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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE AIMMUNE THERAPEUTICS, INC. SECURITIES LITIGATION

Master File No. 3:20-CV-06733-MMC

CO-LEAD PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINAR APPROVAL OF SETTLEMENT, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing: February 28, 2025
Time: 9:00 a.m.
Court: Courtroom 7, 19th Floor
Judge: Hon. Maxine M. Chesney

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on February 28, 2025 at 9:00 a.m., or as soon thereafter as counsel may be heard before the Honorable Maxine M. Chesney, United States District Judge, at the United States Courthouse, United States District Court, Northern District of California, 450 Golden Gate Ave., San Francisco, California, Class Representatives Bruce Svitak and Cecelia Pemberton ("Class Representatives and, along with Co-Lead Plaintiff Barbara Svitak, "Plaintiffs"),[1] will and hereby do move for entry of the Proposed Order Preliminarily Approving Settlement and Providing for Notice (Stipulation, Ex. A), which will: (1) preliminarily approve the terms of the proposed Settlement as set forth in the Stipulation; (2) approve the form and method for providing notice of the proposed Settlement and Final Approval Hearing to the Class; and (3) schedule the Final Approval Hearing. The proposed Settlement provides for the payment of $27.5 million in cash for the benefit of the Class and, if approved, would fully resolve all claims against all Defendants.

The grounds for this motion are that (1) the proposed Settlement is within the range of fairness, reasonableness, and adequacy, such that Notice of its terms may be disseminated to members of the Class and a hearing for final approval of the proposed Settlement scheduled; and (2) the proposed Notice adequately apprises the Class Members about the terms of the Settlement and their rights with respect to it.

This motion is supported by the following memorandum of points and authorities, the accompanying Declaration of Juan E. Monteverde and the exhibits thereto, including the Stipulation and its exhibits, the previous filings and orders in this case, and such other and further representations as may be made by counsel at any hearing on this matter. **Defendants do not oppose the relief requested in this Motion.**

[1] All capitalized terms not defined herein have the same meanings as in the Stipulation of Settlement dated January 17, 2025 ("Stipulation"). The Stipulation is filed contemporaneously herewith as Exhibit 1 to the Declaration of Juan E. Monteverde in Support of Co-Lead Plaintiffs' Motion for Preliminary Approval of Settlement ("Monteverde Decl.").

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether the proposed $27,500,000.00 Settlement is within the range of fairness, reasonableness, and adequacy to warrant the Court's preliminary approval and the dissemination of notice of its terms to members of the Class.

2. Whether the proposed form of notice and proof of claim and release form and the manner for dissemination to the Class Members should be approved.

3. Whether the Court should set a date for a hearing for final approval of the proposed Settlement and the application of Class Counsel for an award of attorneys' fees and reimbursement of costs and expenses.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

After four years of hard-fought litigation, Plaintiffs have secured a $27,500,000 common fund settlement to resolve all claims in this Action. As outlined below, the proposed Settlement is, (1) to the best of Class Counsel's knowledge, the only settlement of a Section 14 merger/acquisition action where the target company was subsequently written off as nearly worthless by the acquirer *during the pendency of the action*; (2) at the top of the range of all Section 14 merger/acquisition settlements (despite this write off); and (3) nearly *two times* the mean securities settlement in 2023.[2] Accordingly, the proposed Settlement represents an excellent recovery for the Class in light of the significant risks associated with continuing to litigate this case. Monetary recoveries in post-merger actions like this are "relatively rare"[3] because such actions face a difficult and unique hurdle in proving economic loss, namely because shareholders received a premium over the stock's trading price as a result of the merger, which was agreed to after a sales process during which the corporation's value was vetted by

[2] *See* Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, NERA Economic Consulting, (Jan. 24, 2024), available at https://www.nera.com/insights/publications/2024/recent-trends-in-securities-class-action-litigation--2023-full-y.html?lang=en#download. The report notes that the median settlement value was $14 million in 2023, and $13 million in 2022. *Id*. at 1, 20.

[3] Cornerstone Research, *Shareholder Litigation Involving Acquisition of Public Companies, Review of 2015 and 1H 2016 M&A Litigation*, at p. 5 (2016), available at https://securities.stanford.edu/research-reports/1996-2016/Shareholder-Litigation-Involving-Acquisitions-of-Public-CompaniesReview-of-2015-and-1H-2016-MA-Litigation.pdf.

third parties. *This is all the more true when the company was written off just a few years after the acquisition* – a fact that, if admitted, would have been fatal. Indeed, Plaintiffs faced the very real prospect of prevailing in proving liability (which itself presented its own challenges), only to have the Class receive nothing if the Court or a jury agreed with Defendants and their experts regarding loss causation/damages.[4]

Class Representatives and Class Counsel were acutely aware of the strengths and weaknesses of this case when they agreed to settle, as the proposed Settlement was achieved after the completion of fact and expert discovery, consultation with damages experts, full briefing of motions for summary judgment and *Daubert* motions, and a lengthy and hard-fought mediation process overseen by an experienced mediator. As a result of Co-Lead Plaintiffs' and Class Counsel's efforts over the past four years, the Class now stands to partake in a settlement that far exceeds the recent median settlement values in securities class actions.

For these reasons, and as provided herein, the proposed Settlement and Plan of Allocation easily fall within the range of fairness, reasonableness, and adequacy such that Notice should be disseminated to the Class Members; and the proposed Notice adequately apprises Class Members about the terms of the Settlement and their rights with respect to it. Accordingly, the proposed Settlement should be preliminarily approved so that Notice may be disseminated to shareholders.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The initial complaint in this consolidated Action was filed on September 25, 2020. ECF No. 1. On December 14, 2020, Bruce and Barbara Carol Svitak and Cecilia Pemberton filed respective motions for lead plaintiff. ECF Nos. 19, 20.[5] On February 22, 2021, this Court entered an Order that appointed Bruce and Barbara Carol Svitak and Cecilia Pemberton as Co-Lead Plaintiffs and appointed their counsel (Monteverde & Associates PC and Kahn Swick & Foti, LLC) as Co-Lead Counsel for the consolidated action. ECF No. 47.

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[4] *See* ECF Nos. 162 (Defendants' Motion for Summary Judgment); 163 (Defendants' Motion to Exclude in Part, Expert Report and Testimony of William Jeffers).

[5] Prior to filing her motion for lead plaintiff, Ms. Pemberton had also sought and received books and records from Aimmune regarding the Merger under Delaware law (specifically, pursuant to 8 Del. C. § 220) in the action captioned *Pemberton v. Aimmune Therapeutics, Inc.*, C.A. No. 2020-0859-JRS.

