities litigation have generally been fixed on a percentage basis rather than by the so-called lodestar method.").[8]

The use of the percentage-of-recovery method also comports with the language of the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff shall not exceed a ***reasonable percentage*** of the amount of any damages and prejudgment interest actually paid to the class. . . ." 15 U.S.C. § 78u-4(a)(6). Furthermore, the Supreme Court has consistently held that the percentage-of-recovery approach is an appropriate methodology for awarding plaintiffs' counsel's fees in a common fund case. *See, e.g.*, *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

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[8] The Third Circuit recommends that district courts perform a lodestar cross-check to ensure the reasonableness of a percentage-of-recovery fee award. *See Sullivan*, 667 F.3d at 330; *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440, at * 7 (E.D. Pa. Sept. 20, 2017). "The lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T*, 455 F.3d at 164. *See infra* Section III.F.2. for application of lodestar cross-check.

C. The Fee Request is Entitled to a Presumption of Reasonableness Because it Is Based Upon A Pre-Existing Agreement With the Court-Appointed Lead Plaintiff and Has Been Approved by the Lead Plaintiff

The 20% fee requested here has been approved by the Court-appointed Lead Plaintiff. Ex. 1, ¶¶ 9-10. Lead Plaintiff—a sophisticated institutional investor—is precisely the type of fiduciary that Congress envisioned when it enacted the PSLRA.[9] The Third Circuit has explained that "courts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected lead plaintiff and properly-selected lead counsel." *Cendant II*, 264 F.3d at 220. Here, in addition to executing a retainer agreement that provided for the requested fee percentage at the outset of its involvement in the Action, Lead Plaintiff has reviewed and approved the requested fee after its diligent involvement in the Action, and this fact should be given significant weight. *See In re Lucent Techs. Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("Significantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fees and expenses request."); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012) ("[W]hen class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight.").

[9] Congress enacted the PSLRA in large part to encourage investors with a significant financial stake in the outcome of a securities class action to assume control of the litigation and "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." *See* H.R. Rep. No. 104-369, at 32 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 731.

III. THE 20% FEE REQUEST IS FAIR AND REASONABLE UNDER THE THIRD CIRCUIT'S *GUNTER/PRUDENTIAL* FACTORS

The Third Circuit has set forth the following factors for courts to consider when determining a fee award from a common fund:

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

Gunter, 223 F.3d at 195 n.1. The Third Circuit has also suggested three other factors that may be relevant to the Court's examination of whether requested attorneys' fees are reasonable:

> (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 [non-class] contingent fee agreement at the time counsel was retained; and (3) any innovative terms of settlement.

Prudential, 148 F.3d at 338-40; *AT&T*, 455 F.3d at 165.[10] As demonstrated below, these factors support Lead Counsel's fee request.

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

Courts have consistently recognized that the result achieved is a major factor to be considered in awarding attorneys' fees. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016). Here, Lead Counsel has secured a Settlement that will provide a certain payment of $82.5 million. Notably, this recovery represents a substantial portion

[10] 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; *see also Schuler v. The Meds. Co.*, 2016 WL 3457218, at *9 (D.N.J. June 24, 2016). "What is important is that the district court evaluate what class counsel actually did and how it benefitted the class." *Prudential*, 148 F.3d at 342.

of the Settlement Class's damages as estimated by Lead Plaintiff's damages consultant—i.e., between approximately 11% and 21% of aggregate damages based on Lead Plaintiff's ability to prove damages for all five corrective disclosures in the Action ($722.5 million) as well as a more conservative estimate that takes into account certain hurdles to establishing damages and loss causation at trial ($380 million). ¶ 150. This result exceeds the median recovery amounts in other recent securities class actions. *See supra* note 2; *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *8 (D. Del. Nov. 19, 2018) (noting "Third Circuit median recovery of 5% of damages in class action securities litigation").

With respect to the number of persons that will benefit from the Settlement, JND has mailed over 156,600 Postcard Notices to prospective Settlement Class Members and Nominees (*see* Ex. 2, ¶ 11), evidencing the potentially large number of investors that will benefit from the Settlement. *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (size of benefitted population "is best estimated by the number of entities that were sent the notice describing the settlement[]"). This factor favors approval of the fee request.

