James E. Cecchi (N.J. Bar No. 030861989)
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
jcecchi@carellabyrne.com

Lauren A. Ormsbee (admitted *pro hac vice*)
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1593
Facsimile: (212) 554-1400
lauren@blbglaw.com

Attorneys for Plaintiff Cambridge Retirement System

CAMBRIDGE RETIREMENT SYSTEM, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

AMNEAL PHARMACEUTICALS INC., CHINTU PATEL, CHIRAG PATEL, BRYAN M. REASONS, PAUL M. BISARO, ROBERT L. BURR, ROBERT A. STEWART, KEVIN BUCHI, PETER R. TERRERI, JANET VERGIS, GAUTAM PATEL, TED NARK, EMILY PETERSON ALVA, JEAN SELDEN GREENE, DHARMENDRA J. RAMA, and AMNEAL PHARMACEUTICALS HOLDINGS, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
SOMERSET COUNTY: LAW DIVISION

Docket No. SOM-L-1701-19

Civil Action
(CBLP Action)

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES & RULES

Class Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") respectfully submits this memorandum of law in support of its motion for: (i) an award of attorneys' fees for all Plaintiff's Counsel in the amount of 28% of the Settlement Fund; (ii) $537,761.22 in litigation expenses reasonably and necessarily incurred by Plaintiff's Counsel in prosecuting and resolving the Action; and (iii) a service award of $4,339.26 to Plaintiff Cambridge Retirement System ("Plaintiff"), in reimbursement for costs that Plaintiff incurred directly related to its representation of the Settlement Class.[1]

PRELIMINARY STATEMENT

The proposed Settlement, which provides for a $25,000,000 cash payment, is an excellent result for the Settlement Class in light of the risks of prosecuting the Action and the range of potential outcomes. The Settlement is the result of the tenacity and effective advocacy of Class Counsel, assisted by Liaison Counsel Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (together with Class Counsel, "Plaintiff's Counsel"), who litigated this Action for over two years against highly skilled defense counsel, including conducting an initial investigation, drafting a detailed Amended Complaint, successfully surmounting Defendants' initial motion to dismiss, fully briefing a motion for class certification, filing a Second Amended Complaint, fully briefing a motion to dismiss the Second Amended Complaint, conducting extensive discovery, and negotiating the Settlement. Plaintiff's Counsel litigated the Action on a wholly contingent fee

[1] Capitalized terms that are not defined in this memorandum of law have the same meanings as set forth in the Stipulation and Agreement of Settlement dated as of March 28, 2022 ("Stipulation") or in the Certification of Lauren A. Ormsbee in Support of (I) Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (II) Class Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Ormsbee Certification" or "Ormsbee Cert."), filed herewith. Citations to "¶ __" herein refer to paragraphs in the Ormsbee Certification and citations to "Ex. __" herein refer to exhibits to the Ormsbee Certification.

basis and faced significant challenges to proving liability that posed the risk that there might be no recovery in the Action.

As detailed in the accompanying Ormsbee Certification,[2] Class Counsel vigorously pursued the claims for the benefit of the Settlement Class throughout the Action. Among other things, Class Counsel, with the assistance of Liaison Counsel: (i) conducted a wide-ranging investigation concerning the alleged misstatements made by Defendants (¶ 14); (ii) drafted the initial class action complaint filed on December 18, 2019, and the more detailed Amended Class Action Complaint for Violations of §§ 11, 12(a)(2) and 15 of the Securities Act of 1933 ("Amended Complaint") filed on March 11, 2020 (¶¶ 13, 15); (iii) researched and drafted detailed briefing for Plaintiff's successful opposition to the Defendants' motion to dismiss the Amended Complaint (¶¶ 17-20); (iv) fully briefed Plaintiff's Motion for Class Certification (¶¶ 26-32); (v) drafted and filed a Second Amended Complaint and responded to a motion to dismiss that complaint (¶¶ 33-36); (vi) engaged in significant discovery, which included preparing and serving document subpoenas on twelve non-parties and obtaining and reviewing over 1.3 million pages of documents produced by Defendants and third parties (¶¶ 21-25); (vii) consulted extensively with various experts and consultants (¶¶ 37-38); and (viii) engaged in extensive arm's-length settlement negotiations, which included preparing a detailed mediation statement and participating in a formal mediation session with Judge Layn Phillips, as well as other settlement negotiations (¶¶ 39-43).

[2] The Ormsbee Certification is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action and a description of the services Plaintiff's Counsel provided for the benefit of the Settlement Class; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of the litigation; and the facts and circumstances underlying Class Counsel's request for an award of attorneys' fees and expenses.

