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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

AHMAD ODEH, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. IMMUNOMEDICS, INC., et al., Defendants.	No. 2:18-cv-17645-EP-ESK **(Consolidated)** CLASS ACTION

LEAD PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Lead Plaintiffs Boris Saljanin and Construction Industry and Laborers Joint Pension Trust ("Lead Plaintiffs"),[1] on behalf of themselves and each Class Member, through their counsel of record, respectfully submit this Memorandum of Law in Support of Motion for Preliminary Approval of Class Action Settlement. Defendants do not oppose the relief sought in this motion.

I. INTRODUCTION

Lead Plaintiffs ask the Court to grant preliminary approval of the parties' $40 million settlement. The Settlement stems from more than four years of hard-fought litigation among sophisticated parties and experienced counsel, and follows extensive, arm's-length mediation and settlement discussions overseen by experienced mediators, first David Murphy, Esq. and, subsequently, Bruce Friedman, Esq. As set forth in the contemporaneously filed Stipulation, the Settlement provides for the payment of $40 million in cash for the benefit of the Class to resolve this securities class against Defendants Immunomedics, Inc. ("Immunomedics" or the "Company"), Michael Pehl, Michael R. Garone, Usama Malik, Behzad Aghazadeh, Peter Barton Hutt, Scott Canute, Khalid Islam, and Morris Rosenberg ("Individual Defendants")

[1] Unless otherwise stated or defined, all capitalized terms used herein shall have the meanings provided in the Stipulation of Settlement (the "Stipulation") attached as Exhibit 1 to the Declaration of Jacob A. Walker in Support of Lead Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Walker Decl."). All citations and internal quotation marks are omitted and emphasis is added, unless otherwise indicated.

(collectively, "Defendants") (together with Lead Plaintiffs, the "Settling Parties"). The Settlement is an excellent result for the Class, particularly given the risks of proceeding through further litigation.

Lead Plaintiffs' First Amended Complaint for Violations of the Federal Securities Laws ("Complaint"), filed on July 19, 2021, alleges that all Defendants violated §10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, and that the Individual Defendants violated §20(a) of the Exchange Act. Lead Plaintiffs allege that, throughout the Class Period (February 9, 2018 through January 17, 2019, inclusive), Defendants made materially false and misleading statements and failed to disclose that Immunomedics had suffered a data integrity breach at its Morris Plains, New Jersey manufacturing facility, imperiling the Biologics License Application ("BLA") for the drug known as IMMU-132. The Complaint further alleges that the price of Immunomedics common stock was artificially inflated as a result of the alleged misrepresentations and omissions and subsequently declined when the facts about Defendants' alleged misrepresentations were revealed in a series of disclosures between November 7, 2018 and January 17, 2019, resulting in financial losses to those who purchased or otherwise acquired Immunomedics common stock at the inflated prices. Defendants deny all of Lead Plaintiffs' allegations.

Lead Plaintiffs were well informed of the strengths and weaknesses of their claims and Defendants' defenses as they negotiated the Settlement. Along with the Court's ruling denying Defendants' motion to dismiss (ECF 59), Lead Plaintiffs had developed a robust record through their extensive pre-filing investigation, thorough discovery, and analysis and insights from the parties' experts. By the time of the Settlement, Lead Plaintiffs' investigation and discovery included: (i) analysis of more than 1.4 million pages of documents produced from Defendants and third-parties; (ii) responses to more than 700 interrogatories and requests for admission; (iii) the taking or defending of seven fact witness depositions; (iv) expert discovery, consisting of the retention of experts, who produced reports and sat for a deposition that Lead Plaintiffs defended, and deposing Defendants' retained expert; and (v) two separate formal mediation sessions with Defendants, overseen by experienced mediators.

As detailed below, the proposed Settlement before the Court is an excellent one, and Lead Plaintiffs request that the Court preliminarily approve it and approve the form and manner of providing notice of it to the Class.

At this first stage of settlement approval, courts are to evaluate whether they are likely to be able to approve the terms of a settlement under Rule 23(e), as amended in 2018, and under the *Girsh* standards. *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). As discussed below, the Settlement easily meets these standards because it is a fair, reasonable, and adequate resolution for the Class, and balances the objective of

securing the highest possible recovery against the substantial risks and costs of continued litigation, including the risk that the Class could receive nothing or an amount equal to or less than the Settlement Amount years into the future. Accordingly, Lead Plaintiffs and Lead Counsel, who have litigated this case from inception, believe that the Settlement is an outstanding result and is in the best interests of the Class.

The Settlement is also fair, reasonable, and adequate because, under the Stipulation, each Class Member is treated equitably. Each Class Member that suffered damages and properly submits a valid Proof of Claim and Release form will receive a *pro rata* share of the monetary relief based on the terms of the Plan of Allocation.

