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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

BARBARA STROUGO, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MALLINCKRODT PUBLIC LIMITED COMPANY, et al., Defendants.	No. 3:20-cv-10100-RK (TJB) CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

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Lead Plaintiff Canadian Elevator Industry Pension Trust Fund and named plaintiff City of Sunrise Police Officers' Retirement Plan ("Plaintiffs"), individually and on behalf of the Class, respectfully submit this memorandum in support of their motion for final approval of the class-wide Settlement of this Litigation, including the proposed Plan of Allocation for distributing Settlement proceeds (the "Motion").[1]

I. PRELIMINARY STATEMENT

Pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rules") and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), this Motion seeks final approval of the proposed Settlement following completion of the notice program approved by the Court, and provides for the payment of $46 million in cash (the "Settlement"). The Settlement here resulted from arm's-length mediation overseen by David M. Murphy of Phillips ADR, an experienced mediator, and represents a very good recovery for the Class. The Settlement follows over five years of hard-fought litigation, including drafting a detailed amended complaint; briefing Defendants' complex motion to dismiss; participating in Mallinckrodt's bankruptcy proceedings in 2020 and 2023; conducting document discovery and negotiating discovery disputes;

[1] Unless otherwise defined herein, all capitalized terms have the meaning set forth in the Stipulation of Settlement, dated September 18, 2024 (ECF 148-4) (the "Stipulation") or the Declaration of Michael G. Capeci in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Capeci Declaration" or "Capeci Decl."), filed herewith.

pursuing class certification; retaining consultants and experts; and engaging in mediation sessions, including the submission and exchange of written mediation statements. Through these efforts, Lead Counsel possessed a full understanding of all relevant issues, which they brought to bear in negotiating and agreeing to the Settlement.

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

Plaintiffs therefore respectfully request that the Court grant final approval of the proposed Settlement and Plan of Allocation.

II. BACKGROUND

A. Procedural History

On July 26, 2019, the initial complaint was filed in the United States District Court for the Southern District of New York. On June 25, 2020, Judge Edgardo Ramos appointed Canadian Elevator as Lead Plaintiff and Robbins Geller Rudman &

Dowd LLP ("Robbins Geller") as Lead Counsel. ECF 42. Shortly thereafter, on August 6, 2020, the case was voluntarily transferred from Judge Ramos to Judge Anne E. Thompson of the United States District Court for the District of New Jersey. ECF 45.

On August 10, 2020, Canadian Elevator filed the Amended Complaint alleging that Mallinckrodt and the Individual Defendants violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC Rule l0b-5 promulgated thereunder (17 C.F.R. §240.10b-5). ECF 56. The Amended Complaint alleges that Mallinckrodt and the Individual Defendants made numerous false and misleading statements and omissions about H.P. Acthar Gel ("Acthar"). Specifically, these allegedly false and misleading statements concerned the following: (1) failing to disclose Mallinckrodt's illegal avoidance of paying rebates to the Centers for Medicare and Medicaid Services by knowingly using an improper base date average manufacturing price for Acthar; (2) giving false guidance for Acthar sales in May 2019 of over $1 billion; (3) failing to disclose the *Strunck* litigation and the related settlement of that litigation; and (4) omitting information about certain Acthar clinical trials. *Id.*

On October 1, 2020, the Individual Defendants and Mallinckrodt moved to dismiss the Amended Complaint and on November 16, 2020, Canadian Elevator filed an opposition brief. ECFs 79, 84. On December 10, 2020, Judge Thompson stayed

the proceedings because Mallinckrodt filed a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Delaware in October 2020. ECF 89.

Canadian Elevator participated in Mallinckrodt's bankruptcy proceedings to protect the interests of the Class. For example, during the 2020 bankruptcy proceedings, parties from a different securities fraud class action, *Shenk v. Mallinckrodt plc, et al.*, No. 1:17-cv-00145-DLF (D.D.C.) ("*Shenk*"), entered into a settlement agreement that would have released the Class's claims from May 3, 2016 to November 6, 2017, if approved. To prevent this, Lead Counsel convinced counsel for the *Shenk* parties to carve out the Class's claims. *Shenk* received final settlement approval in 2022, and this Litigation was expressly carved out of that release. In addition, also during the 2020 bankruptcy proceedings, Canadian Elevator opted out of the bankruptcy release on its own behalf, and unsuccessfully attempted to do so on behalf of the Class.