On September 30, 2021, Plaintiffs filed their Amended Complaint, in which they alleged counts for violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") against Aimmune and its former CEO relating to the Recommendation Statement soliciting Aimmune shareholders to tender their shares in the Tender Offer. ECF No. 52. On November 23, 2021, Defendants filed a Motion to Dismiss the Amended Complaint. ECF No. 54. Plaintiffs filed their opposition to Defendants' motion on January 11, 2022, Defendants filed their reply on February 15, 2022, and Plaintiffs filed a sur-reply on March 12, 2022. ECF Nos. 59, 62, 68. A hearing was held before the Court on April 29, 2022, after which the Court entered an Order Denying Defendants' Motion to Dismiss the Amended Complaint. ECF Nos. 71, 72.

On May 20, 2022, Defendants filed their Answer and Affirmative Defenses to Amended Complaint. ECF No. 76. On June 9, 2022, the parties filed a Joint Case Management Statement & [Proposed] Order and Joint 26(f) Discovery Plan and Schedule. ECF No. 79.

On August 31, 2022, Defendants filed a Rule 12(c) Motion for Judgment on the Pleadings, asserting that Plaintiffs lacked a private right of action under Section 14(e). ECF No. 85. Plaintiffs filed their opposition on September 23, 2022, and Defendants filed their reply on October 10, 2022. ECF Nos. 88, 91. After a hearing before the Court, on November 18, 2022, the Court entered an Order Denying Defendants' Rule 12(c) Motion for Judgment on the Pleadings. ECF No. 96.

On December 22, 2022, Defendants filed a Motion to Certify for an Interlocutory Appeal the Court's November 18, 2022 Order Under 28 U.S.C. § 1292(b). ECF No. 98. Plaintiffs opposed Defendants' Motion on January 25, 2023, and Defendants filed their reply on February 3, 2023. ECF Nos. 106, 107. Following a hearing on February 24, 2023, the Court entered an Order denying the motion. ECF No. 110.

On June 23, 2023, the Court entered an Amended Pretrial Preparation Order, setting various discovery and other pre-trial deadlines and scheduling a jury trial to commence on January 13, 2025. ECF No. 125. Thereafter, the parties engaged in extensive discovery. During the course of the action, Defendants and third parties produced and Class Counsel reviewed more than 313,000 pages of discovery documents, including e-mails, board materials, financial data and projections, analyst

reports, and other Merger-related documentation. Monteverde Decl., ¶2. The parties conducted 19 fact and expert witness depositions. *Id*. All three Plaintiffs sat for depositions and produced documents to Defendants. *Id*. Plaintiffs also prepared and mailed surveys to approximately 2,104 potential Class Members regarding the importance of the facts at issue in the case to the average reasonable investor. *Id*. In addition, the parties engaged respective experts. Plaintiffs retained William Jeffers, CFA of the Griffing Group, and Defendants engaged Professor Paul A. Gompers, Ph.D., of the Harvard Business School. *Id*. Both experts filed extensive opening and responsive reports, and both experts were deposed. *Id*.

On December 8, 2023, the Court entered a stipulated Second Revised Scheduling Order extending certain deadlines to accommodate the time needed to complete productions from third-party advisors and conduct certain depositions, including of foreign deponents. ECF No. 131.

On March 8, 2024, Plaintiffs filed a Motion for Class Certification, and a hearing before the Court was scheduled for June 28, 2024. ECF No. 134. Defendants filed their response in opposition on April 22, 2024, and Plaintiffs filed their reply on May 21, 2024. ECF Nos. 141, 142. On May 24, 2024, the Court entered an Order Granting Co-Lead Plaintiffs' Motion for Class Certification; Vacating Hearing (the "Class Certification Order"). ECF No. 143. Pursuant to the Class Certification Order, Co-Lead Plaintiffs Bruce Svitak and Cecilia Pemberton were appointed as Class Representatives[6] and Monteverde & Associates PC and Kahn, Swick & Foti, LLC were appointed as Class Counsel. *Id*. The Court certified a class defined as (*id.*):

> All record holders and all beneficial holders of Aimmune Therapeutics, Inc. ("Aimmune" or the "Company") common stock who held such stock at any time during the pendency of the tender offer involving Aimmune and Société des Produits Nestlé S.A. ("Nestle") (from September 14, 2020 through October 9, 2020) and had their shares exchanged for $34.50 per share in connection with the closing of the merger (on October 13, 2020) (the "Class"). Excluded from the Class are: (i) Nestle and its affiliates; (ii) the officers and directors of the Company and members of their immediate families; (iii) any entity in which Defendants have or had a controlling interest; and (iv) the legal representatives, heirs, successors or assigns of each officer and director of the Company.

On June 14, 2024, Class Representatives filed a Motion for Partial Summary Judgment and a *Daubert* Motion to Limit Testimony of Paul A. Gompers, and Defendants filed a Motion for

[6] Co-Lead Plaintiff Barbara Carol Svitak did not seek appointment as a Class Representative.

Summary Judgment and a Motion to Exclude, in Part, Expert Report and Testimony of William Jeffers. ECF Nos. 153, 158, 162, 163. The Parties filed their respective oppositions on August 5 and August 9, 2024, and their replies on September 19, 2024. ECF Nos. 194, 195, 198, 199, 210, 212, 214, 215. All of the motions were scheduled for hearing on November 1, 2024.

On September 24, 2024, the Parties participated in a mediation before David M. Murphy of Phillips ADR Enterprises, P.C. Monteverde Decl., at ¶3. By the time the Parties participated in the mediation, fact and expert discovery was complete, and all Parties had fully briefed and opposed the motions for summary judgment and *Daubert* motions. *Id*. In connection with the mediation, the Parties provided the mediator with the summary judgment and *Daubert* motions and presentations. *Id*. While the Parties were not able to reach a settlement at the mediation, the Parties continued their discussions with the assistance of Mr. Murphy. *Id*. On October 31, at the request of the parties, the hearing on the summary judgment and *Daubert* motions was rescheduled to November 8, 2024, to allow the Parties to continue settlement negotiations. ECF No. 237.

On November 7, 2024, after further negotiations, the Parties accepted a mediator's proposal and reached an agreement in principle to resolve the Litigation, subject to Court approval. Monteverde Decl. at ¶3. Later that day, the parties filed a Notice of Settlement with the Court, after which the Court vacated all remaining deadlines, hearings, and trial dates. ECF Nos. 238, 239. Thereafter, the Settling Parties memorialized the terms of the Settlement in the Stipulation.

III. TERMS OF THE PROPOSED SETTLEMENT

Pursuant to the Stipulation, which sets forth the full terms of the proposed Settlement, in exchange for the full settlement and release by the Class of its claims related to the Merger, the Recommendation Statement, and the disclosures therein, Defendants shall cause the Settlement Amount of $27,500,000 to be paid into the Escrow Account and distributed to the Authorized Claimants in accordance with the Plan of Allocation described fully in the Notice.