The Settlement achieved through Class Counsel's efforts is a particularly favorable result when considered in light of the substantial litigation risks present in the Action. These risks are detailed in the Ormsbee Certification at paragraphs 46 to 57 and in the memorandum of law supporting final approval of the Settlement. To succeed in the Action, Class Counsel would have had to overcome significant legal and factual challenges. One significant hurdle related to establishing the standing of Plaintiff and other class members to assert the Securities Act claims under the circumstances of this case, where Amneal common stock had been publicly issued simultaneously under two separate registration statements. In addition, Class Counsel faced significant challenges in proving the falsity of Defendants' alleged misstatements. This was not a case in which the company had restated its financials or admitted to any material misstatement. On the contrary, Defendants had consistently argued that they made no misstatements or omissions and had not engaged in improper conduct. Plaintiff's claims in the Action were based on allegations asserted in a complaint filed by a group of state Attorneys General, which alleged that Amneal's predecessor company had participated in a conspiracy to fix the prices of certain generic drugs. However, that action and other related government investigations had not yet led to any findings of fact that would be admissible in this Action. On the contrary, to succeed on these claims, Class Counsel would have borne the burden of proving that Amneal's predecessor had engaged in illegal anti-competitive conduct (an allegation that Defendants vigorously denied), and then also prove that this conduct rendered various statements made by Defendants concerning Amneal's business and financial results materially false or misleading. From the outset, these risks posed a possibility that Plaintiff and the Settlement Class might not recover in the Action.

As compensation for their efforts on behalf of the Settlement Class and for the risks of nonpayment they faced in bringing and prosecuting the Action on a contingent basis, Class

Counsel now seek an attorneys' fee award for all Plaintiff's Counsel in the amount of 28% of the Settlement Fund. As discussed below, a percentage award is the most appropriate method of awarding an attorneys' fee in a "common fund" case like this one, and the requested 28% fee is well within the range of fees that courts have awarded in similar securities class actions and other comparable cases.

Moreover, the requested fee is substantially less than Plaintiff's Counsel's total lodestar, based on the number of hours that Plaintiff's Counsel dedicated to the Action multiplied by each timekeepers' standard hourly rates. Indeed, the 28% fee requested here is just 71% of Plaintiff's Counsel's lodestar, or in other words, a "negative multiplier" of approximately 0.7 on the lodestar. An upward adjustment (or positive multiplier) of the lodestar figure is typically awarded in class actions with significant contingency risks such as this one. Thus, the fact that the requested fee here is *below* counsel's lodestar strongly supports the reasonableness of the request.

The fee request has the full support of Plaintiff, a sophisticated institutional investor that played an active role in participating and supervising the Action. *See* Certification of Francis E. Murphy, submitted on behalf of Cambridge Retirement System, (Ex. 2) ("Murphy Cert."), at ¶ 6. Plaintiff has approved the fee request as reasonable in light of the result achieved in the Action, the quality of the work counsel performed, and the litigation risks. *Id.*

Finally, while the deadline set by the Court for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections have been received. The deadline for objections is July 25, 2022. Class Counsel will address any objections to the motion for attorneys' fees and litigation expenses in its reply papers, which will be filed by August 8, 2022.

For all the reasons set forth herein and in the Ormsbee Certification, Class Counsel respectfully submits that the requested attorneys' fees and expenses are fair and reasonable under applicable legal standards and, therefore, should be awarded by the Court.

ARGUMENT

I. PLAINTIFF'S COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND

It is well settled that an attorney who maintains a lawsuit that results in the creation of a fund or benefit in which others have a common interest may obtain fees from that common fund. *See 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 Diet Drugs (Phentermine/Fenfluramine/ Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, 540 (3d Cir. 2009) ("a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees"); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("attorneys whose efforts create, discover, increase, or preserve a [common] fund are entitled to compensation").

This "common fund" doctrine regarding the award of attorneys' fees is well established in New Jersey jurisprudence, where it is sometimes referred to as the "fund in court" exception to the general rule that litigants bear their own attorneys' fees. *See* R. 4:42-9(a)(2); *Henderson v. Camden Cnty. Municipal Util. Auth.*, 176 N.J. 554, 564 (2003) ("The fund in court exception generally applies when a party litigates a matter that produces a tangible economic benefit for a class of persons that did not contribute to the cost of the litigation."); *Twp. of Wyckoff v. Vill. of Ridgewood*, 2019 WL 3543881, at *15 (N.J. Super. Ct. App. Div. Aug. 5, 2019) ("fund in court" exception applies "when a party litigates a matter that produces a tangible economic benefit for a

class of persons that did not contribute to the cost of the litigation," making it "unfair to saddle the full cost" of the litigation upon the plaintiff).

Awards of fair attorneys' fees from a common fund ensure that "competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (citations omitted); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."). Indeed, 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) (quoting *J.I. Case Co. v. Borak,* 377 U.S. 426, 432 (1964)); *see also Tellabs, Inc. v. Makor Issues & Rts, Ltd.*, 551 U.S. 308, 313 (2007).

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Class Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class and use a lodestar cross-check to confirm that the fee is reasonable.