On March 21, 2022, Canadian Elevator informed Judge Thompson that Mallinckrodt had agreed to modify the bankruptcy injunction that had stayed this Litigation since December 2020 to allow the Individual Defendants to file a reply brief in support of their motion to dismiss and for the Court to rule on the pending motion. ECF 91. On March 29, 2022, Judge Thompson reinstated the Litigation against the Individual Defendants. ECF 93.

On April 19, 2022, the Litigation was reassigned to Judge Michael A. Shipp. ECF 94. On May 2, 2022, the Individual Defendants filed their reply brief in support of their motion to dismiss the Amended Complaint. ECF 95. On June 16, 2022, Mallinckrodt announced that its Chapter 11 bankruptcy plan was effective, and the Company emerged from bankruptcy proceedings. On December 14, 2022, Judge Shipp ordered the voluntary dismissal without prejudice as to Mallinckrodt from the Litigation due to the bankruptcy discharge. ECF 104.

On December 16, 2022, Judge Shipp issued a Memorandum Opinion largely denying the Individual Defendants' motion to dismiss the Amended Complaint, with the exception of Lead Plaintiff's allegations regarding Acthar's clinical trials. ECF 105. On January 17, 2023, the Individual Defendants answered the Amended Complaint, and on March 20, 2023, the parties attended an initial pretrial conference before Magistrate Judge Bongiovanni. ECFs 108, 116. On May 15, 2023, the Litigation was reassigned to Judge Robert Kirsch. ECF 117.

On February 16, 2023, the parties exchanged their first sets of discovery requests. During discovery, Mallinckrodt and the Individual Defendants collectively produced approximately 155,000 documents. Lead Counsel reviewed all of these documents, including those that were produced by Mallinckrodt during earlier government investigations involving the Department of Justice and Securities Exchange Commission ("SEC"). Plaintiffs also engaged in extensive discovery with

third parties other than Mallinckrodt, and reviewed over 16,000 documents from those third parties.

Before moving for class certification, Plaintiffs retained Steven P. Feinstein, Ph.D., CFA, who prepared a Report on Market Efficiency and Damages Methodology. In rebuttal, the Individual Defendants retained Paul Zurek, Ph.D. On May 29, 2023, Plaintiffs served Dr. Feinstein's Report on Market Efficiency and Damages Methodology and on June 30, 2023, the Individual Defendants served Dr. Zurek's rebuttal report. The parties proceeded through extensive class certification discovery efforts, including the deposition of Gregory Manion, on behalf of Canadian Elevator, on July 18, 2023. Counsel for the Individual Defendants took the deposition of Dr. Feinstein on July 27, 2023. On August 7, 2023, the Court granted Sunrise's unopposed motion to intervene as a named plaintiff, which Lead Plaintiff facilitated to address a possible standing issue that Defendants may have raised in the Litigation. ECF 123. On August 8, 2023, Lead Counsel took the deposition of Dr. Zurek. Counsel for the Individual Defendants deposed David Williams, on behalf of Sunrise, on August 17, 2023.

On August 10, 2023, Plaintiffs served a motion for class certification on the Individual Defendants, and on August 21, 2023, Plaintiffs served a motion to exclude the opinions and report of Dr. Zurek on the Individual Defendants. On October 10, 2023, the Individual Defendants served an opposition to Plaintiffs' motion for class

certification and on December 22, 2023, the Individual Defendants served an opposition to Plaintiffs' motion to exclude the opinions and report of Dr. Zurek. Plaintiffs' reply briefs to their motions for class certification and to exclude the opinions and report of Dr. Zurek were pending when the Settlement was reached. ECFs 129, 134, 136-141.

On February 21, 2024, Plaintiffs filed a letter addressed to Magistrate Judge Bongiovanni outlining the parties' ongoing discovery disputes and on March 7, 2024, Magistrate Judge Bongiovanni stayed the Litigation pending the parties' mediation efforts. ECFs 132, 136. Plaintiffs and the Individual Defendants participated in a mediation session with Mr. Murphy (of Phillips ADR) on March 21, 2024. In advance of that session, the Settling Parties submitted to Mr. Murphy and exchanged detailed opening and reply mediation statements. The Settling Parties engaged in good-faith negotiations but were unable to reach an agreement. The Settling Parties engaged in continued mediation efforts following the conclusion of the March 21, 2024 mediation session.

On May 23, 2024, the Settling Parties attended a second mediation session and again engaged in good-faith negotiations but were unable to reach an agreement. Following additional settlement discussions through Mr. Murphy, on June 7, 2024, the Settling Parties accepted the mediator's proposal to settle the Litigation in return for a cash payment of $46 million.

