UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE CELGENE CORPORATION SECURITIES LITIGATION	Case No. 2:18-cv-04772 (MEF) (JBC) CLASS ACTION

SUPPLEMENTAL DECLARATION OF MATTHEW L. MUSTOKOFF IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND AUTHORIZATION TO DISSEMINATE NOTICE OF SETTLEMENT

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I, Matthew L. Mustokoff, hereby declare as follows:

1. I am a member of the Bar of the Commonwealth of Pennsylvania and a partner at the law firm of Kessler Topaz Meltzer & Check, LLP, attorneys of record for Court-appointed Lead Plaintiff and Class Representative AMF Tjänstepension AB ("AMF" or "Plaintiff")[1] in this matter. I am admitted to practice before this Court *pro hac vice*. I have actively supervised and participated in the prosecution and resolution of the Action, and I make this Supplemental Declaration of my personal and firsthand knowledge. If called and sworn as a witness, I could and would testify competently hereto.

2. I respectfully submit this Supplemental Declaration, along with a declaration from Plaintiff's damages expert, David I. Tabak, Ph.D. of National Economic Research Associates ("NERA"), attached as Exhibit 1 hereto ("Tabak Declaration" or "Tabak Decl."), in response to the Court's Text Order at ECF 482. I also respectfully submit this Supplemental Declaration in further support of Plaintiff's Motion for Preliminary Approval of Settlement and Authorization to Disseminate Notice of Settlement (ECF 479) ("Motion"). By the Motion, Plaintiff seeks preliminary approval of the proposed $239,000,000 cash Settlement with

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 4, 2025 (ECF 479-2) ("Stipulation").

Defendants Celgene, Terrie Curran, and Philippe Martin pursuant to Rule 23(e) of the Federal Rules of Civil Procedure ("Federal Rules" or "Rules").

3. For the reasons discussed herein, in the Tabak Declaration, and in the previously-filed Motion, I, on behalf of Class Counsel, respectfully submit that the proposed Settlement is fair, reasonable, and adequate in all respects and warrants preliminarily approval.

I. INTRODUCTION

4. Following seven years of highly-contested litigation, and aided by extensive arm's-length negotiations facilitated by three experienced mediators, Plaintiff has achieved a cash settlement in the amount of $239,000,000.[2] As provided for in the Stipulation, in exchange for this consideration, the Settlement resolves all claims asserted in the Action (and related claims) by Plaintiff and the Class against Defendants and the other Defendants' Releasees.[3]

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[2] Pursuant to Paragraph 8 of the Stipulation, Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account no later than thirty (30) calendar days after preliminary approval of the Settlement.

[3] As defined in Paragraph 1(t) of the Stipulation, "Defendants' Releasees" means Defendants and Former Defendants, and any and all of their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, divisions, joint ventures, and partnerships, and each of their respective current or former officers, directors, partners, trustees, trusts, members, contractors, auditors, principals, agents, managing agents, employees, insurers, reinsurers, and attorneys, in their capacities as such, as well as each of the Individual Defendant's and Former Defendants' Immediate Family Members, heirs,

5. From its inception, this Action was actively and vigorously litigated by the Parties. At the time of settlement, the Parties were preparing for trial. As discussed in more detail below, Plaintiff's Counsel's efforts leading up to the Settlement included, *inter alia*: (i) conducting an exhaustive investigation into the Class's claims, including interviews with over 100 former Celgene employees; (ii) researching and preparing multiple amended complaints; (iii) briefing (and defeating in part) a motion to dismiss; (iv) conducting comprehensive fact and expert discovery, including taking or defending 34 depositions, analyzing over 4.8 million pages of documents produced by Defendants and third parties, and exchanging expert reports; (v) consulting with multiple experts at various stages of the case; (vi) successfully moving for class certification (and defending that certification on appeal); (vii) overseeing an extensive notice of pendency campaign ("Class Notice"); (viii) briefing and arguing two motions for summary judgment, and providing extensive supplemental submissions; (ix) briefing seventeen affirmative or opposing motions in limine and motions to exclude experts; (x) preparing a 348-page joint pretrial order that involved extensive pretrial preparations; and (xi) preparing for and engaging in settlement negotiations with Defendants, including two formal mediation sessions (over a year a part) and mediation briefing. *See infra*

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executors, personal or legal representatives, estates, beneficiaries, predecessors, successors and assigns.