There are two different potential methods for determining the attorneys' fee—the lodestar method and the percentage-of-recovery method. *See Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, 2012 WL 2813813, at *5 (N.J. Super. Ct. App. Div. July 11, 2012); *Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 196-97 (3d Cir. 2014) ("Both federal law and New Jersey law permit courts to apply the percentage-of-recovery method in class actions where attorney's fees flow from a 'common fund' shared by plaintiffs.").

Each method has "distinct attributes suiting them to particular types of cases." *Sutter*, 2012 WL 2813813, at *5 (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tanks Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995)). A "court making or approving a fee award should determine what sort of action the court is adjudicating and then primarily rely on the corresponding method of awarding fees." *Id*.

The percentage-of-recovery method is favored in cases involving a settlement that creates a cash common fund. *See In re AT&T Corp. Sec. Litig*., 455 F.3d 160, 164 (3d Cir. 2006) ("In common fund cases such as this one, the percentage-of-recovery method is generally favored."), *In re Cendant Corp. Litig.,* 264 F.3d 201, 220 (3d Cir. 2001) ("counsel fees in securities litigation have generally been fixed on a percentage basis rather than by the so-called lodestar method"). The United States Supreme Court has also noted that where a common fund has been created for the benefit of a class as a result of counsel's efforts, counsel's fees should be determined as a percentage of the fund. *See, e.g., Blum v. Stenson,* 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class.").

Courts almost universally prefer the percentage-of-recovery method in such common fund cases because it most closely aligns the interests of counsel and the class, and it rewards counsel directly based on the results they achieve. *See Sullivan v. DB Invs.*, 667 F.3d 273, 330 (3d Cir. 2011) (the percentage-of-recovery method is favored "because it allows courts to award fees from the [common] fund 'in a manner that rewards counsel for success and penalizes it for failure.'"); *In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 300 (3d Cir. 2005) (same); *Dartell v. Tibet Pharms., Inc.,* 2017 WL 2815073, at *8 (D.N.J. June 29, 2017) (same).

III. THE REQUESTED FEE IS REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY METHOD OR THE LODESTAR METHOD

A. The Requested Fee Is Reasonable Under the Percentage-of-Recovery Method

The requested 28% fee is reasonable under the percentage-of-recovery method. Fees most commonly range from 25% to 33.3% of the recovery in common fund cases. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) (in common fund cases, courts typically award "fees of 25% to 33% of the recovery"); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (same); *see also In re Wilmington Trust Sec. Litig.*, 2018 WL 6046452, at *9 (D. Del. Nov. 19, 2018) (finding 28% to be a "typical fee percentage").

A review of attorneys' fees awarded in other class actions with comparably sized settlements strongly supports the reasonableness of the requested 28% fee here. *See Kanefsky v. Honeywell Int'l Inc.,* 2022 WL 1320827, *11 (D.N.J. May 3, 2022) (awarding 29.2% of $10 million settlement); *Schumacher v. Osmotica Pharms. Plc¸* No. SOM-L-000540-19, slip op. at 7 (N.J. Super. Ct. Law Div. Nov. 10, 2021) (Ex. 6) (awarding 33.3% of $5.25 million settlement in Securities Act class action in New Jersey state court); *In re Valeant Pharms. Int'l, Inc. Third-Party Payor Litig.*, 2022 WL 525807, at *8 (D.N.J. Feb. 22, 2022) (awarding 30% of $23,125,000 settlement fund); *Demaria v. Horizon Healthcare Servs., Inc.*, 2016 WL 6089713, at *4 (D.N.J. Oct. 18, 2016) (awarding 33.3% of $33 million settlement and noting that "a contingency fee of 33.33% is fairly standard for the size of the Settlement"); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc.*, 2016 WL 10570211, at *1 (D.N.J. Sept. 29, 2016) (awarding 30% of $33 million settlement); *Bodnar v. Bank of Am. N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016) (awarding 33% of $27.5 million settlement); *In re Heckmann Corp. Sec. Litig.*, 2014 WL 12957418, at *1 (D. Del. June 26, 2014) (awarding 33.3% of settlement valued at $27 million);

Esslinger v. HSBC Bank Nev., N.A., 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) ("a fee award of 30% of the [$23.5 million] settlement here is reasonable and in keeping with similar precedent"); *In re Processed Egg Prod. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012) (awarding 30% of $25 million settlement); *Eaton v. Halifax PLC,* No. MON-L-2365-03, slip op. at 1 (N.J. Super. Ct. Law Div. May 26, 2011) (Ex. 7) (awarding 33.3% of $8.6 million settlement); *In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815, 818 (3d Cir. 2010) (affirming award of 30% of $21.5 million settlement).

B. The Requested Fee Is Reasonable Under the Lodestar Method

The requested fee is also reasonable under the lodestar method, whether that method is employed in the first instance, or as a cross-check on the reasonableness of the percentage fee awarded.