B. The Absence of Objections by Settlement Class Members to Date

The Postcard Notice, which was mailed to prospective Settlement Class Members, and the Notice, which was mailed to Nominees and posted on the Settlement Website and Lead Counsel's website, provide that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 20% of the Settlement Fund. ¶ 162; Ex. 2, Exs. A & B. The notices also advise Settlement Class Members that they can object to the fee request and explain the procedures for doing so. *Id*. While the deadline for objections has not yet passed, to date, no objections have been received. *See Cendant II*, 264 F.3d at 235 ("[t]he vast disparity between the number of potential class

members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement").[11]

C. The Skill and Efficiency of the Attorneys Involved

The skill and efficiency of the legal counsel involved in this Action also supports Lead Counsel's fee request. *See Hall v. AT&T Mobility LLC*, 2010 WL 4053547, at *19 (D.N.J. Oct. 13, 2010) (counsel's skill and efficiency 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 which counsel prosecuted the case and the performance and quality of opposing counsel"). This factor is particularly important, as this Circuit recognizes "the stated goal in percentage fee-award cases of ensuring that competent counsel continue to be willing to undertake risky, complex and novel litigation." *Gunter*, 223 F.3d at 198.

The Settlement—which will provide a substantial benefit to the Settlement Class—required significant skill to obtain and demonstrates the ability of Lead Counsel. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) ("[t]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained") (alteration in original); *see also Bodnar*, 2016 WL 4582084, at *5. Lead Counsel is highly experienced in prosecuting securities class actions and has successfully litigated these and other complex actions throughout the country. ¶ 160.[12] Lead Counsel's experience in the field, along with its effort and skill in surviving, in large part, Defendants' Motion to Dismiss, navigating through voluminous discovery in a compressed time period, and presenting a strong case at mediation and during the settlement

[11] The deadline for submitting objections is November 22, 2019. If any objections are received, Lead Plaintiff will address them in a submission to be filed with the Court no later than seven calendar days prior to the Settlement Fairness Hearing.

[12] *See* Ex. 3-D for the firm résumé of Kessler Topaz.

discussions that followed was essential to achieving a meaningful resolution to the Action. Moreover, Lead Counsel prosecuted this Action efficiently and managed workflow to ensure that there was no duplication of efforts.

The quality of opposing counsel is also relevant here. *Hall*, 2010 WL 4053547, at *19. Lead Counsel faced talented adversaries in this Action. *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Throughout the Action, Defendants were zealously represented by the prominent defense firm Latham & Watkins LLP. The ability of Lead Counsel to obtain such a favorable Settlement for the Settlement Class "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).

D. The Complexity and Duration of the Litigation

Securities litigation is regularly acknowledged to be particularly complex and expensive, usually requiring expert testimony on several issues, including loss causation and damages. *See, e.g.*, *Par Pharm.*, 2013 WL 3930091, at *4 ("Securities fraud class actions are notably complex, lengthy, and expensive cases to litigate."); *Fogarazzo v. Lehman Bros., Inc.*, 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *3 (D.N.J. Nov. 28, 2007) ("[R]esolution of [damages issues] would likely require extensive and conceptually difficult expert economic analysis. . . . Trial on . . . [scienter and loss causation] issues would be lengthy and costly to the parties."). Lead Counsel addressed numerous difficult issues in opposing Defendants' Motion to Dismiss as well as in its Motion to Certify, many of which necessitated extensive consultation with experts. In prosecuting the Action, Lead Counsel also had to closely familiarize itself with, among other things, competition within the pharmaceutical industry concerning generic and branded products, the FDA

approval process, and post-marketing surveillance data, including information that RADARS and NAVIPPRO assembled and distributed, which entailed significant investigation. ¶¶ 31-32.

Had the Action not settled, the Parties would have proceeded with discovery, including depositions (five of which were already scheduled when the Settlement was reached, with seventeen contemplated), and then proceeded to summary judgment. To survive summary judgment, Lead Plaintiff would need to marshal sufficient evidence to establish the elements of its claims, including, for example, scienter (that Defendants acted intentionally or recklessly misled Endo investors) and loss causation (that false or misleading statements by the Defendants caused Lead Plaintiff's alleged loss).