IV. ARGUMENT

A. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

There are three sources of rules governing approval of class action settlements in this District. First, Rule 23(e) of the Federal Rules of Civil Procedure applies. The process under that rule involves two stages: preliminary approval followed by notice to the class, and then final approval after a hearing. *Relente v. Viator, Inc.*, No. 12-cv-05868-JD, 2014 U.S. Dist. LEXIS 160350, *5 (N.D. Cal. Nov. 14, 2014) (Donato, J.). "The court's task at the preliminary approval stage is to determine whether the settlement falls within the range of possible approval." *In re Wells Fargo & Co. S'holder Deriv. Litig.*, 445 F. Supp. 3d 508, 517 (N.D. Cal. 2020) (internal quotation marks omitted). "[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015).

Federal Rule of Civil Procedure 23(e) also provides courts with various factors they must consider in connection with reviewing a settlement for approval, including 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 to the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). A comprehensive assessment of all factors cannot be made by the Court until the final approval hearing after any Class Member has had a chance to object and/or opt out. Thus, at the preliminary approval stage the Court is to consider whether it "will likely be able to . . . approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B). Preliminary approval is appropriate when the proposed settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies and does not improperly grant preferential treatment to class representatives or segments of the class; and (3) falls within the range of possible approval. *In re Facebook Biometric Info. Priv. Litig.*, No. 15-CV-03747-JD, 2020 U.S. Dist. LEXIS 151269, *9 (N.D. Cal. Aug. 19, 2020) (Donato, J.).

These Rule 23(e) factors are not intended to fully displace factors previously adopted by courts to evaluate settlements. *See, e.g., Wong v. Arlo Techs.,* No. 5:19-cv-00372-BLF, 2021 U.S. Dist. LEXIS 58514, at *19 (N.D. Cal. Mar. 25, 2021) ("[T]he Court applies the framework set forth in Rule 23 with guidance from the Ninth Circuit's precedent."). Rather, and second, the Ninth Circuit has long considered the following additional factors when evaluating a class settlement (the "*Hanlon* Factors"), some of which overlap with Rule 23(e)(2): (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of Settlement Class members. *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998); *see also, e.g., Lane v. Facebook*, Inc., 696 F.3d 811, 819 (9th Cir. 2012) (discussing the *Hanlon* factors). Finally, and third, the Northern District of California provides practitioners with procedural guidance for class action settlements ("Procedural Guidance"), some of which overlaps with the factors for settlement approval set forth in Rule 23(e)(2) and in *Hanlon*.[7]

In light of this overlap, Class Representatives address all of the above-referenced factors below where they logically fit.[8] As discussed, the proposed Settlement readily satisfies each of the factors outlined in Rule 23(e)(2), *Hanlon*, and this Court's Procedural Guidance; preliminary approval should thus be granted; and Notice of the proposed Settlement should be sent to the Class.

1. Class Representatives and Class Counsel Have Adequately Represented the Class (Rule 23(e)(2)(A) and *Hanlon* Factor 6)

Rule 23(e)(2)(A) requires courts to resolve two questions to determine "legal adequacy" of a proposed settlement: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. Here, Class Representatives and Class Counsel have no interests contrary to other Class Members: Co-Lead Plaintiffs' claims are typical of

[7] https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/.
[8] Exhibit 2 to the Monteverde Decl. provides the list of the Procedural Guidance and citations to the relevant pages of the Stipulation, its exhibits, and this motion to affirm compliance.

those of the Class, and their interest in obtaining the largest possible recovery for investors is aligned with that of the Class. *Mild v. PPG Indus.*, No. 2:18-cv-04231-RGK-JEM, 2019 U.S. Dist. LEXIS 124352, at *7 (C.D. Cal. July 25, 2019) ("Because Plaintiff's claims are typical of and coextensive with the claims of the Settlement Class, his interest in obtaining the largest possible recovery is aligned with the interests of the rest of the Settlement Class members."). Co-Lead Plaintiffs have also endeavored to protect the interests of the Class by, among other things, engaging experienced counsel, responding to written discovery, and sitting for depositions.

Moreover, for more than four years, Class Counsel have zealously represented the interests of the Class. Class Counsel's significant experience in securities litigation and their recommendation of the proposed settlement weighs strongly in favor of preliminary approval. As detailed in their respective firm resumes, and as this Court has seen firsthand, Class Counsel have an extensive track record of securing substantial monetary recoveries for shareholders. Monteverde Decl., Exs. 3 and 4 (firm resumes).

Class Counsel's informed conclusion that the Settlement is fair, adequate, and reasonable is predicated on their knowledge of the strengths and weaknesses of the claims based on the evidence adduced through fact and expert discovery, as well as Class Counsel's analysis of Defendants' legal and factual arguments, and the potential risk that the Court or a jury may have ruled in favor of Defendants – resulting in no recovery at all. *See In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) ("recommendation of counsel" that was familiar with the dispute and had expertise in securities litigation weighed in favor of approving the settlement). Moreover, at the time of the Settlement, Class Counsel had devoted thousands of hours to prosecuting the action, engaged in substantial motion practice, an adversarial discovery process, a formal mediation process with an experienced mediator, and was in the process of preparing the case for trial. *See Hefler v. Wells Fargo & Co.,* No. 16-cv-05479-JST, 2018 U.S. Dist. LEXIS 213045, at *18 (N.D. Cal. Dec. 17, 2018) (Rule 23(e)(2)(A) satisfied where "Class Counsel had vigorously prosecuted this action through dispositive motion practice, extensive…discovery, and formal mediation"). Thus, Class Counsel's experience in securities litigation, its familiarity with comparable cases and settlements, and its zealous prosecution

of the case render counsel well-suited to evaluate the fairness of the Settlement and to determine whether it is in the best interests of the Class. In sum, Class Representatives' and Class Counsel's zealous representation weigh in support of preliminary approval of the proposed Settlement.

2. The Settlement is the Result of Good Faith, Arm's-Length Negotiations (Rule 23(e)(2)(B))

The Ninth Circuit and district courts within this Circuit "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Arm's-length negotiations typically take place over an extended period of time with experienced counsel on both sides, each with an understanding of the strengths and weaknesses of their own and the opposing party's claims. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007); *see also Moorer v. Stemgenex Med. Grp.*, No. 16-cv-02816-AJB-NLS, 2021 U.S. Dist. LEXIS 4037, at *11 (S.D. Cal. Jan. 8, 2021) (deference to experienced counsel); *Hanlon*, 150 F.3d at 1027 (courts are deferential "to the private consensual decision of the parties"); *In re Wells Fargo Collateral Prot. Ins. Litig.*, No. SAML 17-02797 AG (KESx), 2019 U.S. Dist. LEXIS 202087, at *24-25 (C.D. Cal. Nov. 4, 2019) (same).