From the inception of the Action through March 28, 2022 (the date the Stipulation was signed), Plaintiff's Counsel spent over 18,800 hours on the prosecution and resolution of this Action. ¶ 78. Plaintiff's Counsel's lodestar—which is derived by multiplying the hours spent on the litigation by each firm's current hourly rates for attorneys, paralegals, and other professional support staff—is $9,872,240.00.[3] *Id.* Accordingly, the requested 28% fee, which equates to $7,000,000 (plus interest on that amount at the same rate as earned by the Settlement Fund) is substantially less than counsel's lodestar. The requested fee is roughly 71% of the counsel's total lodestar or, in other words, represents a "negative" lodestar of 0.7.

[3] It is appropriate for the Court to use counsel's current hourly rates (rather than the applicable historical rates) to calculate the base lodestar figure as a means of compensating for the delay in receiving payment. *See, e.g.*, *Rendine v. Pantzer,* 141 N.J. 292, 337 (1995) ("to take into account delay in payment, the hourly rate . . . . should be based on current rates rather than those in effect when the services were performed"); *Sutter*, 2012 WL 2813813, at *7 (approving use of current rates as basis for lodestar calculation in contingency fee case and noting that "the reason for using 'current rates' is to account for the 'delay factor'").

When the lodestar is used as a cross-check on the reasonableness of the percentage award, a positive multiplier (commonly of up to four times the lodestar) is generally awarded. Indeed, positive lodestar multipliers are used in common fund cases to "compensate counsel for the risk of assuming the representation on a contingency fee basis." *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16); *see also Demaria*, 2016 WL 6089713, at *5 ("A multiplier of 4.3 is consistent with the considerable risks that counsel faced in taking on this litigation, and the sophisticated legal work required to achieve success."); *Veritas Software*, 396 F. App'x at 819 ("The final lodestar multiplier of 1.52 was well within the range of attorneys' fees awarded and approved by this Court."); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) (approving a 2.7 multiplier, noting it was "well within the range of those awarded in similar cases").

Similarly, even when the lodestar approach is the basis for the fee award in the first instance, as in statutory fee-shifting cases, courts in New Jersey apply a positive percentage enhancement to the base lodestar to account for contingency fee risks. *See Rendine,* 141 N.J. at 337 (after establishing the base lodestar, the court "should consider whether to increase that fee to reflect the risk of nonpayment in all cases in which the attorney's compensation entirely or substantially is contingent on a successful outcome"). Indeed, New Jersey courts have said that an enhancement to the lodestar is required unless there was no real contingency risk. *Id*.

As discussed above, there were significant contingency fee risks in this Action that would support awarding a positive multiplier of the lodestar. Accordingly, the fact that the fee requested here (which has been requested pursuant to Class Counsel's agreement with Plaintiff) is well ***below*** counsel's lodestar strongly supports the reasonableness of the fee. *See Valeant Pharms.,* 2022 WL 525807, at *7 ("Unlike many others, Lead Counsel's lodestar results in a *negative* multiplier,

thereby furnishing strong evidence that the requested fees are reasonable.") (emphasis in original); *Karali v. Branch Banking & Tr. Co.*, 2020 WL 7227204, at *2 (D.N.J. Feb. 3, 2020) (a "negative multiplier weighs in favor of approval"); *Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) ("Because the lodestar cross-check results in a negative multiplier, it provides strong evidence that the requested fee is reasonable.").

The hourly rates used to calculate Plaintiff's Counsel's lodestar are the standard hourly rates for their attorneys and other professionals and are reasonable for work in the specialized area of securities class action litigation in this jurisdiction. Ex. 4A, at ¶¶ 5-6; Ex. 4B, at ¶ 5. The hourly rates for Class Counsel range from $750 to $1,200 for partners or senior counsel, from $450 to $500 for associates, and from $255 to $350 for paralegals. *See* Ex. 4A-1. The rates for BLB&G's staff attorneys, who were integrally involved in the review of documents produced, range from $375 to $450 per hour. The blended hourly rate for all timekeepers in the application is $522. Class Counsel believes that these rates are within the range of reasonable fees for attorneys working on sophisticated class action litigation in this region. *See, e.g.*, *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *10 n.4 (D. Del. Nov. 19, 2018) (approving Class Counsel's then-applicable 2018 rates, ranging from $295 to $1,250, as reasonable for purposes of lodestar cross-check); *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *25 (D.N.J. Nov. 15, 2016) (approving rates with "blended hourly rate of approximately $516 per hour"); *Sutter*, 2012 WL 2813813, at *8 (approving blended hourly rate of $550 as reasonable); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving fee award following lodestar cross-check where blended average hourly rate was $529 per hour, with hourly rates ranging up to $1,600 for partners and up to $790 for associates).