¶¶ 36-142. As a result of these efforts and others discussed herein, Plaintiff's Counsel had a deep understanding of the strengths and weaknesses of the Class's claims at the time of the mediator's double-blind proposal to resolve the Action for $239 million.

6. In agreeing to settle the Action, Plaintiff carefully considered the significant risks associated with a trial through verdict on liability and damages (*see* detailed discussion at ¶¶ 145-90 below). Although Plaintiff remained confident in the strength of the evidence necessary to establish the Class's claims, it also understood the significant difficulties and risks that trial and post-trial procedures presented to a recovery for the Class, which include, among others, the risks to: successfully establishing liability on all its claims for each of the challenged statements at trial, obtaining the full damages sought even if liability was established, and maintaining any recovery through Defendants' likely appeal.

7. For example, Defendants contended that Plaintiff would have never succeeded in establishing scienter for the fraud claim based on Celgene's deficient new drug application ("NDA") for Ozanimod because, they argued, they had a good-faith belief that the NDA would pass muster with the U.S. Food & Drug Administration ("FDA"), and the FDA ultimately approved the drug. Defendants also maintained that Plaintiff's fraud claim based on the alleged misrepresentation of the sales environment for Otezla was doomed at trial because, again, Plaintiff

would be unable to prove scienter given Defendants' reasonable basis to tell investors that Otezla's market share and prescription levels were growing (not static-to-declining, as Plaintiff claimed).

8. Defendants also challenged the damages models of Plaintiff's damages expert, Dr. Tabak, avowing throughout the case that in measuring the Class's damages, he failed to account for various non-fraud-related "confounding" events that, when properly accounted for, would reduce damages by hundreds of millions of dollars. Resolution of the complex elements of loss causation and damages would likely come down to a battle of the Parties' highly-qualified experts, and had Defendants prevailed on any of their arguments at trial, the Class's recovery would have been significantly reduced or eliminated. Thus, the outcome of trial, especially in a complex case such as this, can never be predicted with any certainty and, but for the Settlement, a recovery for the Class was entirely at risk.

9. Class Counsel believes that the Settlement, particularly when viewed in the context of the risks, uncertainties, and delays of continued litigation, is an excellent result for the Class. If approved, the Settlement will provide a guaranteed recovery to eligible Class Members and conclude this complex Action. Moreover, the $239 million Settlement Amount represents a substantial portion of the Class's potentially recoverable damages—i.e., approximately 8.6% to 18.4% of the damages range (approximately $1.30 billion to $2.78 billion), based on various recovery

scenarios related to whether or not Plaintiff successfully proved liability as to the Otezla-related statements, Ozanimod-related statements, or both, and for each of the claimed corrective disclosures, as estimated by Plaintiff's damages expert. *See infra* ¶ 192; *see also* Tabak Decl. at ¶¶ 14-15.

10. Following preliminary approval of the Settlement, Class Counsel will work with the proposed Claims Administrator, JND Legal Administration ("JND"), to disseminate notice of the Settlement to Class Members.[4] JND will update the case website, www.CelgeneSecuritiesLitigation.com, including posting copies of the Settlement Notice and Claim Form, along with other documents relevant to the Settlement, and will cause the Summary Settlement Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire*. ECF 479-4 at ¶¶ 7, 15.

II. BACKGROUND OF THE ACTION

A. Summary of the Class's Claims

11. The Class's claims in the Action are fully set forth in the operative Fourth Amended Consolidated Class Action Complaint ("Fourth Amended Complaint" or "FAC") filed on August 29, 2025. ECF 469.[5] The FAC asserts claims under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and the rules and regulations promulgated thereunder, including U.S. Securities and

[4] *See* Declaration of Luiggy Segura on behalf of JND (ECF 479-4).

[5] All facts and allegations referenced in this Section are derived from the FAC.

Exchange Commission ("SEC") Rule 10b-5, against Defendants Celgene, Curran, and Martin. FAC ¶¶ 487-92. The following section provides a summary of the claims alleged in the FAC.

