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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re AURORA CANNABIS INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	No. 2:19-cv-20588-BRM-JBC CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION Motion Return Date: January 28, 2025

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Lead Plaintiffs Doug Daulton, Francisco Quintana, Donald S. Parrish, and Quang Ma ("Lead Plaintiffs" or "Plaintiffs"), individually and on behalf of the Settlement 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 $8,050,000 in cash (the "Settlement"). The Settlement here resulted from arm's-length mediation overseen by Robert A. Meyer, Esq. of JAMS, an experienced mediator, and represents a very good recovery for the Settlement Class under the circumstances. The Settlement follows nearly five years of hard-fought litigation, including drafting detailed complaints; opposing several rounds of complex motions to dismiss; moving for partial reconsideration of the Court's motion to dismiss order; moving to amend their

[1] Unless otherwise defined herein, all capitalized terms have the meaning set forth in the Stipulation of Settlement, dated June 7, 2024 (ECF 112-2) (the "Stipulation") or the Declaration of Alan I. Ellman in Support of: (I) Lead 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 Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Ellman Declaration" or "Ellman Decl."), filed herewith.

complaint; meeting and conferring on a discovery plan; propounding discovery; responding to discovery propounded on Lead Plaintiffs; and engaging in a full-day mediation session, preceded by 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 Settlement Class could receive nothing, or far less than the Settlement, after trial and any appeal. In addition, the Plan of Allocation treats Settlement 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 Settlement Class.

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

II. BACKGROUND

A. Procedural History

1. The Initial Complaint and Lead Plaintiff Appointment

This action was initially filed on November 21, 2019. On July 23, 2020, the Court appointed Lead Plaintiffs and approved their selection of Robbins Geller Rudman & Dowd LLP and Hagens Berman Sobol Shapiro LLP as Lead Counsel. ECF 16.

2. Lead Counsel's Investigation and the Amended Complaints

Prior to and after being appointed, Lead Counsel conducted a comprehensive investigation into Aurora's alleged wrongful acts, which included, *inter alia*, reviewing and analyzing Aurora's filings with the SEC and other publicly available material related to the Company, including articles and analyst reports, and interviewing former employees of Aurora and Radient Technologies Inc. ("Radient").

On September 21, 2020, Plaintiffs filed the Amended Complaint and Demand for Jury Trial. ECF 24. The complaint alleged that Defendants issued materially false and misleading statements projecting positive, unrealistic EBITDA for 4Q19, the quarter ending on June 30, 2019. Ellman Decl., ¶19. More specifically, the complaint alleged that during the Class Period, Defendants repeatedly touted the massive, growing demand for consumer cannabis in Canada and the Company's priority of ramping up production and capacity to meet this demand. *See* ECF 24 at ¶3.

Plaintiffs further alleged that during the Class Period, Aurora's sales of cannabis in Canada were severely constrained by three factors that were known, or recklessly disregarded, by Defendants: (1) over-production of cannabis by Aurora and other Canadian licensed producers; (2) limited numbers of retail stores in Ontario and Quebec (the largest markets); and (3) continued competition from the cannabis black market selling at roughly half the price per gram. *Id.* at ¶4.

On September 11, 2019, Aurora reported its financial results for 4Q19 and the 2019 fiscal year. *Id.* at ¶13. Included in the financial results was the EBITDA metric, showing a loss of C$11.7 million and a miss of previously provided projections. *Id.* The Company attributed the loss to "challenges at the retail level in key markets" that were experienced throughout "the Canadian consumer channel," and that "resolution of this issue [was] beyond the Company's control." *Id.* On this news, Aurora stock fell more than 9%. *Id.*

Defendants moved to dismiss the complaint, and Plaintiffs opposed the motion. On July 6, 2021, the Court dismissed the complaint without prejudice. ECF 42.