Plaintiff's Counsel's rates are also reasonable in comparison to the rates of the attorneys at Defendants' Counsel, Kirkland & Ellis, against whom they litigated. *See, e.g., In re: Intelstat S.A.*, No. 20-32299 (KLP) (Bankr. E.D. Va. Sept. 29, 2021), ECF No. 3006 (Ex. 8) (2021 fee application in a bankruptcy proceeding reported rates for Kirkland & Ellis partners ranging from $1,080 to $1,695, with associates ranging from $745 to $1,225, and paralegals ranging from $255 to $460); *In re Gulfport Energy Corp.*, No. 20-35562 (DRJ) (Bankr. S.D. Tex. June 28, 2021), ECF No. 1541 (Ex. 9) (2021 fee application in a bankruptcy proceeding reported rates for Kirkland & Ellis partners ranging from $1,045 to $1,895, with associates ranging from $610 to $1,125, and paralegals ranging from $270 to $460).

Accordingly, the 28% fee requested here is reasonable under both the percentage-of-the-fund approach and the lodestar approach.

IV. THE REQUESTED FEE IS FAIR AND REASONABLE BASED ON CONSIDERATION OF THE FACTORS SET FORTH IN *GUNTER* AND RPC 1.5

In considering the reasonableness of a percentage fee in a common fund case, courts typically consider a series of factors enumerated by the Third Circuit in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000):

> (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.

Gunter, 223 F.3d. at 195 n.1; *see Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, 406 N.J. Super. 86, 105 (App. Div. 2009) (applying *Gunter* factors); *Cerbo v. Ford of Englewood, Inc.*, 2006 WL 177586, at *25 (N.J. Super. Ct. Law Div. Jan. 26, 2006) (same). These factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *Diet Drugs*, 582 F.3d at 545.

In addition, attorneys' fees requests should also be reviewed for reasonableness under the factors set forth in New Jersey Rule of Professional Conduct 1.5(a):

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; [and]
> (8) whether the fee is fixed or contingent.

RPC 1.5(a); *Furst v. Einstein Moomjy, Inc.*, 182 N.J. 1, 22 (2004). Consideration of all these factors supports the 28% fee requested by Class Counsel.

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request

Courts have consistently recognized that the result achieved is a significant factor to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("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) (same). This focus is evident in the first *Gunter* factor ("the size of the fund created and the number of persons benefitted") and RPC 1.5(a)(4) ("the amount involved and the results obtained").

Here, Class Counsel has secured a Settlement that provides for a substantial and certain payment of $25,000,000 for the benefit of the Settlement Class. To date, the Claims Administrator, JND Legal Administration ("JND"), has mailed over 85,500 copies of the Notice to potential Settlement Class Members and their nominees. *See* Certification of Luiggy Segura, submitted on behalf of JND (Ex. 3) ("Segura Cert."), at ¶ 9. While the claim-submission deadline is not until September 26, 2022, and, as a result, the number of eligible claimants who will share in the

Settlement cannot be precisely specified, it is likely to be in the thousands. *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 the benefitted population "is best estimated by the number of entities that were sent the notice describing the [Settlement]."). Accordingly, the significant size of the Settlement obtained and number of persons benefitted supports the approval of the fee award.

B. The Reaction of the Settlement Class to the Settlement and Fee Request To Date Supports Approval of the Fee Request

The Notice has been mailed to over 85,500 potential Settlement Class Members and their nominees. The Notice provided Settlement Class Members with a summary of the terms of the Settlement and stated that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed 28% of the Settlement Fund. *See* Notice, attached as Exhibit A to Segura Decl., at ¶¶ 3, 49. The Notice also advised Settlement Class Members that they could object to the Settlement or fee request and explained the procedure for doing so. *See id.* at p. 3, ¶¶ 59-60. While the July 25, 2022 objection deadline set by the Court has not yet passed, to date, no objections have been received. Accordingly, the reaction of the Settlement Class to date supports approval of the requested fees.

C. The Skill and Efficiency of Plaintiff's Counsel Support Approval of the Fee Request

The efforts and skill of Class Counsel have resulted in a favorable outcome for the benefit of the Settlement Class. *See In re AremisSoft Corp. Sec. Litig.,* 210 F.R.D. 109, 132 (D.N.J. 2002) ("the single clearest factor reflecting the quality of class counsels' services to the class are the results obtained."). This *Gunter* factor is measured by the "'quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance

