UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PFIZER INC. SECURITIES LITIGATION	No. 04-cv-9866 (LTS)(HBP) ECF CASE

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF: (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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PRELIMINARY STATEMENT

After a 12-year battle, the relentless efforts of Plaintiffs' Counsel resulted in a $486 million Settlement — one of the largest securities class action settlements ever against a pharmaceutical company. In order to achieve this extraordinary result, Plaintiffs' Counsel devoted over $120 million of lodestar and placed over $20 million of their own money in out-of-pocket expenses completely at risk in a wholly contingent case where there was a real chance that nothing would be recovered. On these motions, Plaintiffs and Lead Counsel seek final approval of the Settlement and Plan of Allocation ("POA"), PSLRA awards to the Class Representatives, recoupment of Plaintiffs' Counsel's expenses and an award of attorneys' fees of 28% of the gross Settlement Amount, representing a lodestar multiple of 1.13 — well below what courts in this Circuit typically award in a case such as this.

Having been fully informed of the specifics of the Settlement, POA and attorneys' fees and expense reimbursement requests, the reaction of Class Members is overwhelmingly supportive. Following an extensive notice program, including the mailing of more than 4.1 million copies of the Notice to potential Class Members and nominees, only 20 objections have been received.[1] Notably, none of these objections are from institutional investors, despite the extensive amount of institutional holdings of Pfizer common stock during the Class Period.[2] Plaintiffs and Lead Counsel respectfully submit that the low number of objections is compelling evidence that the Settlement, the POA, and the attorneys' fees and expense reimbursement requests are fair and reasonable, and should be approved by the Court. *See Wal-Mart Stores, Inc.*

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[1] Initial capitalized terms are defined in the first Declaration of Charles T. Caliendo ("FCD") (ECF No. 713). The objections are attached to the Supplemental Declaration of Charles T. Caliendo ("SCD") as Exs. 1 - 20. Unless otherwise noted, references to "Ex. _" are to the SCD.

[2] *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006) (finding lack of objections from institutional investors supported settlement approval).

v. Visa U.S.A. Inc., 396 F.3d 96, 118, 119 (2d Cir. 2005) ("the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our *Grinnell* inquiry"); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457, 458 (S.D.N.Y. 2004) (6 objections from one million class members is "vanishingly small" and "constitutes a ringing endorsement of the settlement").

As discussed below, the handful of objections that have been received are without merit. The Settlement Brief and Fee Brief (ECF Nos. 710 and 712) contain thorough analyses of the criteria for evaluating whether to approve a class action settlement, a plan of allocation and attorneys' fees and expense reimbursement applications. By contrast, most of the objectors do not engage in *any* meaningful analysis of the relevant factors or the specific facts of this case. Several of the objections, in the most general terms, assert that the Settlement is too low or the fees too high. *See, e.g.*, Exs. 5, 6, 11, 18, 19. These objectors ignore the complexities of the case and the tremendous litigation risks involved that, as explained in the FCD in §§ I.C. and VIII.D & E, could have resulted in the Class recovering nothing. In addition, they ignore the enormous amount of high-quality legal work performed by Plaintiffs' Counsel against an array of highly-competent defense attorneys in producing a $486 million Settlement. *Id.* § IX. Similarly, two "professional objectors," who raise no objections to the Settlement, nevertheless raise meritless objections to the fee request.[3]

[3] Out of the 20 objections received, 9 complain that due to the length of the case, they are unable to obtain their records supporting their purchases of Pfizer stock during the Class Period. These objections are addressed in § I.B below. Of the remaining 11 objections, 4 failed to attach the required documentation to support their transactions in Pfizer stock and, thus, have violated the Court's Preliminary Approval Order, as well as the procedures set forth in the Notice, thereby depriving Lead Counsel and the Court of the ability to determine whether these objectors are even members of the Class with standing to object. *See* ECF No. 713-4, ¶16; ECF No. 703 ¶16.

ARGUMENT

I. THE OBJECTIONS TO THE SETTLEMENT ARE MERITLESS AND SHOULD BE OVERRULED

A. THE OBJECTIONS TO THE SETTLEMENT ARE BASELESS

Other than the documentation issue discussed below, only 6 objections raise any issue with the Settlement itself. Marc L. Shapiro, Esq. contends that the Settlement is inadequate because it "represents a recovery of only 9% of damages" and the net recovery to shareholders "would be approximately $0.03 per share." Ex. 16 at 2. In addition to being factually inaccurate as the Notice clearly indicates that the estimated average net recovery per share is expected to be $0.08 per share ($0.13 gross recovery less $0.05 maximum per share fees and expenses if awarded), ECF No. 713-4, Ex. A at p. 2,[4] Mr. Shapiro ignores the fact that the recovery here amounts to ***nine times*** that achieved in similar cases where estimated losses exceed $5 billion.[5]

The other 5 objections to the Settlement should be overruled because they raise only generalized objections without any analysis of the *Grinnell* factors and provide no grounds to reject the Settlement.[6] *See In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002) (rejecting broad, unsupported objections because "[they] are of little aid to the Court in determining whether these settlements are fair, adequate, and reasonable").