On September 7, 2021, Plaintiffs filed their Second Amended Complaint and Demand for Jury Trial. ECF 49. Plaintiffs added allegations that, beginning in January or February 2019, Defendants orchestrated and executed a $21.7 million round-trip, sham transaction with Radient. Plaintiffs alleged that Defendants devised

the sham transaction in order to achieve their otherwise baseless projections of positive adjusted EBITDA for 4Q19, ending June 30, 2019. *Id.* at ¶¶6-9.

Defendants moved to dismiss this complaint, and Plaintiffs opposed the motion. On September 23, 2022, Judge Vazquez granted in part and denied in part Defendants' motion. ECF 64. While finding that Defendants' "statements about Aurora's positive 4Q19 EBIDTA projection were false because they knew that the Radient transaction was fraudulently engineered to boost Aurora's sales," *id.* at 4, the Court found that Plaintiffs had not adequately alleged loss causation. *Id.* at 18-19.

On November 7, 2022, Plaintiffs filed the Third Amended Complaint and Demand for Jury Trial ("TAC"). ECF 68. Defendants moved to dismiss the TAC, and Plaintiffs opposed the motion. On August 24, 2023, Judge Vazquez issued an Opinion granting in part and denying in part Defendants' motion to dismiss the TAC. ECF 75. On September 8, 2023, Plaintiffs timely filed a motion for partial reconsideration of the Court's August 24, 2023 Opinion. Defendants answered the TAC on September 22, 2023 (ECF 84), and opposed Plaintiffs' motion for partial reconsideration. ECF 85.

On October 19, 2023, the parties submitted a joint discovery plan to the Court and on October 26, 2023, held a conference to discuss it with Magistrate Judge Clark. On the same day, Magistrate Judge Clark entered the Pretrial Scheduling Order (ECF 90), and the parties commenced discovery.

On November 16, 2023, the parties appeared before Judge Martinotti for a status conference. ECF 91. During the status conference, the Court discussed with Plaintiffs the possibility of withdrawing their reconsideration motion and, alternatively, filing a motion for leave to amend the TAC.

On December 1, 2023, the Court issued an order: (i) withdrawing Plaintiffs' reconsideration motion; (ii) ordering Plaintiffs to send a draft proposed Fourth Amended Complaint ("FAC") to Defendants by December 18, 2023; and (iii) ordering Defendants to inform Plaintiffs by January 5, 2024, whether or not they consent to the filing of the FAC. Plaintiffs timely provided to Defendants the proposed FAC, and Defendants timely responded that they did not consent to its filing. On January 8, 2024, the parties submitted a proposed briefing schedule for Plaintiffs' motion requesting leave to amend (ECF 95), which was "So Ordered" the following day. ECF 98.

On January 22, 2024, Plaintiffs filed their motion to amend, attaching the proposed FAC as an exhibit. ECF 100. Defendants opposed the motion on February 12, 2024 (ECF 105), and Plaintiffs filed their reply on February 28, 2024. ECF 106. The motion was pending when this proposed Settlement was reached.

3. Mediation and Settlement

After Plaintiffs' motion to amend was fully briefed, the parties participated in a full-day mediation session with Mr. Meyer on March 4, 2024. Ellman Decl., ¶39. In

advance of the mediation, the parties exchanged and provided to Mr. Meyer mediation statements with supporting exhibits. *Id.*

During the mediation, the parties negotiated in good faith, and at the end of the day Mr. Meyer made a mediator's proposal to settle the case for $8.05 million. The parties accepted the proposal. Their agreement included, among other things, the parties' agreement to settle the Litigation for mutual releases and a cash payment of $8.05 million. The parties negotiated and signed a stipulation of settlement on June 7, 2024.