Lead Plaintiffs seek preliminary approval so that notice may be disseminated to the Class and a Settlement Hearing and other Settlement-related dates may be scheduled. In connection with the Settlement Hearing, Lead Plaintiffs will ask the Court to make final determinations of: (i) whether the Settlement is fair, reasonable, and adequate as a whole; (ii) whether the Plan of Allocation should be approved; and (iii) an award of attorneys' fees and expenses to Lead Counsel and amounts to be awarded to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

II. PROCEDURAL HISTORY OF THE LITIGATION

A. Pretrial Proceedings

After being transferred by the Honorable Madeline Cox Arleo, this action is pending before the Honorable Evelyn Padin in the United States District Court for the District of New Jersey, under the caption *Odeh v. Immunomedics, Inc., et al.*, No. 18-cv-17645-EP-ESK ("Litigation"). The initial complaint in the Litigation was filed on December 27, 2018. On September 10, 2019, the Court appointed Lead Plaintiffs and Lead Counsel. ECF 34.

The Consolidated Complaint for Violations of the Federal Securities Laws, filed on November 18, 2019, alleges that all Defendants violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and that the Individual Defendants violated §20(a) of the Exchange Act. ECF 41. Lead Plaintiffs allege that, throughout the Class Period (February 9, 2018 through January 17, 2019, inclusive), Defendants made materially false and misleading statements and failed to disclose that Immunomedics had suffered a data integrity breach at its Morris Plains, New Jersey manufacturing facility, imperiling the BLA for the drug known as IMMU-132. *Id.* Lead Plaintiffs further allege that the price of Immunomedics common stock was artificially inflated as a result of the alleged misrepresentations and omissions and subsequently declined when the facts related to Defendants' alleged misrepresentations were revealed in a series of disclosures between November 7,

2018, and January 17, 2019, resulting in financial losses to those who purchased or otherwise acquired Immunomedics common stock at the inflated prices. *Id.*

On January 17, 2020, Defendants moved to dismiss the Consolidated Complaint for failure to state a claim under Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(b) ("PSLRA"). ECF 48. Lead Plaintiffs filed their opposition to the motion on March 6, 2020. ECF 50. Defendants replied in support of the motion to dismiss on May 21, 2020. ECF 58. On July 31, 2020, Judge Arleo issued a Letter Order denying Defendants' motion to dismiss in its entirety. ECF 59.

Defendants answered the Consolidated Complaint on September 11, 2020. ECF 63.

On January 11, 2021, the Settling Parties conducted a formal mediation with David Murphy, Esq., but failed to reach a settlement.

On July 19, 2021, Lead Plaintiffs filed the operative Complaint. ECF 130. On August 18, 2021, Defendants answered the Complaint. ECF 135.

Following extensive class certification discovery, including the depositions of both Lead Plaintiffs and each side's experts, Lead Plaintiffs moved for class certification on June 2, 2022. ECF 215. Defendants opposed the motion and filed a motion to strike portions of the testimony of Lead Plaintiffs' expert, Gregg Edwards, on July 7, 2022. ECF 227. Lead Plaintiffs filed their omnibus reply in support of

class certification and in opposition to Defendants' motion to strike on July 28, 2022 (ECF 239), and Defendants replied in support of the motion to strike on August 15, 2022 (ECF 248). Lead Plaintiffs' motion for class certification and Defendants' motion to strike were pending at the time the parties agreed to settle the Litigation.

B. Investigation, Fact, and Expert Discovery

Through their investigation and fact and expert discovery, Lead Plaintiffs developed substantial information and evidence in support of their claims. Discovery was broad, directed at all Defendants, and a substantial number of third parties. Following the lifting of the PSLRA statutory discovery stay on July 31, 2020, and through November 2022, the parties produced or reviewed about 1.4 million pages of documents, conducted depositions of 9 expert and fact witnesses, and served and responded to more than 700 interrogatories and requests for admission. The parties also served subpoenas on 73 third-parties, which produced approximately 65,000 documents totaling over 418,000 pages.

On April 30, 2021 and January 21, 2022, Lead Plaintiffs and Defendants, respectively, exchanged their expert reports related to class certification. Class certification discovery, including depositions of the Lead Plaintiffs' and the parties' experts, was completed on May 5, 2022.

The parties engaged in numerous lengthy meet-and-confer sessions concerning multiple discovery disputes, as well as in several discovery conferences with

Magistrate Judge Edward S. Kiel to address discovery disputes between the parties and with third-parties. A dispute about alleged insufficiencies with Defendants' privilege log was pending at the time the parties agreed to settle the Litigation.

C. Arm's-Length Settlement Negotiations

The parties engaged in two separate mediation sessions, the details of which are discussed below in §IV. On January 11, 2021, at the first mediation session, the parties engaged the services of David Murphy at Phillips ADR, a respected former litigator with more than three decades of experience in complex securities cases, who has served as a mediator, arbitrator, and independent monitor in hundreds of cases. The first mediation session did not succeed and litigation continued.

