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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE IMMUNITYBIO, INC.  
SECURITIES LITIGATION.

Case No.: 3:23-CV-01216-GPC-VET

**ORDER:**

THIS DOCUMENT RELATES TO: ALL  
ACTIONS

**(1) GRANTING MOTION FOR  
FINAL APPROVAL OF THE CLASS  
ACTION SETTLEMENT;**

**(2) GRANTING MOTION FOR  
AWARD OF ATTORNEY FEES,  
REIMBURSEMENT OF EXPENSES  
AND AWARD TO LEAD  
PLAINTIFF;**

**[ECF Nos. 91, 92]**

Before the Court are two Motions: Plaintiff’s unopposed Motion for Final Approval of Class Action Settlement (“Final Approval Mot.”) and Plaintiff’s unopposed Motion for Attorneys’ fees and expenses, notice and administration costs, and award to Plaintiff (“Attys. Fees Mot.”). ECF Nos. 91, 92. On June 13, 2025, the Court held a hearing on this matter. ECF No. 95. For the reasons set forth below, the Court **GRANTS**

1 the Motion for final approval of class action settlement and **GRANTS** the Plaintiffs’  
2 Motion for Award of Attorneys’ fees and other costs and awards.

3 **I. BACKGROUND**

4 **A. Procedural History**

5 On June 30, 2023, Zachary Salzman initiated this Action by filing a securities class  
6 action complaint against Defendants in this Court. ECF. No. 1. On August 29, 2023, Patel  
7 filed a motion for appointment as Lead Plaintiff. ECF No. 18. On September 27, 2023,  
8 the Court appointed Patel as Lead Plaintiff and appointed Pomerantz LLP (“Pomerantz”)  
9 and Holzer & Holzer, LLC (“Holzer”) as Co-Lead Counsel pursuant to the Private  
10 Securities Litigation Reform Act (“PSLRA”). ECF No. 31.

11 On November 17, 2023, Lead Plaintiff filed the operative First Amended  
12 Complaint (“FAC”) asserting claims against Defendants under Section 10(b) of the  
13 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated  
14 thereunder by the U.S. Securities and Exchange Commission (“SEC”), and claims against  
15 Defendants Richard Adcock, David C. Sachs, and Patrick Soon-Shiong under Section  
16 20(a) of the Exchange Act. ECF No. 37 at 1. The FAC alleged that Defendants  
17 unlawfully inflated ImmunityBio’s stock price during March 10, 2021 and May 10, 2023,  
18 both dates inclusive (the “Settlement Class Period”), by misleading investors about  
19 ImmunityBio’s manufacturing capabilities, compliance with required current good  
20 manufacturing practices, and the approval prospects of ImmunityBio’s lead product  
21 candidate, Anktiva. *Id* at 1-2. The FAC alleged that the misleading nature of Defendants’  
22 statements was revealed on May 11, 2023, when the U.S. Food and Drug Administration  
23 (the “FDA”) rejected ImmunityBio’s license application for Anktiva because of deficient  
24 manufacturing practices, which precipitated a drop in the company’s stock price and in  
25 turn caused injury to investors. *See id.* at 57-58.

26 On January 8, 2024, Defendants filed a motion to dismiss (“MTD”) the FAC for  
27 failure to state a claim under the heightened pleading requirements of Fed. R. Civ. P. 9(b)  
28 and the PSLRA. ECF No. 50. On June 20, 2024, the Court entered an Order granting in

1 part and denying in part Defendants’ MTD, ECF No. 63. In the Order, the Court rejected  
2 Defendants’ challenge as to 51 of the 62 misstatements pled in the FAC and granted Lead  
3 Plaintiff leave to amend. ECF No. 63. On July 16, 2024, Lead Plaintiff filed a notice of  
4 his decision to proceed on the FAC. ECF No. 64. On August 29, 2024, Defendants  
5 answered the FAC, in which they denied, in whole or part, a significant amount of the  
6 FAC’s allegations and raised a variety of affirmative defenses. ECF No. 68.

### 7 **B. Discovery Process**

8 To facilitate discovery, the Parties negotiated and filed a Joint Motion for entry of  
9 a stipulated protective order to govern the exchange of confidential information, ECF No.  
10 71, and a Joint Motion for the entry of a stipulated order to govern the collection,  
11 processing, and production of electronically stored information (ESI), ECF No. 78. The  
12 Court entered both. ECF Nos. 73 (“Protective Order”), 79.

13 Since the entry of the Protective Order, the Parties have engaged in extensive  
14 discovery. Motion for Preliminary Approval at 3. Lead Plaintiff interposed requests for  
15 production covering a number of areas, including the manufacturing process for Anktiva,  
16 compliance with good manufacturing practices, and interactions with the FDA during the  
17 Settlement Class Period. *Id.* Lead Plaintiff also served several subpoenas on third-parties.  
18 *Id.* Meanwhile, Defendants served requests for production and written interrogatories on  
19 Lead Plaintiff. *Id.* Given the wide array of discovery topics sought by the Parties, as well  
20 as the potentially voluminous documentation responsive to the requests, the Parties held  
21 numerous meet-and-confers by letter and phone to resolve disagreements. *Id.* Lead  
22 Plaintiff ultimately obtained over 10,000 pages of documents from Defendants and third-  
23 parties, and produced various records and several written responses to the discovery  
24 requests served on him. *Id.*

25 The Parties attended an Early Neutral Evaluation (“ENE”) conference with the  
26 oversight of Magistrate Judge Valerie E. Torres on October 28, 2024, but were unable to  
27 reach an agreement. ECF No. 76. Following the ENE, the Parties continued with  
28 discovery but expressed interest in the possibility of a mediation. Mot. at 5.

1                   **C. Negotiation**

2                   On December 4, 2024, Co-Lead Counsel and counsel for Defendants participated  
3 in a full-day mediation before Jed Melnick, Esq. of JAMS. According to the Motion for  
4 Preliminary Approval, the Parties engaged in “intensive negotiations, which included  
5 multiple counter-offers, narrowing the difference in the Parties’ respective settlement  
6 positions, but ultimately did not end the mediation with an agreement in place.” ECF No.  
7 80, Motion for Prelim. Approval at 4.

8                   In the days following the meditation, negotiations continued with the aid of Mr.  
9 Melnick. On December 13, 2024, Mr. Melnick made a mediator’s proposal to fully and  
10 finally resolve the Action for \$10.5 million, which each Party accepted that same day.  
11 After subsequent negotiations, the Parties memorialized the agreement in a Confidential  
12 Term Sheet (“Term Sheet”) the following week. Co-Lead Counsel and defense counsel  
13 continued to correspond and exchange edits until the finalization of the Stipulation and its  
14 accompanying Exhibits on January 28, 2025.

15                   These negotiations were therefore conducted “at arm’s-length over the course of  
16 several months through multiple channels, including emails, the ENE, phone calls, and an  
17 in-person mediation with an experienced and disinterested neutral, during which each  
18 side pressed for the most favorable outcome possible.” ECF No. 80, Motion for Prelim.  
19 Approval at 4-5.

20                   **D. Settlement Terms**

21                   Defendants and Lead Plaintiff, individually and on behalf of all Settlement Class  
22 Members, agreed to settle and release the asserted claims. ECF No. 80, Ex. 1  
23 (“Stipulation of Settlement” or “Stipulation”) at 1. On January 28, 2025, Lead Plaintiff  
24 filed an unopposed motion for preliminary approval of the proposed Settlement, ECF No.  
25 80, and the Court held a hearing on the motion on March 7, 2025, during which it raised  
26 questions about the composition of the Settlement Class and including notice of the  
27 anticipated administrative fees, ECF No. 87. On March 17, 2025, the Court entered an  
28 order granting preliminary approval of the Settlement, provisionally certifying the

1 Settlement Class for purposes of the Settlement and authorizing the form and manner of  
2 providing notice of the Settlement to potential Settlement Class members. ECF No. 89.  
3 The Court also directed Lead Plaintiff to revise the proposed Notices to specify the  
4 maximum potential fees the Claims Administrator anticipates incurring in connection  
5 with the Settlement. *Id.* at 28.

6 The key terms of the Settlement have not changed since then. The Settlement  
7 Agreement requires \$10.5 million in cash to be paid into an escrow account for the  
8 benefit of the Settlement Class. Stipulation ¶ 1.34, 2.0. This amount, plus accrued  
9 interest, constitute the Settlement Fund. After Notice and Administration Expenses,  
10 Taxes and Tax Expenses, Court-approved attorneys' fees and expenses, any awards to the  
11 Lead Plaintiff, and any other Court-approved deductions have been paid from the  
12 Settlement Fund, the remaining amount (the Net Settlement Fund) shall be distributed  
13 pursuant to the Plan of Allocation to claimants who are entitled to a distribution. *Id.* ¶ 6.2.  
14 Co-Lead Counsel estimate a gross recovery of \$0.09 per damaged share for each  
15 Settlement Class Member (accounting for the deduction of fees, expenses, and costs).  
16 ECF No. 80, Exhibit B-1 (long-form Notice), at 2.

17 In the Preliminary Approval Order, the Court ordered the Claims Administrator,  
18 Epiq, to: (i) establish a website dedicated to the Settlement, where potential Settlement  
19 Class members can submit Claims electronically and download copies of all Settlement  
20 documents, including the Stipulation, the Notice, and the Proof of Claim form; and (ii)  
21 mail or email an abridged version of the Notice to all Settlement Class members who can  
22 be identified through reasonable effort and release the Publication Notice on a national  
23 newswire, both of which directed potential Class Members to the Settlement website for  
24 additional information about the Settlement. ECF No. 89 at 34-35, 37-39.