4. The Court's Preliminary Approval of the Settlement

On June 7, 2024, Lead Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement, together with supporting papers, including the Stipulation of Settlement, which set forth the terms and conditions of the Settlement. ECF 112. After holding a telephonic hearing on Plaintiffs' motion on October 10, 2024, the Court entered an Order granting preliminary approval of the Settlement and authorizing notice to the Settlement Class (the "Preliminary Approval Order"). ECF 120. As provided therein, objections to the Settlement, or requests to be excluded from the Settlement Class, are due by January 6, 2025, and a Settlement Hearing is scheduled for January 28, 2025, at 2:00 p.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, JND Legal Administration ("JND"), to: (i) send the Postcard Notice to potential Settlement Class Members by email or First-Class Mail (where email addresses are not available) by no later than October 31, 2024; and (ii) publish the Summary Notice by no later than November 7, 2024. ECF 120, ¶10. 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 October 30, 2024, JND established the settlement website at www.AuroraCannabisSecuritiesLitigation.com, which includes, among other things, the Stipulation, the Notice, the Proof of Claim and Release, and an online claim submission page. *See* Declaration of Luiggy Segura Regarding: (A) Dissemination of Notice; (B) Publication/Transmission of the Summary Notice; (C) Establishment of Call Center Services and Website; and (D) Requests for Exclusion Received to Date ("Segura Decl."), ¶15, filed herewith. Distribution of the Postcard Notice commenced on October 31, 2024. *Id.*, ¶¶3-6. Additionally, JND received the names, addresses, and email addresses of additional Settlement Class Members or requests for additional Postcard Notices by numerous nominee holders. *Id.*, ¶7. In total, 495,815 Postcard Notices have been disseminated to potential Settlement Class Members by mail or email. *Id.*, ¶8. On November 7, 2024, JND also published the Summary Notice in

The Wall Street Journal and over *PR Newswire*. *Id.*, ¶14. To date, there have been no objections to any aspect of the Settlement. Only ten requests for exclusion from the Settlement Class have been received. *Id.*, ¶17.

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

In their motion for preliminary approval of the Settlement, Lead Plaintiffs requested that the Court certify the Settlement Class for settlement purposes so that notice of the Settlement, the Settlement Hearing, and the rights of Settlement Class Members to object to the Settlement, request exclusion from the Settlement Class, or submit Proofs of Claim, could be issued. *See* ECF 112-1 at 24-30. In the Preliminary Approval Order, the Court addressed the requirements for class certification as set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Court found that Rules 23(a) and (b)(3) were satisfied for purposes of settlement. ECF 120, ¶3. Specifically, in the Preliminary Approval Order, the Court preliminarily certified a Settlement Class of "all Persons who purchased the common stock of Aurora Cannabis Inc. on the New York Stock Exchange between October 23, 2018 and February 28, 2020, inclusive."[2] *Id.*, ¶2. In addition, the Court preliminarily certified Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel. *Id.*, ¶4.

[2] Excluded from the Settlement Class are: (i) Defendants and the Former Defendants and members of their immediate families; (ii) the current and former officers and directors of Aurora and members of their immediate families; (iii) any entity in which

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 Settlement Class for settlement purposes. Thus, for all of the reasons stated in Lead Plaintiffs' motion for preliminary approval (ECF 112-1 at 24-30) (incorporated herein by reference), Lead Plaintiffs respectfully request that the Court affirm its preliminary certification and finally certify the Settlement Class for purposes of carrying of the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and appoint Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel.

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.'"[3] *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

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any Defendant or Former Defendant has a controlling interest or which is related to or affiliated with any Defendant or Former Defendant; (iv) Aurora's subsidiaries and affiliates or other entities owned or controlled by it; (v) the legal representatives, agents, heirs, successors, administrators, executors, and assigns of each Defendant and Former Defendant; and (vi) any Persons who properly exclude themselves by submitting a valid and timely request for exclusion.

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

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;

(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).[4]

In 1998, in *In re Prudential Insurance Company of America Sales Practice Litigation 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

[4] 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. Fed. R. Civ. P. 23, 2018 Advisory Note, subdiv. (e)(2).

include: "the 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 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 Ellman 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 procedural posture of the case and the difficulty in proving falsity, materiality, scienter, loss causation, and damages, as reflected in the Court's three decisions on the motions to dismiss.