[4] In light of the fact that the estimated per share expenses in the Notice were based upon a 30% fee award, $25 million in expenses and $100,000 in PSLRA awards, the average net recovery is now estimated at $0.09 per share, which is 300% more than Mr. Shapiro claims.

[5] *See* FCD at ¶4 (for 2006-2015, median securities class action settlements as a percentage of estimated losses were only 0.8% to 1% for cases with estimated losses of over $5 billion).

[6] *See* objections from Bill Byslma (Ex. 5), James Cooper (Ex. 6), Edward J. Hobbie, Esq. (as Co-Trustee of the Jean-Rae Turner Trust) (Ex. 10), Robert S. Venning (Ex. 18) and John M. Wight (Ex. 20).

B. THE OBJECTIONS TO THE CLAIMS PROCESS INCLUDING THE REQUIREMENT FOR SUPPORTING DOCUMENTATION ARE MERITLESS

9 out of the 20 objectors raise no specific objection to the Settlement but rather complain about the requirement of providing documentation to support their transactions in Pfizer stock, primarily because they have not retained or cannot locate transaction records dating back to the Class Period.[7] The Court's Preliminary Approval Order specifically approved the Claim Form, which includes the requirement that Class Members submit supporting documentation. ECF No. 703 ¶4. This requirement is necessary in class actions to minimize the likelihood of fraudulent claims and facilitate computation of what each Class Member should receive. *See In re NFL Players' Concussion Injury Litig.*, 307 F.R.D. 351, 414 (E.D. Pa. 2015) ("Submission of fraudulent claims to class settlements is, unfortunately, a documented phenomenon."). Therefore, courts repeatedly uphold the propriety of claims processes which require claimants to submit their securities transaction information. *See, e.g., In re Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at *25 (S.D.N.Y. Dec. 23, 2009) (requiring transaction information "comport[ed] with the long-approved procedures for the efficient management of class-action settlement distributions"; "[w]ithout that necessary information, the Claims Administrator could not calculate claimants' distributions"); *In re WorldCom, Inc. Sec. Litig.*, 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (overruling objection to the requirement that individual claimants submit transaction information).

While Lead Counsel is sympathetic that potential Class Members might have difficulty obtaining transaction records due to the length of the Class Period and the litigation that followed, Plaintiffs' Counsel has taken reasonable steps in an effort to mitigate such problems.

[7] *See* objections from Thomas Biskup (Ex. 2), Mr. Byslma (Ex. 5), Fred Dannov and Eileen Braun (Ex. 7), Frederick Haeberle (Ex. 9), Mr. Hobbie (Ex. 10), James E. Pointer, MD (Ex. 14), Susie P. Meehan (Ex. 12), Donald W. Tompkins (Ex. 17) and Mr. Venning (Ex. 18).

For example, at the first possible time that Plaintiffs' Counsel was permitted to communicate on a grand scale with Class Members in connection with the Class Notice, they advised Class Members to save their Pfizer transaction records.[8] In addition, Lead Counsel has been instructing potential Class Members to do the best they can in searching for records and to submit whatever they can provide, and Lead Counsel has authorized the Claims Administrator to similarly instruct potential claimants who contact them.[9] After the deadline for submission of claims has passed, Lead Counsel will consult with the Claims Administrator and consider whether exceptions from the documentation requirement should be recommended to the Court in connection with the submission of the motion for a distribution order.

It is a difficult balance to be as inclusive as possible by easing the documentation requirement, while still avoiding the real danger of fraudulent submissions eroding the recovery of true Class Members. It is, however, no grounds to disapprove the Settlement. Indeed, a more extensive problem would have arisen had the case been won at trial and upheld on appeal. In this respect, as discussed in the FCD in § VIII.A.2, if a settlement had not been reached, the case would have lasted many more years through trial and post-trial motions, after which a claims process similar to the one conducted for this Settlement would still have been required. And, unlike here, Defendants would have had the right to challenge all claims submitted, including for lacking sufficient documentation, and thus, potential Class Members would still have to provide even older records with Defendants opposing at every turn.[10]

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[8] *See* Class Notice mailed to potential Class Members in 2012, ECF Nos. 393, at 3-4; 393-2 at ¶18 ("If there is a recovery, you will be required to prove your membership in the Class with documentation of any purchases, acquisitions and sales of Pfizer common stock and the resulting damages. ***Please be sure to keep all records of your transactions in Pfizer common stock.***").

[9] *See* Supplemental Affidavit of Angela Ferrante attached to the SCD as Ex. 21, at ¶4.