On September 18, 2024, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement and Approval of Notice to the Class, together with supporting papers, including the Stipulation of Settlement, which set forth the terms and conditions of the Settlement. ECF 148. After holding a telephonic hearing on Plaintiffs' motion on December 20, 2024, the Court entered an Order granting preliminary approval of the Settlement and authorizing notice to the Class (the "Preliminary Approval Order"). ECF 155. As provided therein, objections to the Settlement, or requests to be excluded from the Class, are due by March 25, 2025, and a Settlement Hearing is scheduled for April 15, 2025, at 11:00 a.m. *Id.*

B. The Notice Program Approved by the Court

In the Preliminary Approval Order, the Court approved the form and content of the Postcard Notice, Notice, and Summary Notice, and ordered the Claims Administrator, Verita Global ("Verita"), to: (i) send the Postcard Notice to potential Class Members by email or First-Class Mail (where email addresses are not available); and (ii) publish the Summary Notice. ECF 155, ¶9. The Court further found that these notice procedures "meet the requirements of [Rule] 23, . . . the [PSLRA], and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto." *Id.*, ¶7.

The notice program approved by the Court has since been carried out. On January 13, 2025, Verita established the settlement website at

www.MallinckrodtSecuritiesSettlement.com, which includes, among other things, the Stipulation, the Notice, the Proof of Claim, and an online claim submission page. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶14, filed herewith. Distribution of the Postcard Notice commenced on January 13, 2025. *Id.*, ¶¶6-8. Additionally, Verita received the names, addresses, and email addresses of additional Class Members or requests for additional Postcard Notices by numerous nominee holders. *Id.*, ¶¶9-10. In total, 114,436 Postcard Notices have been disseminated to potential Class Members and nominees by mail or email. *Id.*, ¶11.[2] The Summary Notice was published in *The Wall Street Journal* and over *Business Wire*. *Id.*, ¶12. To date, there have been no objections to any aspect of the Settlement; only one Class Member has requested exclusion from the Class. *Id.*, ¶16.

III. THE COURT SHOULD FINALLY CERTIFY THE CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT

In their motion for preliminary approval of the Settlement, Plaintiffs requested that the Court certify the Class for settlement purposes so that notice of the Settlement, the Settlement Hearing, and the rights of Class Members to object to the Settlement, request exclusion from the Class, or submit Proofs of Claim, could be issued. *See* ECF 148-2 at 27-33. In the Preliminary Approval Order, the Court

[2] Pursuant to request, 76 Notices and Proofs of Claim have been provided to potential Class Members. Murray Decl., ¶11.

addressed the requirements for class certification as set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and found that Rules 23(a) and (b)(3) were satisfied for purposes of settlement. ECF 155, ¶3. Specifically, the Court preliminarily certified a Class of "all Persons who purchased or otherwise acquired Mallinckrodt common stock between May 3, 2016, and March 13, 2020, inclusive."[3] *Id.*, ¶2. In addition, the Court preliminarily certified Plaintiffs as Class Representatives and Lead Counsel as Class Counsel. *Id.*, ¶4.

Nothing has changed since the Court's entry of the Preliminary Approval Order to alter the propriety of the Court's preliminary certification of the Class for settlement purposes. Thus, for all of the reasons stated in Plaintiffs' motion for preliminary approval (ECF 148-2 at 27-33) (incorporated herein by reference), Plaintiffs respectfully request that the Court affirm its preliminary certification and finally certify the Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and appoint Plaintiffs as Class Representatives and Lead Counsel as Class Counsel.

[3] Excluded from the Class are: (1) the Individual Defendants; (2) any directors and officers of Mallinckrodt during the Class Period and members of their immediate families and their legal representatives, heirs, successors, or assigns; and (3) any entity in which any Individual Defendant has or had a controlling interest. Also excluded from the Class is any Person who properly excludes himself, herself, itself, or themselves from the Class by submitting a valid and timely request for exclusion. To the extent any Mallinckrodt employee benefit plan receives a distribution from the Net Settlement Fund, no portion shall be allocated to any Person who is excluded from the Class by definition.

IV. THE SETTLEMENT WARRANTS FINAL APPROVAL

In the Third Circuit, there is a "strong presumption in favor of voluntary settlement agreements," which is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"[4] *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010); *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."); *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 2024 WL 815503, at *5 (E.D. Pa. Feb. 27, 2024) (same).

