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7/5/23 POMERANTZ DRAFT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

MARTIN HOWARD, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ARCONIC INC., KLAUS KLEINFELD, WILLIAM F. OPLINGER, ROBERT S. COLLINS, ARTHUR D. COLLINS, JR., KATHRYN S. FULLER, JUDITH M. GUERON, MICHAEL G. MORRIS, E. STANLEY O'NEAL, JAMES W. OWENS, PATRICIA F. RUSSO, SIR MARTIN SORRELL, RATAN N. TATA, ERNESTO ZEDILLO, MORGAN STANLEY & CO. LLC, CREDIT SUISSE SECURITIES (USA) LLC, CITIGROUP GLOBAL MARKETS INC., GOLDMAN SACHS & CO., J.P. MORGAN SECURITIES LLC, BNP PARIBAS SECURITIES CORP., MITSUBISHI UFJ SECURITIES (USA), INC., RBC CAPITAL MARKETS, LLC, and RBS SECURITIES INC. Defendants.	Civ. Action No. 2:17-cv-01057-MRH **(Consolidated)** CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND AWARD TO PLAINTIFFS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Other Authorities

Lead Plaintiffs Iron Workers Local 580 – Joint Funds and Ironworkers Locals 40, 361 & 417 – Union Security Funds (collectively, "Ironworkers") and Janet L. Sullivan ("Sullivan," and together with Ironworkers, "Plaintiffs"), individually and on behalf of the Settlement Class, respectfully submit this memorandum in support of their motion for: (i) final approval of the class-wide Settlement of this Litigation, including the proposed Plan of Allocation for distributing Settlement proceeds; (ii) an award of attorneys' fees and litigation expenses; and (iii) awards to Plaintiffs for their work and service on behalf of the Settlement Class (the "Motion").[1]

I. PRELIMINARY STATEMENT

Pursuant to Rule 23 of the Federal Rules of Civil Procedure (the "Rules") and the Private Securities Litigation Reform Act of 1995 ("PSLRA"), this Motion seeks final approval of the proposed $74 million Settlement following completion of the notice program approved by the Court, a fee award totaling 33 ⅓% of the Settlement Amount, payment of litigation expenses of $822,910.28, and awards to Plaintiffs of $65,000 for their representation of the Settlement Class.

The Settlement here resulted from arm's-length mediation overseen by experienced mediator Gregory Lindstrom and represents an excellent recovery for the Settlement Class. The Settlement followed over five years of hard-fought litigation including numerous complaints; two motions to dismiss; a request to certify an interlocutory appeal; the review of extensive evidence concerning the Grenfell Tower fire; expert analysis concerning class certification; the exchange of written discovery requests and responses thereto; numerous meet-and-confers; and two in-person mediation sessions preceded by the submission of written mediation statements. Through these efforts, Lead Counsel gained a full understanding of all relevant issues, which they brought to bear in negotiating and agreeing to the Settlement. Furthermore, the Settlement secured by Lead

[1] Unless otherwise defined herein, all capitalized terms have the meaning set forth in the Stipulation of Settlement, dated April 21, 2023 (Dkt. No. 220-1) (the "Stipulation"). All declarations cited herein refer to the declarations attached to the Joint Declaration of Emma Gilmore and David A. Rosenfeld filed herewith (the "Joint Declaration").

Counsel represents an aggregate recovery many multiples higher than the median settlement in securities class actions.

The Settlement easily satisfies the factors set forth in Rule 23(e)(2) and *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), for approving class action settlements, balancing the objective of attaining the highest possible recovery against the risks of continued litigation. This includes the risk that the Settlement Class could receive nothing, or far less, after trial and any appeal. In addition, the Plan of Allocation treats Settlement Class Members equitably and ensures that each Authorized Claimant will receive a *pro rata* share of the proceeds from the Settlement. Moreover, given the absence of any objections to date, the Settlement appears to enjoy unanimous support from the Settlement Class.

In view of the complexity of the issues and the results obtained, the requested awards should be approved as well. The 33 ⅓% fee request is consistent with the percentage-of-recovery method favored in the Third Circuit for common fund class action settlements, like the Settlement here. It is also fully supported by all relevant considerations set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000), for assessing such fee requests. Among other things, fees equal to one-third of the common fund are regularly granted in complex and hard-fought securities class actions like this one. In addition, a lodestar cross-check shows that the fee request falls squarely within the range deemed by the Third Circuit to be acceptable for suits of this type. That there were no objections received from the Settlement Class after receiving Notice that Lead Counsel would seek a fee up to one-third of the Settlement Amount further demonstrates that the fee request is reasonable under the circumstances of this case. Finally, courts routinely allow counsel to recover their litigation expenses and grant awards to named plaintiffs for their time and expenses acting as representatives for absent class members, both of which are appropriately documented in the attached declarations.

Plaintiffs therefore respectfully request that the Court grant (i) final approval of the proposed Settlement and Plan of Allocation; (ii) the request for attorneys' fees and litigation expenses; and (iii) the request for awards to Plaintiffs.

II. BACKGROUND

A. Procedural History

1. The Initial Complaints and Lead Plaintiff Appointment

Martin Howard commenced this securities class action on August 11, 2017, soon after the deadly fire at Grenfell Tower in London, England, on June 14, 2017. Dkt. No. 1.[2] Janet L. Sullivan filed a similar class action complaint in this Court on September 15, 2017. *See Sullivan v. Arconic Inc., et al.*, No. 2:17-cv-01213-MRH (W.D. Pa.). On February 7, 2018, the Court consolidated the two actions and appointed Sullivan as Lead Plaintiff for purchasers of Arconic Depositary Shares representing its 5.375% Class B Mandatory Convertible Preferred Stock issued in a public offering on September 18, 2014 (the "Preferred Shares") and Ironworkers as Lead Plaintiffs for purchasers of Arconic securities other than the Preferred Shares. Dkt. No. 56.

2. Lead Counsel's Investigation and the Amended Complaints

Lead Counsel conducted a comprehensive investigation into Arconic's allegedly wrongful acts, which included, *inter alia*, (1) reviewing and analyzing Arconic's filings with the SEC, and other publicly available material related to Arconic, including news articles, analyst reports, and information published in connection with the Grenfell Tower Inquiry; and (2) interviews (with the aid of a private investigator) of former Arconic employees and others individuals with relevant knowledge. Lead Counsel also consulted with a damages and loss causation expert.

On April 9, 2018, Plaintiffs filed the First Amended Complaint (the "FAC"), asserting

[2] Complaints with similar allegations were previously filed in the United States District Court for the Southern District of New York but were subsequently dismissed.

claims against Arconic and its CEO, Klaus Kleinfeld, under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and claims against all Defendants under Sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"). Dkt. No. 61. On June 8, 2018, Defendants moved to dismiss the FAC. Dkt. No. 71. Plaintiffs filed an opposition on July 18, 2018, and Defendants filed their reply on September 14, 2018. Dkt. Nos. 75, 80. The Court granted the motion without prejudice on June 21, 2019, with leave to replead. Dkt. Nos. 106-07.

In response to the Court's decision, Lead Counsel undertook additional investigative efforts to address the issues identified by the Court. On July 23, 2019, Plaintiffs filed the operative 139-page "SAC," which asserted the same claims as the FAC and included augmented allegations. Dkt. No. 108. Defendants again moved to dismiss, with the parties briefing the motion and filing supplemental authority. Dkt. Nos. 111-12, 115, 118, 126, 128-29. On June 23, 2021, the Court issued an opinion and order denying in part and granting in part the motion. Dkt. Nos. 132-33.