[10] Joseph C. Blanks' assertion that filing a claim form is not necessary at all, because "the Defendant knows the identity of relevant shareholders (or their brokers), the number of shares

C. THE BELATED EXCLUSION REQUESTS COUCHED AS OBJECTIONS ARE MERITLESS

Two additional "objections" read more like belated exclusion requests but nevertheless are addressed herein. The first, a letter from Channa Weeratunge, simply states: "I object to the settlement, because the lawyers have not represented the case properly to win. Please excuse me from the settlement." Ex. 19. To the contrary, Plaintiffs' Counsel secured a $486,000,000 settlement, notwithstanding substantial risks that threatened to leave the Class with no recovery at all. *See* FCD at §§ I.C. and VIII.D & E (detailing those risks). The second, from Rosemary B. McDaniel, states that she "wish[es] to OPT OUT" of the Settlement because she would only receive $39.13 as a member of the Class while attorneys' fees will be in the millions of dollars. Ex. 11. This objection is meritless for the reasons discussed above. *See supra* at 3.

II. THE OBJECTIONS TO THE PLAN OF ALLOCATION LACK MERIT AND SHOULD BE OVERRULED

Mr. Shapiro's first objection that the POA does not allow any recovery for "transactions occurring after December 16, 2004," (Ex. 16 at 7), conflicts with the Court's finding on Defendants' summary judgment motion that the full extent of the truth was in the public domain at day's end on December 19, 2004 and that Plaintiffs identified no valid loss-causing disclosure after that. ECF No. 455 at 27. It also disregards Lead Plaintiff's expert's post-summary judgment determination that any stock purchased after December 16, 2004 did not incur a loss

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owned on various ex-dividend dates, and [when] they owned," Ex. 3 at 2, is simply inaccurate. While Pfizer may know the identities of some shareholders, the overwhelming majority of shares are held by brokers in "street" name and, thus, this does not solve the issue. Mr. Blanks also complains that he did not get a mailed Notice (*id.* at 3). Here, the Notice was sent via first-class mail to all Class Members who could be identified with reasonable effort and was supplemented by a summary notice published in major newspapers and transmitted over *PR Newswire*. Such notice is described as "the best notice…practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see In re Advanced Battery Techs. Sec. Litig.*, 298 F.R.D. 171, 182-83 (S.D.N.Y. Mar. 24, 2014).

attributable to the allegedly misrepresented information because there was no positive artificial inflation in Pfizer common stock attributable to the claims asserted. ECF No. 713, Ex. C, ¶8.[11]

Mr. Shapiro's second objection that there is no recovery for "Pfizer shares acquired in exchange for Pharmacia shares in connection with the April 16, 2002 merger," (Ex. 16 at 7), is also meritless. In addition to the fact that Mr. Shapiro himself exchanged no Pharmacia shares, former Pharmacia shareholders who actually did exchange shares did not suffer harm because, as explained by Plaintiffs' damages consultant, "[u]nlike cash or any other consideration used to acquire Pfizer stock, the exchanged Pharmacia shares were artificially inflated by at least as much as, if not more than, the acquired Pfizer shares because Pharmacia received more revenue from Celebrex and Bextra before the merger than Pfizer did (*see* Fischel Report ¶ 31 n.16)." ECF No. 713-3 at 4.[12]

Finally, Robert W. & Sally B. Glenn's objection that they are being excluded from participating in the recovery because they purchased and sold shares in 2002, prior to the first corrective disclosure, *see* Ex. 8 at 1, should also be rejected. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal 2008) (approving plan that excluded recovery for shares not held through corrective disclosure); *see also Dura Pharm. v. Broudo*, 125 S. Ct. 1627 (2005).

[11] For this same reason, the objection of Kenneth Behrman should be rejected because he falls into the category of Pfizer shareholders who purchased their stock after the last corrective disclosure, but prior to the end of the Class Period on October 20, 2005. *See* Ex. 1.

[12] Mr. Shapiro further states that the POA "excludes losses which were incurred during the class period and does not constitute an equitable distribution." Ex. 16 at 7. It is not inequitable, however, for a plan of allocation to provide for distribution of the proceeds of a settlement only to claimants who suffered losses *as a result of defendants' fraudulent conduct*. *See Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73 (2d Cir. 2006).

III. THE OBJECTIONS TO THE FEE AND EXPENSE REQUESTS ARE MERITLESS AND SHOULD BE OVERRULED

A. THE OBJECTIONS SUBMITTED BY ERNEST AND SCOTT BROWNE AND MICHAEL J. RINIS LACK MERIT

As stated in *In re Polyurethane Foam Antitrust Litig*., 168 F. Supp. 3d 985, 998 (N.D. Ohio 2016) (internal quotation marks omitted):

> [C]lass actions also attract those in the legal profession who subsist primarily off of the skill and labor of, to say nothing of the risk borne by, more capable attorneys. These are the opportunistic objectors. Although they contribute nothing to the class, they object to the settlement, thereby obstructing payment to lead counsel or the class in the hope that lead plaintiff will pay them to go away.

See also In re Rite Aid Corp. Sec. Litig., 269 F. Supp. 2d 603, 610 n.9 (E.D. Pa. 2003), *vacated on other grounds*, 396 F.3d 294 (3d Cir. 2005) (criticizing a "professional gadfly" who had "become a twelfth-hour squeaky wheel"). This line of cases is unfortunately relevant here as John J. Pentz, the attorney representing Ernest and Scott Browne, and Michael J. Rinis have frequently been described as "professional" or "serial" objectors — both having long track records of making meritless objections to class action settlements and attorneys' fees requests and seeking to leverage them for payment from the class or class counsel.[13] It is against this backdrop of skepticism that their objections should be viewed.