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

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;

[4] Unless otherwise noted, citations are omitted, and emphasis is added throughout.

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Id.

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

> "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation."

521 F.2d at 157 (ellipses omitted); *see also Frederick v. Range Res.-Appalachia, LLC*, 2022 WL 973588, at *14 (W.D. Pa. Mar. 31, 2022) (Rule 23(e)(2) "overlap[s]" with *Girsh*), *aff'd*, 2023 WL 418058 (3d Cir. Jan. 26, 2023).[5]

In 1998, in *In re Prudential Ins. Co. of Am. Sales Prac. Litig. Agent Actions*, the Third Circuit added additional factors for a court to consider, when appropriate. *See* 148 F.3d 283, 323 (3d Cir. 1998). These factors include:

> [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

Id.

Both the *Girsh* and *Prudential* factors "'are a guide and the absence of one or more does not automatically render the settlement unfair.'" *Kamfsky v. Honeywell Int'l Inc.*, 2022 WL 1320827, at *4 (D.N.J. May 3, 2022). Instead, the Court "must

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

look at all the circumstances of the case and determine whether the settlement is within the range of reasonableness under *Girsh*." *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *7 (D.N.J. June 15, 2020).

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

As described below and in the Capeci Declaration, the Settlement is a very good result under the circumstances, is presumptively fair, and clearly satisfies each element of Rule 23(e)(2) and the *Girsh* and *Prudential* factors. This is especially so in light of the difficulty in proving falsity, materiality, scienter, loss causation, and damages, as argued by the Individual Defendants in their motion to dismiss and in their opposition to Plaintiffs' class certification motion.

V. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR APPROVAL

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

The first factor under Rule 23(e)(2) addresses the adequacy of representation by the class representative(s) and class counsel. Fed. R. Civ. P. 23(e)(2)(A). This overlaps with the third *Girsh* factor, which covers the stage of proceedings and the

amount of discovery completed. *See Girsh*, 521 F.2d at 157; *see also Warfarin*, 391 F.3d at 535 (similar factor for presumption of fairness).

Confidence in the abilities of Lead Plaintiff and Lead Counsel was expressed by Judge Ramos in appointing each to their respective positions. *See* ECF 42. That Court's confidence was well-placed as, since then, they and Sunrise have vigorously pursued this Litigation. Among many other undertakings, Lead Counsel conducted a thorough investigation into the alleged violations of the federal securities laws; drafted a detailed amended complaint; successfully in large part defeated the Individual Defendants' motion to dismiss; protected the Class's interests in Mallinckrodt's bankruptcy proceedings; conducted extensive fact discovery; retained experts and consultants, including investigators, an economist, and a damages expert; briefed class certification and conducted discovery related to that motion; prepared mediation statements; and engaged in settlement negotiations and mediation sessions led by an experienced mediator. *See generally* Capeci Decl. At each of these stages, Lead Counsel sought to advance this case on behalf of the Class.

Lead Counsel are highly qualified lawyers well-versed in prosecuting complex class actions under the federal securities laws. Robbins Geller has successfully prosecuted hundreds of securities class actions on behalf of damaged investors. *See, e.g.*, *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2021 WL 358611, at *6 (D.N.J. Feb. 1, 2021) (finding Robbins Geller skilled and efficient and noting that it "achieved a

$1.21 billion settlement – the ninth largest PSLRA class action ever recovered – for the benefit of the class"), *aff'd in part, dismissing appeal in part sub nom.*, *TIAA v. Valeant Pharms. Int'l, Inc.*, 2021 WL 6881210 (3d Cir. Dec. 20, 2021); *McDermid v. Inovio Pharms., Inc.*, 467 F. Supp. 3d 270, 281 (E.D. Pa. 2020) ("Robbins Geller is a preeminent litigation firm with a record of winning complex securities class actions.").

See also accompanying Declaration of Michael G. Capeci Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Ex. F (Robbins Geller firm résumé), and Declaration of James E. Cecchi Filed on Behalf of Carella, Byrne, Cecchi, Brody & Agnello, P.C. in Support of Application for Award of Attorneys' Fees and Expenses, Ex. C (Carella Byrne firm résumé). In addition, Plaintiffs' support for the Settlement carries substantial weight. *See* Declarations of Gregory Manion and David Williams, filed herewith.