On November 30, 2022, the parties participated in a second mediation with Bruce A. Friedman, Esq. of JAMS. The mediation followed the parties' submission of mediation statements and other relevant documents. The parties engaged in good-faith negotiations, and at the end of the mediation session, Mr. Friedman made a mediator's recommendation to settle the case for $40,000,000. The parties each accepted the recommendation. The parties executed a Term Sheet memorializing their agreement on December 1, 2022.

III. THE SETTLEMENT TERMS

Under the agreed-upon terms of the Settlement, Defendants have already caused to be paid $40 million into the Escrow Account, which amount, plus accrued interest,

constitutes the Settlement Fund. The distribution of the Settlement Fund, contingent on the approval by the Court, will proceed in a four-part sequence.

First, the costs associated with providing notice to the Class, and subsequent settlement administration ("Notice and Administration Expenses"), will be funded out of the Settlement Fund. Lead Plaintiffs propose that nationally recognized class action settlement administrator JND Legal Administration, be approved to provide notice and claims administration services in connection with the Settlement.

Second, because the Settlement Fund is a "qualified settlement fund" within the meaning of Treasury Regulation §1.468B-1, the income earned on the Settlement Fund is taxable. All Taxes and Tax Expenses (such as expenses of tax attorneys and accountants) will be paid out of the Settlement Fund.

Third, assuming the Court grants preliminary approval of the Settlement, Lead Plaintiffs will then move, at the time the Court sets, for final approval of the Settlement. Concurrent with Lead Plaintiffs' final-approval motion, Lead Counsel will submit an application for an award of attorneys' fees not to exceed 29.5% of the Settlement Fund and payment of expenses and charges resulting from the prosecution of the Litigation not to exceed $650,000, which includes proposed awards to Lead Plaintiffs not to exceed $25,000 in the aggregate pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class. Such awards and expenses will be

paid from the Settlement Fund upon entry of the order awarding such fees and expenses.

Fourth, once Notice and Administration Expenses, Taxes and Tax Expenses, Court-approved attorneys' fees and expenses and any award(s) to the Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4), and any other fees or expenses approved by the Court have been paid from the Settlement Fund, the remaining amount ("Net Settlement Fund") will be distributed pursuant to the Court-approved Plan of Allocation to Authorized Claimants who are entitled to a distribution of at least $10.00. Any amount remaining following that distribution will be redistributed in an economically feasible manner. The Plan of Allocation treats all Class Members equitably based on the timing of their purchases, acquisitions, and sales of Immunomedics common stock.

In exchange for the benefits provided under the Stipulation, Class Members will release all claims against Defendants based on, arising out of, or in connection with both: (i) the purchase or acquisition of Immunomedics common stock from February 9, 2018, through January 17, 2019, inclusive; and (ii) the facts, matters, statements, or omissions alleged in the Litigation. Stipulation, ¶1.

IV. THE SETTLEMENT RESULTED FROM ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

As discussed above, the parties engaged in extensive arm's-length negotiations over the course of two separate mediation sessions. The first mediation session with

Mr. David Murphy occurred on January 11, 2021. Following the first mediation session, the parties continued with the discovery and briefing described above. The parties held a second mediation session with Bruce A. Friedman, Esq. of JAMS, on November 30, 2022. The mediation came after the parties' submission of mediation statements and other relevant documents. The parties engaged in good-faith negotiations, and at the end of the mediation session, Mr. Friedman made a mediator's recommendation to settle the case for $40,000,000. The parties each accepted the recommendation. The parties executed a Term Sheet memorializing their agreement on December 1, 2022. The parties continued to negotiate the terms of the contemporaneously filed Stipulation of Settlement until it was finalized on January 20, 2023.

V. PRELIMINARY APPROVAL IS WARRANTED AND WILL ALLOW LEAD PLAINTIFFS TO NOTIFY THE CLASS OF THE SETTLEMENT

Rule 23(e) requires court approval for any compromise of claims brought on a class basis. Fed. R. Civ. P. 23(e) ("The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval."). It is well established in this Circuit that the settlement of class-action litigation is both favored and encouraged. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) ("This presumption is especially strong in class actions and other complex cases where substantial judicial resources can be conserved

by avoiding formal litigation."); *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."); *Curiale v. Lenox Grp., Inc.*, 2008 WL 4899474, at *5 (E.D. Pa. Nov. 14, 2008) ("The law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.").

The *Manual for Complex Litigation* describes a three-step process for approving a class action settlement: (1) preliminary approval of the proposed settlement; (2) ordering dissemination of notice of the settlement to class members; and (3) a final approval hearing. *See Manual for Complex Litigation* §21.63 (4th ed. 2004). At this point, Lead Plaintiffs request that the Court: (1) enter the proposed Preliminary Approval Order; (2) order the dissemination of notice to the Class; and (3) set a time for the final approval hearing.

Under Rule 23(e), as recently amended, preliminary approval should be granted if the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal."[2] Fed. R. Civ. P. 23(e)(1)(B); *see also Jones v. Com. Bancorp, Inc.*, 2007 WL 2085357, at *2 (D.N.J. July 16, 2007) ("Courts make a preliminary evaluation of the fairness of the

[2] Here, there is no difference between the Class proposed for certification (see ECF 215) and the Class that the proposed Settlement will bind.

settlement, prior to directing that notice be given to members of the settlement class."). Rule 23(e)(2) provides:

> (2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering 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.