[13] *See, e.g., In re Royal Ahold N.V. Sec. & ERISA Litig*., 461 F. Supp. 2d 383, 386 (D. Md. 2006) (Mr. Pentz is "a professional and generally unsuccessful objector" and his objection was "not well reasoned"); *Barnes v. FleetBoston Fin. Corp.*, 2006 WL 6916834, at *1-2 (D. Mass. Aug. 22, 2006) (Mr. Pentz "make[s] a living simply by filing frivolous appeals and thereby slowing down the execution of settlements."); *In re Wal-Mart Wage & Hour Employment Practices Litig*., 2010 WL 786513, at *1 (D. Nev. Mar. 8, 2010) (Mr. Pentz has a "documented history" of appealing, and thereafter dismissing the appeals when he and his clients were compensated by class counsel); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575004, at *3 (N.D. Cal. Dec. 27, 2011) ("Mr. Rinis appears to be a 'serial objector' who has filed objections in at least 21 class action settlements in federal courts."); *In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483, 500 (E.D. Mich. 2008) ("Mr. Rinis … can be fairly characterized as a 'serial objector.'").

1. The Assertion That the Fee Percentage In the Original TRSL Retainer Agreement Is Required to Be Blindly Enforced Is Meritless

Brownes/Rinis complain that although the Court-appointed institutional Lead Plaintiff TRSL fully supports the 28% fee request, its support should be completely disregarded and given no weight because it is higher than the 17.5% fee set forth in the original retainer agreement entered into with TRSL almost twelve years ago,[14] as if a party to an agreement is never permitted to release another party from an obligation based upon a change in circumstances. *See generally Burman v. Transworld Airlines, Inc.*, 570 F. Supp. 1303, 1313 (N.D. Ill. 1983) ("[P]arties to a contract are free to modify or amend it."). In making this argument, what objectors fail to appreciate is that in the context of a PSLRA case, a retainer agreement is not binding on the court and it merely creates a *presumption* of reasonableness of a fee request; it does not replace a district court's fee analysis and it does not replace the judgment of duly-appointed class representatives to make a determination of what they believe is reasonable under the circumstances.[15] Indeed, if blind acceptance of the fee provision in a retainer agreement were the law — and it is not, Plaintiffs' Counsel would have been compelled to seek a fee based upon different retainer agreements that specified a 33% fee entered into by Plaintiffs' Counsel with Class Representatives Fleckles, Perusse and Chace. If that were to happen, Messrs. Pentz

[14] *See* Ex. 26. It is important to note that this was an agreement only with G&E and it did *not* cover or purport to cover fees that would be incurred by the other Plaintiffs' Counsel in the case. The original retention agreement provided for an 18% fee on the first $249 million recovered, and an additional 17% fee on the next $250 million recovered. *Id.* Applying this to the $486 million recovery would yield a requested fee of $85.11 million (17.51%), which would have resulted in an immediate forfeiture of 30% of lodestar under the original agreement, even before the Court rules on the fairness of the fee request.

[15] It is worth noting that in *Cendant*, cited by both Messrs. Brownes and Mr. Rinis, the Court set aside the lower court's fee award and remanded the case "with instructions to dismiss the fee application and to decline to accept any further applications that are submitted *without the prior approval of the Funds*." *In re Cendant Corp. Litig.*, 264 F.3d 201, 281 (3rd Cir. 2001) (emphasis added). Thus, *Cendant* actually stands for the proposition that the starting point for any fee analysis is the opinion and approval of the institutional lead plaintiff.

and Rinis would be doing what professional objectors do — arguing the other side and vehemently asserting that the 33% fee percentage in those retainer agreements should *not* be enforced.[16]

Here, TRSL described some of the factors it considered in exercising its fiduciary duty to evaluate the fee request in the Declaration of Roy A. Mongrue, Jr. ("Mongrue Decl.") (FCD Ex. E), General Counsel at TRSL who participated in settlement discussions, attended the mediation and was otherwise fully familiar with this case, at ¶16 (emphasis added):

> At the beginning of the case, TRSL and G&E entered into an agreement providing for a fee lower than 28%. At that time, *no one contemplated that the case would last 12 years and that Plaintiffs' Counsel would incur a lodestar in excess of $120 million*. To limit fees as provided for in that original agreement would result in Plaintiffs' Counsel receiving far less than their lodestar, which does not seem right given the excellent result achieved in this case. TRSL therefore *consulted independent counsel, including a former federal judge, to advise us concerning the fee request*. On the basis of their advice and my knowledge of the work done and results achieved in this case, TRSL supports Lead Counsel's request on behalf of all Plaintiffs' Counsel for a fee of 28%.