3. Motion for Certification of Interlocutory Appeal

In the decision on Defendants' motion to dismiss, the Court held that Plaintiffs adequately alleged scienter as against Arconic based on the corporate scienter theory. Dkt. No. 132. On August 11, 2021, Defendants filed a motion for certification of an interlocutory appeal on the issue of corporate scienter, which the parties fully briefed. Dkt. Nos. 143-44, 154, 157-58. After hearing oral argument, the Court denied the motion on July 29, 2022. Dkt. No. 166.

4. Initial Discovery and Class Certification

On August 29, 2022, the parties submitted a joint Rule 26(f) report. Dkt. No. 176. On September 14, 2022, the parties participated in a video status conference with the Court regarding the discovery schedule (Dkt. No. 181), leading to the Court's issuance of the Order regarding case management and the Initial Case Management Order on December 2, 2022. Dkt. Nos. 183-84. The parties subsequently agreed on a Discovery Stipulation and Order and a Stipulated

Confidentiality and Protective Order, which were approved by the Court. Dkt. Nos. 192, 203.

Soon thereafter, the parties served extensive discovery requests on one another, including document requests and interrogatories. Subsequently, the parties exchanged correspondence and met and conferred several times regarding objections to the scope of discovery. The parties also began negotiating search terms for electronically stored information and proposed custodians.

On March 28, 2023, Plaintiffs filed the Expert Report of Zachary Nye, Ph.D in support of their anticipated motion for class certification, due April 30, 2023. Dkt. No. 211. Lead Counsel also prepared a supporting brief in anticipation of that deadline. Joint Decl. ¶ 46.

5. The Settlement

On February 23, 2023, Plaintiffs and the Arconic Defendants participated in a private in-person mediation before experienced mediator Gregory Lindstrom of Phillips ADR Enterprises. In advance, Plaintiffs and the Arconic Defendants exchanged written mediation statements and supporting exhibits. The parties negotiated in good faith, but were unable to reach a resolution. Nevertheless, the parties continued to explore a potential compromise. After the initial mediation session, Lead Counsel participated in numerous phone calls with Mr. Lindstrom. On March 30, 2023, Plaintiffs and the Arconic Defendants attended a second in-person mediation before Mr. Lindstrom in a continued effort to reach a resolution. These negotiations were protracted, complex, and challenging. After extensive discussion and negotiation, with the active involvement of the mediator, the parties reached an agreement in principle to settle the Litigation for $74,000,000, subject to the execution of settlement papers, and approval by the Court.

6. The Court's Preliminary Approval of the Settlement

On April 21, 2023, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement, together with supporting papers, including the Stipulation, which set forth the terms and conditions of the Settlement. Dkt. Nos. 218-20. The Court heard oral argument on

the motion on May 1, 2023. Dkt. No. 226. Based on the findings made on the record, the following day, the Court entered an Order granting preliminary approval of the Settlement and authorizing notice to the Settlement Class (the "Preliminary Approval Order"). Dkt. No. 227. As provided therein, objections to the Settlement, or requests to be excluded from the Settlement Class, are due by July 19, 2023, and a Settlement Hearing is scheduled for August 9, 2023, at 9:30 a.m. *Id.*

B. The Notice Program Approved by the Court

In the Preliminary Approval Order, the Court approved the form and content of the Notice, Summary Notice, and Postcard Notice, and ordered the Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), to (i) send the Postcard Notice to potential Settlement Class Members by First-Class Mail and, if possible, via email, by no later than May 23, 2023; and (ii) publish the Summary Notice by no later than May 30, 2023. Dkt. No. 227 ¶¶ 7-12. The Court further found that these notice procedures "meet the requirements of Rule 23 . . . the [PSLRA], due process, and other applicable law" and "constitute the best notice practicable under the circumstances." *Id.* ¶ 15.

The notice program approved by the Court has since been carried out. On May 23, 2023, A.B. Data established the settlement website at www.arconicsecuritiessettlement.com, which includes, among other things, the Stipulation, the Notice, the Proof of Claim and Release, and an online claim submission page. *See* Nordskog Decl. ¶ 11. A.B. Data commenced its distribution of the Postcard Notice on May 23, 2023. *Id.* ¶ 3. Additionally, A.B. Data received the names and addresses of additional Settlement Class Members or requests for additional Postcard Notices by numerous nominee holders. *Id.* ¶ 7. In total, 525,405 potential Settlement Class Members were notified of the Settlement by mail or email. *Id.* ¶ 8. On May 30, 2023, A.B. Data also published the Summary Notice in *The Wall Street Journal*, and over a national newswire. *Id.* ¶ 9. To date, there have been no objections to any aspect of the Settlement, nor have any Settlement Class Members requested exclusion from the Settlement Class. *Id.* ¶ 12; Joint Decl. ¶ 69.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

In the Third Circuit, there is a "strong presumption in favor of voluntary settlement agreements," which is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (citation omitted); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.").

Rule 23(e)(2) governs the settlement of class action claims. It provides that a class action settlement may be approved by the Court upon a finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). To guide that assessment, the rule directs the Court to consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Id. The first two factors focus on "procedural" concerns, whereas the final two focus on the "substantive" terms of the settlement. Fed. R. Civ. P. 23, advisory committee note to 2018 amendments (the "2018 Advisory Note"). These points of inquiry overlap with the nine factors that traditionally guided the fairness analysis, as adopted by the Third Circuit in *Girsh v. Jepson*:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of

> reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

521 F.2d at 157 (citation omitted); *see also Frederick v. Range Res.-Appalachia, LLC*, 2022 WL 973588, at *14 (W.D. Pa. Mar. 31, 2022) (Rule 23(e)(2) "overlap[s]" with *Girsh*).[3] The *Girsh* factors "are a guide and the absence of one or more does not automatically render the settlement unfair." *Kanefsky v. Honeywell Int'l Inc.*, 2022 WL 1320827, at *4 (D.N.J. May 3, 2022).

Finally, the Third Circuit has repeatedly held that a class action settlement is entitled to an initial presumption of fairness if: "(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *Warfarin*, 391 F.3d at 535; *see also In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) (same).

As described below, each of these factors supports final approval of the Settlement.

A. Plaintiffs and Lead Counsel Have More Than Adequately Represented the Settlement Class

The first factor under Rule 23(e)(2) addresses the adequacy of representation by the class representative(s) and class counsel. Fed. R. Civ. P. 23(e)(2)(A). This overlaps with the third *Girsh* factor, which covers the stage of proceedings and the amount of discovery completed. *See Girsh*, 521 F.2d at 157; *see also Warfarin*, 391 F.3d at 535 (similar factor for presumption of fairness).

Lead Counsel are highly qualified lawyers well-versed in prosecuting complex class actions under the federal securities laws. Pomerantz and Robbins Geller have both successfully prosecuted hundreds of securities class actions on behalf of damaged investors. *See, e.g., In re Petrobras Sec. Litig.*, 317 F. Supp. 3d 858 (S.D.N.Y. 2018), *aff'd*, 784 F. App'x 10 (2d Cir. 2019)

[3] Rule 23(e) was amended in 2018 to specify the matters which trial courts must consider when evaluating whether a proposed settlement is fair, reasonable, and adequate. As explained in the accompanying 2018 Advisory Note, this amendment was not designed to "displace" any of the multi-factor tests used by courts to review class action settlements, such as *Girsh*, but rather to focus the inquiry. Fed. R. Civ. P. 23, 2018 Advisory Note, subdiv. (e)(2).