25 The Notice program approved by the Court has been carried out. On March 24,  
26 2025, Lead Plaintiff received a list from Defendants containing the names of 310  
27 stockholders of record during the Settlement Class Period, including a number of  
28 nominee purchasers. D'Aloia Declaration ("D'Aloia Decl.") ¶ 41. On April 7, 2025, Epiq

1 (i) established a settlement website at [www.immunitybiosecuritysettlement.com](http://www.immunitybiosecuritysettlement.com), which  
2 includes, among other things, a copy of the Stipulation, the Preliminary Approval Order,  
3 the Notice, the Proof of Claim form, and an online Claim submission page and  
4 commenced its distribution of the short-form Notice and Publication Notice. *See* Mahan  
5 Declaration (“Mahan Decl.”) ¶¶ 3-12. Epiq has since received the contact information for  
6 many additional potential Settlement Class members by numerous nominee holders. *Id.* ¶  
7 7. In total, 39,925 potential Settlement Class Members were sent a Notice regarding the  
8 Settlement as of May 13, 2025, and only six have been returned as undeliverable. *Id.* ¶¶  
9 6-9. To date, there have not been any objections to the Settlement or any requests for  
10 exclusion received from potential Settlement Class members. D’Aloia Decl. ¶ 44; Mahan  
11 Decl. ¶¶ 16, 18.

12 The Parties have the right to terminate the Settlement in the event that it does not  
13 become final. Stipulation ¶ 2.11-2.12. ImmunityBio also has the right to terminate the  
14 Settlement if requests for exclusion exceed an agreed-upon threshold set forth in a  
15 confidential Supplemental Agreement between the Parties. *Id.* ¶ 2.13. If the Settlement is  
16 terminated, Parties will revert to their respective positions in the litigation before the  
17 agreement to enter into a Settlement. *Id.* ¶ 2.14.

## 18 II. DISCUSSION

### 19 A. Legal Standard

20 The Ninth Circuit has a strong judicial policy that favors settlements in class  
21 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However,  
22 when the parties settle before class certification, the court must “peruse the proposed  
23 compromise to ratify both the propriety of the certification and the fairness of the  
24 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). To that end, a  
25 reviewing court must engage in two-step process. First, the court must “direct notice in a  
26 reasonable manner to all class members who would be bound by the proposal if giving  
27 notice is justified by the parties’ showing that the court will likely be able to: (i) approve  
28 the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on

1 the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Second, after providing the class with notice  
2 of the proposed settlement, a reviewing court may then approve it only after a hearing  
3 and finding that it is “fair, reasonable, and adequate.” Fed. R. Civ. 23(e)(2).

4 **B. Final Certification of the Proposed Settlement Class under Rule 23**

5 The Court granted preliminary certification to the Settlement Class for settlement  
6 purposes in the Preliminary Order. ECF No. 89. It appears no material changes have  
7 occurred since this Court’s preliminary approval and there is no opposition to final  
8 certification. Therefore, analysis for final certification will resemble the prior analysis for  
9 preliminary certification.

10 Federal Rule of Civil Procedure (“Rule”) 23 establishes four prerequisites for class  
11 certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of  
12 representation. Fed. R. Civ. P. 23(a). Under Rule 23(b)(3), common questions must  
13 predominate over individual questions, Fed. R. Civ. P. 23(b)(3), and the class action  
14 device must be “superior to other available methods for fairly and efficiently adjudicating  
15 the controversy.” *Id.*

16 In the context of securities litigation, class actions are “particularly well-suited”  
17 because “geographically dispersed shareholders with relatively small holdings” may not  
18 otherwise pursue their claims. *In re VeriSign, Inc. Sec. Litig.*, 2005 WL 7877645, at \*9  
19 (N.D. Cal. Jan. 13, 2005). As such, it is “well established that the requirements of Rule  
20 23 should be liberally construed in favor of class action cases brought under the federal  
21 securities laws.” *In re NetSol Techs., Inc. Sec. Litig.*, 2016 WL 7496724, at \*3 (C.D. Cal.  
22 July 1, 2016) (citation omitted).

23 Lead Plaintiff seeks certification of a Settlement Class consisting of all persons  
24 who purchased or acquired ImmunityBio securities from March 10, 2021, to May 10,  
25 2023, inclusive, and were damaged thereby, except those specifically excluded in ¶ 1.35  
26 of the Stipulation. Mot. at 8.

1 For the following reasons, the Court agrees with the Plaintiff that the Court will  
2 likely be able to certify the class for purposes of settlement under the requirements of  
3 Rule 23.

4 **1. Numerosity**

5 The numerosity requirement under Rule 23(a)(1) is met if “the class is so  
6 numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “As a  
7 general matter, courts have found that numerosity is satisfied when class size exceeds 40  
8 members, but not satisfied when membership dips below 21.” *Slaven v. BP Am., Inc.*, 190  
9 F.R.D. 649, 654 (C.D. Cal. 2000). The exact size of the class does not need to be known  
10 as long as general knowledge and common-sense support that the class is sufficiently  
11 large. *See Vinh Nguyen v. Radiant Pharm. Corp.*, 287 F.R.D. 56, 569 (C.D. Cal 2012).  
12 Indeed, “[w]here several million shares of stock were purchased during the class period,  
13 courts regularly find that class members are sufficiently numerous to render joinder  
14 impracticable.” *In re Silver Wheaton Corp. Sec. Litig.*, 2017 WL 20139171, at \*6 (C.D.  
15 Cal. May 11, 2017). Here, there were over 400 million shares of ImmunityBio common  
16 stock outstanding during the Class Period, and those shares actively traded on the  
17 NASDAQ, with average daily trading volume of 1.9 million shares. Mot. at 8. The notice  
18 program carried out by the Claims Administrator has identified almost 40,000 potential  
19 Settlement Class members. Mahan Decl. ¶¶ 6-10. Joinder of this number of plaintiffs is  
20 clearly impractical. The numerosity requirement is therefore satisfied.

21 **2. Commonality**

22 Rule 23(a)(2) requires the existence of “questions of law or fact common to the  
23 class.” Fed. R. Civ. P. 23(a)(2). Commonality is established if plaintiffs and class  
24 members’ claims “depend upon a common contention . . . capable of class-wide  
25 resolution—which means that determination of its truth or falsity will resolve an issue  
26 that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores,*  
27 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Not every question of law or fact must be  
28

1 common to the class. *Abdullah v. U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 957 (Ninth Cir.  
2 2013).

3 Here, Settlement Class Members are those individuals who purchased or otherwise  
4 acquired ImmunityBio securities during the relevant period of time. There are clear  
5 questions that are common to all class members, including: (1) whether statements  
6 Defendants made to the investing public during the Class Period were false or  
7 misleading; (2) whether Defendants made such statements with scienter; (3) whether such  
8 statements artificially inflated the price of ImmunityBio securities during the Class  
9 Period; (4) whether the price of ImmunityBio securities declined in response to  
10 disclosures that revealed the truth; and (5) the extent of damages suffered by the  
11 Settlement Class and the appropriate measure. ECF No. 89 at 12. It is plain that the  
12 proposed class meets Rule 23(a)(2)'s commonality requirement. *See Jimenez v. Allstate*  
13 *Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014) (“[A] class meets Rule 23(a)(2)'s  
14 commonality requirement when the common questions it has raised are apt to drive the  
15 resolution of the litigation, no matter their number.”) (internal quotation marks and  
16 citation omitted). The Court therefore finds that the proposed class meets the  
17 commonality requirement.

### 18 **3. Typicality**

19 Rule 23(a)(3) demands that “the claims or defenses of the representative parties are  
20 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The named  
21 plaintiff must be a member of the class they seek to represent and must “possess the same  
22 interest and suffer the same injury” as putative class members. *Gen. Tel. Co. of Sw. v.*  
23 *Falcon*, 457 U.S. 147, 156 (1982) (internal quotations omitted). The representative claims  
24 are typical if they are “reasonably co-extensive with those of absent class members,”  
25 though they “need not be substantially identical.” *Parsons v. Ryan*, 754 F.3d 657, 685  
26 (9th Cir. 2014) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

27 Here, Dipak Patel was appointed as Lead Plaintiff. ECF No. 31. As described in  
28 his motion for appointment as Lead Plaintiff, Mr. Patel alleged he lost more than

1 \$280,000 as a result of the alleged fraud during the Class Period. ECF No. 18 at 1. Mr.  
2 Patel’s claims are typical of the putative class because he, “like other members of the  
3 Class, purchased ImmunityBio securities during the Class Period at prices artificially  
4 inflated by Defendants’ misrepresentations or omissions and was damaged upon the  
5 disclosures of those misrepresentations and/or omissions.” *Id.* at 9. Thus, Mr. Patel’s  
6 claims for damages are based upon the same legal theory, events, and course of conduct  
7 as the Class’s claims. *See* FAC ¶¶ 198, 212, 215.

#### 8 **4. Adequacy**

9 Under Rule 23(a)(4), representative parties must be able to “fairly and adequately  
10 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). In analyzing whether Rule  
11 23(a)(4) has been met, the Court must ask two questions: “(1) do the named plaintiffs and  
12 their counsel have any conflicts of interest with other class members and (2) will the  
13 named plaintiffs and their counsel prosecute the action vigorously on behalf of the  
14 class?” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012)  
15 (citation omitted). The adequacy of representation requirement is designed to deny  
16 certification in instances of “actual fraud, overreaching, or collusion.” *In re Bluetooth*  
17 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (emphasis in original).