Plaintiffs and Lead Counsel have thus adequately represented the Class under Rule 23(e)(2)(A) and have secured "'an adequate appreciation of the merits of the case.'" *Warfarin*, 391 F.3d at 537. "[C]ourts in this Circuit traditionally 'attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class.'" *Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014). Bringing their experience and

knowledge of this case to bear, Plaintiffs and Lead Counsel all believe that the Settlement is in the best interests of the Class.

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

The second factor under Rule 23(e)(2) considers whether the Settlement was negotiated at arm's length. *See* Rule 23(e)(2)(B). A class action settlement is considered presumptively fair where, as here, the parties, through capable counsel, have engaged in arm's-length negotiations. *See Warfarin*, 391 F.3d at 535 (citing arm's-length negotiations as a factor in assessing presumption of fairness).

The parties engaged in arm's-length negotiations, including mediation conducted by an experienced mediator, David Murphy of Phillips ADR. In advance of the first mediation session, the parties prepared and exchanged opening and reply statements. These mediation statements were extensively informed by the facts obtained throughout the investigation and litigation process. The parties negotiated in good faith, and after the second mediation session, and further discussions with Mr. Murphy, ultimately agreed to the mediator's proposal to settle the case. Capeci Decl., ¶¶121-125.

This record clearly demonstrates that the parties negotiated at arm's length. *See Copley v. Evolution Well Servs. Operating, LLC*, 2023 WL 1878581, at *4 (W.D. Pa. Feb. 10, 2023) (settlement from mediation sessions before experienced mediator was "arm's length"); *Utah Ret. Sys. v. Healthcare Servs. Grp.*, 2022 WL 118104, at *8

(E.D. Pa. Jan. 12, 2022) (involvement of neutral mediator points to an arm's-length negotiation). Indeed, participation of an "'independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties.'" *McDermid v. Inovio Pharms., Inc.*, 2023 WL 227355, at *5 (E.D. Pa. Jan. 18, 2023) (alteration in original).

When a settlement results from arm's-length negotiations, the assessment by experienced counsel that a settlement is in the best interest of the class is entitled to "'considerable weight.'" *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016) (courts "'afford[] considerable weight to the views of experienced counsel regarding the merits of the settlement'"); *In re NFL Players' Concussion Inj. Litig.*, 307 F.R.D. 351, 387 (E.D. Pa. 2015) ("'A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.'"), *amended*, 2015 WL 12827803 (E.D. Pa. May 8, 2015), *aff'd*, 821 F.3d 410 (3d Cir. 2016). This flows from the principle that "a settlement represents the result of a process by which opposing parties attempt to weigh and balance the factual and legal issues that neither side chooses to risk taking to final resolution." *Fulton-Green v. Accolade, Inc.*, 2019 WL 4677954, at *9 (E.D. Pa. Sept. 24, 2019). Bringing their experience and knowledge of this case to bear, Lead Counsel believes that the Settlement is in the best interests of the Class. This factor thus weighs strongly in favor of approval.

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

The third consideration under Rule 23(e)(2), which overlaps with *Girsh* factors 1 and 4-9, is the adequacy of the settlement in light of the costs, risks, and delay of continued litigation. Fed. R. Civ. P. 23(e)(2)(C)(i). Securities cases are "'notably complex, lengthy, and expensive . . . to litigate.'" *Beltran v. SOS Ltd.*, 2023 WL 319895, at *4 (D.N.J. Jan. 3, 2023) (Pascal, M.J.), *report & recommendation adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023). This case has already been pending for over five years, discovery is ongoing, and the motions for class certification and to strike the Individual Defendants' expert are still pending. Plaintiffs would undoubtedly face substantial additional costs, risks, and delays were litigation to continue, including in fact and expert discovery, summary judgment, trial, and appeal. At a minimum, proceeding through these stages of litigation would significantly prolong the time until any Class Member receives a financial recovery. "The Court weighs the value of an immediate guaranteed settlement against the challenges that remain in proceeding with litigation." *Honeywell*, 2022 WL 1320827, at *5. As explained below, the Settlement is more than adequate in light of these obstacles.