(Pomerantz, as sole lead counsel, achieved a historic $3 billion settlement for investors); *Honeywell Int'l*, 2022 WL 1320827, at *8 (Pomerantz is "highly experienced," has "won substantial recoveries" in securities class actions, and is "qualified"); *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2021 WL 358611, *6 (D.N.J. Feb. 1, 2021) (finding Robbins Geller skilled and efficient and noting that it "achieved a $1.21 billion settlement—the ninth largest PSLRA class action ever recovered—for the benefit of the class"); *McDermid v. Inovio Pharms., Inc.*, 467 F. Supp. 3d 270, 281 (E.D. Pa. 2020) ("Robbins Geller is a preeminent litigation firm with a track record of winning complex securities class actions."); *see also* Dkt. Nos. 220-9, 220-10 (firm resumes of Pomerantz and Robbins Geller). In addition, Ironworkers are sophisticated institutional investors that oversee approximately $3.8 billion of investments on behalf of their beneficiaries, with significant experience prosecuting class actions arising under the federal securities laws. *See* Tormey Decl. ¶¶ 3-4; Sabbagh Decl. ¶¶ 3-4.

The Court previously expressed confidence in the abilities of Plaintiffs and Lead Counsel by appointing each to their respective positions. *See* Dkt. No. 56. The Court's confidence was well-placed as, since then, they have vigorously pursued the claims asserted and the interests of absent class members. Among other things, Plaintiffs and/or Lead Counsel strengthened the operative pleading through several amendments, successfully opposed Defendants' motion to dismiss and request to certify an interlocutory appeal from the partial denial of that motion, prevailed against Defendants' attempts to deprive them of discovery relevant to class certification, served and responded to extensive written discovery requests, including substantive objections to the scope thereof, produced an expert report on market efficiency in support of Plaintiffs' forthcoming motion for class certification, prepared a brief in support of their anticipated motion for class certification, and engaged in protracted and challenging settlement negotiations before an experienced mediator at a unique inflection point in the Litigation. Accordingly, the Court found

at the hearing held on May 1, 2023, that Lead Counsel's zealous advocacy reflected their reputation for being "some of the most sophisticated and experienced securities litigators, at a minimum, in the United States . . . ." Dkt. No. 230 ("Tr.") at 6:21-23. Thus, by the time the parties entered into the Settlement, Plaintiffs and Lead Counsel had "an adequate appreciation of the merits of the case" through substantial litigation and their prior experience. *See Warfarin*, 391 F.3d at 597.

Although formal discovery is in its nascent stages, Lead Counsel had already conducted numerous former employee interviews, reviewed tens of thousands of pages of relevant evidence published in connection with the Grenfell Tower Inquiry—including Arconic's own documents, testimony, and expert reports—and enlisted the assistance of an expert economist. *See* Joint Decl. ¶¶ 45, 47. This is precisely the type of "informal discovery," outside the ambit of the Federal Rules, which can enable counsel to sufficiently value the claims in a case. *NFL Players Concussion Injury Litig.*, 821 F.3d at 436, 439; *see also In re PNC Fin. Servs. Grp., Inc.*, 440 F. Supp. 2d 421, 433 (W.D. Pa. 2006) (similar). In addition, since agreeing to settle, Lead Counsel has obtained confirmatory discovery from Defendants to verify their findings. Joint Decl. ¶ 48. This fact further supports approval. *See Lan v. Ludrof*, 2008 WL 763763, at *13 (W.D. Pa. Mar. 21, 2008) (informal discovery and post-settlement "confirmatory discovery" provided adequate basis to value claims); *see also In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016) (settlement after extensive briefing on motion to dismiss, motion to certify interlocutory appeal, and expedited discovery was well-informed).

B. The Settlement Negotiations Were Conducted at Arm's-Length and Under the Oversight of an Experienced Mediator

The second factor under Rule 23(e)(2) considers whether the Settlement was negotiated at arm's-length. *See* Fed. R. Civ. P. 23(e)(2)(B); *see also Warfarin*, 391 F.3d at 535 (citing arm's-length negotiations as a factor in assessing presumption of fairness).

Here, the proposed Settlement was the result of extensive arm's-length negotiations by experienced counsel overseen by an independent mediator. As set forth in Part II.A.5, *supra*, the parties were unable to agree on an appropriate settlement amount following the initial all-day mediation on February 23, 2023, but continued to regularly confer with Mr. Lindstrom thereafter and agreed to participate in another mediation on March 30, 2023. The negotiations were vigorous and adversarial. Following these negotiations, Mr. Lindstrom made a mediator's recommendation to settle for $74 million, which the parties ultimately accepted. This record demonstrates that the parties negotiated at arm's length. *See Copley v. Evolution Well Servs. Operating, LLC*, 2023 WL 1878581, at *4 (W.D. Pa. Feb. 10, 2023) (settlement from "two full-day mediation sessions" before experienced mediator was "arm's length"); *see also McDermid v. Inovio Pharms., Inc.*, 2023 WL 227355, at *5 (E.D. Pa. Jan. 18, 2023) (that settlement resulted from "a mediator's proposal after two mediations gives it additional weight"). Indeed, "participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties." *Walker v. Highmark BCBSD Health Options, Inc.*, 2022 WL 17592067, at *3 (W.D. Pa. Dec. 13, 2022) (citation omitted).

When a settlement results from arm's-length negotiations, the assessment by experienced counsel that a settlement is in the best interest of the class is entitled to "considerable weight." *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003); *see also Viropharma*, 2016 WL 312108, at *11 (courts "afford[] considerable weight to the views of experienced counsel regarding the merits of the settlement"). This flows from the principle that "a settlement represents the result of a process by which opposing parties attempt to weigh and balance the factual and legal issues that neither side chooses to risk taking to final resolution." *Fulton-Green v. Accolate, Inc.*, 2019 WL 4677954, at *9 (E.D. Pa. Sept. 24, 2019). Bringing their experience and knowledge

of this case to bear, Lead Counsel believe that the Settlement is in the best interests of the Settlement Class. This factor thus weighs strongly in favor of approval.

C. The Settlement Is Adequate Considering the Costs, Risks, and Delays of Trial and Appeal

The third consideration under Rule 23(e)(2), which overlaps with *Girsh* factors 1 and 4-9, is the adequacy of the settlement in light of the costs, risks, and delay of continued litigation. Fed. R. Civ. P. 23(e)(2)(C)(i). This case has already been pending for nearly six years. Plaintiffs would undoubtedly face substantial additional costs, risks, and delays were litigation to continue. As explained below, the Settlement is more than adequate in light of those obstacles.