18 It does not appear that Plaintiff has any interests in conflict with the Settlement  
19 Class. Dipak Patel was previously appointed as Lead Plaintiff because he had the largest  
20 financial losses. ECF No. 31. His interests are aligned with those of the other class  
21 members. *See Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at \*3 (C.D. Cal. July 25,  
22 2019). Lead Plaintiff has demonstrated his commitment to this Action through his active  
23 involvement in retention of counsel, discovery, and mediation. In addition, Plaintiff’s Co-  
24 Lead Counsel, attorneys Pomerantz LLP and attorneys Holzer & Holzer, are experienced  
25 securities litigators who have litigated numerous securities class actions on behalf of  
26 stakeholders in district courts throughout the country. *See* ECF No. 80, Firm Resumes  
27 (Exs. 2, 4). There is no indication that Plaintiff or his counsel will not continue to  
28

1 prosecute this lawsuit vigorously. The Court therefore concludes the adequacy  
2 requirement is met for the purposes of conditional certification.

### 3 **5. Predominance and superiority**

4 Finally, to certify a class under Rule 23(b)(3), the Court must find “that the  
5 questions of law or fact common to class members predominate over any questions  
6 affecting only individual members, and that a class action is superior to other available  
7 methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).  
8 Predominance tests “whether proposed classes are sufficiently cohesive to warrant  
9 adjudication by representation.” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045  
10 (2016) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997)).  
11 Superiority asks if class adjudication is “the most efficient and effective means of  
12 resolving the controversy.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,  
13 1175 (9th Cir. 2010).

14 Whether the questions addressable with common proof predominate over those  
15 that require individual proof depends on “the elements of the underlying cause of action.”  
16 *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). As a fraud-on-  
17 the-market case, “the elements of falsity, materiality, scienter, and loss causation present  
18 questions common to the class because they all depend on Defendants’ actions, and not  
19 those of any individual class member.” *Ali v. Franklin Wireless Corp.*, 2023 WL 25718,  
20 at \*5 (S.D. Cal. Jan. 3, 2023). Indeed, proof of these elements “can be made on a class-  
21 wide basis” as they “affect[] investors in common.” *Schleicher v. Wendt*, 618 F.3d 679,  
22 685, 687 (7th Cir. 2010). Similarly, there are no individualized issues of reliance because  
23 Lead Plaintiff relies on the class-wide presumption of reliance established in *Basic Inc. v.*  
24 *Levinson*, 485 U.S. 224 (1988), based on the contention that the market for ImmunityBio  
25 securities was efficient at all relevant times, *see* FAC ¶¶ 196-97, which Defendants do  
26 not oppose for purposes of Settlement. Finally, while damages may differ among class  
27 members, the proper amount of class-wide damages has been negotiated for purposes of  
28 Settlement.

1 Certification of a settlement class would provide significant efficiencies compared  
2 to any alternative method of adjudication. In a class action settlement, the Court need not  
3 address whether the case, if tried, would present issues of manageability under Rule  
4 23(b)(3)(D). *Amchem*, 521 U.S. at 620.

5 Based on the foregoing reasons, the requirements under Rule 23 are satisfied, and  
6 the Court CERTIFIES the Settlement Class for purposes of the Settlement.

### 7 **C. Appointment of Class Counsel**

8 When a court certifies a class, it must also appoint class counsel. *See* Fed. R. Civ.  
9 P. 23(g)(1). The Rule directs the Court to consider: (i) the work counsel has done in  
10 identifying or investigating potential claims in the action; (ii) counsel’s experience in  
11 handling class actions, other complex litigation, and the types of claims asserted in the  
12 action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel  
13 will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A).

14 Since they were appointed Co-Lead Counsel in September 2023, ECF No. 31,  
15 Pomerantz and Holzer have devoted substantial time, effort, and resources to identifying,  
16 investigating, litigating, and negotiating a settlement. Pomerantz and Holzer have  
17 extensive experience prosecuting class actions under the federal securities laws. *See* ECF  
18 No. 80, Ex. 2 (Pomerantz firm résumé), Ex. 4 (Holzer firm résumé). Both firms regularly  
19 serve as class counsel or co-counsel in like matters. *See, e.g., Kendall v. Odonate*  
20 *Therapeutics, Inc.*, 2022 WL 188364, at \*5 (S.D. Cal. Jan. 18, 2022) (Pomerantz and  
21 Holzer “have significant experience in litigating securities fraud cases, including class  
22 actions,” and appointing both as class counsel under Rule 23(g)); *Jiangchen v. Rentech,*  
23 *Inc.*, 2019 WL 5173771, at \*5 (C.D. Cal. Oct. 10, 2019) (finding that Holzer “has  
24 significant experience in securities class action lawsuits” and “vigorously pursued  
25 Plaintiff’s claims”). Following the Preliminary Approval Order, Co-Lead Counsel have  
26 also continued to work together and devote their time, energy, and resources in  
27 overseeing the notice program, working with opposing counsel, and fulfilling all  
28 deadlines and requirements as set forth in the Settlement and Preliminary Approval

1 Order. Mot. at 9. Accordingly, the Court appoints Pomerantz and Holzer as Class  
2 Counsel.

3 **D. Final Approval of Class Action Settlement**

4 Federal Rule of Civil Procedure 23(e) requires judicial approval for any proposed  
5 class action settlement. Before approving a proposed class action settlement, a court must  
6 find that the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e). Such an  
7 evaluation is made in the context of the “strong judicial policy that favors settlements,  
8 particularly where complex class action litigation is concerned.” *In Re Syncor ERISA*  
9 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). Any fairness determination requires the  
10 Court to “focus[ ] primarily upon whether the particular aspects of the decree that directly  
11 lend themselves to pursuit of self-interest by class counsel and certain members of the  
12 class—namely attorney’s fees and the distribution of any relief, particularly monetary  
13 relief, among class members—strictly comport with substantive and procedural standards  
14 designed to protect the interests of class members.” *Staton*, 327 F.3d at 960. Courts  
15 evaluate the “settlement as a whole, rather than assessing its individual components.”  
16 *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012).

17 Rule 23(e) was amended in 2018 to create uniformity amongst the circuits and to  
18 focus the inquiry on whether a proposed class action is “fair reasonable, and adequate.”  
19 Fed. R. Civ. P. 23(e), advisory committee notes (2018 amendment). As amended, Rule  
20 23(e) provides that a court may approve a proposed class action settlement after  
21 considering whether:

- 22 (A) the class representatives and class counsel have adequately represented the  
23 class;
- 24 (B) the proposal was negotiated at arm’s length;
- 25 (C) the relief provided for the class is adequate, taking into account:
  - 26 (i) the costs, risks, and delay of trial and appeal;
  - 27 (ii) the effectiveness of any proposed method of distributing relief to the  
28 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

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

2 Fed. R. Civ. P. 23(e)(2).

3 For the reasons that follow, the Court finds that the Settlement Agreement reached  
4 by the Parties is likely fair, reasonable, and adequate, and GRANTS final approval of the  
5 Class Action Settlement.

6 **1. Adequacy of Representation**

7 Rule 23(e)(2)(A) requires the Court to consider whether “the class representatives  
8 and class counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A).  
9 This analysis is “redundant of the requirements of Rule 23(a)(4) and Rule 23(g),  
10 respectively.” 4 William B. Rubenstein, *Newberg on Class Actions* § 13:48 (5th ed.  
11 2020); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019)  
12 (noting similarity of inquiry under Rule 23(a)(4) and Rule 23(e)(2)(A)).

13 The Court found above that Lead Plaintiff and his counsel adequately represent the  
14 class for the purposes of class certification. For the same reasons, the Court finds that the  
15 adequacy of representation requirement under Rule 23(e)(2)(A) is met.

16 **2. Arm’s Length Negotiation**

17 Rule 23(e)(2)(B) requires the Court to consider whether “the proposal was  
18 negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). The Ninth Circuit “put[s] a good  
19 deal of stock in the product of an arms-length, non-collusive, negotiated resolution” in  
20 approving a class action settlement. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965  
21 (9th Cir. 2009). “Settlements that follow sufficient discovery and genuine arms-length  
22 negotiation are presumed fair.” *In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D.  
23 607, 610 (S.D. Cal. 2008).

24 Here, the proposed Settlement arises out of an arm’s-length negotiation process  
25 that occurred between Lead Plaintiff and the Defendants following initial discovery.  
26 These negotiations took place over several months on numerous occasions, including at  
27 the ENE in the presence of Magistrate Judge Torres, telephonically, in writing, and in-  
28 person at mediation before the presence of an experienced mediator, Jed Melnick, Esq.

1 The Settlement was ultimately reached after mediation as a result of his proposal,  
2 evincing that the settlement was reached via non-collusive means. *See In re Illumina, Inc.*  
3 *Sec. Litig.*, 2019 WL 6894075, at \*5 (S.D. Cal. Dec. 18, 2019) (“The assistance of an  
4 experienced mediator in the settlement process confirms that the settlement is non-  
5 collusive.”) (quoting *Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at \*4 (N.D. Cal.  
6 Apr. 13, 2007)). After accepting the mediator’s proposal, the Parties negotiated once  
7 more to finalize the Confidential Term Sheet, and thereafter, negotiated for another  
8 month to arrive at the terms of the Stipulation and its Exhibits. These lengthy arms-length  
9 negotiations support the conclusion that the Settlement was achieved in the absence of  
10 collusion. *See Scott v. ZST Digital Networks, Inc.*, 2013 WL 12123989, at \*6 (C.D. Cal.  
11 Mar. 27, 2013) (“There can be little doubt that the negotiations... were conducted at  
12 arm’s-length by counsel over the span of several months, were serious, informed and  
13 noncollusive” especially when “[t]he parties were represented by experienced counsel  
14 who bargained in an adversarial manner”).