V. THE SETTLEMENT MEETS ALL REQUIREMENTS FOR APPROVAL

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

The Court previously expressed confidence in the abilities of Lead Plaintiffs and Lead Counsel by appointing each to their respective positions. *See* ECF 16. The Court's confidence was well-placed as, since then, they 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 detailed amended complaints; opposed Defendants' motions to dismiss; moved for partial reconsideration of the Court's motion to dismiss order; moved to amend their complaint; utilized the services of experts and consultants, including investigators, an economist, and a damages expert; prepared a mediation statement; and engaged in settlement negotiations and a mediation session led by an experienced mediator. *See generally* Ellman Decl. At each of these stages, Lead Counsel sought to advance this case on behalf of the Settlement Class.

Lead Counsel are highly qualified lawyers well-versed in prosecuting complex class actions under the federal securities laws. Robbins Geller and Hagens Berman have 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, 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 Roberts v. Zuora, Inc., et al.*, No. 3:19-cv-03422-SI (N.D. Cal.) (Illston, J.) (on behalf of the certified class, Hagens Berman secured a

$75.5 settlement, representing a recovery of five times greater than the median recovery obtained in comparable securities class actions cases in 2023); *In Re: Charles Schwab Corp. Sec. Litig.*, No. 08-CV-01510-WHA, ECF No. 1101 (N.D. Cal.) (Alsup, J.) (Hagens Berman secured settlements totaling $235 million recovering 45 percent and 85 percent of investor losses for the two different classes; the Honorable William Alsup commented, "Class counsel did a good job persistently advocating for the best interests of the class members, and obtained a very good result for the class . . . ."); *Aequitas Investor Litig.*, No. 3:16-cv-00580-AC (D. Or.) (Hernandez, J.) (Hagens Berman, on behalf of its clients, reached a unified $234 million settlement with defendants, allowing investors to recover 80% to 90% of their losses after the liquidation of the Aequitas estate).

See also accompanying Declaration of Alan I. Ellman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Ex. E (Robbins Geller firm resumé), Declaration of Shayne C. Stevenson Filed on Behalf of Hagens Berman Sobol Shapiro LLP in Support of Application for Award of Attorneys' Fees and Expenses, Ex. C (Hagens Berman firm resumé), 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. D (Carella Byrne firm firm resumé). In addition, Plaintiffs' support for the Settlement carries substantial weight. *See* Declarations of

Lead Plaintiffs, Doug Daulton, Francisco Quintana, Donald Parrish, and Quang Ma, filed herewith.

Lead Plaintiffs and Lead Counsel have thus adequately represented the Settlement 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, Lead Plaintiffs and Lead Counsel all believe that the Settlement is in the best interests of the Settlement 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, Robert Meyer of JAMS. In advance of the mediation session, the parties prepared and exchanged opening statements. These mediation statements were extensively informed by the facts obtained throughout the

investigation and litigation process. The parties negotiated in good faith, and ultimately agreed to the mediator's proposal to settle the case. Ellman Decl., ¶39.

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., Inc.*, 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 believe that the Settlement is in the best interests of the Settlement 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 nearly five years, discovery has just begun, and the motion to amend the complaint is still pending. Lead Plaintiffs would undoubtedly face substantial additional costs, risks, and delays were litigation to continue, including in subsequent motion to dismiss briefing, 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 Settlement 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

Lead 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, Judge Vazquez twice dismissed the case, and partially dismissed Plaintiffs' claims a third time. As they have maintained in their motions to dismiss, Defendants have contested each of Lead Plaintiffs' allegations, maintaining that their statements concerning the alleged round-trip transaction between Aurora and Radient were not false because there was no round-trip transaction. Ellman Decl., ¶51.[5] Similarly, Defendants have argued that "Plaintiffs have not adequately alleged a causal connection between any misrepresentation or omission about the Radient transaction and their loss." ECF 72-1; Ellman Decl., ¶52.

Further, nearly all of the evidence would need to be reviewed by subject-matter experts given the complex nature of Lead Plaintiffs' claims. 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.

[5] Defendants also argued that because there was no false or misleading statements, scienter could not be adequately alleged or proven. Ellman Decl., ¶51.