1. Risks and Costs of Establishing Liability and Damages

Plaintiffs and Lead Counsel believe that their case is strong but acknowledge that there would be risks involved in further litigation. As an initial matter, there is no longer a corporate defendant. As such, Plaintiffs would have to establish liability with

respect to ***each*** of the ten Individual Defendants. The Individual Defendants have contested each of Plaintiffs' allegations, maintaining that they made no materially false and misleading statements and did not violate GAAP, or ASC 450, specifically; and that Plaintiffs could not establish scienter for any of them. Defendants were also expected to argue that the appropriate class period is the one settled by the SEC, *i.e.*, November 2018 to May 2019, with one stock decline in May 2019. Capeci Decl., ¶143. Adopting this shorter class period would materially reduce recoverable damages. *Id.*[6]

Further, nearly all of the evidence would need to be reviewed by subject-matter experts given the complex nature of Plaintiffs' claims, including the compliance with GAAP. As courts recognize, "proving damages in securities fraud cases . . . 'invariably requires expert testimony which may, or may not be, accepted by a jury.'" *SOS Ltd.*, 2023 WL 319895, at *5. Because Plaintiffs bear the burden of proof, Defendants could win at summary judgment on any of these issues through a prevailing *Daubert* motion. If the case proceeded to trial, these issues would be resolved through an inherently uncertain "battle of the experts." *Viropharma*, 2016 WL 312108, at *12; *see also Inovio*, 2023 WL 227355, at *8 ("[c]onflicting expert

[6] Notably, the SEC did not receive any recovery from the Individual Defendants. Capeci Decl., ¶79.

testimony at trial would introduce further uncertainty"); *SOS Ltd.*, 2023 WL 319895, at *5 (battle of experts "can go either way").

While there are strong responses to Individual Defendants' arguments on liability and damages, they pose undeniable risks. Any one of these arguments, if successful, could have resulted in the claims at issue being severely curtailed or even eliminated. *See Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *4 (E.D. Pa. Apr. 5, 2019) (Courts 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.'"). Moreover, any trial victory for Plaintiffs would inevitably lead to an appeal, which at a minimum would have resulted in substantial delays before any financial recovery. *See Honeywell*, 2022 WL 1320827, at *4 ("The time and expense of a securities class action trial is substantial and would very likely lead to post-trial motions and subsequent appeals . . . ."). The risks associated with establishing liability and damages at trial, and preserving any trial victory through appeal, thus weigh in favor of approving the Settlement.

At a minimum, the Settlement spares the Class the substantial costs and delays associated with further litigation. *Inovio*, 2023 WL 227355, at *6. Indeed, it is not uncommon for a securities fraud case to take many years to proceed from filing

through appeal.[7] This case is no exception. Here, after over five years of litigation, the parties are still in the discovery phase of the litigation. Based on the course of litigation to date, continued proceedings would likely be lengthy, procedurally complex, and thus costly.

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

2. The Risks of Maintaining the Class Action Through Trial

Plaintiffs' class certification motion has not yet been decided. The Individual Defendants vigorously opposed the motion. Had the Court declined to certify the

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

class, the case would likely be over. Even if the Court grants the class certification motion, the Individual Defendants still could have pressed a Rule 23(f) interlocutory petition or moved to decertify the class or trim the class period to the period resolved in the SEC matter before trial or on appeal, as class certification may be reviewed at any stage of the litigation. *SOS Ltd.*, 2023 WL 319895, at *5. Therefore, the sixth *Girsh* factor supports approval of the Settlement.

3. The Ability of Defendants to Withstand a Greater Judgment

This *Girsh* factor is neutral. Although the Individual Defendants may be able to withstand a greater judgment, "where the other *Girsh* factors weigh in favor of approval, this factor should not influence the overall conclusions that the settlement is fair, reasonable, and adequate." *Healthcare Servs.*, 2022 WL 118104, at *10.

4. The Settlement Falls Well Within the Range of Reasonableness

"'The last two *Girsh* factors ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial.'" *Jackson v. Wells Fargo Bank, N.A.*, 136 F. Supp. 3d 687, 705 (W.D. Pa. 2015). In making this "range of reasonableness" assessment, courts do not need to make a precise estimate of damages. *See Inovio*, 2023 WL 227355, at *8 ("The inability to determine the precise amount of damages . . . does not render the Court unable to conduct this [range of reasonableness] analysis."). "These factors examine 'whether the settlement represents a good value for a weak case or a poor value for a

strong case.'" *Healthcare Servs. Grp.*, 2022 WL 118104, at *10 (quoting *Warfarin*, 391 F.3d at 538). "'"[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery"'" is not dispositive, particularly in securities class actions. *In re AT&T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006). Rather, the recovery must be considered relative to "'all the risks considered under *Girsh*.'" *Id.*