The Brownes conveniently suggest that the "uncertainty of increased discovery" is not good enough to change the retainer agreement. *See* Ex. 4 at 5. First and foremost, that objection says nothing about the right of one party to voluntarily release another party from the terms of their agreement, as TRSL has done here. Additionally, the objection ignores the fact that when the TRSL retainer agreement was entered into, no one knew that Defendants would seek a *Daubert* hearing at the outset of the case based on millions of pages of discovery from an

[16] Indeed, where, as here, there are multiple class representatives with differing fee arrangements, it is appropriate for a compromise fee percentage to be proposed as the starting point for the court's analysis. *See In re JPMorgan Chase & Co. Secs. Litig.*, Master File No. 1:12-cv-03852-GBD (S.D.N.Y. Apr. 5, 2016) (ECF No. 205 at 17) (where, at the outset of the litigation, each lead plaintiff entered into separate agreements with one of three co-lead counsel firms (but not the others) containing varying fee percentage structures, lead plaintiffs agreed to support a fee request reflecting a compromise of the different fee arrangements as well as the significant risks of the litigation, substantial time and effort dedicated by counsel, and the quality of the results achieved).

entirely different products liability action. This required Plaintiffs' Counsel to rapidly review that discovery and conduct a mini-trial on 6-months' notice. Plaintiffs' Counsel had to retain and prepare appropriate experts, engage in deposition practice with respect to the reports of the experts and quickly understand and digest esoteric medical issues in fields such as biostatics, cardiology and cardiothoracic surgery. All of this was necessary to enable Plaintiffs' Counsel to present live testimony and to cross examine Defendants' experts in order to win the hearing and allow the case to proceed. *See* FCD at §§ II.C. & F.3.b and VIII.A.1. The *Daubert* phase of the case added more than a year and a half to the duration of the case and, more importantly, added enormous expert expense and professional time necessary to engage in what amounted to a five-day mini-trial, complete with post-hearing submissions, all of which took place after a motion to dismiss and before discovery had even begun.

The objection also disregards the fact that the case only became *more* complex at that time with merits discovery getting underway, hotly contested class certification on the horizon, tens of millions of pages of additional documents being produced and needing to be analyzed, Plaintiffs' Counsel gearing up for more than 70 depositions still to come, not to mention the massive effort required to prepare a motion to amend the complaint, the highly technical and factually-oriented responses necessary to oppose Defendants' multiple summary judgment motions, the risky appellate work and, finally, the settlement negotiations and the Settlement, all of which required an additional extraordinary expenditure of time over more than 6 additional years.[17]

[17] The objectors also erroneously assert that "Class Counsel was *required* to disclose the existence of the fee agreement" in the Notice. *See* Brownes Obj. (Ex. 4) at 5 (emphasis added) (citing *In re Bristol Myers Squibb Sec. Litig.*, 2007 U.S. App. LEXIS 18093, at *6 (3d Cir. 2007)); *see also* Rinis Obj. (Ex. 15) at 3. This assertion is wrong and contrary to *Bristol Myers Squibb*, as the court there did not require the terms of the retainer agreement to be disclosed. The Notice here

2. Objector Attacks on Hourly Rates of Contract Attorneys, Staff Attorneys and Paralegals Are Meritless

None of the objectors, professional or otherwise, dispute that the multiplier sought here (1.13) is extremely reasonable and much less than the multipliers awarded in most class action settlements. *See* Fee Brief at 15 (multipliers between 2 and 5 routinely awarded); *In re Bear Stearns Mortgage Pass-Through Certificates Litig.*, Hearing Transcript at 28, lines 17-21 (Ex. 22) ("[I]n this [C]ircuit[,] Lodestar multipliers in complex contingent actions of between 2 and 5 are commonly awarded. And so thus it is easy for the Court to come to the conclusion that the 1.5 multiplier in this complex case is reasonable."). Nevertheless, Brownes/Rinis seek reductions in legitimate lodestar that was required in this case through erroneous interpretation of the relevant case law.

Without any discussion of what tasks were actually performed in this 12 year-old case, the Brownes assert that the hourly rates of all staff attorneys, contract lawyers and paralegals should arbitrarily be cut in half, thereby reducing Plaintiffs' Counsel's total lodestar to approximately $90 million. Ex. 4 at 6.[18] This assertion is meritless. "An attorney, regardless of

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stated Lead Counsel would make an application for fees not to exceed 30% of the Settlement Fund and fees would be set by the Court. *See* ECF No. 713-4 at p. 2. Lead Counsel also disclosed in the briefing the existence of the original retainer agreement, stated that the fee request was higher than what was originally provided for in the TRSL retainer agreement, and stated that the fee request was supported by TRSL (and the other Class Representatives). Thus, any Class Member who wanted to object to the fee award had all the information they needed to do so, as demonstrated by the very existence of these objections.