Fed. R. Civ. P. 23(e)(2). These factors overlap with those set forth by the Third Circuit in *Girsh*, 521 F.2d at 157, which include:

> . . . (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 . . . ; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation . . . .[3]

The Third Circuit has held that there is an initial "presumption of fairness" of the Settlement if the Court finds that: "(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 Sodium*, 391 F.3d at 535; *see also, e.g.*, *Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *5 (E.D. Pa. Apr. 5, 2019) (granting final approval, analyzing amended Rule 23(e)(2) and the *Girsh* factors).

These factors warrant preliminary approval here.

A. The Proposed Settlement Is Fair

The first two factors for the Court's consideration under Rule 23(e)(2) are the adequacy of representation for the class and the arm's-length nature of the settlement negotiations. *See* Rule 23(e)(2)(A)-(B). These two factors dovetail into the third *Girsh* factor, which focuses on the stage of the proceedings and the amount of discovery completed. *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 102 (D.N.J. 2012) ("a presumption of fairness exists where a settlement has been negotiated at

[3] The *Girsh* factors "are a guide and the absence of one or more does not automatically render the settlement unfair." *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5 (D.N.J. Mar. 26, 2010).

arm's length, discovery is sufficient, the settlement proponents are experienced in similar matters and there are few objectors").

Here, the Settlement is presumptively fair because the Settling Parties completed extensive discovery and thereby had an adequate understanding of the merits of the case and the Settlement itself resulted from extensive arm's-length negotiations conducted by experienced counsel before highly respected independent mediators.

First, Lead Plaintiffs and Lead Counsel have adequately represented the Class as required by Rule 23(e)(2)(A) by diligently prosecuting this Litigation on their behalf, including, among other things, drafting complaints, opposing and defeating Defendants' motion to dismiss, obtaining more than 1.4 million pages of documents produced by Defendants and third-parties, propounding and responding to extensive written discovery, collecting and producing substantial discovery from their own files, moving for and fully briefing class certification, taking and defending 9 fact and expert depositions, and engaging in two separate mediation sessions.

Lead Counsel are highly competent lawyers who possess substantial experience in prosecuting complex securities class actions in this Circuit and throughout the country and have successfully prosecuted hundreds of securities class actions on behalf of damaged investors. *See In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at *9 (D.N.J. Apr. 25, 2005) ("Lead Counsel [Robbins Geller] are highly skilled

attorneys with great experience in prosecuting complex securities action[s], and their professionalism and diligence displayed during [this] litigation substantiates this characterization."); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, 2019 WL 4877563, at *3 (D.N.J. Oct. 3, 2019) (noting that Robbins Geller is "capable of adequately representing the class, both based on their prior experience in class action lawsuits and based on their capable advocacy on behalf of the class in this action"); *Thieffry on Behalf of Synchronoss TechS., Inc. v. Waldis*, 2018 WL 2357759, at *5 (D.N.J. May 24, 2018) ("While I recognize that each counsel is well qualified, I am particularly persuaded by [Block & Leviton's] experience in large securities class actions . . . . I find that the experience garnered from such representations will benefit the shareholders in this suit.").

Moreover, the Court-appointed Lead Plaintiffs include both a sophisticated individual investor and a sophisticated institutional investor responsible for overseeing hundreds of millions of dollars of investments. The collective experience, expertise, and tenacity of Lead Counsel, and the sophistication of Lead Plaintiffs, led to this excellent result, which will provide significant and immediate relief to the Class.

Given the advanced stage of the litigation, there can be no doubt that "counsel had an adequate appreciation of the merits of the case before negotiating" the Settlement. *Warfarin Sodium*, 391 F.3d at 537; *Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *10. As detailed above in §II.A and B, by the time of

Settlement, Lead Plaintiffs had engaged in extensive fact discovery, expert discovery, and motion practice, and therefore had a keen awareness of the risks of continued litigation, including the strength of the evidence that would be introduced at a trial. *See Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *10 (applying the *Girsh* factors and finding discovery efforts weighed in favor of approving settlement); *see also In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *11 (D.N.J. May 14, 2012) ("Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent.").

All of this, combined with Lead Counsel's extensive experience in securities fraud litigation, provided a strong basis upon which to evaluate the relative strengths and weaknesses of the claims and defenses. *See Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("courts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class"), *aff'd*, 559 F. App'x 151 (3d Cir. 2014). The court should "give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their cause of action." *Huffman*, 2019 WL 1499475, at *4.