1. Risks and Costs of Establishing Liability and Damages

Plaintiffs believe their case is strong but acknowledge that further litigation poses a variety of risks. To prevail on their Exchange Act claims, Plaintiffs would need to prove—and defeat Defendants' counter-arguments regarding—falsity, materiality, scienter, loss causation, and damages. For example, Plaintiffs would need to marshal evidence showing that Arconic's statements that Reynobond complied with building codes *throughout the world* (which necessarily differ in each country) were false and made with scienter. However, as the Court acknowledged in its motion to dismiss decision, a significant amount of pertinent evidence is located at the Arconic subsidiary in France, and Arconic objected to producing information from that entity outside the framework of the Hague Convention. Joint Decl. ¶¶ 39, 53. It also refused to produce any records relating to any market other than the United Kingdom. *Id.* Even if Plaintiffs gained timely access to that evidence, the fact that many documents and depositions would be in French create their own challenges in terms of the need to translate and the ability to secure clear and convincing testimony. *See Beltran v. SOS Ltd.*, 2023 WL 319895, at *5 (D.N.J. Jan. 3, 2023) (that most of the needed evidence is in China "further complicates [the] chances of success") (Pascal, M.J.), *report adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023).

Further, nearly all this evidence would need to be reviewed by subject-matter experts given the highly technical and multinational nature of Plaintiffs' claims. In addition, "proving damages in securities fraud cases . . . invariably requires expert testimony." *Id.* Because Plaintiffs bear the burden of proof, Defendants could win at summary judgment on any of these issues through a well-placed *Daubert* motion. If the case proceeded to trial, these issues would be resolved through an inherently uncertain "battle of the experts." *Viropharma*, 2016 WL 312108, at *12; *see also Inovio Pharms.*, 2023 WL 227355, at *8 ("Conflicting expert testimony at trial would introduce further uncertainty"); *SOS Ltd.*, 2023 WL 319895, at *5 (battle of experts "can go either way").

Moreover, any trial victory for Plaintiffs would inevitably lead to an appeal. *See Honeywell*, 2022 WL 1320827, at *4 ("The time and expense of a securities class action trial is substantial and would very likely lead to post-trial motions and subsequent appeals"). Indeed, Defendants already sought leave to pursue an interlocutory appeal on the issue of corporate scienter and, thus, would likely seek to challenge that same issue in a subsequent appeal. Reversal on that issue, or any expert matter, could unwind all the time and money spent securing a judgment.

At a minimum, the Settlement spares the Settlement Class of the substantial costs and delays associated with further litigation. It is well-known that "[s]ecurities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *In re Innocoll Holdings Public Ltd. Co. Sec. Litig.* (*Innocoll II*), 2022 WL 16533571, at *5 (E.D. Pa. Oct. 28, 2022) (citation omitted); *see also Honeywell*, 2022 WL 1320827, at *4 (securities class actions are "by definition . . . complicated"). Indeed, it is not uncommon for a securities fraud case to take a decade or more to proceed from filing through appeal.[4] This case is no exception. Here, it took nearly five and a

[4] The time required to prosecute a full-length securities claim to fruition itself poses the risk that a change in law could jeopardize even seemingly secure victories under then-existing standards. *See, e.g., In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011), *aff'd*, 838 F.3d 223 (2d Cir. 2016) (Supreme Court decision after entry of verdict in plaintiffs' favor reduced a billion-dollar verdict into a $78 million recovery in case brought in 2005).

half years of litigation before the case entered the fact discovery phase. Based on the course of litigation to date, continued proceedings would likely be lengthy, procedurally complex, and thus costly, particularly given the need for overseas discovery and extensive expert testimony.

In short, a potential recovery for the Settlement Class—if any—would occur years from now after incurring significant costs. By contrast, the Settlement provides an immediate and substantial recovery without the risks, expense, and delays of continued litigation. The risks and costs associated with establishing liability and damages at trial and appeal thus weigh in favor of approving the Settlement. *See SOS Ltd.*, 2023 WL 319895, at *5 ("certainty" of settlement is favorable to the "gamble" of bringing securities claims to trial); *Whiteley v. Zynebra Pharms., Inc.*, 2021 WL 4206696, at *3 (E.D. Pa. Sept. 16, 2021) ("[A]voidance of unnecessary expenditure of time and resources benefits all parties and weighs in favor of approving the settlement.").

2. The Settlement Falls Well Within the Range of Reasonableness

"The last two *Girsh* factors ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial." *Jackson v. Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 705 (W.D. Pa. 2015) (citation omitted). In making this assessment, courts do not need to make a precise estimate of damages. *See Inovio Pharms.*, 2023 WL 227355, at *8 ("[T]he inability to determine the precise amount of damages . . . does not render the Court unable to conduct this [range of reasonableness] analysis"). "[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery" is not dispositive, particularly in securities class actions. *In re AT&T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006). Rather, the recovery must be considered relative to "all the risks considered under *Girsh*." *Id.*

Plaintiffs' damages expert estimates that if Plaintiffs fully prevailed at summary judgment and trial, and the Court and jury accepted Plaintiffs' damages theory, the total potential maximum damages would be approximately $856 million in the aggregate. Thus, if the Court or a jury

accepted Plaintiffs' damages model, the $74 million Settlement represents approximately 22% of the likely recoverable damages for purchasers of Arconic Preferred Shares (who had claims under the Securities Act and the Exchange Act) and 7.18% of the likely recoverable damages in this case for purchasers of Arconic common stock and notes (who had claims under the Exchange Act).

It is not possible to quantify precisely the risks to the best possible recovery posed by Defendants' anticipated merits arguments. However, the recovery achieved by the Settlement is outstanding for a case of this type. The recovery far surpasses the median recovery of 1.8% of estimated damages in securities class actions settled in 2020, 2021, and 2022, and the median recovery of 1.7% of estimated damages for securities class actions with investor losses in the range of $600 - $999 million. *See* Joint Decl. Ex. 9 at 17-18. Indeed, courts regularly approve securities class action settlements that provide similar, or far lower, recoveries given the risks of continuing such litigation. *See, e.g.*, *SOS Ltd.*, 2023 WL 319895, at *6 (6.5% recovery); *Utah Ret. Sys. v. Healthcare Servs. Grp., Inc.*, 2022 WL 118104, at *8 (E.D. Pa. Jan. 12, 2022) (6.4% recovery); *Schuler v. Medicines Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (4% recovery); *In re Par Pharms. Sec. Litig.*, 2013 WL 3930091, at *8 (D.N.J. July 29, 2013) (7% recovery); *In re Hemispherx Biopharma, Inc. Sec. Litig.*, 2011 WL 13380384, at *6 (E.D. Pa. Feb. 14, 2011) (5.2% recovery); *see also AT&T*, 455 F.3d at 170 (affirming approval of settlement that provided a 4% recovery). Therefore, the Settlement Amount in this case is fair, reasonable, and adequate.

D. The Settlement Satisfies the Remaining Rule 23(e)(2) Factors

The remaining factors of Rule 23(e)(2) require courts to consider: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees, including the timing of payment; (iii) the existence of any other agreements; and (iv) whether the settlement treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv); Fed. R. Civ. P. 23(e)(2)(D). These factors also support approval here.