[18] In making this argument, the Brownes lump together the lodestars of contract attorneys who are temporary employees hired for this particular case and staff attorneys who are full-time, salaried employees. The contract attorneys were retained during the *Daubert* phase of the action in order to allow Plaintiff's Counsel to rapidly get through the millions of pages of documents produced and enable Plaintiffs' Counsel to depose Defendants' experts and to adequately prepare for the *Daubert* hearing and continue with the document review thereafter. Putting aside the erroneous argument that document review itself is not a task worthy of compensation in this type of case – it is critical given that the number of depositions are limited under the Federal Rules and Plaintiffs' Counsel do not have access to witnesses like Defendants do – the Brownes wrongly assume that

whether she is an associate with steady employment or a contract attorney whose job ends upon completion of a particular document review project, is still an attorney. It is therefore appropriate to bill a contract attorney's time at market rates and count these time charges toward the lodestar." *In re Tyco Int'l, Ltd. Multidistrict Litig.,* 535 F. Supp. 2d 249, 272 (D.N.H. 2007).[19] Similarly, it is appropriate to include hours billed for paralegal services within a lodestar calculation. *See Missouri v. Jenkins,* 491 U.S. 274, 286-88 (1989) (market rate billings of paralegal hours count toward an attorneys' fees award).[20] Thus, the contention that the rates of contract lawyers, staff attorneys and paralegals should be arbitrarily cut in half to reduce lodestar is not warranted.[21]

3. The Assertion That the Fee Award Is Required to Be Based on the Net Settlement Amount Is Meritless

The Brownes assert that the Court should award attorneys' fees based on the *Net* Settlement Fund, misleadingly contending that "[e]very Circuit Court of Appeals that has

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document review is also the entirety of the work that staff attorneys performed. In addition to reviewing a massive amount of documents, however, the staff attorneys also prepared partners and senior associates for case-critical depositions. Furthermore, the staff attorneys prepared dozens of memoranda replete with complex legal analysis regarding a variety of topics. To suggest that the time expended by either contract or staff attorneys should be treated differently from time spent by associates or partners is simply unsupportable.

[19] As the Court recognized in *In re: American International Group, Inc. 2008 Sec. Litig.* by overruling an objection to the use of contract lawyers, "there is no impropriety in billing at appropriate lawyer rates the legal work of lawyers hired to work on a specific complex case." Hearing Transcript at 38, lines 3-6, 13-16 (Ex. 23).

[20] *See also Grays Harbor Adventist Christian School,* 2008 WL 1901988, at *5 (W.D. Wash. April 24, 2008) ("paralegals ... may be included in the calculation of recoverable lodestar").

[21] The objectors' reliance on *In re Beacon Assocs. Litig.*, 2013 WL 2450960 (S.D.N.Y. 2013), is entirely misplaced. Brownes Obj. (Ex. 4) at 6. In *Beacon*, which involved the Madoff scandal, Judge McMahon was troubled by tremendous inefficiency on the part of the plaintiffs' lawyers when compared to a handful of government lawyers reviewing the same documents, *see id.* at *17, and decided that the appropriate course was to reduce by 25% the fee requested by certain plaintiffs' firms "for the work they did reviewing documents that had been produced to the regulators." *Id.* at *19. That situation is not evenly remotely presented here.

considered the question of whether attorneys' fees should be calculated based upon the gross or net settlement fund has ruled in favor of the latter." Brownes Obj. (Ex. 4) at 8; *see also* Exs. 3, 13, 15 (other similar objections). This is demonstrably untrue as courts have been uniform in their recognition that the reasonableness of a fee does not turn on which denominator is utilized. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015) ("The district court did not abuse its discretion in calculating the fee award as a percentage of the total settlement fund, including notice and administrative costs, and litigation expenses. We have repeatedly held that the reasonableness of attorneys' fees is not measured by the choice of the denominator…. [T]he choice of whether to base an attorneys' fee award on either net or gross recovery should not make a difference so long as the end result is reasonable.") (citations and internal quotation marks omitted); *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) (it makes no difference whether attorneys' fees are based on the net or gross recovery, so long as the fee is reasonable); *see also In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 172 n.8 (3d Cir. 2006) ("[e]xpenses are generally considered and reimbursed separately from attorneys' fees").[22] Here, TRSL based its approval of a 28% fee upon the Gross Settlement Amount. Had it deemed a net fee was warranted, there is nothing to suggest that it would not have approved a 29% fee as

[22] Courts routinely determine the reasonableness of fee requests based on the gross settlement amount. *See, e.g.*, *In re: American International Group, Inc. 2008 Sec. Litig.*, Master File No. 08-CV-4772-LTS-DCF, slip op. at 3 (ECF No. 517) (S.D.N.Y. Mar. 20, 2015); *In re Bear Stearns Mortgage Pass-Through Certificates Litig.*, No. 1:08-cv-08093-LTS, slip op. at 2 (ECF No. 287) (S.D.N.Y. May 27, 2015); *In re Polyurethane*, 168 F. Supp. 3d 985, 1009 (N.D. Ohio 2016); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 U.S. Dist. LEXIS 5964, 2015 WL 1396473, at *4 (E.D. Mich. Jan. 20, 2015); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 n.34 (E.D.N.Y. 2003) ("The objector asserts that I should award attorneys' fees calculated on the net recovery to the Class, excluding costs and expenses…I disagree."); *In re Flag Telecom Holdings*, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010) ("Courts in this District and throughout the nation . . . have not hesitated to award 30% of the 'gross' recovery, or more, in complicated securities fraud cases such as this."); *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400, 411 (D. Conn. 2009) (rejecting objection that "attorneys' fees should be paid out of the 'net fund' (i.e. after payment of expenses) as opposed to the 'gross fund'" as "lack[ing] merit").