Second, the Settlement was negotiated at arm's length, as contemplated by Rule 23(e)(2)(B). As detailed above in §IV, the Settling Parties' settlement negotiations spanned almost two years and involved two separate mediation sessions with experienced mediators, as well as follow up teleconferences, phone calls, and email communications. The negotiations were vigorous and adversarial, and the Defendants were represented by highly sophisticated counsel. It was not until after these lengthy, contentious settlement negotiations that Mr. Bruce Friedman issued a "mediator's proposal" that recommended the amount of the Settlement, which the parties ultimately accepted. Mr. Friedman's direct participation as a mediator further insures that negotiations were non-collusive and conducted at arm's length. *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011) ("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."); *see also Sanders v. CJS Sols. Grp., LLC*, 2018 WL 1116017, at *2 (S.D.N.Y. Feb. 28, 2018) ("[T]he settlement was negotiated for at arm's length with the assistance of an independent mediator, which reinforces the non-collusive nature of the settlement.").

B. The Benefits Under the Settlement Are Adequate

Rule 23(e)(2)(C)(i), which overlaps with *Girsh* in many respects (*i.e.*, factors 1, 4-9), instructs the Court to consider the adequacy of the settlement relief given the

costs, risks, and delay that trial and appeal would inevitably impose. *Compare* Fed. R. Civ. P. 23(e)(2)(C)(i) *with Girsh*, 521 F.2d at 157 (factor one focuses on "the complexity, expense, and likely duration of the litigation"). This aspect of Rule 23(e)(2)(C)(i) also supports approval.

"Securities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *In re PAR Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013). Despite the advanced stage of the litigation, this case would still face a significant risk of substantial delay before ultimate resolution, including delays associated with a potential interlocutory appeal of class certification, summary judgment motions, scheduling trial, and potential appeals that could last for years into the future. *See Ins. Brokerage Antitrust Litig.*, 282 F.R.D. at 103 ("By reaching a favorable Settlement with most of the remaining Defendants prior to the disposition of Defendants' renewed dismissal motions or even an eventual trial, Class Counsel have avoided significant expense and delay, and have also provided an immediate benefit to the Settlement Class."). The immediate relief that the Settlement provides to Class Members supports approval, particularly given the delays associated with continued litigation.

The relief is also fair, reasonable, and adequate considering the risks of continued litigation, which would require Lead Plaintiffs to prove (and defeat Defendants' counterarguments regarding) falsity, materiality, scienter, loss causation,

and damages at trial. *See Girsh*, 521 F.2d at 157 (risks of establishing liability, damages, and maintaining a class action support settlement approval).

Although Lead Plaintiffs believe their case is strong, they acknowledge, as they must, there are risks to litigation and ultimate recovery. Defendants' arguments, including the arguments in their opposition to class certification, highlight the risks Lead Plaintiffs would face proving their claims. For example, Defendants have strenuously argued that Lead Plaintiffs cannot invoke the presumption of class-wide reliance under *Basic v. Levinson*, 485 U.S. 224 (1988), in order to satisfy Rule 23(b)(3)'s requirement that class-wide issues predominate, claiming that the allegedly concealed information was fully available to the market earlier than alleged. ECF 226. Even if the Court granted Lead Plaintiffs' Motion for Class Certification notwithstanding these claims, they would likely serve as a basis for an appeal under Fed. R. Civ. P. 23(f), the outcome of which would be uncertain and the litigation of which would entail additional delays and expenses. Defendants repeatedly and explicitly stated they would pursue such an appeal, if warranted.

Defendants have also argued that Lead Plaintiffs could not establish the element of scienter, because the evidence did not support that any statements, even potentially misleading ones, were made with the requisite intent to defraud. And Defendants have likewise challenged Lead Plaintiffs' theory of loss causation (and therefore recoverable damages), maintaining that losses on the alleged "corrective disclosure"

dates were not caused by any alleged fraud; *i.e.*, nothing about the disclosures revealed to the market that any of Immunomedics' prior statements were false or misleading. Instead, Defendants argue, the disclosures largely represented the materialization of the risks that the Company previously and adequately disclosed both before and during the Class Period.

Moreover, at trial, Lead Plaintiffs' claims would be the subject of complex expert testimony, including testimony offered by Defendants' experts, that would conflict with Lead Plaintiffs' expert analysis. Indeed, the opinions of each side's experts vary substantially, and continued litigation poses the risks that Defendants would prevail in a "battle of experts." *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001). Such a battle would increase the expense – as well as the risk – involved with advancing the litigation toward a positive resolution at trial for Lead Plaintiffs and the Class, as a jury might credit Defendants' experts and accordingly reject Lead Plaintiffs' claims. *See PAR Pharm.*, 2013 WL 3930091, at *6 (noting "the inherent unpredictability and risk associated with damage assessments in the securities fraud class-action context").

The Settlement is a particularly strong result for the Class when balanced against those risks. The $40 million recovery exceeds 25% of estimated reasonably recoverable damages, which assumes that Lead Plaintiffs would prevail on all of their arguments about the causes of the declines in the price of Immunomedics' common

stock on the "corrective disclosure" dates Lead Plaintiffs alleged, among other issues. This result exceeds the 2.8% average percentage recovery in securities class actions settled between 2012 and 2021 where investor losses ranged from $100 million to $199 million. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full Year Review*, at 23 fig. 21 (NERA Economic Consulting 2022), Walker Decl., Ex. 2.