and quality of opposing counsel." *ViroPharma,* 2016 WL 312108, at *16. It took persistent litigation efforts and substantial skill to achieve the benefit for the Settlement Class secured by Plaintiff's Counsel. The recovery obtained for the Settlement Class is the direct result of the significant efforts of highly skilled and specialized attorneys with substantial experience in prosecuting complex class actions.[4] Class Counsel's success in overcoming Defendants' motion to dismiss in a case with substantial risks, and its efforts in obtaining substantial discovery, created the circumstances in which Plaintiff was able to obtain the $25 million cash Settlement. In addition, Plaintiff's Counsel's reputation as attorneys who will zealously carry a meritorious case through trial and appellate levels further enabled them to negotiate the very favorable recovery for the benefit of the Settlement Class.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Class Counsel. *See, e.g.*, *P. Van Hove BVBA v. Universal Travel Grp., Inc.,* 2017 WL 2734714, at *11 (D.N.J. June 26, 2017) ("the competence of opposing counsel demonstrates that Lead Counsel prosecuted this case with skill and efficiency"); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."). Here, Defendants were represented ably by Kirkland & Ellis LLP, a prominent and highly experienced firm who vigorously litigated on behalf of its clients. ¶ 82. The ability of Class Counsel to obtain a favorable outcome for the Settlement Class in the face of this formidable legal opposition further confirms the quality of Class Counsel's representation.

[4] The experience of Class Counsel and Liaison Counsel is set forth in their firm resumes, which are attached to the Ormsbee Certification as Exhibits 4A-3 and 4B-3.

D. The Complexity and Duration of the Litigation Support Approval of the Fee Request

The complexity and duration of the litigation also support approval of the fee requested. Securities litigation is regularly acknowledged to be particularly complex and expensive litigation, usually requiring expert testimony on several issues, including loss causation and damages. *See, e.g.*, *Fogarazzo v. Lehman Bros., Inc.*, 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re Genta Sec. Litig.*, 2008 WL 2229843, *3 (D.N.J. May 28, 2008) ("This [securities fraud] action involves complex legal and factual issues, and pursuing them would be costly and expensive."); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, *3 (D.N.J. Nov. 28, 2007) ("[R]esolution of [accounting and damages issues] would likely require extensive and conceptually difficult expert economic analysis. . . . Trial . . . would [be] lengthy and costly to the parties.").

This Action presented a number of unique challenges and complexities, including the fact that claims arose out of the simultaneous issuance of common shares through the use of two registration statements that were issued in connection with the "reverse merger" business combination that led to the public issuance of Amneal common stock and Defendants' related legal argument that class members were required to "trace" their purchases to one of those specific registration statements to have standing to assert a Securities Act claim. ¶ 48. In addition, Plaintiff's need to demonstrate Legacy Amneal's underlying anticompetitive conduct in order to establish the basis for its misrepresentation claims broadened the scope of necessary discovery and elements of a proof in the Action beyond what is normally required in a more typical Securities Act claim. ¶ 50.

Here, the $25,000,000 recovery is very favorable in light of the complexity of this case and the significant risks and expenses that the Settlement Class would have faced by litigating to trial.

Had this litigation continued without settling, Plaintiff, through Plaintiff's Counsel, would have been required to advance their case through the completion of discovery, which would have included additional document discovery and numerous depositions. In addition, Plaintiff would have had to conduct substantial expert discovery (including preparation of expert reports and expert depositions). ¶ 86. In addition, it would be highly likely that Defendants would move for summary judgment, which would have to be briefed and argued, a pre-trial order would have to be prepared, proposed jury instructions would have to be submitted, and motions *in limine* and motions addressing the admissibility of expert testimony would have to be filed and argued. *Id*. Substantial time and expense would need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain. *Id*.

Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process. ¶ 56. Indeed, even a victory at the trial stage does not guarantee a successful outcome in complex securities cases. *See Warner Commc'ns*, 618 F. Supp. at 747-48 ("Even a victory at trial is not a guarantee of ultimate success. If plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."). Considering the magnitude, expense, and complexity of this securities case—especially when compared against the significant and certain recovery achieved by the Settlement—Class Counsel's fee request is reasonable. Accordingly, this factor weighs in Class Counsel's favor.

E. The Risk of Non-Payment Supports Approval of the Fee Request

Class Counsel undertook this Action on a contingent fee basis, taking the risk that the litigation would yield no or very little recovery and leave them uncompensated for their time and

their out-of-pocket expenses. As explained in detail in the Ormsbee Certification, Class Counsel faced significant risks that could have resulted in no recovery or a recovery smaller than the Settlement Amount. ¶¶ 46-57. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g.*, *Warner Commc'ns*, 618 F. Supp. at 747-49 (citing cases); *see also* PRC 1.5(a)(8). This is particularly true in securities litigation, such as this Action, because securities litigation has long been regarded as "notably difficult and notoriously uncertain." *Dartell*, 2017 WL 2815073, at *10.

Plaintiff's Counsel have not been compensated for any of their time or expenses since the case began in 2019. Since that time, Plaintiff's Counsel have expended over 18,800 hours in the prosecution of this litigation with a resulting lodestar of $9,872,240 and have incurred over $500,000 in litigation expenses. ¶ 78. "Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval." *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012).

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result, and that such a result would be realized only after considerable and difficult effort. This factor strongly favors approval of the requested fee.