the starting point for the Court's analysis.[23]

B. THE OTHER OBJECTIONS TO THE FEE AND EXPENSE REQUESTS LACK MERIT

Primarily relying on *Wal-Mart*, 396 F.3d at 124 (affirming the District Court's 6.511% fee award (as opposed to the 18.5% requested)), Mr. Shapiro concludes that both the requested attorneys' fees and litigation expenses are "unreasonable and excessive." Shapiro Obj. (Ex. 16) at 3. What Mr. Shapiro fails to mention is that counsel's 18.5% fee request equated to a 9.68 multiplier. *Id*. at 121. In fact, the 6.511% fee awarded still yielded a multiplier of 3.5, *id*. at 123, more than three times the 1.13 multiplier sought here. Mr. Shapiro also suggests that "[t]he difference between 6.5% and 30% of fund fees is too wide not to bend even the tolerance level afforded by the abuse of discretion standard." Ex. 16 at 5. This assertion disregards the fact that district courts have extensive discretion to award fees in this Circuit, so long as the appropriate factors of the fee analysis are applied. *See City of Providence v. Aeropostale, Inc*., 2014 WL 1883494, at *18 (S.D.N.Y. May 9, 2014) ("[N]either the Second Circuit nor the Supreme Court has established any presumption at all concerning any particular level of fee award that would be unreasonable in a securities fraud class action — nor would such a "presumption" be appropriate, since a fee request must be analyzed in accordance with the particulars of the case at bar, not against some arbitrary one-size-fits-all standard.").

Mr. Shapiro further cites to a six-year-old study by law professor Brian T. Fitzpatrick for the proposition that fees in "mega fund" settlements should be lower. *See* Shapiro Obj. (Ex. 16) at 5. Mr. Shapiro fails to mention that Professor Fitzpatrick has more recently supported a 33.33% fee award in a "mega" case involving a $325 million settlement because, among other

[23] The Seventh Circuit decisions cited by the Brownes (Ex. 4 at 8) are distinguishable from the current case, as they address the lower courts' inclusion of notice costs (paid separately by Defendants) in the value of the settlement when determining the fee percentage awarded, which the Seventh Circuit found to be improper.

reasons, it was—as it is here—supported by large sophisticated class members, and even though the settlement amount was large, the excellent result achieved in the case and the decade-long amount of work required to achieve the settlement justified a fee percentage above the norm. *See* Ex. 24 (Declaration of Brian T. Fitzpatrick in *In re Neurontin Mktg., Sales Prac. & Prods. Liab. Litig*., No. 04-cv-10981 (D. Mass. Oct. 27, 2014) (ECF No. 4299-3), at ¶¶ 5-9, 17-18). The court ultimately found that the one-third fee percentage was too high, but still awarded 28%. *See* Ex. 25 (Mem. and Order in *Neurontin* (D. Mass. Nov. 10, 2014), ECF No. 4303 at 8-9). A comparison of the instant case to *Neurontin* shows that a 28% fee award here would be reasonable because while both cases took longer than a decade to achieve excellent results and both have sophisticated class member support, the court in *Neurontin* applied a multiplier of 3.32, whereas here Lead Counsel seeks a far more modest multiplier of 1.13.[24]

Mr. Shapiro also ignores well-settled law in the Second Circuit which does not require extensive scrutiny in a lodestar-crosscheck analysis,[25] when he argues that Plaintiffs' Counsel should have submitted "itemized back up to support all entries for all of their lodestar and expenses, so they can be audited." Ex. 16 at 3, 6. Here, Plaintiffs' Counsel provided sufficient documentation of their work as set forth both in the FCD and in the supporting individual firm declarations, which contain schedules of time spent by the attorneys and professional support staff at each firm who worked on this case and their billing rates. *See* FCD Exs. I-O. Plaintiffs'

[24] Avarind S. Muzumdar objects to the fee award as "excessive [] especially when this case is not going for a trial." (Ex. 13) The trial risks are discussed in great detail in the FCD at §§I.C and VIII.D & E, and a trial is not required to award an appropriate fee. Mr. Muzumdar also argues that fees should be based on an arbitrary sliding scale and erroneously cites to the Architect/Engineer Fee Guidelines for Basic Services from the Kentucky Dept. of Education, which are not applicable here.

[25] *See Bear Stearns* Hearing Transcript at 28, lines 2-12 (Ex. 22) (in lodestar cross-check, the Court "need not exhaustively scrutinize the particulars of the representations of counsel as to the components of the Lodestar fee"); *American International Group* Hearing Transcript at 36, lines 18-20 (Ex. 23) (same).