### 15 **3. Adequacy of Relief Provided to the Class**

16 Rule 23(e)(2)(C) requires that the Court consider whether “the relief provided for  
17 the class is adequate, taking into account: (i) the costs, risks, and delay of trial and  
18 appeal; (ii) the effectiveness of any proposed method of distributing relief to the class,  
19 including the method of processing class-member claims; (iii) the terms of any proposed  
20 award of attorney’s fees, including timing of payment; and (iv) any agreement required to  
21 be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C). The amount offered in  
22 the proposed settlement agreement is generally considered to be the most important  
23 consideration of any class settlement. *See Bayat v. Bank of the West*, No. C-13-2376  
24 EMC, 2015 WL 1744342, at \*4 (N.D. Cal. Apr. 15, 2015) (citing *In re HP Inkjet Printer*  
25 *Litig.*, 716 F.3d 1173, 1178–79 (9th Cir. 2013)).

26 Here, the Parties have agreed to settle this case for an amount of \$10,500,000.  
27 Stipulation ¶ 1.34. Because Lead Plaintiff’s expert estimates that maximum recoverable  
28 damages would amount to approximately \$130.6 million, the Settlement Amount

1 represents over 8% of estimated damages. Mot. at 15. Any deductions for attorney’s fees,  
2 and costs of notice are to be deducted from the Settlement Amount, only by the Court’s  
3 approval upon motion by Lead Plaintiff. As a percentage of estimated damages, the  
4 Settlement Amount is well above the median percentage of the recovery level for investor  
5 losses in securities class action settlements. *See Farrar v. Workhorse Grp., Inc.*, 2023  
6 WL 5505981, at \*7 (C.D. Cal. July 24, 2023) (collecting cases recognizing that 3% is  
7 within the range of average recovery percentages approved in securities class action  
8 settlement); *Vataj v. Johnson*, 2021 WL 1550478, at \*9 (N.D. Cal. Apr. 20, 2021)  
9 (settlement for 2% of damages is “consistent with the typical recovery in securities class  
10 action[s]”).

11 **a. Costs, risks, and delay of trial and appeal**

12 “To evaluate adequacy, courts primarily consider plaintiffs’ expected recovery  
13 balanced against the value of the settlement offer.” *In re Tableware Antitrust Litig.*, 484  
14 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). While a settlement need not compensate class  
15 members for the maximum value of their claims, there is no fixed percentage of the  
16 potential recovery that renders a settlement amount reasonable. *See In re Baan Co. Sec.*  
17 *Litig.*, 284 F. Supp. 2d 62, 65 (D.D.C. 2003) (citing *In re Newbridge Networks Sec. Litig.*,  
18 1998 WL 765724, at \*2 (D.D.C. Oct. 23, 1998)). The Court therefore must examine  
19 whether the Settlement Agreement adequately compensates the class given the costs,  
20 risks, and delay of trial and appeal based on the facts of this case. The relief must  
21 therefore “be judged not in comparison with the possible recovery in the best of all  
22 possible worlds, but rather in light of the strengths and weaknesses of plaintiffs’ case.” *In*  
23 *re Stable Road Acquisition Corp. Sec. Litig.*, 2024 WL 3643393, at \*8 (C.D. Cal. Apr.  
24 23, 2024) (citation and quotations omitted).

25 Based on the risks of litigation, Plaintiff contends that the settlement provides  
26 adequate relief to the class, especially considering the fact that Lead Plaintiff would need  
27 to secure certification of a liability class and prove – and, thus, defeat Defendants’  
28 defenses as to – falsity, scienter, loss causation, and damages. Defendants repeatedly

1 claimed that they had valid defenses as to multiple elements of Lead Plaintiff’s claims,  
2 “virtually ensuring that these issues would be hotly contested at each stage of litigation.”  
3 Mot. at 17.

4 Additionally, “a significant amount of key evidence is in the possession of third  
5 parties,” like ImmunityBio’s contract manufacturing organizations, which could limit  
6 Lead Plaintiff’s ability to secure evidence needed at summary judgment or to prevail at  
7 trial. *See Hester v. Vision Airlines, Inc.*, 2014 WL 3547643, at \*12 (D. Nev. July 17,  
8 2014) (identifying the “difficulty in obtaining documents from third-parties as a  
9 “significant challenge[.]”). Relatedly, because of the “highly technical nature of  
10 biopharmaceutical manufacturing, requiring even more expert involvement than in a  
11 standard securities case,” Mot. at 17, the elements of loss causation and damages would  
12 certainly invite expert testimony. Since Lead Plaintiff bears the burden of proof,  
13 Defendants could win at summary judgment or trial through a Daubert motion and there  
14 would be an “unpredictable battle of the experts.” *Baker v. Seaworld Ent., Inc.*, 2020 WL  
15 4260712, at \*7 (S.D. Cal. Jul. 24, 2020) (citation omitted).

16 In addition to risk and unpredictability, prolonged litigation would also impose  
17 substantial costs and delays, especially since “securities fraud class actions are notably  
18 complex, lengthy, and expensive cases to litigate.” *Baker*, 2020 WL 4260712, at \*7  
19 (citation omitted). Discovery costs would accumulate due to more document productions,  
20 disputes, the need for expert testimony, and taking numerous fact and expert depositions.  
21 Mot. at 18. And even if Plaintiff prevailed at trial, Defendants are likely to engage in  
22 extensive post-trial motion practice, including appeals. Mot. at 18.

23 As such, the Settlement Amount presents a substantial relief to the Settlement  
24 Class. Although the Settlement is only a portion of Defendant’s maximum potential  
25 exposure according to Plaintiff’s calculations, the relief appropriately accounts for the  
26 not-insubstantial risk that Plaintiff and the class would recover nothing on some or all  
27 claims. Courts must “consider the vagaries of litigation and compare the significance of  
28 immediate recovery by way of the compromise to the mere possibility of relief in the

1 future, after protracted and expensive litigation.” *Nat’l Rural Telecomms. Coop. v.*  
2 *DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted). The Court here  
3 concludes that the costs and risks of proceeding with litigation likely renders the agreed-  
4 upon settlement amount to be adequate relief for the class as a whole. *See, e.g., Baron v.*  
5 *HyreCar Inc.*, 2024 WL 3504234, at \*8 (C.D. Cal. July 19, 2024) (settlement for 2% of  
6 total damages supports preliminary approval); *Hunt v. Bloom Energy Corp.*, 2023 WL  
7 7167118, at \*7 (N.D. Cal. Oct. 31, 2023) (same for 5.2% of damages); *Hardy v. Embark*  
8 *Tech., Inc.*, 2023 WL 6276728, at \*8 (N.D. Cal. Sept. 26, 2023) (same for 1.1% of  
9 damages); *In re Lyft, Inc. Sec. Litig.*, 2022 WL 17740302, at \*6 (N.D. Cal. Dec. 16,  
10 2022) (same for 3.2% of damages); *Kendall*, 2022 WL 188364, at \*6 (same for 3.49% to  
11 3.84% of damages).

12 **b. Effectiveness of proposed method of distributing relief**

13 Rule 23(e)(2)(C)(ii) calls for the court to weigh potential relief against “the  
14 effectiveness of any proposed method of distributing relief to the class, including the  
15 method of processing class-member claims.” This analysis requires the court to  
16 “scrutinize the method of claims processing to ensure that it facilitates filing legitimate  
17 claims” without being “unduly demanding.” Fed. R. Civ. P. 23(e), advisory committee  
18 notes (2018 amendment).

19 Here, the method for processing claims and distributing relief to eligible Claimants  
20 is clear, well-established, and effective. As noted, Lead Plaintiff has ascertained potential  
21 Settlement Class Members from transfer records maintained by Defendants and has  
22 communicated with nominee holders to provide the Notice to clients of theirs who may  
23 be part of the Settlement Class. Mot. at 19. In addition, Lead Plaintiff has published  
24 notice in a national newswire about the Settlement, directing potential claimants to a  
25 website with more complete documentation on the Settlement. Claimants are required to  
26 submit records establishing all relevant transactions in ImmunityBio securities. Mot. at  
27 19. Claimants also have an opportunity to cure any deficiencies or request that the Court  
28 review a denied claim. *Id.* The Net Settlement Fund will then be distributed to Authorized

1 Claimants on a pro rata basis in accordance with the Plan of Allocation based on the  
2 amount of each claimant’s Recognized Losses. ECF No. 80, Exhibit B-1, at 12. The Class  
3 Administrator will distribute each Authorized Claimant’s allocation via check.  
4 Stipulation ¶ 6.0.

5 These procedures are regularly held to be “effective” in securities class actions. *See*  
6 *Baron*, 2024 WL 3504234, at \*9 (finding nearly identical procedures effective for  
7 preliminary approval in securities class action); *Hefler v. Wells Fargo & Co.*, 2018 WL  
8 6619983, at \*2, 7 (N.D. Cal. Dec. 18, 2018) (same).

9 **c. Attorneys’ fees and administration fees**

10 Rule 23(e)(2)(C)(iii) requires the Court to account for “the terms of any proposed  
11 award of attorney’s fees.” Co-Lead Counsel seek a fee award of 30% of the Settlement  
12 Amount and reimbursement of costs plus interest. The Settlement is not contingent on  
13 any ruling with respect to attorneys’ fees. Stipulation ¶¶ 7.0, 8.3. The Settlement also  
14 calls for up to \$350,000 in administration fees. Based on the reasoning below, *see infra*,  
15 the Court finds that an award of 30% of the Settlement Amount after deducting litigation  
16 expenses, administration fees, and the Lead Plaintiff’s incentive award is reasonable.