It is not possible to quantify precisely the risks to recovery posed by the Individual Defendants' arguments as to falsity, materiality, scienter, loss causation, and damages described above. Nevertheless, the Settlement represents a significant recovery. The $46 million recovery under the Settlement exceeds the $43 million average settlement in securities class actions settled in 2024. *See* Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review* at 22, fig. 21 (NERA Jan. 22, 2025). The Settlement is also more than three times the median recovery for securities class actions settled in 2024. *Id.* at 23, fig. 22.[8]

Moreover, any estimate of potentially recoverable damages assumes that Plaintiffs would prevail on all of their arguments regarding the causes of the declines in Mallinckrodt's stock price on the "corrective disclosure" dates that Plaintiffs

[8] Each of these statistics exclude settlements of $1 billion or higher (of which there were none in 2024), merger objections, crypto unregistered securities, and settlements of $0 to the class.

alleged, among other issues. A jury could find at trial that recoverable damages are significantly lower (or zero) as the Individual Defendants have strenuously argued.

Given the complexity of this case and the risks and delay inherent in continued litigation, a $46 million recovery is a very good result. Taking into account that this case has been litigated for over five years, there is no corporate defendant, and the significant amount of the recovery, the Settlement here falls well within the range of reasonableness and should be approved. *See Girsh*, 521 F.2d at 157.

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

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

1. The Proposed Method for Distributing Relief Is Effective

Under Rule 23(e)(2)(C)(ii), the court must "scrutinize the method of claims processing to ensure that it facilitates [the] filing of legitimate claims." 2018 Advisory Note, subdiv. (e)(2). Here, the method for processing Claims follows well-established and effective procedures. Class Members must provide basic personal

information and trading records to substantiate their transactions in Mallinckrodt common stock. Requiring such documentation is reasonable because "there is no central repository of the owners of the securities" and it "prevent[s] fraudulent claims." *SOS Ltd.*, 2023 WL 319895, at *7; *see also In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.* ("*Innocoll I*"), 2022 WL 717254, at *5 (E.D. Pa. Mar. 10, 2022) (It is "standard" to require the submission of records "proving ownership of the shares" in securities cases.). In addition, claimants have the opportunity to cure any deficiencies in the Proof of Claim or request that the Court review any Claim denial (Stipulation, ¶¶5.7-5.8). *See Se. Pa. Trans. Auth. v. Orrstown Fin. Servs., Inc.*, 2023 WL 1454371, at *11 (M.D. Pa. Feb. 1, 2023) (Allowing claimants to "cure any deficiencies . . . or request that the Court review a denial" supports approval under Rule 23(e)(2).).

2. The Requested Attorneys' Fees Are Reasonable

As set forth in more detail in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Fee Memorandum"), Lead Counsel's request for an award of attorneys' fees of one-third of the Settlement Fund is reasonable and appropriate. Further, because the $46 million cash component of the Settlement has already been fully funded, there is no risk that counsel will be paid but Class Members will not. Importantly, the Settlement may not be terminated based on

a ruling regarding attorneys' fees. *See* Stipulation, ¶7.5. This further supports approval. *See Innocoll I*, 2022 WL 717254, at *5.

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

As discussed in the motion for preliminary approval, and described in the Notice, Plaintiffs and the Individual Defendants have entered into a standard supplemental agreement providing the Individual Defendants with the right (but not the obligation) to terminate the Settlement in the event valid requests for exclusion from the Class exceed the criteria set forth in that agreement. As other courts have recognized, "'[t]his type of agreement is standard in securities class action settlements,'" *Orrstown Fin. Servs.*, 2023 WL 1454371, at *12, and "does not affect the adequacy of the relief provided to the class." *Inovio*, 2023 WL 227355, at *6.

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

Rule 23(e)(2)(D) requires the Court to consider whether class members will be treated equitably. All Class Members will be treated equitably under the terms of the Stipulation, which provides that each Class Member who properly submits a valid Proof of Claim, including Plaintiffs, will receive a *pro rata* share of the Settlement proceeds based on the terms of the Plan of Allocation. This treats Class Members fairly, relative to one another. *See Inovio*, 2023 WL 227355, at *6 (plan that provides payments proportional to investment losses treats class members equitably); *Healthcare Servs. Grp.*, 2022 WL 118104, at *9 (Finding class members were treated

equally because the "plan of allocation apportions the net settlement fund among class members based on when they purchased and sold their HCSG common stock. This method ensures that settlement class members' recoveries are based on the relative losses they sustained, and eligible class members will receive a pro rata distribution from the net settlement fund calculated in the same manner.").