The proposed Settlement here is the product of just such serious, informed, non-collusive negotiations between the parties after extensive litigation and discovery, certification of the Class, fully briefed motions for summary judgment and *Daubert* motions, and a fulsome mediation process before an experienced mediator[9] that resulted in a mediator's recommendation. *Facebook Biometric Info. Priv. Litig.*, 2020 U.S. Dist. LEXIS 151269, at *10-11 (settlement deemed "product of serious, informed and noncollusive negotiations" when achieved after formal mediation and "considerable time and effort by the mediator and the parties"). As noted, the Parties participated in a full-day, in-person mediation before Mr. Murphy on September 24, 2024; thereafter participated in various teleconferences and correspondences through Mr. Murphy for the following six weeks; and did not come to a settlement in principle until November 7, 2024, just one day before the dispositive motion

[9] David Murphy is an experienced mediator that regularly mediates federal class action securities law cases, shareholder derivative suits, and breach of fiduciary duty and corporate control cases. Philips ADR, David Murphy, Esq., https://phillipsadr.com/our-team/david-m-murphy/ (last visited November 27, 2024).

hearing in this matter, and as a result of an October 30, 2024 double-blinded mediator's proposal. Monteverde Decl., ¶3. Through this process, the strengths and weaknesses of the Parties' claims and defenses were extensively debated; negotiations were hard-fought; and Class Representatives and Class Counsel were thus well-positioned to evaluate the strengths and weaknesses of the claims and defenses, as well as the fairness of the Settlement. *Id*. at ¶4.

This process and the participation of an independent mediator weigh in favor of a finding that the Settlement is not collusive. *De Leon v. Ricoh USA, Inc.*, No. 18-cv-03725-JSC, 2019 U.S. Dist. LEXIS 204442, at *29 (N.D. Cal. Nov. 25, 2019) ("The use of an experienced private mediator and presence of discovery supports the conclusion that Plaintiff [was] armed with sufficient information about the case to broker a fair settlement."); *Moore v. Verizon Communs., Inc.*, No. C 09-1823 SBA, 2013 U.S. Dist. LEXIS 122901, *32 (N.D. Cal. Aug. 28, 2013) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 938) (participation of a mediator is "a factor weighing in favor of a finding of non-collusiveness.").

3. The Settlement Provides Adequate Relief for the Class (Rule 23(e)(2)(C), *Hanlon* Factor 4, and Procedural Guidance 1(c) and 11)

Pursuant to Rule 23(e)(2)(C) and *Hanlon* Factor 4, the Court also considers whether "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)."[10] When evaluating the adequacy of a settlement, courts balance a plaintiff's expected recovery against the value of the offer. *See Vataj v. Johnson*, No. 19-cv-06996-HSG, 2021 U.S. Dist. LEXIS 75879, at *26 (N.D. Cal. Apr. 20, 2021); *Tableware*, 484 F. Supp. 2d at 1080. Here, the $27.5 million recovery represents (1) 28.9% of damages based on Aimmune's 52-week high share price (which represented an aggregate plausible damages amount of $95 million) and (2) 13.7% of the maximum theoretical aggregate damages of $201.2 million calculated by Co-Lead Plaintiffs' expert, assuming they prevailed on *all* claims against Defendants. *See* Monteverde Decl., ¶8.

[10] Each of these four factors are addressed separately below.

This proposed Settlement recovery is in line with and exceeds recent comparable class action settlements and is a very good result for any stage of the litigation. *See, e.g., Ferraro Family Foundation, Inc., et al. v. Corcept Therapeutics Inc., et al.,* Case No. 3:19-cv-01372-JD (ECF Nos. 195 and 215) (approving settlement that recovered 7.3% of maximum available damages); *Vataj v. Johnson*, 2021 U.S. Dist. LEXIS 75879, at *26 (preliminarily approving settlement that was 2% of estimated damages); *In re Extreme Networks, Inc. Sec. Litig*., No. 15-cv-04883-BLF, 2019 U.S. Dist. LEXIS 121886, at *27 (N.D. Cal. July 22, 2019) (approving settlement that recovered 5%-9.5% of estimated maximum non-disaggregated damages); *see also* Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, NERA Economic Consulting, (Jan. 24, 2024), at 24, available at https://www.nera.com/insights/publications/2024/recent-trends-in-securities-class-action-litigation--2023-full-y.html?lang=en#download (median ratio of settlement to losses was 1.8% since 2021).

Assuming all shares in the Class submit a valid and timely Proof of Claim, the average distribution will be $0.60 per share owned (before the payment of Court-approved fees and expenses (estimated to be approximately $0.20 per share) and the cost of notice and claims administration). Monteverde Decl., ¶8. The Settlement is thus not just in line with, but in fact superior to other Section 14 "merger projection challenge" case settlements. *See, e.g., Karri v. Oclaro, Inc., et al*., Case No. 3:18-03435 (N.D. Cal. 2024) (recovery of $0.09 per share for shares that were valued at $8.36); *In re Envision Healthcare Corp.*, No. 18-1068-RGA (D. Del.) (recovery of $0.14 per share for a $46 stock); *NECA-IBEW Pension Trust Fund v. Precision Castparts Corp*., No. 16-cv-01756-YY (D. Or. 2021) (recovery of $0.40 per share for a $111 stock); Monteverde Decl., Ex. 5 (summarizing recent comparable Section 14 class settlements).

4. The Costs, Risks, and Delay of Trial and Appeal Support Approval of the Settlement (Rule 23(e)(2)(C)(i), *Hanlon* Factors 1, 2 and 3, and Procedural Guidance 1(c))

Rule 23(e)(2)(C)(i) – which incorporates *Hanlon* Factors 1, 2 and 3[11] – requires the Court to weigh the cost, risk, and delay of further litigation against the result achieved, and Procedural

[11] Rule 23(e)(2)(C)(i) essentially incorporates the first three traditional *Hanlon* factors. *See, e.g.*,

Guidance 1(c) requires justification for the discount applied to Co-Lead Plaintiffs' claims in the Settlement.