Given the complexity of this case and the risks and delay in continued litigation, the $40 million Settlement is an exceptional result. Considering that the case has been litigated for more than four years, and the significant amount of the recovery, the Settlement here falls well within the range of reasonableness given the attendant risks and uncertainties of continued litigation and should be preliminarily approved. *See Girsh*, 521 F.2d at 157.

C. The Other Rule 23(e)(2) Factors Are Met

Rule 23(e)(2) also enumerates three other factors for the Court to consider in approving a settlement: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees; and (iii) the existence of any other "agreements." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). These factors also support preliminary approval.

1. The Proposed Method for Distributing Relief Is Effective

As discussed below in §VII, the method of the proposed notice and claims administration process is effective and more than sufficient. The notice plan includes: (i) direct mail notice to all those who can be identified with reasonable effort, (ii) direct email notification to hundreds of financial institutions that represent major investors and regularly monitor proposed securities class actions, and (iii) publication of the Summary Notice in *The Wall Street Journal* and once over a national newswire service. In addition, a case-specific website will be established and include relevant deadlines and key Settlement documents, including the Stipulation, Notice, Proof of Claim and Release form, and Preliminary Approval Order.

The claims process is also effective and includes a standard claim form that requests the information necessary to calculate a claimant's claim amount under the Plan of Allocation. The Plan of Allocation will govern how Class Members' claims will be calculated and, ultimately, how money will be distributed to Authorized Claimants. The Plan of Allocation was prepared with help from Lead Plaintiffs' damages expert. Calculations were based on the expert's event-study analysis estimating the amount of artificial inflation in the prices of Immunomedics' common stock during the Class Period. A thorough claim-review process, including how deficiencies will be addressed, is also explained in the Stipulation, ¶5.7.

2. Attorneys' Fees and Expenses

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). The Settlement provides that Lead Counsel will apply to this Court for an award of attorneys' fees and expenses no later than 35 days before the Settlement Hearing. *See* [Proposed] Preliminary Approval Order, ¶26. As set forth in the proposed Notice, Lead Plaintiffs will request attorneys' fees not to exceed 29.5% of the Settlement Fund and litigation expenses not to exceed $650,000, which amount includes awards to Lead Plaintiffs not to exceed $25,000 in the aggregate in connection with their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4).

This fee request is consistent with attorneys' fees regularly approved in connection with large PSLRA securities class action settlements within this District and nationwide. *See, e.g.*, *In re Novo Nordisk Sec. Litig.*, No. 3:17-cv-00209-ZNQ-LNG, (ECF 361) (D.N.J. July 13. 2022) (awarding attorneys' fees of 29% of $100 million settlement and approximately $2.7 million in litigation expenses); *Ortiz v. Canopy Growth Corp. et al.*, No. 2:19-cv-20543-KM-ESK, (ECF 100) (D.N.J. June 7, 2022) (awarding attorneys' fees of 33% of a $13 million settlement and approximately $91,000 in expenses in a securities class action); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc.*, 2016 WL 10570211, at *1 (D.N.J. Sept. 29, 2016) (awarding attorneys' fees of 30% of a $33 million settlement amount in a securities

class action); *Fernandez v. Knight Cap. Grp., Inc.*, 2015 WL 13901241, at *3 (D.N.J. July 6, 2015) (awarding attorneys' fees of 33% of a $13 million settlement and approximately $231,000 in expenses in a securities class action); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery."); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, 2013 WL 12153597 (D.N.J. Jan. 30, 2013), at *1 (awarding attorneys' fees of 27.5% and expenses of $3.4 million on $164 million recovery).

Lead Counsel's notice of its maximum expense request of $625,000 is based on the substantial expenses that counsel incurred over four years of litigation and allows for any additional expenses, apart from claims-related expenses, incurred prior to final approval. The litigation included an extensive factual investigation; written discovery from Defendants, Lead Plaintiffs, and 73 third parties; nine fact and expert depositions; and retention of experts. The expense amount likewise includes the costs for mediations with two of the most highly regarded mediators in the United States.

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

Rule 23(e)(2)(C)(iv) calls for the disclosure of any other agreements entered into in connection with the settlement of a class action. The Settling Parties have entered into a supplemental agreement that provides that if a threshold number of valid opt-outs are received, Defendants will have the right (but not the obligation) to

terminate the Settlement, as set forth in the Supplemental Agreement. *See* Stipulation, ¶7.3.[4]

4. Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), concerns whether the Settlement treats Class Members equitably. As discussed above, all Class Members are treated equitably under the Stipulation, which provides that each Class Member that suffered damages and properly submits a valid Proof of Claim and Release form will receive a *pro rata* share of the Net Settlement Fund, calculated under the Plan of Allocation and subject to the $10.00 minimum payment.