1. The Proposed Method for Distributing Relief Is Effective

Under Rule 23(e)(2)(C)(ii), the court must "scrutinize the method of claims processing to ensure that it facilitates the filing of legitimate claims." Fed. R. Civ. P. 23, 2018 Advisory Note, subdiv. (e)(2). Here, the method for processing claims follows well-established and effective procedures. Settlement Class Members must provide basic personal information and trading records to substantiate their transactions in Arconic securities. Requiring such documentation is reasonable because "there is no central repository of the owners of the securities" and it "prevent[s] fraudulent claims." *SOS Ltd.*, 2023 WL 319895, at *7; *see also In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.* (*Innocoll I*), 2022 WL 717254, at *5 (E.D. Pa. Mar. 10, 2022) (it is "standard" to require the submission of records "proving ownership of the shares" in securities cases). In addition, claimants have the opportunity to cure claim deficiencies or request that the Court review any claim denial (Stipulation ¶¶ 5.9-5.10). *See Se. Pa. Trans. Auth. v. Orrstown Fin. Servs., Inc.*, 2023 WL 1454371, at *11 (M.D. Pa. Feb. 1, 2023) (allowing claimants to "cure any deficiencies . . . or request that a Court review a denial" supports approval under Rule 23(e)(2)).

2. The Requested Attorneys' Fees Are Reasonable

As set forth in Part V, *infra*, Lead Counsel's request for an award of attorneys' fees is reasonable and appropriate. Further, because this is an all-cash settlement which has already been fully funded, there is no risk that counsel will be paid but Settlement Class Members will not. Importantly, the Settlement may not be terminated based on a ruling regarding attorneys' fees. *See* Stipulation ¶ 6.4. This further supports approval. *See Innocoll I*, 2022 WL 717254, at *5.

3. The Parties Have No Other Agreements Besides an Agreement to Address Requests for Exclusion

As discussed in the motion for preliminary approval, and described in the Notice sent out to potential Settlement Class Members, Plaintiffs and Defendants have entered into a supplemental agreement providing Defendants with the right to terminate the Settlement in the event valid

requests for exclusion from the Settlement Class exceed the criteria set forth therein. As other courts have recognized, "[t]his type of agreement is standard in securities class action settlements." *Orrstown Fin. Servs.*, 2023 WL 1454371, at *12 (citation omitted), and "does not affect the adequacy of the relief provided to the class." *Inovio Pharms.*, 2023 WL 227355, at *6.

4. Settlement Class Members Will Be Treated Equitably, and the Reaction of the Settlement Class Supports Final Approval

Rule 23(e)(2)(D) requires the Court to consider whether class members will be treated equitably. As set forth in Part IV, each Settlement Class Member who properly submits a valid Claim will receive a *pro rata* share of the Settlement proceeds based on their relative investment losses. This treats class members fairly relative to one another. *See Inovio Pharms.*, 2023 WL 227355, a *6 (plan that provides payments proportional to investment losses treats class members equitably); *see also Innocoll I*, 2022 WL 717254, at *5 (a formula that distributes proceeds based on relative investment losses "ensures" it is equitable). Further, of the 525,405 potential Settlement Class Members, there have been no objections or requests for exclusion to date. Nordskog Decl. ¶ 12; Joint Decl. ¶ 69. To the extent there are any objections to the Settlement after this filing, they will be addressed in Plaintiffs' reply.

* * *

Each factor identified in Rule 23(e)(2) and *Girsh* is satisfied. As such, the Settlement is also entitled to a presumption of fairness, in accordance with *Warfarin*, 391 F.3d at 535. Given the complexity of the underlying issues, the $74 million recovery provided by the Settlement is excellent, and could not have been achieved without the commitment of Plaintiffs and the hard work of their counsel. Plaintiffs and Lead Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and should be granted final approval.

IV. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

As set forth in the Notice, the Net Settlement Fund will be divided among Settlement Class Members who submit valid Claims pursuant to the Plan of Allocation. *See* Dkt. No. 220-3 (the "Notice"). "[A]pproval of a plan of allocation . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *Innocoll II*, 2022 WL 16533571, at *8. A plan of allocation need not be "perfect," it "need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *SOS Ltd.*, 2023 WL 319895, at *9 (citation omitted). "Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable." *Rossini v. PNC Fin. Servs. Grp., Inc.*, 2020 WL 3481458, at *17 (W.D. Pa. June 26, 2020) (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011)).

The Plan of Allocation here was developed with the assistance of Lead Counsel's experts. *See* Joint Decl. ¶ 68. The calculations set forth therein were based on: (i) an event study analysis that estimated the amount of artificial inflation in the prices of Arconic securities during the Class Period; and (ii) statutory damages provided under the Securities Act. *See* Notice ¶ 23. The Plan of Allocation distributes the Net Settlement Fund on a *pro rata* basis, as determined by the ratio between each valid claim and the sum of all valid claims. *Id.* The calculation of each claim will depend upon several factors, including when the securities were purchased or acquired, and whether they were sold or held. *Id.* Once each claim is calculated and verified, and the distribution ratio is determined, the Net Settlement Fund (*i.e.*, the Settlement Fund less Notice and Administration Expenses, Taxes and Tax Expenses, and all Court-approved attorney's fees, litigation expenses, and lead plaintiff awards) will be distributed to Authorized Claimants entitled to a distribution of at least $10.00. *Id.* Any amount remaining following the initial distribution will be further distributed among Authorized Claimants to the extent economically feasible. *Id.*

This plan is fair, reasonable, and adequate, and consistent with standard practice in securities cases. *See Inovio Pharms.*, 2023 WL 227355, at *9 (approving plan that allocates funds in proportion to each member's losses based on "when each member purchased and sold his stock"); *see also, e.g.*, *SOS Ltd.*, 2023 WL 319895, at *7 (same); *Honeywell*, 2022 WL 1320827, at *6 (same); *Healthcare Servs.*, 2022 WL 118104, at *11 (same); *Innocoll II*, 2022 WL 16533571, at *8 (same). For all these reasons, the Plan of Allocation should be approved.

V. THE REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES SHOULD BE APPROVED

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Indeed, it is well established in this Circuit that an attorney "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); *see also In re S.S. Body Armor I Inc.*, 961 F.3d 216, 225 (3d Cir. 2020) (same). The determination of the proper amount of attorneys' fees to award rests within the sound discretion of the court. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009).

Lead Counsel requests attorneys' fees in the amount of 33 ⅓% of the Settlement Amount ($24,666,666.66) and litigation expenses of $822,910.28, plus interest earned on these amounts at the same rate and for the same period as that earned by the Settlement Fund. As provided in the Stipulation, Lead Counsel will allocate the attorneys' fees among Lead Plaintiffs' Counsel in a manner which they in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the case. These requests are fair and reasonable, and well within the range of fees and expenses typically granted in similar matters. For all the reasons set forth below, Lead Counsel respectfully request that these attorneys' fees and expenses be approved.

A. The Settlement Creates a Common Fund From Which a Percentage of Recovery Fee Award Is Appropriate

Attorneys' fees in class actions are assessed using the percentage-of-recovery ("POR") method or the "lodestar" method. *In re Diet Drugs*, 582 F.3d 524 (3d Cir. 2009). POR simply refers to a percentage of the settlement, whereas the lodestar approach "multipl[ies] the number of hours . . . reasonably worked on a client's case by a reasonable hourly billing rate . . . based on the given geographical area, the nature of the services provided, and the experience of the attorney." *Gelis v. BMW of N. Am., LLC*, 49 F.4th 371, 379 (3d Cir. 2022); *see also AT&T*, 455 F.3d at 164.