F. The Significant Time Devoted to this Case by Plaintiff's Counsel Supports Approval of the Fee Request

As set forth above, since the inception of the case, Plaintiff's Counsel have expended over 18,800 hours and incurred over $500,000 in expenses prosecuting this Action for the benefit of the Settlement Class. ¶¶ 78, 90. As more fully discussed above and in the Ormsbee Certification, this Action was vigorously litigated. This includes, *inter alia,* the considerable time spent in the initial investigation of the case; working extensively with experts; researching complex issues of law; preparing and filing the three complaints; researching and briefing the issues in connection with

Defendants' motions to dismiss and Plaintiff's motion for class certification; reviewing and analyzing over 1.3 million pages of documents produced by Defendants; preparing for the mediation, drafting a detailed mediation statement, and engaging in extensive settlement negotiations. ¶¶ 5, 13-43, 79. At all times, Class Counsel conducted their work with skill and efficiency, conserving resources and avoiding duplication of efforts. ¶ 80. The foregoing represents a very significant commitment of time, personnel, and out-of-pocket expenses by Plaintiff's Counsel while taking on the substantial risk of recovering nothing for their efforts.

G. The Requested Fee of 28% of the Settlement Fund is within the Range of Fees Typically Awarded in Actions of this Nature

As discussed above in Part III, the requested fee of 28% of the Settlement Fund is well within the range of fees awarded in comparable cases, when considered as a percentage of the fund or on a lodestar basis. Accordingly, this factor strongly supports approval of the requested fee.

H. The RPC 1.5(a) Factors Also Support the Fee Award

The factors set forth in New Jersey Rule of Professional Conduct 1.5(a) also support the fee request. *First*, as previously discussed in connection with the *Gunter* factors, "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly," RPC 1.5(a)(1), all amply support the 28% fee requested. *Second*, the fact that professionals at Plaintiff's Counsel dedicated over 18,800 hours to the litigation of the Action precluded them from other employment during the time that they devoted to this case. RPC 1.5(a)(2).

Third, the "fee customarily charged in the locality for similar legal services," RPC 1.5(a)(3), also supports the fee award, as a percentage fee award is a typical method of payment in contingent-fee class actions and the percentage fee sought is well within the range awarded in other class actions. *See* Part III above. A 28% fee is also consistent with typical attorneys' fees in non-

class cases. *See Ocean Power*, 2016 WL 6778218, at *29 ("A 30% fee is . . . consistent with typical fee awards in non-class cases"); *Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.").

Fourth, "the amount involved and the results obtained" also strongly support the reasonableness of the fee. RPC 1.5(a)(4). As discussed in Part IV.A, the $25 million recovery is a very favorable outcome to the Action that will benefit thousands of Amneal investors. The *fifth* and *sixth* factors, the "the time limitations imposed by the client or by the circumstances" and "the nature and length of the professional relationship with the client," are not particularly relevant here, but are at least neutral with respect to the award of fees.[5]

Seven, "the experience, reputation, and ability of the lawyer or lawyers performing the services" also supports the fee requested. As discussed above and set forth in the firm resumes attached to the Ormsbee Certification as Exhibits 4A-3 and 4B-3, Class Counsel and Liaison Counsel are highly experienced and skilled counsel in this area of the law.

Eight, the final factor, "whether the fee is fixed or contingent," strongly supports the reasonableness of the fee. Plaintiff's Counsel brought this action on a fully contingent basis with no guarantee of receiving any payment and faced a number of significant risks that could have led to no recovery for the class (and, thus, no compensation at all for counsel). As noted above, these circumstances strongly support an award of a reasonable fee. Indeed, the contingency fee risk would normally support the award of a fee substantially above the lodestar, but, here, counsel is

[5] No particularly stringent time limitations were imposed by the client or the circumstances of the Action. With respect to Class Counsel's professional relationship with Plaintiff Cambridge Retirement System, BLB&G has represented Cambridge Retirement System as lead plaintiff in several past and pending securities class actions, but Class Counsel believe this factor is neutral with respect to the request for fees sought.

requesting a fee that is less than their lodestar, which further underscores the reasonableness of the request.

* * *

Accordingly, consideration of the *Gunter* factors and RPC 1.5(a) factors makes clear that Class Counsel's requested fee of 28% of the Settlement Fund is fair and reasonable.

V. CLASS COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Class Counsel also respectfully requests that this Court approve payment of $537,761.22 for litigation expenses that Plaintiff's Counsel incurred in connection with this Action. All of these expenses, which are set forth in declarations submitted by Plaintiff's Counsel, were reasonably necessary for the prosecution and settlement of this Action. Counsel in a class action are entitled to recover expenses that were "'adequately documented and reasonable and appropriately incurred in the prosecution of the class action.'" *ViroPharma*, 2016 WL 312108, at *18; *accord In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001).