Counsel also broke their time down into specific categories to further assist the Court in its lodestar-crosscheck analysis. *See Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) ("Of course, where [the lodestar method is] used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized"); *Shapiro v. JP Morgan Chase & Co.*, 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014) (time need not be "exhaustively scrutinized"). Likewise, Plaintiffs' opening papers contain a breakdown of Plaintiffs' Counsel's expenses by category. *See* FCD §X; Exs. I-O.[26] This itemization of expenses by category is typical of what is submitted in other cases. Mr. Shapiro does not cite any authority suggesting that more expense detail is required.

C. THE OBJECTIONS FAIL TO ADDRESS THE FUNDAMENTAL QUESTION BEFORE THE COURT WHICH IS WHETHER THE FEE SOUGHT IS REASONABLE UNDER THE CIRCUMSTANCES OF THIS CASE

The issues raised by the objectors share the common flaw that they fail to address the fundamental question before the Court — whether based on the totality of the circumstances — the fee sought here is reasonable.

The complexity, riskiness and enormous amount of work this case required is amply demonstrated in Plaintiffs' opening papers. *See* FCD at §VIII.A.1. This was a case where there was no parallel securities fraud action by the U.S. Securities and Exchange Commission and no financial restatement. It required 12 years of relentless efforts by Plaintiffs' Counsel to, *inter*

[26] Mr. Blanks generally complains about the use of jury consultants and that "[e]xpert fees are too high." (Ex. 3 at 2). Jury consultants are customary in large securities class actions that, like here, went to the brink of trial. More importantly, Mr. Blanks ignores that what he characterizes as the "jury consultant" here was actually a litigation consultant, who — as explained at length in the FCD at §II.I.3 and elsewhere — was extensively involved with litigation strategy, presentation of the case for the *Daubert* hearing, depositions, the mediation, the mock trial, and actual trial preparation. All of this work was essential to successful prosecution of the case. Similarly, the experts used by Plaintiffs were necessary to present testimony on, *inter alia*, statistically significant CV risk and loss causation and damages and each was needed to counter Defendants' experts. *See id.* at §II.F.3b.

alia: (i) understand the complex medical and statistical evidence related to the drugs' CV risks; (ii) distill down that evidence from the massive 64 million-page document production database; (iii) cut through the complexity of the "Cox-2 Alliance" partnership between Pfizer and its co-promotion partner, Pharmacia, to ascertain who knew what about the CV risks with the drugs and when they knew it; (iv) battle with Defendants' team of as many as eleven of the nation's finest defense firms in guiding the case through a gauntlet of procedural challenges; (v) formulate a compelling case that withstood Defendants' bid to dispose of the case at summary judgment; (vi) further refine the successful summary judgment record via, among other things, a mock jury trial to improve Plaintiffs' intended presentation of the case to a jury; and (vii) then revive the case on appeal after one of the extreme risks of prosecuting a securities class action manifested itself—the unexpected exclusion of Plaintiffs' loss causation and damages expert on the eve of trial resulting in dismissal of the case. *See* Fee Brief at 1-2, 6-10.

In addition, as explained in the FCD, the risk of going to trial was enormous. Plaintiffs faced substantial hurdles in proving *scienter*, not the least of which was the fact that the FDA had made public statements *supporting* Pfizer's viewpoints about a lack of increased CV risk with Celebrex, which required Plaintiffs to amass evidence, as they did, that the FDA was not given complete information to properly assess the issue. *See* FCD at §VIII.D.5. Further, just one adverse factual determination on a key loss causation date could have eviscerated nearly all of the recoverable damages in the case and left the Class, even assuming a complete victory otherwise, with only $28 million in damages. Plaintiffs' Counsel's efforts produced a result that exceeds that amount by *seventeen times*. *See* FCD at ¶13.

Based on the complexity, risk, duration, result and support of the Lead Plaintiff and other Class Representatives, the fee sought is justified and reasonable, and well within the parameters

of other court awards under similar circumstances. *See In re Initial Public Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.33% of $586 million in highly complex case); *In re Urethane Antitrust Litig.*, 2016 WL 4060156 (D. Kan. July 29, 2016) (33.3% fee award in $1.06 billion settlement yielding multiplier of 3.5); *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (31.33% fee award in $1.06 billion); *ETSI Pipeline Project v. Burlington N., Inc.*, 1989 U.S. Dist. LEXIS 18796 (E.D. Tex. June 5, 1989) (33% fee award in $635 million settlement); *In re Fructose Antitrust Litig.*, MDL No. 1087, Master File No. 95-1477 (C.D. Ill. Oct. 4, 2004) (25% fee in $531 million settlement yielding multiplier of 3.64); *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1797-MSG (E.D. Pa. Oct. 8, 2015) (27.5% fee award in $512 million settlement yielding multiplier of 4.12); *TFT-LCD*, 2011 WL 7575003 at *2 (30% fee award in $405 million settlement yielding multiplier of 1.096); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at **9-10 (D.D.C. July 16, 2001) (33.7% fee award in $365 million settlement); *see also* Fee Brief at 12 (citing further cases).

CONCLUSION

Plaintiffs respectfully request that the Court overrule all of the objections and approve the Settlement, POA and fee and expense requests in their entirety.

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Respectfully Submitted,

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