It is undisputed that "'securities actions are highly complex and…securities class litigation is notably difficult and notoriously uncertain.'" *Hefler,* 2018 U.S. Dist. LEXIS 213045, at *37; *see also Mauss v. NuVasive, Inc*., No. 13cv2005 JM (JLB), 2018 U.S. Dist. LEXIS 206387, at *15-16 (S.D. Cal. Dec. 5, 2018) (recognizing that "[s]ecurities class actions are complex actions to litigate" and often involve "complex and highly risky trial and likely post-trial appeals and motion practice"). While Co-Lead Plaintiffs remained confident in their ability to prove their claims at trial, Defendants advanced several credible arguments regarding both liability and damages. For example, Defendants argued the Recommendation Statement was not false and misleading because it informed stockholders that the Company's projections had been reduced and included the impact of the maintenance duration assumption on the share price in documents made available to investors with the original Recommendation Statement, as well as in an amendment to the Recommendation Statement. *See* ECF No. 162 (Defendants' Motion for Summary Judgment). They likewise argued that, because Palforzia had not reached commercialization at the time of the Merger, the maintenance duration assumption was necessarily an uncertain extrapolation made from a small number of clinical trials, and that Plaintiffs had not adduced evidence that Defendants intended to deceive investors regarding this assumption. *Id.* Defendants also argued that Plaintiffs could not support their claim that Aimmune's CEO intentionally manipulated the projections, as he had every incentive to maximize his own proceeds in the Merger. *Id*. Simply put, establishing Defendants' liability at summary judgment or trial would be difficult and complex, with success far from certain. Monteverde Decl., ¶5.

Even more concerning were Defendants' arguments regarding, and Plaintiffs' unique hurdle of proving, economic loss in a Section 14 case such as this one. Even if liability had been established, Defendants had numerous challenges to loss causation and damages, including the fact that Aimmune stockholders received a 174% premium for their Aimmune shares through the Merger, and that there was no higher offer on the table. ECF No. 163; Monteverde Decl., ¶6. Indeed, based in part on these

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Wong, 2021 U.S. Dist. LEXIS 58514, at *25 (N.D. Cal. Mar. 25, 2021) (citing *Hanlon*, 150 F.3d at 1026).

facts, in a motion pending before the Court at the time of the Settlement, Defendants sought to exclude vast swaths of Plaintiffs' valuation expert's opinions that, if granted, may have singlehandedly rendered it impossible for Plaintiffs to prove damages at trial. *Id*. Perhaps most compelling of all, though, was Defendants argument that Nestlé had sold Aimmune's primary product at a substantial loss and essentially written off the value of the acquisition *while this case was pending. Id*. Had that single fact made its way before the jury, a jury may well have found that Plaintiffs and the Class not only suffered no loss at all, but that Nestlé in fact overpaid for Aimmune to begin with. *Id*. Simply put, "in 'any securities litigation case, it [is] difficult for [plaintiff] to prove loss causation and damages at trial.'" *In re Zynga Sec. Litig.,* No. 12-cv-04007-JSC, 2015 U.S. Dist. LEXIS 145728, at *35 (N.D. Cal. Oct. 27, 2015). That was all the more true here, where the target company in this securities litigation was written off while this case was pending.

Moreover, while the Class had already been certified by the Court, Rule 23(c)(1) provides that a class certification order may be altered or amended at any time prior to a decision on the merits, such that there was an ongoing risk that any certified class could have been disturbed on appeal or if Defendants successfully moved to decertify the Class. *See Rodriguez*, 563 F.3d at 966. And, even if Plaintiffs prevailed at a trial, Defendants would almost certainly file an appeal – a process that would further extend the litigation for years and risk reversal of any verdict. Monteverde Decl., ¶7. Finally, barring the Settlement, this case would require the expenditure of substantial time and money for trial and beyond, with no guarantee that any additional benefit would be provided to the Class, and with the risk that the Class would receive nothing. As noted, at the time the Settlement was reached, Defendants' motion for summary judgment sought dismissal of all claims. *Id*. Conversely, the Settlement confers a substantial and immediate benefit and avoids the risks associated with obtaining a wholly speculative (though potentially larger) sum in the future. *Id*.

In sum, Defendants had "plausible defenses that could have ultimately left class members with a reduced or non-existent recovery." *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 999 (N.D. Cal. 2015). The Settlement balances the risks, costs, and delay inherent in complex cases, is a meaningful recovery, and thus merits preliminary approval.

5. The Extent of Discovery Completed and the Stage of the Proceedings at Which the Settlement Was Achieved (*Hanlon* Factor 5)

Relatedly, the fifth *Hanlon* factor strongly supports preliminary approval. At the time the Settlement was reached, the Parties had a thorough understanding of the arguments and evidence. Co-Lead Plaintiffs, through Class Counsel, over more than four years: (i) conducted a detailed investigation into the claims asserted and drafted an amended complaint; (ii) successfully opposed a 12(b)(6) motion to dismiss; (iii) successfully opposed a Rule 12(c) motion for judgment on the pleadings and a motion for leave to file a supervisory writ; (iv) won a motion for class certification; (v) extensively consulted with a valuation expert and obtained an expert report on damages and loss causation; (vi) drafted and responded to written discovery requests; (vii) obtained and analyzed over 313,000 pages of documents produced by Defendants and third parties; (viii) conducted 19 depositions, both fact and expert; (ix) prepared and mailed surveys to approximately 2,104 potential class members regarding the importance of the facts at issue in the case to the reasonable investor; (x) fully briefed a partial motion for summary judgment and an opposition to Defendants' motion for summary judgment; (xi) fully briefed a *Daubert* motion to limit the testimony of Defendant's expert and an opposition to Defendants' motion to limit Co-Lead Plaintiffs' expert; and (xii) participated in a fulsome mediation process with an experienced mediator. Accordingly, Class Representatives and Class Counsel were in an excellent position to assess the strengths and weaknesses of the case at the time of the Settlement.

6. The Proposed Method for Distributing Relief is Effective (Rule 23(e)(2)(C)(ii))

The method for providing notice and distributing relief to eligible claimants and for processing Class Members' claims in the Settlement includes standard, well-established, and effective procedures for processing claims and efficiently distributing the Net Settlement Fund, and is therefore an effective method of distribution under Rule 23(e)(2)(C)(ii). The Notice and Proof of Claim and Release will be mailed via first class mail to all Class Members who can be identified with reasonable effort. Proposed Preliminary Approval Order, ¶7(b). Additionally, Notice will be posted on a website created for this case and Summary Notice shall be published in *PRNewswire*. *Id*. The claims process includes a standard claim form that requests basic information necessary to calculate a claimant's claim amount pursuant to the Plan of Allocation, which governs how Class Members' claims will be

calculated and, ultimately, how money will be distributed to Authorized Claimants. Proposed Notice and Proposed Clam Form, Exs. A-1 and A-2 to Proposed Order for Preliminary Approval.