The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Schering-Plough*, 2012 WL 1964451, at *8. The expenses for which Class Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, expert/consultant fees, mediation fees, document management costs, on-line legal and factual research, photocopying, and postage expenses. The largest category of expenses was for the retention of Plaintiff's experts and consultants, which total $330,240.75, or approximately 61% of the total litigation expenses incurred by Plaintiff's Counsel. Plaintiff's Counsel also incurred expenses of $37,314.50 for mediation costs, $23,755.63 for on-line factual research, $86,228.60

for on-line legal research, and $34,794.24 for document management costs, among others. ¶¶ 94-96.

A complete breakdown by category of the expenses incurred by Plaintiff's Counsel is set forth in Exhibit 5 to the Ormsbee Certification. These expense items are recorded separately by Plaintiff's Counsel, and such charges are not duplicated in the firm's hourly rates.

The Notice informed potential Settlement Class Members that Class Counsel would apply for payment of litigation expenses in an amount not to exceed $650,000, which may include a request for a service award to Plaintiff. *See* Segura Decl. (Ex. 3), at Ex. A, ¶¶ 3, 49. The total amount of expenses requested is $542,100.48, which includes $537,761.22 for litigation expenses incurred by Plaintiff's Counsel and as further described below, $4,339.26 for a service award for Plaintiff—an amount that is well below the total amount listed in the Notice. To date, there has been no objection to the expense application.

VI. PLAINTIFF SHOULD BE AWARDED A SERVICE AWARD FOR THEIR REASONABLE COSTS

In connection with their request for an award of Litigation Expenses, Class Counsel also seek a service award of $4,339.26 to Plaintiff to reimburse it for costs directly related to its representation of the Settlement Class. Here, Plaintiff seeks an award of $4,339.26 for the time dedicated by its employees and representatives in furthering and supervising the Action and for time dedicated to the matter by its outside counsel. *See* Murphy Cert. ¶¶ 9-11.

Service awards are common in class action litigation and particularly where "a common fund has been created for the benefit of the entire class." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (*en banc*). "'The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation,' and to 'reward the public service of contributing to the enforcement of mandatory

laws."' *Id.* (quoting *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *21 (D.N.J. Apr. 8, 2011)). *Accord In re Liquid Aluminum Sulfate Antitrust Litig.*, 2019 WL 7375288, at *6 (D.N.J. Nov. 7, 2019) (awarding lead plaintiffs $25,000 each); *Demaria*, 2016 WL 6089713, at *5 (approving $45,000 service award to each plaintiff); *Schumacher v. Osmotica Pharms. Plc*¸ No. SOM-L-000540-19, slip op. at 7 (Ex. 6) (granting service awards of $7,500 in total to class representatives in a Securities Act class action in New Jersey court).

Here, Plaintiff took an active role in the litigation and has been fully committed to pursuing the claims on behalf of the proposed class since it became involved in the case. During the litigation, employees and representatives of Plaintiff dedicated a substantial number of hours to the litigation by, among other things: meeting and communicating with Class Counsel regarding case strategy and developments; reviewing and commenting on pleadings and briefs filed in the Action; undertaking discovery efforts; sitting for a deposition; meeting and consulting with Class Counsel regarding settlement negotiations; and evaluating and approving the proposed Settlement. *See* Murphy Cert. ¶¶ 3-4, 9. These efforts required representatives of Plaintiff to dedicate considerable time and resources to the Action that they would have otherwise devoted to their regular duties and thus represented a cost to Plaintiff. The requested service award includes reimbursement based on the number of hours that Plaintiff's employees or representatives committed to these activities multiplied by a reasonable hourly rate for each individual. *Id.* ¶ 9. In addition, Plaintiff also requests reimbursement for fees incurred by outside counsel who provided advice to Cambridge Retirement System in connection with its role as Plaintiff in the Action as part of the service award. *Id.* ¶ 10. The service award sought by Plaintiff is reasonable and should be granted.

VII. CONCLUSION

For all the foregoing reasons, Class Counsel respectfully requests that the Court award attorneys' fees in the amount of 28% of the Settlement Fund; $537,761.22 in payment of the reasonable litigation expenses that Plaintiff's Counsel incurred in connection with the prosecution and resolution of the Action; and a service award of $4,339.26 in reimbursement of Plaintiff's costs in representing the Settlement Class in the Action.

Date: July 11, 2022

Respectfully submitted,

/s Lauren A. Ormsbee
John C. Browne
Lauren A. Ormsbee
Abe Alexander
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 100120
Tel: (212) 554-1400
Fax: (212) 554-1444
johnb@blbglaw.com
lauren@blbglaw.com
abe.alexander@blbglaw.com

Counsel for Plaintiff Cambridge Retirement System and Interim Class Counsel

/s James E. Cecchi
James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Tel: (973) 994-1700
Fax: (973) 994-1744
JCecchi@carellabyrne.com
DEcklund@carellabyrne.com

Liaison Counsel for Plaintiff Cambridge Retirement System

#3110940