The POR approach is "favored" in common fund cases because it "rewards counsel for success and penalizes it for failure," thus aligning the interests of counsel with those of the class. *In re Rite Aid Corp. Sec. Litig.*, 396 F. 3d 294, 300 (3d Cir. 2005) (citation omitted); *see also Wells Fargo*, 136 F. Supp. 3d at 712 (same). In contrast, the lodestar method has several limitations and is generally reserved for cases involving fee-shifting statutes or settlements with an imprecise value. *Rite Aid*, 396 F.3d at 300; *see also Gelis*, 49 F.4th at 379 (same). In addition, the PSLRA has made POR the standard for setting fees in securities cases by providing that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. § 78u-4(a)(6); *see also In re Cendant Corp. Sec. Litig.* (*Cendant II*), 404 F.3d 173, 188 n.7 (3d Cir. 2005) (POR is "the standard" in PSLRA cases). As such, courts consistently apply the POR approach in securities class actions settled through the creation of a common settlement fund. *See, e.g.*, *Inovio Pharm.*, 2023 WL 227355, at *11; *SOS Ltd.*, 2023 WL 319895, at *8; *Innocoll II*, 2022 WL 16533571, at *9; *Honeywell*, 2022 WL 1320827, at *10; *In re Wilmington Trust Sec. Litig.*, 2018 WL 6046452, at *8 (D. Del. Nov. 19, 2018); *P. Van Hove BVBA v. Universal Travel Grp.*, 2017 WL 2734714, at *10 (D.N.J. June 26, 2017).

The Settlement here establishes an all-cash common fund in exchange for the release of claims governed by the PSLRA. Thus, Lead Counsel's application for a POR fee award is consistent with the law of this Circuit.

B. The Requested Fee Is Presumptively Reasonable Because It Was Negotiated by Lead Plaintiff

Courts afford 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." *Cendant II*, 404 F.3d at 199. Ironworkers are sophisticated institutional investors. Given their substantial financial interest in this case, they had every incentive to, and did, negotiate a fair and reasonable fee at the outset of their involvement. The fee requested is consistent with the terms of the retainer agreement entered into between Ironworkers and Pomerantz when Ironworkers decided to seek a leadership role in this case. *See* Tormey Decl ¶ 7; Sabbagh Decl. ¶ 7. Co-Lead Plaintiff Sullivan also supports the attorneys' fees requested. *See* Sullivan Decl. ¶ 6. For these reasons, the requested fee should be considered presumptively reasonable. *See Healthcare Servs.*, 2022 WL 118104, at *11 (applying presumption when "Lead Plaintiff, a sophisticated entity, reviewed and approved the fee"); *see also Valeant Pharm.*, 2021 WL 358611, at *5 (same); *Viropharma*, 2016 WL 312108, at *16 (same).

C. The Requested Fee Is Fair and Reasonable

When evaluating a fee request, courts consider several factors established by the Third Circuit in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d at 195 n.1, including:

> (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.

These factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *Id.* Here, each factor supports the requested 33 ⅓% fee award.

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

In awarding fees, the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Viropharma*, 2016 WL 312108, at *16 (same). To assess this factor, courts "consider[] the fee request in comparison to the size of the fund created and the number of class members to be benefitted." *Zynerba Pharms.*, 2021 WL 4206696, at *11 (quoting *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011)).

The $74 million recovery here is an outstanding result that provides an immediate cash recovery to the Settlement Class. By contrast, if the case did not settle, any available insurance would continue to be depleted by defense costs, decreasing the likelihood of a comparable recovery in the future. In light of these factors and others, and after multiple rounds of discussions and negotiations, the parties agreed to settle—at the recommendation of the mediator—for $74 million. As discussed above, that figure exceeds many securities class action settlements that have been approved in this Circuit, and is multiples higher than the median settlement in securities class actions with comparable losses. *See id.* at *11 (recovery that "exceeds the median recovery for similar securities class actions" supported 33% fee request); *see also Viropharma*, 2016 WL 312108, at *16 (same for "higher than average recovery for [securities] cases of this type").

In addition, the number of class members that will benefit from the Settlement is unquestionably large. The Settlement Class includes nearly all who purchased or acquired widely-held Arconic securities from November 4, 2013, and June 27, 2017, inclusive. Thus, thousands of investors will benefit from the Settlement. *See* Part II.B *supra* (Notice sent to 525,405 potential Settlement Class Members). Accordingly, the first *Gunter* factor clearly weighs in favor of

approving the negotiated fee. *See Honeywell*, 2022 WL 1320827, at *11 ($10 million securities settlement that "benefits thousands of investors and is all cash" supported fee award).

2. Reaction of Settlement Class Members to the Fee Request

Notice of this Settlement, including the fee request, has been provided to 525,405 potential Settlement Class Members. Nordskog Decl. ¶ 8. To date, no objections have been received. Joint Decl. ¶ 69. Thus, the reaction of the Settlement Class weighs in favor of approval of the requested fee. *See AT&T*, 455 F.3d at 170 (district court did not abuse discretion finding that a low number of objectors supports the fee award); *see also Inovio Pharms.*, 2023 WL 227355, at *12 (that there were "no objections to the request fee award . . . favors approval"); *Honeywell*, 2022 WL 1320827, at *10 ("lack of objections" to attorneys' fees "weighs strongly in favor of approving the request").

3. The Skill and Efficiency of Counsel

The third *Gunter* factor—the skill and efficiency of the attorneys involved—is measured by the "quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Innocoll II*, 2022 WL 16533571, at *10 (citation omitted). As set forth in Part III.A, Lead Counsel vigorously litigated against highly qualified opposing counsel for nearly six years on a fully contingent basis by drawing on their substantial and well-documented expertise in this area of law. *See Viropharma*, 2016 WL 312108, at *16 (that lead counsel "litigated this case aggressively and professionally" against "highly regarded" opposing counsel supported award); *see also Healthcare Servs.*, 2022 WL 118104, at *12 (same for counsel who "expended significant effort and resources on a contingency basis"). Indeed, the Court acknowledged at the hearing on May 1, 2023 that the "quality of the written submissions" and "vigorous and effective oral advocacy" throughout the case displayed the "sophisticated experience that came to the table" on both sides. Tr. 32:10-15.

That Lead Counsel secured a $74 million settlement under these circumstances demonstrates their "legal prowess." *Wilmington Trust*, 2018 WL 6046452, at *8; *see also In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 436 (D.N.J. 2004) (the "results obtained for a class evidence the skill and quality of counsel") (citation omitted). Furthermore, the benefit of an all-cash settlement of this type is "immediate." *Honeywell*, 2022 WL 1320827, a *11.

4. The Complexity and Duration of the Litigation

While securities class actions are "inherently complex, expensive, and lengthy" to litigate, *Healthcare Servs.*, 2022 WL 118104, at *12, this case, as the Court acknowledged at the May 1, 2023 hearing, presented unique challenges which made it "an exceedingly complex securities case" and set it apart from the "run-of-the-mine" variety. Tr. 5:21-8:13. Among other things, this case involved a "complex overlay of . . . sophisticated multinational products liability law" and Defendants' disclosure obligations under the federal securities laws as well as "novel or modestly . . . tested theories of liability." *Id.* Accordingly, this case has already spanned nearly six years and required Lead Counsel to amend the operative pleading several times, oppose two motions to dismiss, argue against the request to certify an interlocutory appeal, oppose Defendants' attempt to deprive them of discovery relevant to class certification, serve and respond to extensive written discovery requests, challenge Defendants' numerous objections to producing relevant discovery, produce an expert report on market efficiency, draft a class certification brief, review tens of thousands of pages of relevant evidence published in connection with the Grenfell Tower Inquiry, negotiate the Settlement and, now, move for preliminary and final approval of the Settlement. Each of these stages of litigation presented obstacles that Lead Counsel skillfully overcame. In light of the complexity and duration of this case, this factor clearly favors approval of the requested attorneys' fees. *See Inovio Pharms.*, 2023 WL 227355, at *12 (several motions to dismiss, fact discovery, and negotiating settlement supported finding that securities case was complex and

long); *see also Viropharma*, 2016 WL 312108, at *16 (same, after extensive briefing on motion to dismiss, motion to certify interlocutory appeal, and expedited discovery).