As detailed in the Nirmul Declaration, Defendants advanced considerable challenges to Lead Plaintiff's claims—perhaps most significantly with respect to Lead Plaintiff's ability to prove loss causation and damages. On these issues, Lead Plaintiff would have to prove (through expert testimony) that the revelation of the alleged fraud through the alleged corrective disclosures on May 10, 2013, January 10, 2017, March 9, 2017, March 14, 2017, and June 8, 2017, proximately caused the declines in the price of Endo common stock on each of those days (and/or the subsequent trading days), and that any other information released and absorbed by the market on those days played little or no role in the price declines. ¶ 111; *see Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'"). Defendants would contend, with the help of their experts, that Lead Plaintiff could not prove that the price declines in Endo common stock upon the alleged corrective disclosures were statistically significant and/or resulted from the disclosure of any previously misrepresented or concealed fact. ¶ 116. Moreover, due to the complexities of establishing loss causation and damages, both sides would be required

to rely on expert testimony at trial, and this element of Lead Plaintiff's claims would be reduced to a battle of experts "with no guarantee whom the jury would believe." *Cendant II*, 264 F.3d at 239; *see also The City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *9 (S.D.N.Y. May 9, 2014), *aff'd, Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015) ("Undoubtedly, the Parties' competing expert testimony on damages would inevitably reduce the trial of these issues to a risky 'battle of the experts' and the 'jury's verdict with respect to damages would depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable.'").

Even if Lead Plaintiff defeated Defendants' summary judgment motions and was successful against Defendants at trial, Lead Plaintiff's efforts in establishing its claims in all likelihood would not end with a judgment at trial, but would continue through one or more levels of appellate review. In complex litigation such as this, as Lead Counsel is well aware, even a victory at the trial stage does not guarantee ultimate success. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (following plaintiff verdict after four-week trial, court granted defendants' post-trial motion for judgment as a matter of law on loss causation grounds, which judgment was affirmed on appeal). "A trial of a complex, fact-intensive case like this could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation." *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *3 (C.D. Cal. Oct. 25, 2016).

Despite the difficulty of the issues raised and the risks faced, Lead Counsel has secured an excellent result for the Settlement Class while avoiding the delays of continued litigation. As a result, this factor strongly supports the requested fee award.

E. The Risk of Nonpayment

"Courts routinely recognize that risk created by undertaking an action on a contingency fee basis militates in favor of approval." *In re Schering-Plough Corp.*, 2012 WL 1964451, at *7 (D.N.J

May 31, 2012); *see also In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 104 (E.D. Pa. 2013) ("as a contingent fee case, counsel faced a risk of nonpayment in the event of an unsuccessful trial. Throughout this lengthy litigation, class counsel have not received any payment. This factor supports approve of the requested fee."); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 516 (W.D. Pa. 2003) (finding "investment of time, personnel and resources" supported awarding requested fee).

Here, Lead Counsel undertook the Action on an entirely contingent basis, taking the risk that the litigation would yield little or no recovery, and leave it uncompensated for its time and out-of-pocket expenses. Through October 16, 2019, Lead Counsel has expended over 18,500 hours prosecuting the Action and has incurred $962,916.92 in Litigation Expenses. Lead Counsel has received no compensation for any time or expenses in this case. In contrast, it is our understanding that Defendants' Counsel has been paid for its time in this case on a regular basis.

As noted above, even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured.[13] Thus, any fee award has always been at

[13] There have been many hard-fought lawsuits where excellent professional efforts produced no fee for counsel. *See, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' judgment as a matter of law following plaintiff verdict); *Robbins v. Koger Props. Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against accounting firm reversed on appeal); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities class action jury verdict for plaintiffs' in case filed in 1973 and tried in 1988); *Bentley v. Legent Corp.*, 849 F. Supp. 429 (E.D. Va. 1994), *aff'd*, *Herman v. Legent Co.*, 50 F.3d 6 (4th Cir. 1995) (directed verdict after plaintiffs' presentation of its case to the jury); *In re Apple Comput. Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (after jury rendered a verdict for plaintiffs following an extended trial, the court overturned the verdict); *Landy v. Amsterdam*, 815 F.2d 925 (3d Cir. 1987) (directed verdict for defendants after five years of litigation). Indeed, even judgments initially affirmed on appeal by an appellate panel are no assurance of a recovery. *See, e.g.*, *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after eleven years of litigation, and following a jury verdict for plaintiffs and an affirmance by a First Circuit panel, plaintiffs' claims were dismissed by an *en banc* decision and plaintiffs recovered nothing).

risk, and completely contingent on the result achieved and on this Court's discretion in awarding fees and expenses. Here, the risk of nonpayment was heightened due to uncertainty surrounding Endo's financial condition and its ability to fund a future judgment in an amount greater than the Settlement Amount (or any judgment) given its current debt obligations and exposure in various pending litigation. Accordingly, the contingent risk in this case also supports the requested fee.