7. Anticipated Legal Fees and Expenses and Service Awards (Rule 23(e)(2)(C)(iii) and Procedural Guidance 2, 6 and 7)

As set forth in the Notice, Class Counsel intend to move for attorneys' fees of no more than one-third of the Settlement Fund, plus expenses not to exceed $450,000.00, which includes expert fees of $289,011.01. This anticipated fee request is well supported by "(1) the results achieved for the class; (2) the complexity of the case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and performance of counsel on both sides; (4) the contingent nature of the fee; and (5) fees awarded in comparable cases." *In re Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD, 2018 U.S. Dist. LEXIS 169764, at *44 (N.D. Cal. Sept. 21, 2018) (Donato J.) (citing the Ninth Circuit's *Vizcaino* factors and noting that "[s]election of the benchmark or any other rate [] must be supported by findings that take into account all of the circumstances of the case).

A one-third fee of the $27,500,000 Settlement Amount would equate to $9,166,667. While significant additional time will be spent in connection with final approval and settlement administration, Class Counsel's current lodestar is already $5,631,732.50 ($2,865,375.00 for 3,819.10 hours by M&A and $2,766,357.50 for 3,423.60 hours by KSF), and thus a one-third fee of the Settlement Amount represents approximately a 1.6x multiplier to the time that Class Counsel has expended to date. Monteverde Decl., ¶11.

A fee request of one-third of the Settlement Amount and a multiplier of 1-2x are both in line with fees routinely granted in complex class actions such as this one. *See, e.g., Karri v. Oclaro, Inc.*, 18-cv-3435-JD (N.D. Cal. 2018) (approving one-third award); *Ziegler v. GW Pharmaceuticals plc*, Case No. 3:21-cv-01019-BAS-MSB (S.D. Cal. 2024) (approving one-third award); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming one-third award); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33% award "for attorneys' fees is justified because of the complexity of the issues and the risks"); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 U.S. Dist. LEXIS 86270, at *4 (E.D. Cal. Nov. 14, 2007) (approving a fee award of 33% of the common fund, and stating "'[e]mpirical studies show that, regardless whether

the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery,'" *citing* 4 Newberg and Conte, Newberg on Class Actions § 14.6 (4th ed. 2007)); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 U.S. Dist. LEXIS 16939, at *12 (N.D. Cal. Feb. 6, 2013) ("[m]ultipliers of 1 to 4 are commonly found to be appropriate in complex class action cases"); *Winters v. Two Towns Ciderhouse, Inc.*, No. 20-cv-00468-BAS-BGS, 2021 U.S. Dist. LEXIS 89872, at *6 (S.D. Cal. May 11, 2021) ("lodestar of 1.675 is not unreasonable or out of the realm of multipliers other courts have awarded") (citing *Vizcaino*, 290 F.3d at 1043 (upholding a lodestar multiplier of 3.65)).[12]

Additionally, a review of fee awards in cases involving "common funds of comparable size[,]"*Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d at 632, suggests the market rate fee award in such cases is approximately 33%. *See Davis v. Yelp, Inc.*, No. 18-cv-00400-EMC, 2023 U.S. Dist. LEXIS 40323, at *6 (N.D. Cal. Jan. 27, 2023) (awarding 33% of $22.25 million common fund in securities case and collecting cases awarding same percentage of similarly sized common funds); Exh. 5 to Monteverde Decl. (summarizing recent comparable Section 14 class settlements). As Class Counsel will demonstrate in their motion for an award of attorneys' fees, an award of one-third of the Settlement Amount is warranted after "consider[ing] all the circumstances of the case[.]" *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1048 (9th Cir. 2002).

Finally, Co-Lead Plaintiffs also intend to seek service awards relating to their role in this action and representation of the Class in the aggregate amount of $25,000 ($10,000 each for Class Representatives and $5,000 for Co-Lead Plaintiff Barbara Svitak) pursuant to 15 U.S.C. § 78u-4(a)(4), as reimbursement for their time and expenses. Co-Lead Plaintiffs performed their duties by responding to discovery (including collecting documents, answering interrogatories and requests for admission, and sitting for their depositions) and regularly and extensively communicating with Class Counsel

[12] "[W]hether the case was risky for class counsel" is also a pertinent factor. *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 631 (N.D. Cal. 2021) (Donato, J.). The risk Class Counsel undertook here is magnified by the fact that they are both boutique firms, and litigating this Action required devoting a significant amount of their resources and foregoing other opportunities. *See Denton v. Pennymac Loan Servs., LLC*, 252 F. Supp. 3d 504, 518 (E.D. Va. 2017) (counsel "is a small law firm and thus representing a client on a contingent fee…basis necessarily involved loss of other opportunities.").

regarding developments in the litigation, including settlement. Monteverde Decl., ¶12. These service awards are fully supported by Co-Lead Plaintiffs' efforts. *Rodriguez*, 563 F.3d at 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general"); *Bellinghausen v. Tractor Supply Co.,* 306 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases and noting that, while such an award is discretionary, service awards "typically range from $2,000 to $10,000"); *see also Todd v. STAAR Surgical Co.*, No. CV 14-5263 MWF (GJSx), 2017 U.S. Dist. LEXIS 176183, at *15-16 (C.D. Cal. Oct. 24, 2017) (collecting "numerous cases in which service awards of $10,000 or more are found reasonable").[13]

8. The Proposed Settlement Treats All Class Members Equitably (Rule 23(e)(2)(D) and Procedural Guidance 1(g))

The Settlement has no obvious deficiencies and does not grant improper or preferential treatment to Co-Lead Plaintiffs or other segments of the Class. In *In re Bluetooth Headset Products Liability Litigation*, the Ninth Circuit noted three troubling signs of a potential disregard for the class's interests: (a) when class counsel receive a disproportionate distribution of the settlement; (b) when the parties negotiate a "clear sailing" arrangement that provides for the payment of attorneys' fees separate and apart from class funds; or (c) when the parties arrange for fees not awarded to plaintiffs' counsel to revert to defendants rather than the class. 654 F.3d 935, 947-48 (9th Cir. 2011).

None of these deficiencies exist here. The proposed Settlement creates a common fund, with no reversion to Defendants. Stipulation ¶5.7. The funds will be used to cover costs and fees and compensate Class Members based on a *pro rata* formula pursuant to the Plan of Allocation. Under the Plan of Allocation, each Authorized Claimant that submits a valid, timely Proof of Claim will receive distribution from the Net Settlement Fund on a *pro rata* basis. Stipulation ¶5.3(h), Notice at 13. This means that every shareholder in the Class will receive equal treatment under the Plan of Allocation. *See Ciuffitelli v. Deloitte & Touche Lp,* No. 3:16-cv-00580-AC, 2019 U.S. Dist. LEXIS 61386, at *19 (D. Or. Mar. 19, 2019; *In re Portal Software Sec. Litig*., No. C-03-5138 VRW, 2007

[13] Such awards also would "not constitute inequitable treatment of class members" relative to Co-Lead Plaintiffs. *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-cv-04883-BLF, 2019 U.S. Dist. LEXIS 121886, at *26 (N.D. Cal. July 22, 2019).