5. The Risk of Non-Payment

Lead Counsel has prosecuted this case on a contingent basis. In other words, they advanced "attorney time, effort and money . . . with no guarantee of any recovery." *Calhoun v. Invention Submission Corp.*, 2023 WL 2403917, at *4 (W.D. Pa. Mar. 8, 2023). This risk is "especially high in securities class actions, as they are 'notably difficult and notoriously uncertain.'" *Universal Travel Grp.*, 2017 WL 2734714, at *12 (citation omitted). Due to the inherent risk of non-payment, "[c]ourts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval" in securities cases. *Zynerba Pharms.*, 2021 WL 4206696, at *12 (citation omitted) (approving one-third fee award); *see also Universal Travel Grp.*, 2017 WL 2734714, at *12 (same).

6. The Significant Time Devoted to This Case

The significant time that counsel devoted to this case favors approval of the requested fee as well. Lead Plaintiffs' Counsel invested over 11,400 hours of attorney time over the course of almost six years, and incurred $822,910.28 in expenses prosecuting this case for the benefit of the Settlement Class without any guarantee they would be compensated if Plaintiffs did not prevail. *See* Gilmore Decl. ¶¶ 4-5; Rosenfeld Decl. ¶¶ 4-5; Yates Decl. ¶¶ 4-5; Trinko Decl. ¶¶ 4-5.

7. The Range of Fees Typically Awarded

"While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has noted that reasonable fee awards in [POR] cases generally range from nineteen to forty-five percent of the common fund." *Zynerba Pharms.*, 2021 WL 4206696, at *12; *see also Abramson v. Agentra, LLC*, 2021 WL 3370057, at *17 (W.D. Pa. Aug. 3, 2021) (same).

Courts in this Circuit frequently award a one-third POR fee in securities class action cases that settle in the $10 to $100 million range. *See Martin v. Altisource Res. Corp.*, 2020 WL 9763240 (D.V.I. Feb. 14, 2020) (33.33% of $15.5 million); *In re Heckmann Corp. Sec. Litig.*, 2014 WL 12957418 (D. Del. June 26, 2014) (33.33% of $13.5 million); *In re Adams Golf, Inc. Sec. Litig.*, 2010 WL 11570192 (D. Del. June 17, 2010) (33.33% of $17.75 million); *In re Reliance Sec. Litig.*, 2002 WL 35645209 (D. Del. Feb. 8, 2002) (33.33% of $75 million); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423 (E.D. Pa. 2001) (33.33% of $48 million). Indeed, courts around the country regularly award such fees in securities class actions involving similarly novel, complex, or fiercely litigated claims. *See, e.g., Pearlstein v. BlackBerry Ltd.*, 2022 WL 4554858 (S.D.N.Y. Sept. 29, 2022) (33.33% of $165 million); *Grae v. Corrections Corp. of Am.*, 2021 WL 5234966 (M.D. Tenn. Nov. 8, 2021) (33.33% of $56 million); *Landmen Partners Inc. v. Blackstone Grp., L.P.*, 2013 WL 11330936 (S.D.N.Y. Dec. 18, 2013) (33.33% of $85 million); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012) (33.33% of $145 million).

The requested fee is also consistent with awards granted in other types of complex class actions within the Third Circuit and elsewhere. *See, e.g., In re Neurontin Antitrust Litig.*, 2014 WL 12962880 (D.N.J. Aug. 6, 2014) (33.33% of $190 million); *Marchbanks Truck Service, Inc. v. Comdata Network, Inc.*, 2014 WL 12738907 (E.D. Pa. July 14, 2014) (33.33% of $130 million); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808 (D.N.J. Nov. 9, 2005) (33.33% of $75 million); *Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626 (D.N.J. Oct. 23, 2017) (33.33% of $61.5 million); *see also, e.g., In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396 (S.D.N.Y. Sept. 23, 2019) (33.33% of $75 million).

In addition, the POR approach to awarding fees in class actions is meant to "approximate the fee which would be negotiated if the lawyer were offering the services in the private marketplace." *Remeron*, 2005 WL 3008808, at *16. In this regard, numerous courts recognize that

"[a]ttorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation." *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828 (D.N.J. Nov. 28, 2007); *see also Rossini*, 2020 WL 3481458, at *20 ("[P]laintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.") (citation omitted).

Because the requested fee is well within the range of fees typically awarded in similar cases, and consistent with private practice, this factor favors approval of the requested fee award.

E. A Lodestar Cross-Check Confirms That the Requested Fee Is Reasonable

The lodestar approach has been criticized for encouraging attorneys to "maximize legal fees" and undercompensating attorneys for "the risk of undertaking complex or novel cases." *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000). Given its limited value and tedious burdens, many courts consider it to be a "waste of judicial resources." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000).

While not mandatory, courts may elect to use an abridged lodestar analysis to "cross-check" the reasonableness of a POR fee. *See Rossini*, 2020 WL 3481458, at *21 (the "lodestar cross-check is 'suggested,' but not mandatory"). This cross-check simply compares counsel's "lodestar" to the fee resulting from the POR approach to assesses the reasonableness of the resulting "multiplier." *AT&T*, 455 F.3d at 164. If used, the cross-check is "non-dispositive," *Altnor v. Preferred Freezer Servs., Inc.*, 197 F. Supp. 3d 746, 767 (E.D. Pa. 2016), and "should not displace a district court's primary reliance on the [POR] method." *AT&T* , 455 F.3d at 164.

Because it merely serves to confirm prior findings, the cross-check "need entail neither mathematical precision nor bean-counting," and "district courts may rely on summaries submitted by the attorneys and need not review actual billing records," as in a full-blown lodestar review. *Rite Aid*, 396 F.3d at 306-07. The appropriate multiplier varies based on the facts of each case and "need not fall within any pre-defined range, provided that the . . . analysis justifies the award." *Id.*

However, the Third Circuit has repeatedly recognized that multipliers "ranging from one to four are the norm" in common fund cases. *In re S.S. Body Armor I, Inc.*, 927 F.3d 763, 774 (3d Cir. 2019) (citation omitted); *see also In re Veritas Software Corp. Sec. Litig.*, 396 Fed. App'x 815, 818-19 (3d Cir. 2010) (same). Multipliers of this type are common in securities class action cases as they account for "the contingent nature and risk of the litigation, the results obtained, and the quality of the service rendered." *In re Ravisent Tecshs. Inc. Sec. Litig.*, 2005 WL 906361, at *12 (E.D. Pa. Apr. 18, 2005) (citation omitted); *see also Zynerba Pharms.*, 2021 WL 4206696, at *14 ("Such multipliers are necessary to compensate counsel for the risk of [nonrecovery]").