F. The Amount of Time Devoted to the Action by Lead Counsel

1. The Time Devoted by Lead Counsel Supports the Fee Request

Lead Counsel expended substantial time and effort prosecuting this Action and achieving the Settlement. As set forth in greater detail in the Nirmul Declaration, Lead Counsel, among other things:

- conducted a significant legal and factual investigation into the Settlement Class's claims, which included review of: (i) Endo's SEC filings; (ii) press releases and other public statements by defendants; (iii) research reports issued by securities and financial analysts; (iv) media and news reports concerning Endo; (v) transcripts of Endo's earnings and other investor conference calls and related presentations; (vi) regulatory filings, reports, and correspondence, including Endo's publicly available Citizen Petition and related documents filed with the FDA; (vii) pleadings and other public filings in proceedings against Endo involving its Opana ER franchise; (viii) a Freedom of Information Act request to the FDA and a Freedom of information Law request under New York State Law to the State of New York Office of the Attorney General; (ix) interviews with numerous former Endo employees and potential witnesses; and (x) consultation with experts (¶¶ 31-33);

- researched and drafted the detailed Amended Complaint based on Lead Counsel's investigation (¶ 34);

- opposed Defendants' Motion to Dismiss the Amended Complaint (¶¶ 37-41);

- engaged in substantial discovery, which included participating in negotiations with Defendants (and nonparties) regarding the scope and volume of discovery and the issuance of subpoenas to seventeen nonparties with information relevant to Lead Plaintiff's Claims (¶ 46-75);

- reviewed and analyzed a significant portion of the more than 415,000 documents produced by Defendants and nonparties in preparation for mediation, depositions, summary judgment, and trial (¶¶ 55-63);

- assisted Lead Plaintiff in responding to Defendants' discovery requests (¶¶ 70-74);
- retained and consulted with an economic expert in connection with preparing the Amended Complaint, mediation, and class certification (¶¶ 76-80);
- briefed the Motion to Certify and defended the deposition of Lead Plaintiff (i.e., the proposed class representative) (¶¶ 81-86, 75);
- opposed Defendants' Motion to Exclude (¶¶ 87-89);
- deposed Defendants' class certification expert and defended the deposition of Lead Plaintiff's class certification expert (¶ 78, 85);
- prepared for depositions of five former high-level Endo employees scheduled before the Settlement was reached (¶¶ 65-66);
- engaged in a hard-fought, arm's-length mediation facilitated by Judge Phillips, including pre-mediation briefing and expert damages analyses, followed by several months of continued negotiations (¶¶ 92-100); and
- negotiated the final terms of the Settlement with Defendants, drafted, finalized, and filed the Stipulation and related Settlement documents, and obtained preliminary approval of the Settlement (¶¶ 101-104).

Lead Counsel has expended more than 18,500 hours prosecuting this Action with a lodestar value of $7,488,443.00 as of October 16, 2019. This time and effort was critical in obtaining the favorable result represented by the Settlement.[14]

While the discovery conducted in this Action, particularly document discovery, represents a substantial percentage of Lead Counsel's lodestar, Lead Counsel respectfully submits that it was necessary and important to the prosecution, and ultimate resolution, of the Action.

Following the Parties' initial, unsuccessful mediation, Lead Plaintiff served its first request for the production of documents on all Defendants. ¶ 55. Through a series of meet and confer

[14] Lead Counsel will continue to perform legal work on behalf of the Settlement Class should the Court approve the Settlement. Additional resources will be expended assisting Settlement Class Members with their Claim Forms and related inquiries and working with the JND to ensure the smooth progression of claims processing.

discussions, e-mails, and letters outlining the Parties' respective positions, Lead Plaintiff successfully negotiated a larger scope of discovery than Defendants initially proposed in terms of custodians, search terms, and time period. ¶ 56.