U.S. Dist. LEXIS 51794, at *14 (N.D. Cal. June 30, 2007) (the Settlement "does not improperly grant preferential treatment to [the Lead Plaintiff] or segments of the class") (citation omitted); *see also Opperman v. Kong Techs., Inc.,* No. 13-cv-00453-JST, 2017 U.S. Dist. LEXIS 104507, at *20 (N.D. Cal. July 6, 2017).

9. Other Agreements (Rule 23(e)(2)(C)(iv))

The Parties have entered into a standard supplemental agreement that provides that, if a certain threshold number of Class Members opt out of the Settlement, Defendants shall have the option to terminate the Settlement. Stipulation ¶7.4. Agreements of this sort are typical in class settlements and, if requested, Plaintiffs can submit additional information regarding this supplemental agreement *in camera*. There are no other side agreements.

10. No government participants or other cases affected (*Hanlon* Factor 7, Procedural Guidance 1(d))

Finally, the Parties are aware of no other cases that will be affected by the Settlement. Additionally, there are no governmental participants involved in the Merger or the Action.[14]

B. THERE ARE NO DIFFERENCES BETWEEN THE CERTIFIED CLASS AND THE SETTLEMENT CLASS, AND THE RELEASE IS PROPERLY TAILORED TO THE CLAIMS AT ISSUE (PROCEDURAL GUIDANCE 1(a) AND (b))

The "Class" is defined in paragraph 1.6 of the Stipulation identically to how the "Class" was defined in the Order Granting Co-Lead Plaintiffs' Motion for Class Certification (ECF 143). Thus, there is no "reason to reconsider [the] prior certification order." *Koeppen v. Carvana, LLC*, No. 21-cv-01951-TSH, 2024 U.S. Dist. LEXIS 150626, at *12 (N.D. Cal. Aug. 22, 2024).

There are also no substantive differences between the claims to be released and the claims previously set forth in Plaintiffs' Amended Complaint, which were certified for class treatment, as the claims to be released include all claims in Plaintiffs' Amended Complaint and related Released Claims against Released Persons as defined in the Stipulation (and also described in the Notice and Claim Form). *Id.*; Stipulation ¶1.28. And, while the Released Claims include not only those claims that were asserted, but also those that could have been asserted, the Stipulation properly limits such

[14] *Hanlon* factor 8 is "the reaction of Settlement Class members." This cannot be determined until Notice is provided and Class Members are able to respond at or prior to the Final Approval hearing.

Released Claims to those that arise out of "(i) the Litigation; (ii) the Merger or Tender Offer; and (iii) the Recommendation Statement…or any other disclosures related to the Merger or Tender Offer." *Id*. In other words, as is customary, the Settlement simply releases all claims that have been asserted, could have been asserted, or could be asserted in the future against Defendants and certain related entities or persons that arise out of or relate to the Litigation, the Merger, and the Recommendation Statement, or disclosures related to the Merger. Such releases are common in approved securities class action settlements. *See Hesse v. Sprint Corp*., 598 F.3d 581, 590 (9th Cir. 2010) ("[W]e have held that federal district courts properly released claims not alleged in the underlying complaint where those claims depended on the same set of facts as the claims that gave rise to the settlement."); *Reyn's Pasta Bella, LLC v. Visa USA, Inc*., 442 F.3d 741, 748 (9th Cir. 2006) ("A class settlement may also release factually related claims against parties not named as defendants[.]"); *Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939, 946-47 (N.D. Cal. 2013) (same).

C. THE NOTICE PROGRAM SATISFIES ALL REQUIREMENTS (RULE 23(E)(1), PROCEDURAL GUIDANCE 3-5, 10, AND THE PSLRA)

Class Representatives also request that the Court approve the form and content of the proposed Notice (attached as Exhibits A-1 and A-3 to the proposed Preliminary Approval Order). Rule 23(e)(1) of the Federal Rules of Civil Procedure requires that all members of the class be notified of the terms of any proposed settlement. The notice must state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. Fed. R. Civ. P. 23(c)(2)(B). Furthermore, in securities class actions, the PSLRA requires that the notice provide the following information:

> (1) "[t]he amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis;" (2) "[i]f the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this chapter, a statement from each settling party concerning the issue or issues on which the parties disagree;" (3) "a statement indicating which parties or counsel intend to make . . . an application [for attorneys' fees or costs], the

> amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought;" (4) "[t]he name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members;" and (5) "[a] brief statement explaining the reasons why the parties are proposing the settlement."

15 U.S.C. § 78u-4(a)(7).

Here, the proposed form of the Notice meets these requirements, as well as those identified in the Procedural Guidance. The Settling Parties agreed on the form of the Notice to be disseminated to all persons who fall within the definition of the Class and whose names and addresses have been or can be identified from or through Aimmune's transfer records. The Notice (1) describes the Settlement and sets forth the Settlement Amount in the aggregate and on an average per share basis (*id*. at 7, 13); (2) summarizes the nature, history, and status of the Action, sets forth the definition of the Class, states the Class's claims and issues, describes the Settling Parties' disagreement over damages and liability, discusses the rights of persons who fall within the definition of the Class (including the right to be excluded or object to Settlement and all relief requested in connection thereto), and summarizes the reasons the Settling Parties are proposing the Settlement (*id*. at 2-6); (3) sets out the limits on attorneys' fees and expenses Class Counsel intend to seek from the Settlement Fund, and describes the proposed Plan of Allocation (*id*. at 2, 13); (4) includes detailed information on the process and requirements for requesting exclusion from the Class or for objecting to the Settlement or the request for fees and expenses (including addresses for the Court and Counsel) (*id*. at 9-11); (5) explains the difference between objecting to the Settlement and opting out of the Settlement (*id*. at 11); (6) informs the Class of what will happen if they do nothing at all (*id*. at 12); (7) provides instructions on the timing and process for completing and submitting the Proof of Claim form that accompanies the Notice (*id*. at 7-8); and (8) informs Class Members that copies of the Notice and Proof of Claim form may be obtained by writing the Claims Administrator, or by accessing the documents on the Settlement website, and contains instructions on how to access the case docket via PACER or in person at the Court (*id*. at 12). Finally, once set, the Notice will set forth the date, time, and place of the Final Approval Hearing, clearly states that the date may change

without further notice, and explains how and where Class Members may confirm beforehand to ensure that the date and/or time has not changed. *Id*. at 11.