The Settlement satisfies each factor identified under Rule 23(e)(2) and the Third Circuit's *Girsh* opinion is satisfied. Moreover, pursuant to *Warfarin Sodium*, 391 F.3d at 535, the Settlement is entitled to a presumption of fairness. Given the litigation risks involved, and the complexity of the underlying issues, the $40 million recovery is an excellent one. The Settlement is fair, reasonable and adequate, preliminary approval should be granted, and notice of the Settlement should be sent to the Class.

[4] As is standard in securities class actions, agreements of this kind are not made public to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging the opt-out threshold to exact individual settlements. In accordance with its terms, the Supplemental Agreement may be submitted to the Court *in camera*.

VI. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT

Under the terms of the Stipulation, the Settling Parties have agreed, for purposes of the Settlement only, to the certification of the following Class:

> all Persons who purchased or otherwise acquired the common stock of Immunomedics between February 9, 2018 and January 17, 2019, inclusive, and were damaged thereby. Excluded from the Class are: (i) Individual Defendants; (ii) the immediate family members of the Individual Defendants; (iii) the officers and directors of Immunomedics during the Class Period and their immediate family members; (iv) any firm, trust, corporation, or other entity in which any Defendant has, or had during the Class Period, a controlling interest; and (v) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded person or entity under clauses (i)-(iv). Also excluded from the Class is any Person who would otherwise be a Member of the Class but who validly and timely requested exclusion in accordance with the requirements set by the Court in connection with the Settlement.

Stipulation, ¶1.6. This definition is substantially identical to the class definition proposed by Lead Plaintiffs in their motion for class certification. ECF 215. The proposed Class satisfies the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e), and should be certified for settlement purposes only. In addition, Lead Plaintiffs should be appointed Class Representatives, and Lead Counsel should be appointed Class Counsel.

First, given that Immunomedics averaged 180.1 million shares of common stock outstanding during the Class Period, with a market capitalization of $3.7 billion, and a weekly trading volume of nearly 6% of shares outstanding, it is immediately clear that thousands of individuals and entities traded Immunomedics stock during the

Class Period and numerosity is satisfied. *See* ECF 215-1 at 4. *See also Roofer's Pension Fund v. Papa*, 333 F.R.D. 66, 74 (D.N.J. 2019) (finding numerosity satisfied where defendant issuer had more than 100 million shares outstanding and an average weekly trading volume of about 9.5 million shares).

Second, because the Class's claims arise from the same alleged misrepresentations and omissions and rely on the same theories of liability, questions of law and fact exist as to all Class Members. *See* ECF 215-1 at 4-5 (establishing that common questions of law and fact exist); *W. Palm Beach Police Fund v. DFC Glob. Corp.*, 2016 WL 4138613, at *8 (E.D. Pa. Aug. 4, 2016) (the "commonality requirement is readily satisfied in securities fraud cases"). The facts here raise common questions as to whether: (1) Defendants violated the Exchange Act; (2) Defendants' statements misrepresented or omitted material facts; (3) Defendants acted knowingly or recklessly; and (4) investors suffered damages as a result of the alleged misconduct. These common questions readily establish commonality. *See In re Novo Nordisk Sec. Litig.*, 2020 WL 502176, at *5 (D.N.J. Jan. 31, 2020); *DFC*, 2016 WL 4138613, at *8.

Third, Lead Plaintiffs' claims are typical of the Class's claims because they share the same factual and legal underpinnings. *See Novo Nordisk*, 2020 WL 502176, at *6 ("Here, typicality is clearly satisfied because Plaintiffs' claims arise from the

same course of conduct that gave rise to the claims of all other Class members and are based on the same legal theory.").

Fourth, Lead Plaintiffs are adequate class representatives because they have no interests "antagonistic" to those of the proposed Class, and there is no doubt that Lead Counsel is qualified and capable. *See* §V.A hereof. Lead Plaintiffs, like all Class Members, purchased or acquired Immunomedics common stock at market prices during the Class Period and allege that they were injured by the same material misrepresentations and omissions and subsequent stock price declines that allegedly injured all Class Members. Lead Plaintiffs have already successfully represented the interests of the Class, demonstrating assertiveness and commitment to zealously prosecute this action. Both Lead Plaintiffs gave several hours of deposition testimony in this Litigation throughout their involvement.

Additionally, the requirements of Rule 23(b)(3) are satisfied as common questions of law and fact predominate over individual ones and class treatment is superior to individual adjudications. ECF 215-1 at 22-24. Indeed, the elements of Lead Plaintiffs' claims, such as falsity, scienter, reliance, economic loss, and loss causation, all present common questions of law and fact that predominate over individualized ones. "[F]ailure of proof" of any of these elements "would end the case" for all putative class members. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013). Superiority is also readily met because adjudicating

individual claims would be a significant waste of judicial resources. "Generally, '[a]s a practical matter, investors defrauded by securities law violations have no recourse other than class relief.'" *Papa*, 333 F.R.D. at 78 (alteration in original) (quoting *Shapiro v. All. MMA, Inc.*, 2018 WL 3158812, at *6 (D.N.J. June 28, 2018)). Lead Plaintiffs are unaware of any other related litigation commenced by purchasers of Immunomedics common stock during the Class Period. Accordingly, class certification is appropriate here for Settlement purposes.