Defendants began making rolling productions of documents on March 15, 2019, and made further document productions on April 5, April 18, April 26, May 20, May 22, June 19, and July 2, 2019. ¶ 57. Given the September 20, 2019 fact discovery cut-off established in the Court's Scheduling Order and what Lead Counsel reasonably anticipated would be a voluminous production of documents, Lead Counsel immediately assembled a team of attorneys and commenced reviewing the documents in preparation for depositions, summary judgment, and trial. ¶¶ 58-63. Once an agreement in principle regarding the Settlement was reached on July 15, 2019, Lead Counsel immediately halted its review of documents such that its lodestar does not include any time billed for "confirmatory discovery."

2. A Lodestar Cross-Check Supports the Fee Request

The Third Circuit recommends that district courts use counsel's lodestar as a "cross-check" to determine whether the fee that would be awarded under the percentage-of-recovery method is reasonable. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164. Where a lodestar cross-check is performed, however, "the lodestar cross-check does not trump the primary reliance on the percentage of the common fund." *Bodnar*, 2016 WL 4582084, at *5.

The lodestar method, as set forth in the seminal case, *Lindy Bros. Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), is a two-step process. The first step requires the court to ascertain the "lodestar" figure by multiplying the number of hours reasonably worked by a reasonable hourly rate. The second step permits the court to adjust the lodestar to take into account the contingent nature and risks of the litigation, the result obtained and the quality of the services rendered by counsel. *See id*. at 167-68. A multiplier

"need not fall within any pre-defined range, provided that the [d]istrict [c]ourt's analysis justifies the award." *Schuler*, 2016 WL 3457218, at *10 (alterations in original).

The Nirmul Fee and Expense Declaration contains the lodestar calculation for Lead Counsel, by timekeeper and also by litigation category. *See* Ex. 3-A; 3-B. Through October 16, 2019, Lead Counsel expended 18,540.60 hours of attorneys and professional support staff time in the prosecution of the Action. ¶ 159 & Ex. 3.[15] These hours have been multiplied by the current hourly rates of the attorneys and professional support staff who worked on the Action to arrive at the lodestar amount of $7,488,443.00.[16]

Finally, pursuant to the lodestar method, after an analysis of counsel's lodestar, a positive multiplier may be awarded to account for "the contingent nature or risk involved in a particular case and the quality of the attorneys' work." *Rite Aid*, 396 F.3d at 306. As noted, Lead Counsel's lodestar in this Action is $7,488,443.00. The requested fee, if awarded, represents a multiplier of 2.2 to Lead Counsel's time. This multiplier is directly in line with multipliers applied in other securities fraud cases. *See Martin v. Foster Wheeler Energy Corp.*, 2008 WL 906472, at *8 (M.D. Pa. Mar. 31, 2008) ("Lodestar multiples of less than four (4) are well within the range awarded by

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[15] Attorney and staff member time expended in preparing this fee and expense application is not included in Lead Counsel's lodestar.

[16] The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *See Mo. v. Jenkins*, 491 U.S. 274, 284 (1989); *see also In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) (in conducting lodestar cross-check, "[e]ach attorney's hourly rates were appropriately calculated by reference to current rather than historic rates"). The Nirmul Fee and Expense Declaration includes a description of the legal background and experience of Kessler Topaz, which support the hourly rates submitted. Lead Counsel's rates are fair and reasonable for this legal market. Indeed, Defendants' Counsel in this Action, Latham & Watkins LLP, reported hourly rates ranging from $238 to $425 per hour for paralegals and other support staff, $595 to $1,024 per hour for bar-admitted associates, and $1,050 to $1,466 per hour for partners in a recent bankruptcy filing. *See Imerys Talc Am., Inc., et al.*, No. 19-10289-LSS (Bankr. D. Del. Oct. 15, 2019), ECF No. 1159-2. All of these rates are in line with, or exceed, Lead Counsel's rates.

district courts in the Third Circuit."); *Prudential*, 148 F.3d at 341 ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.") (alteration in original). *See also Bodnar*, 2016 WL 4582084, at *6 (holding that a positive 4.69 multiplier was "appropriate and reasonable"). Further, courts have awarded fees representing multipliers of 3, 4, 5, or even more times the lodestar to reflect the contingency-fee risk and other relevant factors. *See Schuler*, 2016 WL 3457218, at *9 (approving 3.57 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (E.D. Pa. 2005) (6.96 multiplier); *In re Aetna Inc. Sec. Litig.*, 2001 WL 20928, at *15 (3.6 multiplier).