Further, out of the thousands of potential Class Members, there have been no objections filed to date. "[W]hen . . . objectors are few and the class members many, there is a strong presumption in favor of approving the settlement." *Healthcare Servs. Grp.*, 2022 WL 118104, at *9. "The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement . . . ." *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001). To the extent that any objections to the Settlement are made subsequent to this filing, they will be addressed in Plaintiffs' reply due on April 8, 2025.

E. The Settlement Satisfies the Applicable *Prudential* Factors

In addition to the Rule 23(e)(2) and *Girsh* factors, the applicable *Prudential* factors support the Settlement. Plaintiffs are well-informed of the strengths and weaknesses of the case after extensive discovery and significant litigation and have made an informed decision about the appropriate settlement value of their claims; Class Members had an opportunity to opt out of the Class; the method for processing

Claims is fair and reasonable; and, as explained in the Fee Memorandum, the requested attorneys' fees are fair and reasonable. *In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, 2022 WL 16533571, at *7-*8 (E.D. Pa. Oct. 28, 2022) ("*Innocoll II*").

Each factor identified in Rule 23(e)(2) and the Third Circuit's *Girsh* and *Prudential* opinions is satisfied. Moreover, pursuant to *Warfarin*, the Settlement is entitled to a presumption of fairness. 391 F.3d at 535. Given the litigation risks involved, and the complexity of the underlying issues, a recovery of $46 million in cash is an excellent result and could not have been achieved without the commitment of Plaintiffs and the hard work of Lead Counsel. Plaintiffs and Lead Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and should be granted final approval.

VI. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

As set forth in the Notice, the Net Settlement Fund will be divided, *pro rata*, among Class Members who submit valid Claims pursuant to the Plan of Allocation. *See* Murray Decl., Ex. B (Notice). "'Approval of a plan of allocation . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.'" *Innocoll II*, 2022 WL 16533571, at *8. A plan of allocation need not be "'perfect,'" it "'need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *SOS Ltd.*, 2023 WL 319895, at *9. "'Courts generally consider plans

of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.'" *Rossini v. PNC Fin. Servs. Grp.*, 2020 WL 3481458, at *17 (W.D. Pa. June 26, 2020) (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011)).

Here, the proposed Plan of Allocation is fair and reasonable. The Plan of Allocation was developed with the assistance of Lead Counsel's damages expert. *See* Capeci Decl., ¶149. The Plan of Allocation distributes the Net Settlement Fund on a *pro rata* basis, as determined by the ratio between each valid Claim and the sum of all valid Claims. The calculation of each Claim will depend upon several factors, including when the Mallinckrodt shares were purchased or acquired, and whether (and when) they were sold or held. Once each Claim is calculated and verified, and the distribution ratio is determined, the Net Settlement Fund (*i.e.*, the Settlement Fund less Notice and Administration Expenses, Taxes and Tax Expenses, and all Court-approved attorneys' fees and litigation expenses) will be distributed to Authorized Claimants entitled to a distribution of at least $10.00. Stipulation, ¶5.10. Any amount remaining following the initial distribution will be further distributed among Authorized Claimants to the extent economically feasible. *Id.* If further re-distribution of funds remaining in the Net Settlement Fund would not be cost effective, the Plan of Allocation calls for any remaining balance to be contributed to

an appropriate non-sectarian, non-profit charitable organization(s) serving the public interest selected by Lead Counsel. *Id.*

This plan is fair, reasonable, and adequate, and consistent with standard practice in securities cases. *See Inovio*, 2023 WL 227355, at *9 (approving plan that allocates funds in proportion to each member's losses based on "when each member purchased and sold his . . . stock[]"); *see also, e.g.*, *SOS Ltd.*, 2023 WL 319895, at *7 (same); *Honeywell*, 2022 WL 1320827, at *6 (same); *Healthcare Servs. Grp.*, 2022 WL 118104, at *11 (same); *Innocoll II*, 2022 WL 16533571, at *8 (same). No objections to the Plan of Allocation have been filed by Class Members. For all these reasons, the Plan of Allocation should be approved.

VII. CONCLUSION

The Settlement before the Court for approval is a very good one by any measure, and the proposed Plan of Allocation is an equitable method by which to distribute the Net Settlement Fund. For all the reasons stated above and in the accompanying declarations, Plaintiffs respectfully request that the Court certify the Class for Settlement purposes, and grant their motion for final approval of the Settlement and the Plan of Allocation as fair, reasonable, and adequate.

DATED: March 11, 2025

Respectfully submitted,

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