Because Lead 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 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 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 Lead 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 Settlement 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.[6] This case is no exception. Here, after nearly five years of litigation, the parties have just started 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 Settlement 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

[6] 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).

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

Lead Plaintiffs' class certification motion has not yet been filed. Defendants would invariably oppose the motion vigorously. Had the Court declined to certify the class, the case would likely be over. Even if the Court grants an eventual class certification motion, Defendants still could have pressed a Rule 23(f) interlocutory petition or moved to decertify the class or trim the class period 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 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. Grp.*, 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 Defendants' arguments as to falsity, materiality, scienter, loss causation, and damages described above. Nevertheless, the Settlement represents a significant percentage of damages that could reasonably be expected to be proved at trial. "Typical settlement recoveries in securities class action cases range from roughly 1.6 to 14 percent." *SOS Ltd.*, 2023 WL 319895, at *6. The $8.05 million recovery under the Settlement, or

approximately 2.53% of the total estimated recoverable damages, significantly exceeds the 1.8% median settlement as a percentage of investor losses in securities class actions settled between 2021 and 2023, inclusive. *See* Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review* at 26, fig. 22 (NERA Jan. 23, 2024).

Moreover, Lead Plaintiffs' estimate of potentially recoverable damages assumes that Lead Plaintiffs would prevail on all of their arguments regarding the causes of the declines in Aurora's stock price on the "corrective disclosure" dates that Lead Plaintiffs alleged, among other issues. Ellman Decl., ¶52. A jury could find at trial that recoverable damages are significantly lower as Defendants have strenuously argued – and thus the Settlement would represent a larger percentage recovery for Settlement Class Members.

Given the complexity of this case and the risks and delay inherent in continued litigation, an $8.05 million recovery is a very good result. Taking into account that this case has been litigated for nearly five years, 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." Fed. R. Civ. P. 23, 2018 Advisory Note, subdiv. (e)(2). Here, the method for processing claims follows well-established and effective procedures. Settlement Class Members must provide basic personal information and trading records to substantiate their transactions in Aurora 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 claim deficiencies 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 Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Fee Memorandum"), Lead Counsel's request for an award of attorneys' fees of 25% of the Settlement Fund is reasonable and appropriate. Further, because the $8.05 million cash component of the Settlement has already been fully funded, there is no risk that counsel will be paid but Settlement 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, Lead Plaintiffs and Defendants have entered into a standard supplemental agreement providing Defendants with the right (but not the obligation) to terminate the Settlement in the event valid requests for exclusion from the Settlement 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. Settlement Class Members Will Be Treated Equitably, and the Reaction of the Settlement Class Supports Final Approval

Rule 23(e)(2)(D) requires the Court to consider whether class members will be treated equitably. All Settlement Class Members will be treated equitably under the terms of the Stipulation, which provides that each Settlement Class Member who properly submits a valid Proof of Claim, including Lead Plaintiffs, will receive a *pro rata* share of the Settlement proceeds based on the terms of the Plan of Allocation. This treats Settlement 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 Settlement Class Members, there have been no objections filed to date. Ellman Decl., ¶48. "[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 Lead Plaintiffs' reply.

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. Lead Plaintiffs are well-informed of the strengths and weaknesses of the case after an extensive investigation and significant litigation and have made an informed decision about the appropriate settlement value of their claims; Settlement Class Members had an opportunity to opt out of the Settlement 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 $8.05 million in cash is an excellent result and could not have been achieved without the commitment of Lead Plaintiffs and the hard work of Lead Counsel. Lead 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 Settlement Class Members who submit valid Claims pursuant to the Plan of Allocation. *See* Segura Decl., Ex. B (Notice). "'[A]pproval 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., Inc.*, 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 consultant.

See Ellman Decl., ¶¶56-57. 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 Aurora shares were purchased, and whether 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 Settlement 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 under the circumstances, 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, Lead Plaintiffs respectfully request that the Court certify the Settlement 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: December 23, 2024

Respectfully submitted,

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