To date, Lead Plaintiffs' Counsel devoted a combined 11,411.25 hours to prosecuting this case, with a total loadstar of $6,976,740.75. Gilmore Decl. ¶ 4; Rosenfeld Decl. ¶ 4; Yates Decl. ¶ 4; Trinko Decl. ¶ 4. Thus, a 33 ⅓% POR award equal to $24,666,666.66 yields a multiplier of 3.54. That multiplier is well within the range approved in other securities class actions. *See Schuler*, 2016 WL 3457218, at *10 (approving 33.33% award with 3.57 multiplier); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 134-35 (D.N.J. 2002) (same for 4.3 multiplier); *In re Aetna Inc. Sec. Litig.*, 2001 WL 20928, at *15 (E.D. Pa. Jan. 4, 2001) (same for 3.6 multiplier). Indeed, a multiplier of 4.2 is appropriate in "a hard-fought [securities] case with a substantial risk." *In re DaimlerChrysler AG Sec. Litig.*, 2004 WL 7351531, at *19 (D. Del. Jan. 28, 2004).

In addition, Lead Counsel will devote additional time to this matter in connection with administering the Settlement through its completion, for which they will not seek additional compensation. As such, the requested fee is more than reasonable.

F. Reasonably Incurred Litigation Expenses Should Be Awarded

Lead Counsel also requests payment for $822,910.28 in litigation charges and expenses incurred in connection with this case. It is widely accepted that counsel may recover "expenses that were adequately documented and reasonable and appropriately incurred in the prosecution of

the class action." *Viropharma*, 2016 WL 312108, at *18; *see also Calhoun*, 2023 WL 2403917, at *6 (awarding litigation costs "routinely charged to clients billed by the hour").

The costs and charges incurred by Lead Plaintiffs' Counsel are documented in the accompanying declarations, and include standard expenses, including travel, document hosting and production, investigators, legal research, mediation fees, court filings, postage, copying, and experts. *See* Gilmore Decl. Ex. B; Rosenfeld Decl. Ex. B; Yates Decl. Ex. B; Trinko Decl. Ex. B. These are the type of expenses routinely approved in securities class actions. *See Innocoll II*, 2022 WL 16533571, at *12 (approving costs for "court fees, copying and printing costs, document hosting and analysis, . . . expert fees, investigator fees, legal research, mediation fees, overnight and hand delivery, service of process, travel, and costs related to press releases"); *see also, e.g.*, *Viropharma*, 2016 WL 312108, at *18 (similar). In addition, the fact that no one objected to the $975,000 cost ceiling specified in the Notice (Joint Decl. ¶ 69) confirms that the costs are reasonable. *See Lan*, 2008 WL 763763, at *18 (that there were no objections "further supports the reasonableness of the expense requests").

VI. THE AWARDS TO PLAINTIFFS SHOULD BE APPROVED

The PSLRA specifically allows for "the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class." 15 U.S.C. §§ 78u-4(a)(4), 77z-1(a)(4). In enacting this provision, Congress recognized that "lead plaintiffs should be reimbursed for reasonable costs and expenses associated with service as lead plaintiff, including lost wages, and grants the courts discretion to award fees accordingly." H.R. Rep. No. 104-369, at 35 (1995). In addition, the Third Circuit has approved making awards to class representatives to compensate them for the risks they incur and for their enforcement of mandatory laws. *Sullivan*, 667 F.3d at 333 n.65; *see also Brady v. Air Line Pilots Ass'n*, 627 F. App'x 142, 146 (3d Cir. 2015) (approving lead plaintiff award). In accordance with the PSLRA and the inherent powers of the Court, lead

plaintiffs regularly receive such awards in securities class actions. *See Universal Travel Grp.*, 2017 WL 2734714, at *14 (granting service award under PSLRA and inherent power); *see also Inovio Pharms.*, 2023 WL 227355, at *13 (courts "regularly approve" lead plaintiff awards to "compensate named plaintiffs for the services they provide and the risks they incurred").

Consistent with the Notice sent to the Settlement Class, Plaintiffs seek an award of $65,000 in the aggregate for their service on behalf of the Settlement Class. As provided in the accompanying declarations, Plaintiffs have performed a number of activities on behalf of the Settlement Class over the past six years, including: (a) communicating with counsel on case progress; (b) reviewing key filings; (c) responding to written discovery requests; (d) collecting documents for production; (e) conferring with counsel on litigation strategy; and (e) consulting with counsel regarding mediation and settlement. *See* Tormey Decl. ¶ 5; Sabbagh Decl. ¶ 5; Sullivan Decl. ¶ 4. The award requested here is less than or equal to awards for similar service in other securities class actions. *See, e.g.*, *Inovio Pharms.*, 2023 WL 227355, at *13 (awarding $75,000 or more to *each* of the two representatives); *In re CIGNA Corp. Sec. Litig.*, No. 02-8088, Dkt No. 288 (E.D. Pa. July 13, 2007) (awarding four lead plaintiffs more than $130,000). Plaintiffs respectfully request that the awards be approved.

VII. CONCLUSION

The efforts of Plaintiffs and Lead Counsel have resulted in a very favorable result for the Settlement Class under the circumstances of this case. For all the reasons stated above and in the accompanying declarations, Plaintiffs respectfully request that the Court (i) approve the Settlement and Plan of Allocation; (ii) award attorneys' fees in the amount of 33 ⅓% of the Settlement Amount ($24,666,666.66) and litigation expenses of $822,910.28, plus interest on both amounts at the same rate and for the same period as earned by the Settlement Fund; and (iii) award Plaintiffs $65,000.

Dated: July 5, 2023

Respectfully submitted,

POMERANTZ LLP

/s/ Emma Gilmore
Jeremy A. Lieberman (*pro hac vice*)
Emma Gilmore (*pro hac vice*)
Justin D. D'Aloia (*pro hac vice*)
Villi Shteyn (*pro hac vice*)
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
jalieberman@pomlaw.com
egilmore@pomlaw.com
jdaloia@pomlaw.com
vshteyn@pomlaw.com

Lead Counsel for Lead Plaintiff Ironworkers for All Shares Other Than the Defined Preferred Shares

ROBBINS GELLER RUDMAN & DOWD LLP

Samuel H. Rudman
David A. Rosenfeld (*pro hac vice*)
Magdalene Economou (*pro hac vice*)
Natalie Bono (*pro hac vice*)
58 South Service Road, Suite 200
Melville, New York 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173
srudman@rgrdlaw.com
drosenfeld@rgrdlaw.com
MEconomou@rgrdlaw.com
NBono@rgrdlaw.com

Lead Counsel for Lead Plaintiff of the Defined Preferred Shares

LAW OFFICE OF ALFRED G. YATES, JR., P.C.

Alfred G. Yates, Jr. (PA17419)
Gerald L. Rutledge (PA62027)
1575 McFarland Road, Suite 305
Pittsburgh, PA 15216

Telephone: (412) 391-5164
Facsimile: (412) 471-1033
yateslaw@aol.com

Local Counsel

LAW OFFICES OF CURTIS V. TRINKO

Curtis V. Trinko (*pro hac vice*)
39 Sintsink Drive West - 1st Floor
Port Washington, NY 11050
Telephone: (212) 490-9550
Facsimile: (212) 986-0158
ctrinko@trinko.com

Additional Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2023, I served the attached document, Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Award of Attorneys' Fees and Expenses, and Award to Plaintiffs, via the CM/ECF system to all counsel of record.

/s/ Emma Gilmore
Emma Gilmore