VII. THE PROPOSED NOTICE PROGRAM SATISFIES RULE 23 AND DUE PROCESS

A. Retention of JND Legal Administration as Claims Administrator

JND Legal Administration ("JND") is an experienced administrator for class action settlements, and has implemented many successful claims administration programs. *See* www.jndla.com. Lead Plaintiffs request that the Court appoint JND as Claims Administrator to provide all notices approved by the Court to Class Members, to process Proof of Claim and Release forms, and to administer the Settlement.

B. Proposed Notice Procedures

Rule 23(e) governs notice requirements for settlements or "compromises" in class actions. The Rule provides that a class action shall not be settled, dismissed, or compromised without the approval of the court, and notice of the proposed settlement, dismissal, or compromise will be given to all members of the class in such a manner as the court directs. Fed. R. Civ. P. 23(e). The Rule provides that "[t]he court must

direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). In addition, Rule 23(c)(2)(B) requires a certified class to receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

Here, the parties have negotiated the form of the notices to be disseminated to all identified potential Class Members. The proposed Notice and Summary Notice are attached to the proposed Preliminary Approval Order as Exhibits 1 and 3, respectively.

The proposed Notice apprises Class Members of (among other things) the nature of the Litigation, the definition of the Class, the claims and issues in the Litigation, and the claims to be released in the Settlement. The Notice also: (i) advises that a Class Member may enter an appearance through counsel if desired; (ii) describes the binding effect of a judgment on Class Members under Rule 23(e)(3); (iii) states the procedures and deadline for Class Members to object to the proposed Settlement, the proposed Plan of Allocation, and the requested attorneys' fees and expenses; (iv) states the procedures and deadline for Class Members to submit a Proof of Claim and Release form to recover from the Settlement; and (v) provides the date, time, and location of the Settlement Hearing. The parties further propose to supplement the Notice with the Summary Notice, to be published once in the national

edition of *The Wall Street Journal*, and once over a national newswire service. *See* §V.C.1.

The Notice also satisfies the PSLRA's specific notice requirements by including, *inter alia:* (i) the amount of the Settlement determined in the aggregate and on an average per-share basis; (ii) that the parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs prevailed at trial, and stating the issue(s) on which the parties disagree; (iii) that Lead Counsel intends to make an application for an award of attorneys' fees and expenses, including the amount of the requested fees and expenses determined on an average per-share basis; (iv) contact information for Lead Counsel; and (v) the reasons the parties are proposing the Settlement.

The proposed plan for providing notice is the same method used in many other securities class actions. Courts routinely find that comparable notice programs represent the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. *See Jones*, 2007 WL 2085357, at *5 ("the proposed distribution of notice to class members by first class mail is reasonable because no alternative method of distribution is more likely to notify class members"). For all these reasons, the notice program should be approved by the Court.

VIII. PROPOSED SCHEDULE OF EVENTS

The last step in the settlement approval process is to hold a Settlement Hearing at which the Court will hear argument and make a final decision about whether to approve the Settlement under Rule 23(e)(2). *See Manual for Complex Litigation*, *supra*, at §21.63.

Concurrent with this motion, Lead Plaintiffs have submitted a proposed agreed-upon Preliminary Approval Order ("PAO"), which was negotiated with Defendants, setting forth the following proposed schedule of Settlement-related events through final approval.

Date for commencing the mailing of the Notice and Proof of Claim and Release form to the Class ("Notice Date")	21 calendar days after the PAO is signed and entered
Deadline for publishing the Summary Notice	7 calendar days after the Notice Date
Deadline for filing of papers in support of final approval of the Settlement, Plan of Allocation, and Lead Counsel's application for attorneys' fees and expenses	35 calendar days before the Settlement Hearing
Deadline for filing objections and requests for exclusion from the Class	21 calendar days before the Settlement Hearing
Deadline for filing reply papers	7 calendar days before the Settlement Hearing
Deadline for Lead Counsel to serve on Defendants' Counsel proof, by affidavit or declaration, of mailing and publishing Notice	7 calendar days before the Settlement Hearing
Deadline for Class Members to file Proof of Claim and Release forms	90 calendar days after the Notice Date

Settlement Hearing	At least 100 calendar days after the PAO is signed and entered, at the Court's convenience

This proposed schedule complies with Rule 23 and will allow Class Members to recover from the Settlement promptly.

IX. CONCLUSION

Lead Plaintiffs have obtained an outstanding result for the Class, and now request that the Court grant their motion for preliminary approval and enter the Settling Parties' proposed Preliminary Approval Order, which is attached as Exhibit A to the Stipulation.

DATED: January 20, 2023

Respectfully submitted,

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