G. The Fee Requested Is In Line With Fees Awarded in Similar Cases

Lead Counsel's request for attorneys' fees equal to 20% of the Settlement Fund is fair and reasonable under the percentage-of-recovery method. Courts in the Third Circuit routinely award attorneys' fees of 20% or more of the settlement at issue. While there is no established benchmark, the Third Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995); *see also Ikon*, 194 F.R.D. at 194 ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."); *cf. La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (noting that "[c]ourts within the Third Circuit often award fees of 25% to 33 1/3% of the recovery").

Indeed, ample precedent exists in this Circuit for granting fees in securities class actions and other similar litigation that are based upon a greater percentage of the settlement fund than the fee requested here. *See, e.g.*, *Bodnar*, 2016 WL 4582084, at *6 (awarding 33% fee, yielding a 4.69 multiplier); *In re Cent. European Dist. Corp. Secs. Litig.*, 2014 WL 12608150, at *2 (D.N.J. Nov. 14, 2014) (awarding 30% fee, yielding a 2.5 multiplier); *In re Genta Secs. Litig.*, 2008 WL 2229843, at *11 (D.N.J. May 28, 2008) (awarding 25% fee, yielding a 3.72 multiplier); *In re*

Ravisent Techs., Inc. Sec. Litig., 2005 WL 906361, at *10-12 (E.D. Pa. Apr. 18, 2005) (awarding 33% fee, yielding a 3.1 multiplier); *In re ATO Techs., Inc. Sec. Litig.*, 2003 WL 1962400, at *3, *6 (E.D. Pa. Apr. 28, 2003) (awarding 30% fee, yielding a 2.35 multiplier); *In re Aetna Inc. Sec. Litig.*, 2001 WL 20928, at *14-15 (E.D. Pa. Jan. 4, 2001) (awarding 30% fee, yielding a 3.6 multiplier); *Ikon*, 194 F.R.D. at 197 (awarding 28.4% fee, yielding multiplier of roughly 2.6).

H. Impact of Governmental Investigations

With respect to the first additional *Prudential* consideration, Lead Counsel has obtained a favorable recovery for the benefit of the Settlement Class without the aid of any related governmental investigations into whether Defendants knowingly or recklessly made materially false or misleading statements concerning Reformulated Opana ER. Thus, the value of the Settlement achieved is directly attributable to the efforts undertaken by Lead Counsel in this Action, and this factor supports the reasonableness of the requested fee award.

I. The Requested Fee Is In-Line with Contingent Fee Arrangements Negotiated in Non-Class Litigation

The Third Circuit also suggests that the requested fee be compared to "the percentage fee that would have been negotiated had the case been subjected to a private [non-class] contingent fee agreement." *AT&T*, 455 F.3d at 165. Moreover, if this Action were a non-representative litigation, the customary arrangement likely would be contingent, on a percentage basis, and in the range of 30%-40% of the recovery. *See Ikon*, 194 F.R.D. at 194 ("In private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."); *Blum*, 465 U.S. at 903 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery."). The requested fee is thus reasonable when compared with such privately agreed upon contingent fee arrangements.

J. Innovative Terms

Finally, with respect to the third *Prudential* consideration, the terms of the Settlement are relatively standard for a securities class action settlement. The absence of any "innovative" terms, however, does not adversely affect counsel's fee request. *See DFC Glob.*, 2017 WL 4167440, at *9 (approving fee request where "parties have not alerted the Court to—nor has the Court uncovered—any creative settlement terms"); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 340 (E.D. Pa. 2007) (the absence of any particularly innovative terms did not adversely affect counsel's fee request).

IV. LEAD COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Lead Counsel also requests that this Court approve reimbursement in the amount of $962,916.92 for expenses it reasonably incurred in prosecuting and resolving the Action. These expenses are set forth by category in the Nirmul Fee and Expense Declaration. *See* Ex. 3-C.

Counsel in a class action are entitled to recover expenses that were "adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *Viropharma*, 2016 WL 312108, at *18; *see also DFC Glob.*, 2017 WL 4167440, at * 9 (approving counsel's reimbursement of litigation expenses and noting "[i]tems such as photocopying, telephone and fax charges, express mail charges, expert witness fees, travel and lodging, and computer-assisted research . . . necessary for the prosecution of a large class action lawsuit"). Here, the expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation, and such expenses are routinely charged to clients billed hourly, including, among others, expert fees, on-line research, court reporting and transcripts, photocopying, and postage expenses. These expense items are billed separately by Lead Counsel, and such charges are not duplicated in the firm's hourly rates. *See* Ex. 3, ¶ 7.