17 **d. Agreements made in connection with the proposal**

18 Finally, the court must consider “any agreement required to be identified under  
19 Rule 23(e)(3),” Fed. R. Civ. P. 23(e)(2)(C)(iv), that is, “any agreement made in  
20 connection with the proposal.” Fed. R. Civ. P. 23(e)(3). The Parties here have entered  
21 into a confidential Supplemental Agreement that establishes conditions under which  
22 ImmunityBio may terminate the Settlement if those totaling a certain amount  
23 ImmunityBio stock “opt out” of the Settlement. Stipulation ¶ 2.13. “[T]his type of  
24 agreement is common in securities fraud actions and does not weigh against preliminary  
25 approval.” *Baron*, 2024 WL 3504234, at \*10 (citation omitted); *see Illumina*, 2019 WL  
26 6894075, at \*9 (similar). Its terms are confidential “to prevent third parties from utilizing  
27 it for the improper purpose of obstructing the settlement and obtaining higher payouts”  
28

1 for themselves at the expense of other Settlement Class members. *Farrar*, 2023 WL  
2 5505981, at \*10 (citation omitted).

#### 3 **4. Equitable Treatment of Class Members**

4 Rule 23(e)(2)(D) requires the Court to consider whether the Settlement Agreement  
5 “treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). In  
6 doing so, the Court determines whether the settlement “improperly grant[s] preferential  
7 treatment to class representatives or segments of the class.” *In re Tableware Antitrust*  
8 *Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). “Matters of concern could include  
9 whether the apportionment of relief among class members takes appropriate account of  
10 differences among their claims, and whether the scope of the release may affect class  
11 members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P.  
12 23(e)(2)(D), advisory committee notes (2018 amendment); *see also* 4 William B.  
13 Rubenstein, *Newberg on Class Actions* § 13:56 (5th ed. 2020) (“Put simply, the court’s  
14 goal is to ensure that similarly situated class members are treated similarly and that  
15 dissimilarly situated class members are not arbitrarily treated as if they were similarly  
16 situated.”).

17 Here, under the proposed Plan of Allocation, each Authorized Claimant will  
18 receive a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized  
19 Losses divided by the total Recognized Losses of all Authorized Claimants, multiplied by  
20 the total amount of the Net Settlement Fund. Mot. at 21.

21 The court finds that the proposed distribution method treats Class Members equally  
22 by taking into account the amount of shares held by class members, the time class  
23 members held these shares, and how price declines based on “corrective information”  
24 affected the price of shares. *See Vinh Nguen v. Radiant Pharms. Corp.*, 2014 WL  
25 1802293, at \*5 (C.D. Cal. May 6, 2014) (finding a similar distribution method equitable).  
26 And while the proposed Plan of Allocation excludes any claimant whose distribution  
27 amounts calculates to less than \$10.00, courts in this Circuit “regularly approve” of  
28 settlement agreements that include such provisions because this is “no significant

1 indication of preferential treatment.” *Baron*, 2024 WL 3504234, at \*11 (citation omitted).  
2 Accordingly, the court finds that the method of distribution treats class members  
3 equitably relative to each other.

4 Lead Plaintiff also requests an incentive award to compensate him for the time that  
5 he spent pursuing this matter on behalf of the class. Based on the reasoning below, *see*  
6 *infra*, the Court finds that this incentive award is reasonable and does not diminish the  
7 equitable nature of the Settlement.

### 8 **5. Hanlon factors**

9 The Court traditionally examined the *Hanlon* factors for its fairness analysis. The  
10 2018 amendments to Rule 23(e) make clear that the considerations identified therein were  
11 not designed to “displace” any factor previously used by courts to evaluate settlements,  
12 but rather to “focus the court and the lawyers on the core concerns of procedure and  
13 substance that should guide the decision whether to approve the proposal.” Fed. R. Civ.  
14 P. 23(e), advisory committee notes (2018 amendment). Thus, courts may still consider  
15 additional Hanlon factors in the exercise of discretion. *See, e.g., Fitzgerald v. Pollard*,  
16 2024 WL 4596401, at \*5-8 (S.D. Cal. Oct. 28, 2024).

17 The *Hanlon* factors mostly overlap with the Rule 23(e) factors. The Court will  
18 examine two non-duplicative *Hanlon* factors.

19 **Reaction of the Settlement Class.** An overwhelmingly positive reaction of class  
20 members to a proposed settlement significantly weighs in favor of the settlement’s  
21 adequacy. *Delacruz v. CytoSport, Inc.*, 2014 WL 12648451, at \*7 (N.D. Cal. Jul. 1,  
22 2014). Indeed, “the absence of a large number of objections to a proposed class action  
23 settlement raises a strong presumption that the terms . . . are favorable to the class  
24 members.” *Omnivision*, 559 F. Supp. 2d at 1043 (finding only three objections out of  
25 57,630 potential class members weighing in favor of the settlement’s adequacy). Among  
26 the almost 40,000 copies of the Notice sent to potential class members, no objection nor  
27 request for exclusion to the Settlement has been received till May 30, 2025. *See* ECF No.  
28 94 at 5. It shows that the Settlement terms are considered fair, reasonable, and adequate

1 from class members’ perspective. *See Nat’l Rural Telecomm. Coop.*, 221 F.R.D. at 529  
2 (noting no objection nor request for exclusion from the Settlement as “compelling  
3 evidence that the Proposed Settlement is fair, just, reasonable, and adequate”); *see also*,  
4 *e.g., Ali*, 2024 WL 5179910, at \*8; *Derr v. Ra Medical Sys., Inc.*, 2022 WL 21306534, at  
5 \*6 (S.D. Cal. Sept. 23, 2022); *Kendall*, 2022 WL 1997530, at \*6.

6 **Discovery Conducted to Date and Stage of Proceedings.** Although formal  
7 discovery is not required to reach the Settlement stage, the Court considers whether the  
8 parties have “carefully investigated the claims” before reaching to the resolution. *Hardy*  
9 *v. Embark Tech., Inc.*, No. 3:22-CV-02090-JSC, 2024 WL 1354416, at \*5 (N.D. Cal.  
10 Mar. 29, 2024) (citing *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir.  
11 1998)). “The fact that formal discovery was in its early stages does not weigh against  
12 final approval.” *Stable Road*, 2024 WL 3643393, at \*9.

13 Here, Co-Lead Counsel conducted an extensive pre-suit investigation that included  
14 (1) a review of government records, (2) interviews with former employees of  
15 ImmunityBio and its relevant business partners, and (3) consultation with experts in the  
16 field of class wide damages and the FDA regulatory approval process. *See D’Aloia Decl.*  
17 ¶¶ 10-12. The parties then thoroughly briefed the sufficiency of the FAC, where Lead  
18 Plaintiff opposed Defendants’ MTD. *See D’Aloia Decl.* ¶¶ 13-14. The Parties then  
19 pressed forward with discovery requests, conducted multiple meet-and-confers, and  
20 exchanged documents that assisted Lead Counsel in assessing the merits of the case. *Id.*  
21 ¶¶ 19-25, 28-30. The Parties also exchanged detailed mediation statements before  
22 mediation with supporting documentary evidence. *Id.* ¶¶ 34. The Parties continued to  
23 negotiate post-mediation allowing them to assess the strengths and weaknesses of the  
24 claims. *Id.* ¶¶ 35-37.

25 Other securities cases throughout the Ninth Circuit have reached the same result on  
26 similar facts. *See, e.g., Stable Road*, 2024 WL 3643393, at \*9 (finding parties were well-  
27 informed as the investigation involved interviews and consultation with experts). Thus,  
28 although the Co- Lead Plaintiff secured the Settlement at an early stage of the

1 proceedings, he was well-informed of the relevant information to make informed  
2 decisions regarding the Settlement.

3 **E. Plan of allocation**

4 As set forth in the long-form Notice, the Net Settlement Fund will be divided  
5 among Settlement Class members who submit timely and valid Claims in accordance  
6 with the Plan of Allocation described therein. ECF No. 80-2 at 79. A plan for allocation  
7 should be “fair, reasonable and adequate,” *see Class Plaintiffs v. City of Seattle*, 955 F.2d  
8 1268, 1284-85 (9th Cir. 1992), although it “need not be perfect,” *Brown v. Brewer*, 2012  
9 WL 12882380, at \*1 (C.D. Cal. Jan. 18, 2012). Rather, an allocation formula that has a  
10 “reasonable, rational basis” satisfies the requirement, “particularly if recommended by  
11 competent class counsel.” *Id.* “A plan of allocation that reimburses class members based  
12 on the extent of their injuries is generally reasonable.” *Mauss v. NuVasive, Inc.*, 2018 WL  
13 6421623, at \*4 (S.D. Cal. Dec. 6, 2018) (citation omitted).

14 As described in the Notice, the Plan of Allocation was developed with the  
15 assistance of Lead Plaintiff’s damages expert and designed to equitably distribute the Net  
16 Settlement Fund to Authorized Claimants based on their respective economic losses as a  
17 result of the alleged fraud, without considering market-wide factors, industry-wide  
18 factors, or company-specific factors unrelated to the alleged fraud. *See* ECF No. 80-2 at  
19 79-80. Each Authorized Claimant’s economic losses attributable to the fraud are  
20 calculated using the Recognized Loss formula. *Id.* at 79. The formula depends on several  
21 factors, including when the shares were purchased and in what amounts, whether the  
22 shares were ever sold, and, if so, when they were sold and for what amounts. *Id.* at 81.  
23 The Net Settlement Fund will then be distributed to each Authorized Claimant on pro rata  
24 basis based on the amount of their Recognized Loss relative to the total Net Settlement  
25 Fund. *Id.* at 83. If the Recognized Loss is less than \$10.00, then no distribution will be  
26 made. *Id.* Not paying these *de minimis* claims does not disturb the fairness of the  
27 allocation plan. Such small checks are frequently discarded by recipients and “cause a  
28 disproportionate administrative expense to the fund,” and, thus, other Settlement Class

1 members. *In re MGM Mirage Sec. Litig.*, 708 F. App’x 894, 897 (9th Cir. 2017). For this  
2 reason, courts regularly approve plans with similar minimum thresholds. *Id.*; *see also*  
3 *Baron*, 2024 WL 3504234, at \*11 (“courts within the Ninth Circuit regularly approve  
4 settlement agreements including such provisions”); *Hefler v. Wells Fargo & Co.*, 2018  
5 WL 6619983, at \*11 (N.D. Cal. Dec. 18, 2023) (same), *aff’d sub nom. Hefler v. Pekoc*,  
6 802 F. App’x 285 (9th Cir. 2020). Moreover, the lack of any objections to the Plan of  
7 Allocation after distributing the Notice further evinces that it is fair. *See Mauss*, 2018 WL  
8 6421623, at \*4.