The Claims Administrator will cause a copy of the Notice and Proof of Claim and Release to be mailed via first class mail to all Class Members who can be identified with reasonable effort. Proposed Preliminary Approval Order, ¶7(b). Additionally, Notice also will be posted on the case website, and Summary Notice shall be published in *PRNewswire*. *Id*. The Claims Administrator will also send the Notice to entities which commonly hold securities in "street name" as nominees for the benefit of their customers who are the beneficial purchasers. *Id*. at ¶7(e). Class Counsel have used this same notice system in the past and believe that the proposed plan is the best plan available and represents the highest likelihood of reaching all potential members of the Class (and/or their brokers).

These proposed methods of giving notice (similar, if not identical, to the methods used in countless other securities class actions) have been "found to be satisfactory and meet due process." *In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 U.S. Dist. LEXIS 42228, at *18-20 (N.D. Cal. Mar. 31, 2015) (due process satisfied where notice program entailed mailing by first-class mail, publication in *Investor's Business Daily* and maintenance of a settlement website by claims administrator for key documents). As such, the contents of the Notice and Summary Notice and methods of providing notice satisfy the requirements of Rule 23(e), the PSLRA, and this Court's Procedural Guidance. Thus, the Court should approve the proposed Notice and Summary Notice.

Additionally, Defendants have undertaken to comply with the Class Action Fairness Act 28 U.S.C. §1715 at their own cost. Stipulation ¶3.2. At least ten (10) calendar days prior to the Final Approval Hearing, Defendants' Counsel shall file with the Court an appropriate affidavit or declaration regarding their compliance with CAFA. *Id*.

D. THE PROPOSED PLAN OF ALLOCATION SHOULD BE PRELIMINARILY APPROVED (PROCEDURAL GUIDANCE 1(e) AND 8)

Under the Plan of Allocation, Class Members who were record or beneficial holders of Aimmune common stock during the pendency of the tender offer (from September 14, 2020 through October 9, 2020), and who had their shares exchanged for $34.50 per share in connection with the closing of the Merger on October 13, 2020, and who submit a valid Proof of Claim to the Claims Administrator, may

share in the recovery, *pro rata* with their stock holdings. Stipulation Ex. A-1 (Notice) at 7, 13. This is a similar Plan of Allocation used in other Section 14 settlements. *See, e.g.*, *Brown v. Papa Murphy's Holdings, Inc.*, Case No. 19-cv-5514 (W.D. Wash. 2019), at ECF No. 89; *Karri v. Oclaro, Inc.*, Case No. 18-cv-3435-JD (N.D. Cal. 2024), at ECF No. 224.

Defendants shall not have a reversionary interest in the Net Settlement Fund. The Settlement provides for reallocating any balance remaining in the Net Settlement Fund after the initial distribution on a *pro rata* basis among Authorized Claimants until the balance remaining in the Net Settlement Fund is *de minimis*, with any *de minimis* remainder being issued as a *cy pres* award to the Bay Area Financial Education Foundation (in which no party or counsel has any interest). Stipulation, ¶ 5.7. *See Hunt v. Bloom Energy Corp.*, No. 19-cv-02935-HSG, 2024 U.S. Dist. LEXIS 82465, at *17 (N.D. Cal. May 6, 2024) (approving the foundation as a *cy pres* recipient because it "does work that aligns with the objectives of the securities laws underlying this case and the class members' interest in protecting investors."); https://www.bafef.org/programs (explaining the foundation provides a "basics of investing" workshop and provides free workshops to equip individuals with essential knowledge regarding financial literacy).

E. THE CLAIMS ADMINISTRATOR (PROCEDURAL GUIDANCE 2)

With respect to Notice and Administration Costs, Class Counsel has chosen RG/2 Claims Administration LLC ("RG/2") as the proposed Claims Administrator. Class Counsel considered three bids from potential claims administrators and selected RG/2 because (1) their $93,641 proposal was the most reasonable estimated cost compared to two other bids at $100,871 and $149,258; (2) their proposal was reasonable in light of Class Counsel's experience in similar settlements; and (3) Class Counsel have had positive experiences with RG/2 in other class action settlements.[15] All costs for class administration will be paid from the Settlement Fund. Stipulation, ¶5.2.

[15] In the past two years, RG/2 has served as claims administrator for Class Counsel in the following class action settlements: *Karri v. Oclaro, Inc.*, 18-cv-3435-JD (N.D. Cal. 2024) ($15.25 million settlement in 2024); *Murphy, et al. v. Inman, et al.*, No. 2017-159571-CB (Cir. Ct. Oakland Cnty, MI) ($9 million settlement in 2024); *Baker v. McAdams et al.*, No. 21STCV07569 (Los Angeles Super. Ct.) ($3 million settlement in 2023), *Brown v. Papa Murphy's Holdings, Inc.*, No. 19-cv-05514-BHS-JRC ($2.4 million settlement in 2022). Additionally, RG/2 maintains robust control

F. ESTIMATE OF THE EXPECTED CLAIM RATE (PROCEDURAL GUIDANCE 1(F))

Class Counsel expects the claims rate to be at least 60% of eligible Aimmune shares based on recent comparable settlements. *See* Monteverde Decl., Ex. 5 (chart of recent comparable settlements). "[C]ourts have approved settlements with significantly lower claims rates" than expected here. *Shuman v. SquareTrade Inc.*, No. 20-cv-02725-JCS, 2023 U.S. Dist. LEXIS 34302, at *9 (N.D. Cal. Mar. 1, 2023) (citing cases where claims rates ranged from 2%-6%); *In re Tracfone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1006 (N.D. Cal. 2015) (deeming estimated claims rate of 25-30% an "excellent result"); *Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d at 622 (granting final approval where settlement claims rate was approximately 22%).

G. PROPOSED SCHEDULE OF EVENTS (PROCEDURAL GUIDANCE 9)

The proposed Preliminary Approval Order includes a schedule predicated on the date the Court signs and enters the Order (defined therein as the "Notice Date"). *See* Preliminary Approval Order (Stipulation, Ex. A) at 5-6.

Class Counsel submits that the proposed schedule is consistent with the schedules adopted in other securities class actions they have litigated and should be approved here.

V. CONCLUSION

For the foregoing reasons, the proposed Settlement warrants this Court's preliminary approval, and entry of the Preliminary Approval Order.

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systems and procedures for securely handling all class member data and otherwise establishing the manner in which it does its business. Declaration of William W. Wickersham (Monteverde Decl., Ex. 6; *see also* Procedural Guidance 2.

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Dated: January 17, 2025

Respectfully submitted,

/s/ Juan E. Monteverde

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