The largest component of Lead Counsel's expenses, by far, was the cost of Lead Plaintiff's experts and consultants in the total amount of $786,126.21, or approximately 82% of total expenses. ¶ 165. As detailed in the Nirmul Declaration, Lead Counsel utilized experts/consultants at each stage of the Action, and these experts/consultants were absolutely critical to the prosecution and resolution of the Action. In preparing the Amended Complaint and in connection with mediation, Lead Counsel engaged Dr. Zachary Nye of Stanford Consulting Group, Inc. to provide loss causation and damages consulting services and, in particular, Dr. Nye's damages analyses prepared for mediation assisted Lead Counsel in refining their settlement position. ¶¶ 76-77. Lead Counsel also engaged and worked extensively with Joseph R. Mason, Ph.D. of BVA Group in connection with class certification. In furtherance of the Motion to Certify, Dr. Mason submitted two expert reports and sat for a full-day deposition. At the time of settlement, Dr. Mason was preparing for a second deposition pursuant to Court Order (ECF No. 79). ¶ 78. Additionally, following the Parties' February 4, 2019 mediation session, Dr. Mason prepared detailed analyses of Endo's financial condition, which assisted Lead Plaintiff and Lead Counsel in evaluating their approach to a settlement during months of negotiations following the Parties' in-person mediation sessions. ¶ 79. Moreover, after the Parties agreed in principle to resolve the Action, Dr. Mason and his associates at BVA Group helped formulate the Plan of Allocation. ¶ 80.

Lead Counsel's second largest expense was for document management and litigation support in the amount of $67,869.60, or approximately 7% of total expenses. ¶ 165. This amount includes charges for an outside vendor retained by Lead Counsel to host the document database utilized to effectively and efficiently review and analyze the documents that Defendants and non-parties produced in the Action. Lead Counsel also incurred the cost of formal mediation with Judge Phillips ($22,556.25) and the cost of travel, meals, and lodging required to prosecute the Action

($18,648.86). The other expenses for which Lead Counsel seeks reimbursement include, among others, online research, court fees, court reporters and transcripts, process servers, document-reproduction costs, and postage and delivery expenses. ¶¶ 166-167.

All of the foregoing expenses were necessarily incurred for the effective prosecution of the Action, rendering reimbursement of Lead Counsel's expenses reasonable and appropriate. In addition, the amount of Lead Counsel's expense request—$962,916.92, combined with the $32,074.20 being requested for Lead Plaintiff (discussed below), is less than the $1.3 million maximum amount of expenses that Lead Counsel stated they would seek in the Postcard and long-form Notices. Ex. 2, Exs. A & B. To date, there has been no objection to the request for expenses. ¶ 148.

V. LEAD PLAINTIFF SHOULD BE AWARDED ITS REASONABLE COSTS UNDER THE PSLRA

The PSLRA 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). Consistent with that statute, Lead Plaintiff seeks an award based on the time dedicated by its employees to the Action. Specifically, Lead Plaintiff seeks an award of $32,074.20. Ex. 1, ¶ 16. This amount is based on the number of hours that Lead Plaintiff's employees committed to the Action, multiplied by a reasonable hourly rate for their time. Moreover, as noted above, the notices informed potential Settlement Class Members that Lead Counsel's request for reimbursement of Litigation Expenses might include the reasonable costs and expenses of Lead Plaintiff related to its representation of the Settlement Class in the Action (in an amount not to exceed $50,000), and there has been no objection to that request.

SEB IM took an active role in the Action and has been fully committed to pursuing the Settlement Class's claims since it appointment as Lead Plaintiff. During the course of the Action,

SEB IM communicated regularly with Lead Counsel regarding strategy and developments, reviewed and authorized pleadings and briefs in the Action, assisted in responding to discovery requests, and a representative for SEB IM prepared for, traveled to, and testified at a deposition in connection with Lead Counsel's Motion to Certify. Ex. 1, ¶¶ 5-6. In addition SEB IM consulted with Lead Counsel regarding the Parties' settlement discussions, and a representative for SEB IM attended the February 2019 mediation. *Id*. SEB IM also evaluated and approved the Settlement. Ex. 1, ¶ 7. The foregoing efforts required employees of SEB IM to dedicate considerable time and resources to the Action that they would have otherwise devoted to their regular duties at SEB IM.