9 Courts have found nearly identical allocation plans to be fair, reasonable, and  
10 adequate in other securities class action settlements. *See, e.g., Ali v. Franklin Wireless*  
11 *Corp.*, 2024 WL 5179910, at \*9 (S.D. Cal. Dec. 19, 2024) (collecting cases). Indeed,  
12 plans of this type are “customary” and “standard” in securities class action settlements.  
13 *Bernstein v. Ginkgo Bioworks Holdings, Inc.*, 2024 WL 5112227, at \*5 (N.D. Cal. Dec.  
14 13, 2024).

#### 15 **F. Attorneys’ fees and costs, administration fees, and incentive award**

16 Together with its Motion for final approval, Plaintiff has also filed an unopposed  
17 Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Award to Lead  
18 Plaintiff.

##### 19 1. Attorneys’ Fees

20 Co-Lead Counsel seek attorneys’ fees in the amount of \$3,150,000, plus interest.  
21 “While attorneys’ fees and costs may be awarded in a certified class action where so  
22 authorized by law or the parties’ agreement, Fed. R. Civ. P. 23(h), courts have an  
23 independent obligation to ensure that the award, like the settlement itself, is reasonable,  
24 even if the parties have already agreed to an amount.” *Bluetooth*, 654 F.3d at 941.

25 Fees can be calculated by either the lodestar method or the percentage-of-the-fund  
26 method. *Id.* at 942. Courts may exercise discretion to choose which calculation method  
27 they use to achieve a reasonable result. *See Bluetooth*, 654 F.3d at 942. Use of the  
28 percentage method in common fund cases is the most dominant because of its various

1 advantages, including increased incentive for counsel to litigate and promotion of  
2 efficiency. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal.  
3 2008). Further, the PSLRA itself provides that “[t]otal attorneys’ fees and expenses  
4 awarded by the court to counsel for the plaintiff class shall not exceed a reasonable  
5 percentage of the amount” recovered for the class. 15 U.S.C. § 78u-4(a)(6). Thus, the  
6 Court agrees with Plaintiff and elects to use the percentage-of-recovery method to award  
7 the attorneys’ fees.

8 The Court notes that the Ninth Circuit recognizes 25% as the benchmark  
9 percentage for the percentage-of-recovery method. *In re Online DVD-Rental Antitrust*  
10 *Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (citing *Bluetooth*, 654 F.3d at 942). Courts  
11 should analyze the following factors to determine if a percentage is reasonable: (1) the  
12 results achieved; (2) the risk of litigation; (3) the skill required and quality of counsel’s  
13 work; (4) the contingent nature of the fee and financial burden; (5) awards made in  
14 similar cases; (6) the reaction of the class; and (7) the lodestar cross-check. *See*  
15 *Omnivision*, 559 F. Supp. 2d at 1046; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047  
16 (9th Cir. 2002). As noted by other courts, these factors intentionally track the factors used  
17 to evaluate the adequacy of a settlement. *Omnivision*, 559 F. Supp. at 1046.

18 Analysis of these factors support a finding that 30% of the \$10.5 million  
19 Settlement Amount minus the administration fees, litigation expenses and the award to  
20 Lead Plaintiff, totaling \$2,987,985, plus interest is a reasonable fee in this case.

21 **a. The results achieved**

22 “The most important factor [in determining the reasonableness of attorneys’ fees]  
23 is the ‘overall result and benefit to the class from the litigation.’” *Stemple v. QC*  
24 *Holdings, Inc.*, 2016 WL 11783383, at \*3 (S.D. Cal. Nov. 7, 2016) (citing *Omnivision*  
25 *Techs., Inc.*, 559 F. Supp. 2d at 1046; *see also In re Heritage Bond Litig.*, 2005 WL  
26 1594389, at \*8 (C.D. Cal. June 10, 2005) (noting that “courts have consistently  
27 recognized that the result achieved is a major factor to be considered in making a fee  
28 award”) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). The \$10.5 million

1 Settlement Fund represents over 8% of the Lead Plaintiff’s best-case estimate for  
2 recoverable damages, assuming success at trial, of \$130.6 million. *See* D’Aloia Decl. ¶48.  
3 This percentage is well above the median percentage of the recovery level for investor  
4 losses in securities class action settlements. *See Farrar v. Workhorse Grp., Inc.*, 2023  
5 WL 5505981, at \*7 (C.D. Cal. July 24, 2023) (collecting cases recognizing that 3% is  
6 within the range of average recovery percentages approved in securities class action  
7 settlement); *Vataj v. Johnson*, 2021 WL 1550478, at \*9 (N.D. Cal. Apr. 20, 2021)  
8 (settlement for 2% of damages is “consistent with the typical recovery in securities class  
9 action[s]”). ECF No. 89 at 21-22. This factor supports the 30% fee.

10 **b. The risk of litigation**

11 The risks associated with the litigation have been considered. Courts have  
12 consistently recognized that the securities class actions are complex and risky. *Ali*, 2024  
13 WL 5179910, at \*11 (S.D. Cal. Dec. 19, 2024); *see also Redwen v. Sino Clean Energy,*  
14 *Inc.*, 2013 WL 12303367, at \*6 (C.D. Cal. July 9, 2013); *Johnson v. US Auto Parts*  
15 *Network, Inc.*, 2008 WL 11343481, at \*3 (C.D. Cal. Oct. 9, 2008).

16 In the present case, Lead Plaintiff faced substantial risks in pursuing this litigation  
17 given the uncertainty created by the heightened pleading standard established under the  
18 PSLRA for trying securities fraud cases. *Hefler v. Wells Fargo & Co.*, 2018 WL  
19 6619983, at \*13 (N.D. Cal. Dec. 18, 2018); *aff’d sub nom. Hefler v. Pekoc*, 802 F. Ap’x  
20 285 (9th Cir. 2020). The substantial risks of no recovery remains if Lead Plaintiff  
21 continued to litigate, including the difficulty of establishing scienter and the involvement  
22 of expert witnesses on highly technical subject matters. *See Brown v. China Integrated*  
23 *Energy Inc.*, 2016 WL 11757878, at \*11 (C.D. Cal. July 22, 2016). Jury verdicts in favor  
24 of plaintiffs are exceedingly uncommon in securities fraud class actions. *See Omnivision*,  
25 559 F. Supp. at 1047 (plaintiffs prevailed in only three out of eleven jury trials on  
26 securities claims from 1996 to 2008). These obstacles to recovery are further heightened  
27 by the complexity of manufacturing biologic compounds under FDA regulations—a  
28 highly technical topic that may be difficult for the Court or a jury to fully understand

1 throughout the proceedings. *See Amgen*, 2016 WL 10571773, at \*9. Hence, this factor  
2 weighs in favor of the fee.

3 **c. The skill required and quality of counsel’s work**

4 Prosecuting complex class actions takes skill and experience, and this is  
5 particularly true in securities class actions because the PSLRA makes it difficult to get  
6 past the motion to dismiss stage. *Omnivision*, 559 F. Supp. 2d at 1047; *see also Stable*  
7 *Rd.*, 2024 WL 3643393, at \*13; *Am. Apparel*, 2014 WL 10212865, at \*22. Here, the  
8 complexity of the case is further corroborated by the technicality of the subject matter,  
9 requiring specialized knowledge with drug manufacturing and familiarity with applicable  
10 FDA regulations.

11 Despite some weaknesses, a pleading that has withstood two motions to dismiss  
12 shows some skillful work. *Omnivision*, 559 F. Supp. 2d at 1047; *see also Illumina*, 2021  
13 WL 1017295, at \*7. Co-Lead Counsel also managed discovery from numerous parties on  
14 a highly technical topic and finally negotiated a resolution, D’Aloia Decl. ¶¶ 15-17, 20-  
15 22, 24-25, 28-30, at an early stage of the proceeding, *Vizcaino*, 290 F.3d at 1050 n.5. In  
16 sum, this factor supports the 30% fee.

17 **d. The contingent nature of the fee and financial burden**

18 This factor also weighs in favor of the requested fee. Co-Lead Counsel’s fees were  
19 entirely contingent on a successful outcome, and they risked non-payment of 2,092.56  
20 billable hours, ECF No. 93-2 at 2; ECF No. 93-4 at 7, and \$180,049.92 of litigation  
21 expenses, ECF No. 93-6 at 2; ECF No. 93-4 at 9. As discussed, Co-Lead Counsel  
22 assumed considerable risk of non-reimbursement for the time and costs they spent on this  
23 litigation “demonstrated by the fact that settlements were not easily achieved.” *In re*  
24 *Heritage Bond Litig.*, 2005 WL 1594389, at \*14. Thus, this factor supports the requested  
25 fee.

26 **e. Awards made in similar cases**

27 The Ninth Circuit has recognized that 25% is the benchmark in securities class  
28 actions. Some courts in the Ninth Circuit have even awarded up to 33% of the common

1 fund. *See e.g., Singer v. Becton Dickinson & Co.*, No.08-cv-821-IEG (BLM), 2010 WL  
2 2196104, at \*8 (S.D. Cal. June 1, 2010) (awarding 33%); *In re Banc of California Sec.*  
3 *Litig.*, 2020 WL 1283486, at \*1 (same). Thus, 30% is within the usual range compared to  
4 other cases.

5 **f. The reaction of the class**

6 Notices were sent to almost 40,000 potential class members. Mahan Decl. ¶¶ 6-10.  
7 There was also a Settlement website. *Id.* ¶¶ 13-14. The Notice informed the class  
8 members that Co-Lead Counsel would seek up to “one third (33 and ⅓%) of the gross  
9 Settlement Amount” and “reimbursement of expenses and a compensatory award in an  
10 amount not to exceed fifteen thousand dollars (\$15,000.00).” ECF No. 93-1 at 10.  
11 Although class members were notified of their right to object to these terms, no class  
12 member has objected to the requested fees or expenses. Mahan Decl. ¶¶ 16,18.

13 **g. The lodestar cross-check**

14 Lastly, the seventh factor encourages the Court to do a lodestar cross-check on the  
15 requested percentage. Courts calculate lodestar by multiplying reasonable hourly rates by  
16 the number of hours spent. Here, Co-Lead Counsel state that 2,092.56 hours were spent  
17 prosecuting this case. ECF No. 93-2 at 2; ECF No. 93-4 at 7. The hourly rate for  
18 Pomerantz LLP ranged from \$525 to \$1,050 and calculates the total value at  
19 \$1,099,114.00, ECF No. 93-2 at 2, and the hourly rate for HOLZER & HOLZER, LLC  
20 ranged from \$645 to \$985 and calculates the total value at \$826,713.75. ECF No. 93-4 at  
21 6. This is a lodestar multiplier of 1.64, well within the multiplier range of one to four  
22 often used to cross-check reasonableness. *See Spann v. J.C. Penney Corp.*, 211 F. Supp.  
23 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (citing *Vizcaino*, 290 F.3d at 1052-54  
24 (surveying multipliers in over 20 class actions and finding multipliers from one to four in  
25 over 80% of cases)).

26 Thus, the Court concludes that the requested attorneys’ fees are reasonable as  
27 modified above.

28 **2. Reimbursement of Attorneys’ Expenses**

1 As to the requested expenses, “Class Counsel are entitled to reimbursement of the  
2 out-of-pocket costs that they reasonably incurred investigating and prosecuting [the]  
3 case.” *Couser*, 125 F. Supp. 3d at 1049 (citing *In re Media Vision Tech. Sec. Litig.*, 913  
4 F. Supp. 1362, 1366 (N.D. Cal. 1996)). “[A]n attorney who has created a common fund  
5 for the benefit of the class is entitled to reimbursement of reasonable litigation expenses  
6 from that fund.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. Oct. 8, 2014)  
7 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, at \*23). Co-Lead Counsel has  
8 provided a breakdown of all costs incurred pursuing this action, totaling \$180,049.92.  
9 ECF No. 93-6 at 2; ECF No. 93-4 at 9. The Court agrees with Co-Lead Counsel that,  
10 because of the contingent nature of this action, Counsel had no incentive to accrue  
11 unnecessary or unreasonable expenses. As such, the Court finds expenses in the amount  
12 of \$180,049.92 plus interest is reasonable.

### 13 3. Award to Lead Plaintiff

14 Lead Plaintiff Dipak Patel and seeks an award of \$10,000 for litigating on behalf of  
15 the Settlement Class. Patel Decl. ¶ 8-9.

16 The PSLRA authorizes the Court to award class representatives “reasonable costs  
17 and expenses (including lost wages) that were directly related to their role in representing  
18 the class. 15 U.S.C. § 78u-4(a)(4). In common fund cases, named plaintiffs may also be  
19 granted “reasonable incentive payments” in addition to reimbursement for their  
20 “litigation expenses, and identifiable services rendered to the class directly under the  
21 supervision of class counsel.” *Staton*, 327 F.3d at 977 (citing *Missouri v. Jenkins*, 491  
22 U.S. 274, 285 (1989)).

23 Courts have granted incentive awards of \$10,000 or more to individuals who carry  
24 out litigation efforts on behalf of absent class members. *See, e.g., In re Illumina, Inc. Sec.*  
25 *Litig.*, 2021 WL 1017295, at \*8 (S.D. Cal. Mar. 17, 2021) (awarding \$25,000 in incentive  
26 award to one plaintiff and \$27,000 total); *see also Stable Rd.*, 2024 WL 3643393, at \*16  
27 (granting \$10,000 to Lead Plaintiff); *Davis v. Yelp, Inc.*, No. 18-CV-00400-EMC, 2023  
28 WL 3063823, at \*2 (N.D. Cal. Jan. 27, 2023) (granting \$15,000 to Lead Plaintiff).

1 When deciding whether an incentive award is reasonable and fair, the Ninth Circuit  
2 considers the number of class representatives, the average incentive award amount, and  
3 the proportion of the total settlement that is spent on incentive awards. *See In re Online*  
4 *DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015). Here, the  
5 compensatory award makes up less than a tenth of a single percent (.10%) of the total  
6 Settlement Fund. Lead Plaintiff spent 10 to 20 hours litigating this action, meeting with  
7 counsel and responding to discovery requests. Patel Decl. ¶¶ 4, 8. He also participated in  
8 settlement negotiations and helped to secure the settlement. *Id.*; Attys. Fees Mot. at 21.  
9 Additionally, the lack of any objections to the proposed award to Lead Plaintiff also  
10 supports the reasonableness of the award. *See Khoja*, 2021 WL 5632673, at \*11. As such,  
11 the Court finds the \$10,000 incentive award reasonable.

#### 12 4. Administrator's Fees

13 The Preliminary Approval required Co-Lead Counsel to clarify the maximum  
14 amount of Claim Administration fees in the Notices. Co-Lead Counsel revised the Notice  
15 to specify that "Claim Administration fees are not expected to exceed \$350,000."  
16 D'Aloia Decl. ¶¶ 42. Although this amount is \$50,000 higher than the initial amount  
17 indicated to the Court, no class member objects to this payment. Thus, the Court  
18 approves payment to the Claims Administrator for all costs incurred to date up to  
19 \$350,000.

### 20 **III. CONCLUSION**

21 Based on the above, it is hereby ORDERED:

22 1. **Incorporation of Settlement Documents.** This Order and Judgment  
23 incorporates and makes a part hereof: (a) the Stipulation; and (b) the Notice of Proposed  
24 Settlement of Class Action, Motion for Attorneys' Fees and Expenses, and Settlement  
25 Fairness Hearing, filed with the Court on January 28, 2025 (the "Notice"). Unless  
26 otherwise defined, capitalized terms used herein have the same meaning as set forth in the  
27 Stipulation.  
28

1           2.     **Jurisdiction**. The Court has jurisdiction over the subject matter of the Action,  
2 Lead Plaintiff, all Settlement Class members, and the Defendants.

3           3.     **Final Certification of a Settlement Class**. The Court hereby affirms its  
4 determinations in the Preliminary Approval Order to certify, for purposes of the Settlement  
5 only, the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of  
6 the Settlement Class consisting of all persons who purchased or acquired, ImmunityBio,  
7 Inc. securities from March 10, 2021 to May 10, 2023, inclusive (the “Settlement Class  
8 Period”), and were damaged thereby, except those expressly excluded therefrom.  
9 Excluded from the Settlement Class are Defendants; members of the immediate families  
10 of the Defendants; the subsidiaries and affiliates of any Defendants; any Person or entity  
11 who is a partner, executive officer, director or controlling person of any of the Defendants;  
12 any entity in which any Defendant has a controlling interest; and the legal representatives,  
13 heirs, successors and assigns of any such excluded person.

14           4.     **Appointment of Settlement Class Representatives**. Pursuant to Rule 23 of  
15 the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court  
16 hereby affirms its determinations in the Preliminary Approval Order appointing Lead  
17 Plaintiff as Class Representative for the Settlement Class and Co-Lead Counsel as Class  
18 Counsel for the Settlement Class. Lead Plaintiff and Co-Lead Counsel have fairly and  
19 adequately represented the Settlement Class both in terms of litigating the Action and for  
20 purposes of entering into and implementing the Settlement and have satisfied the  
21 requirements of Rules 23(a)(4) and 23(g) of the Federal Rules of Civil Procedure.

22           5.     **Notice**. The Court finds that the forms and methods of notifying the  
23 Settlement Class of the Settlement and its terms and conditions (a) were carried out in  
24 accordance with the Preliminary Approval Order; (b) constituted the best notice practicable  
25 under the circumstances; (c) constituted notice that was reasonably calculated, under the  
26 circumstances, to apprise Settlement Class members of (i) the pendency of the Action, (ii)  
27 the proposed Settlement, including the Releases to be provided thereunder and the Plan of  
28 Allocation, (iii) Co-Lead Counsel’s Fee and Expense Application, (iv) the right to object

1 to any aspect of the Settlement, (v) the right to be excluded from the Settlement Class, and  
2 (vi) the right to appear at the Settlement Fairness Hearing; and (d) met the requirements of  
3 due process and Fed. R. Civ. P. 23 and Section 21D(a)(7) of the Securities Exchange Act  
4 of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform  
5 Act of 1995.

6       6.     **Final Settlement Approval.** Pursuant to, and in accordance with, Rule 23(e)  
7 of the Federal Rules of Civil Procedure, the Court hereby fully and finally approves the  
8 Settlement as set forth in the Stipulation in all respects (including, without limitation, the  
9 amount of the Settlement Consideration and the Releases provided for therein), and finds  
10 that the Settlement, as a whole, is fair, reasonable, and adequate, and in the best interests  
11 of the Settlement Class. The Court further finds that there was no collusion in connection  
12 with the Stipulation; the Stipulation was the product of informed, arm's length negotiations  
13 among competent, able counsel representing the Parties' interests; and the record is  
14 sufficiently developed and complete to have enabled the Lead Plaintiff, Co-Lead Counsel,  
15 Defendants, and their counsel to have adequately evaluated and considered their positions  
16 before deciding to settle. The Parties are directed to consummate the Settlement in  
17 accordance with the terms and provisions of the Stipulation.