Numerous courts in this Circuit have approved reasonable awards to compensate lead plaintiffs for the time their employees have spent supervising and participating in a litigation on behalf of a class of investors. *See, e.g*., *Wilmington Trust* 2018 WL 6046452, at * 10 (awarding institutional lead plaintiffs $55,456.06 in costs and expenses related to time spent on the case where, like here, "their employees took an active role in the litigation, including reviewing significant pleadings and briefs, communicating regularly with Lead Counsel, authorizing settlement discussions, monitoring the progress of settlement negotiations, and approving the settlements"); *DFC Glob.*, 2017 WL 4167440, at * 10 (awarding $21,640 in the aggregate to institutional lead plaintiffs in PSLRA case); *Par Pharm*., 2013 WL 3930091, at *11 (awarding $18,000 to institutional lead plaintiff in PSLRA case); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding $144,657 to New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds "for their reasonable costs and expenses incurred in managing this litigation and representing the Class" and noting these efforts to be "precisely the types of activities that support awarding reimbursement of expenses to class representatives"); *In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 WL 9447623, at *29

(D.N.J. Dec. 9, 2008) (awarding $150,000 to lead plaintiffs in PSLRA case). *See also In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here, "the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation"). Accordingly, the award sought by Lead Plaintiff is reasonable and justified under the PSLRA based on its prosecution of the Action and should be granted.

VI. CONCLUSION

For the reasons stated herein and in the Nirmul Declaration, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 20% of the Settlement Fund and approve reimbursement of Litigation Expenses in the amount of $962,916.92, plus interest, as well as the proposed award in the amount of $32,074.20 to Lead Plaintiff SEB IM.

Dated: November 1, 2019

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

s/ Sharan Nirmul

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SEB INVESTMENT MANAGEMENT AB, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ENDO INTERNATIONAL PLC, *et al.*, Defendants.	Civ. A. No. 2:17-CV-3711-TJS ELECTRONICALLY FILED

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

WHEREAS, this matter came on for hearing on December 11, 2019 (the "Settlement Fairness Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Fairness Hearing and otherwise; and it appearing that notice of the Settlement Fairness Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and *The Wall Street Journal* and transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested; and

WHEREAS, this Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated August 22, 2019 (ECF No. 83-2) (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Jurisdiction**—The Court has jurisdiction to enter this Order and over the subject matter of the Action, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Notice**—Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and reimbursement of Litigation Expenses satisfied the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

3. **Fee and Expense Award**—Lead Counsel is hereby awarded attorneys' fees in the amount of ___% of the Settlement Fund and $_____ in reimbursement of Lead Counsel's Litigation Expenses, plus interest, which sums the Court finds to be fair and reasonable. The attorneys' fees and expenses awarded will be paid to Lead Counsel from the Settlement Fund in accordance with the terms of the Stipulation.

4. **Factual Findings**—In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

a. The Settlement has created a fund of $82,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class

Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel;

b. The fee sought by Lead Counsel has been reviewed and approved as reasonable by Lead Plaintiff, who oversaw the prosecution and resolution of the Action;

c. Over 156,600 Postcard Notices and 4,200 Notice Packets were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 20% of the Settlement Fund, and Litigation Expenses in an amount not to exceed $1.3 million, which amount may include a request for reimbursement to Lead Plaintiff in an amount not to exceed $50,000;

d. Lead Counsel has conducted the litigation and achieved the Settlement with skillful and diligent advocacy;

e. The Action raised a number of complex issues;

f. Had Lead Counsel not achieved the Settlement, there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from Defendants;

g. Lead Counsel devoted more than 18,500 hours, with a lodestar value of $7,488,443.00, to achieve the Settlement; and

h. The amount of attorneys' fees awarded and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

5. **PLSRA Award**—Lead Plaintiff, SEB Investment Management AB, is hereby awarded $_____ from the Settlement Fund as reimbursement for its reasonable costs directly related to its representation of the Settlement Class.

6. **No Impact on Judgment**—Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

7. **Retention of Jurisdiction**—Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

8. **Termination of Settlement**—In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

9. **Entry of Order**—There is no just reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____, 2019.

_____
TIMOTHY J. SAVAGE
United States District Judge