18       7.     **Dismissal of Claims.** The Action and all claims asserted against Defendants  
19 in the Action by Lead Plaintiff and the other Settlement Class members are hereby  
20 DISMISSED WITH PREJUDICE. The Parties shall bear their own costs and expenses,  
21 except as otherwise expressly provided in the Stipulation.

22       8.     **Binding Effect.** The terms of the Stipulation and this Order and Final  
23 Judgment shall be forever binding on the Parties and all Settlement Class members,  
24 regardless of whether or not any such Settlement Class member received a copy of the  
25 Notice, submitted a Proof of Claim, or obtains a distribution from the Net Settlement Fund.

26       9.     **Releases.** The Releases set forth in paragraphs 5.1 and 5.2 of the Stipulation,  
27 together with the definitions contained therein, are expressly adopted and approved in all  
28 respects. Accordingly, the Court hereby ORDERS that:

1 (a) Without further action by anyone, and subject to paragraph 10 below,  
2 upon the Effective Date of the Settlement, Lead Plaintiff and all Settlement Class  
3 members on behalf of themselves and their respective heirs, executors,  
4 administrators, predecessors successors, and assigns, shall be deemed to, and by  
5 operation of law and of the judgment shall, fully and unconditionally release,  
6 resolve, relinquish, waive, and discharge any and all of Lead Plaintiff's Claims as  
7 against Defendants and other Released Defendant Parties. Lead Plaintiff and the  
8 Settlement Class members shall be, and hereby are, permanently and forever  
9 enjoined from prosecuting any and all of Lead Plaintiff's Claims against the  
10 Released Defendant Parties .

11 (b) Without further action by anyone, and subject to paragraph 10 below,  
12 upon the Effective Date of the Settlement, Defendants, on behalf of themselves and  
13 their respective heirs, executors, administrators, predecessors, successors, and  
14 assigns, shall be deemed to, and by operation of law and of the judgment shall, fully  
15 and unconditionally release, resolve, relinquish, waive, and discharge any and all of  
16 Defendants' Claims as against Lead Plaintiff and the other Released Lead Plaintiff  
17 Parties. Defendants and other Released Defendant Parties shall be, and hereby are,  
18 permanently and forever enjoined from prosecuting any and all of Defendants'  
19 Claims as against the Released Lead Plaintiff Parties.

20 10. Notwithstanding paragraph 9 above, nothing in this Order and Final Judgment  
21 shall var any action by any of the Parties to enforce or effectuate the terms of the Stipulation  
22 or this Order and Final Judgment.

23 11. **Approval of Plan of Allocation.** The Court hereby finds that the proposed  
24 Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund  
25 among Settlement Class members.

26 12. **Award of Attorney Fees and Expenses.** Co-Lead Counsel are awarded  
27 attorneys' fees in the amount of \$2,987,985 and expenses in the amount of \$180,049.92,  
28 plus interest earned thereon, for the same time period and at the same rate as that earned

1 on the Settlement Fund until paid, such amounts to be paid from the Settlement Fund upon  
2 entry of this Order and Final Judgment. The Court finds that the amount of fees awarded  
3 is fair and reasonable in light of the time and labor required, the difficulty of the case, the  
4 skill required to prosecute the claims asserted, the experience and ability of the attorneys,  
5 awards in similar cases, the contingent nature of the representation and the result obtained  
6 for the Settlement Class. In the event that this Order does not become Final, and any  
7 portion of the Fee and Expense Award has already been paid from the Settlement Fund,  
8 Co-Lead Counsel shall within thirty (30) calendar days of entry of the order rendering the  
9 Settlement and Judgment non-Final or notice of the Settlement being terminated, refund  
10 the Settlement Fund the Fee and Expense Award paid to Co-Lead Counsel.

11 13. **Compensatory Award to Lead Plaintiff.** Lead Plaintiff is awarded the sum  
12 of \$10,000, as reasonable costs and expenses directly relating to the representation of the  
13 Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), plus interest earned thereon, for  
14 the same time period and at the same rate as that earned on the Settlement Fund until paid,  
15 such amounts to be paid from the Settlement Fund upon the Effective Date of the  
16 Settlement.

17 14. **Rule 11 Findings.** The Court finds that all Parties and their counsel have  
18 complied in all respects with each requirement of Fed. R. Civ. P. 11 as to all proceedings  
19 herein.

20 15. **No Admission.** Neither this Order and Final Judgment, the Preliminary  
21 Approval Order, the Stipulation (including the Exhibits thereto), the Term Sheet, nor any  
22 of the negotiations, documents, or proceedings connected with them shall be deemed to be,  
23 or offered or received:

24 (a) Against any of the Defendants or other Released Defendant Parties as  
25 evidence of, or construed as evidence of, any presumption, concession, or admission  
26 by any of the Defendants or other Released Defendant Parties with respect to the  
27 truth of any fact alleged by the Lead Plaintiff in this Action or the validity of any  
28 claim that has been or could have been asserted against any of the Defendants or the

1 Released Defendant Parties in this Action, or the deficiency of any defense that has  
2 been or could have been asserted in the Action, or of any alleged wrongdoing or  
3 liability by any of the Defendants or other Released Defendant Parties in connection  
4 with the Action;

5 (b) Against any of the Defendants, the Lead Plaintiff, any Settlement Class  
6 member, or the other Released Parties as evidence of, or construed as evidence of,  
7 any presumption, concession, or admission by any of them with respect to any  
8 liability, negligence, fault, or wrongdoing as against any of them in any other civil,  
9 criminal, or administrative action or proceeding, other than such proceedings as may  
10 be necessary to effectuate the provisions of the Stipulation, provided, however, that  
11 if the Stipulation is approved by the Court, the Defendants, the Lead Plaintiff, any  
12 Settlement Class member, and the other Released Parties may refer to it to effectuate  
13 the liability protection granted to them hereunder;

14 (c) Against any of the Defendants or other Released Defendant Parties as  
15 evidence of, or construed as evidence of, any presumption, concession, or admission  
16 by any of them that the Settlement Amount represents the amount which could or  
17 would have been received after trial of the Action against them;

18 (d) Against the Lead Plaintiff, Released Lead Plaintiff Parties, including  
19 any Settlement Class member, as evidence of, or construed as evidence of, any  
20 presumption, concession, or admission by Lead Plaintiff or any Settlement Class  
21 member that any of their claims are without merit, or that any defenses asserted by  
22 the Defendants in the Action have any merit, or that damages recoverable in the  
23 Action would not have exceeded the Settlement Amount; or

24 (e) Against the Lead Plaintiff or any Released Lead Plaintiff Parties,  
25 including any Settlement Class member or Co-Lead Counsel, as evidence of, or  
26 construed as evidence of, any infirmity of the claims alleged by the Lead Plaintiff in  
27 the FAC or the Action or of any lack of merit to the claims or the Action or of any  
28 bad faith, dilatory motive, or inadequate prosecution of the claims or the Action or

1 any non-compliance with Fed. R. Civ. P. 11 or any similar rule or ethical obligation.

2 16. Notwithstanding the foregoing Paragraph 15, the Parties and other Released  
3 Parties may file or refer to this Order and Final Judgment, the Stipulation, Preliminary  
4 Approval Order, and/or any Proof of Claim Form: (a) to effectuate the liability protections  
5 granted hereunder or thereunder, including without limitation, to support a defense or  
6 counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith  
7 settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion  
8 or similar defense or counterclaim; (b) to obtain a judgment reduction under applicable law;  
9 (c) to enforce any applicable insurance policies and any agreements relating thereto; or (d)  
10 to enforce the terms of the Stipulation and/or this Order and Final Judgment.

11 17. **Retention of Jurisdiction**. Exclusive jurisdiction is hereby retained over the  
12 Parties for all matters relating to the Action, including the administration, interpretation,  
13 effectuation or enforcement of the Stipulation or Settlement and this Order and Final  
14 Judgment, and including any application for fees and expenses incurred in connection with  
15 administering and distributing the Settlement proceeds to the Settlement Class members.

16 18. **Reasonable Modifications**. Without further order of the Court, the Parties  
17 may agree to such amendments or modifications of the Stipulation or the Settlement that  
18 are not materially inconsistent with this Order and Final Judgment and do not materially  
19 limit the rights of Settlement Class members in connection with the Settlement, including  
20 reasonable extensions of time to carry out any of the provisions of the Settlement.

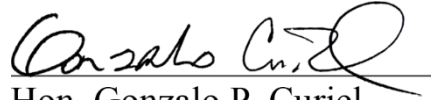
21 19. **Entry of Final Judgment**. There is no just reason for delay in the entry of  
22 this Order and Final Judgment and immediate entry by the Clerk of the Court is directed  
23 pursuant to Fed. R. Civ. P. 54(b).

24 20. **Termination of Settlement**. In the event that the Settlement is terminated in  
25 accordance with the terms and conditions set forth in the Stipulation, then this Order and  
26 Final Judgment, shall be rendered null and void of no further force or effect, except as  
27 otherwise provided in the Stipulation, and all Parties shall revert *nunc pro tunc* to their  
28 respective status prior to the execution of the Term Sheet, and all Parties shall proceed in

1 all respects as if the Term Sheet and the Stipulation had not been executed and the  
2 Preliminary Approval Order and this Order and Final Judgment had not been entered. In  
3 such circumstances, all Parties shall thereafter work together to arrive at a mutually  
4 agreeable schedule for resuming litigation of the Action.

5  
6 **IT IS SO ORDERED.**

7 Dated: June 13, 2025

8   
9 Hon. Gonzalo P. Curiel  
United States District Judge

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