12. The FAC generally alleges that, from April 27, 2017 to April 27, 2018, inclusive, Defendants made public disclosures that concealed material facts concerning the timeline for the FDA's approval of Ozanimod, a multiple sclerosis ("MS") and Ulcerative Colitis ("UC") drug, and the purportedly increasing sales and market share growth for Otezla, a pill that treats psoriasis ("PsO") and psoriatic arthritis ("PsA"). *See id.* ¶¶ 1-35.

13. As background, according to the FAC, during the Class Period, investors knew that Celgene's blockbuster cancer drug and largest source of revenue, Revlimid, was set to start losing patent exclusivity in 2022. *Id.* ¶¶ 84-87. Faced with losing the "lion's share" of Celgene's revenue with this impending "patent cliff," Defendants claimed that two drugs from Celgene's Inflammation & Immunology ("I&I") franchise—Ozanimod and Otezla—were poised to replace Revlimid as the Company's primary revenue drivers. *Id.* ¶¶ 88-89. The FAC alleges that Defendants knew that was nowhere near the truth. Throughout this Action, Defendants repeatedly denied all claims and the vast majority of the allegations in the FAC.

1. The Otezla Claims

14. The FAC alleges that in January 2015, Celgene unveiled a five-year strategic growth plan, publicly claiming that its I&I franchise would grow to deliver $3 billion in net sales by 2020—and that Otezla would lead the way. *Id.* ¶ 92. Specifically, Celgene stated that Otezla, which launched in 2014, would bring in $1.5 billion to $2 billion in net sales by 2017. *Id.* ¶ 91.

15. In multiple statements over the next year and a half, Defendants continued to represent that Otezla would achieve $1.5 billion to $2 billion in annual revenues by 2017, signaling to the market that the conditions necessary to hit those numbers—sustained and increasing market acceptance and sales growth—were firmly in place. *See, e.g.*, *id.* ¶¶ 116-18, 127. However, the FAC alleges that those statements were materially false and misleading when made. In reality, Defendants knew that Otezla's sales growth was flat, and that numerous factors barred the way to further market penetration for the drug. *See generally id.* ¶¶ 94-109.

16. Among other issues, Otezla was trying to take market share away from well-established PsO and PsA drugs, that doctors knew and trusted, and faced competition from other new entrants into the space. *See id.* ¶¶ 106-07. Otezla also did not work as well as the other PsO and PsA treatments, and Defendants knew it. *See id.* ¶¶ 107, 105-06. Reports from the field did not support competitive efficacy levels and Otezla worked more slowly, and on a narrower range of indications, than

its competitors, further limiting its potential patient population. *Id.* ¶ 106. In addition, while Celgene promoted the fact that Otezla was an easy-to-take pill, as opposed to its competitors, which required injections, multiple former Celgene employees confirmed that its inferior efficacy overshadowed this convenience, contributing to lower prescription rates. *Id.* ¶¶ 90, 105-06.

17. In addition, insurers and Pharmacy Benefits Managers, who greatly influence whether and when treatments are covered by insurance plans, posed another major obstacle to the growth of Otezla sales. *Id.* ¶ 108. In 2015, these entities imposed so-called "step-edits"—requirements that patients first try less expensive treatments before being covered for Otezla. *Id.* In an attempt to remove these step edits and gain market share, Celgene decided to offer steep discounts and rebates to insurers for Otezla. *Id.* ¶¶ 174-84. But, the market access garnered through these discounts was not enough to offset the lower revenue resulting from the discounted Otezla sales. *Id.*

18. Throughout the Class Period, these and other fundamental barriers were recognized within the Company as blocking Otezla from selling sufficiently to achieve the 2017 sales guidance, which Defendants affirmed to the public. *See id.* ¶¶ 169-77, 185-93.

19. The FAC alleges that the weak Otezla growth trends from 2015 and 2016 were recognized and discussed at the highest levels of Celgene's I&I franchise,

as was the fact that the publicly-issued 2017 net sales guidance for Otezla could not be met. *Id.* ¶¶ 119-28. Among other things, at multiple meetings of Celgene's I&I Executive Committee ("IIEC"), of which Defendant Terrie Curran and former defendant Scott Smith were members, in the third and fourth quarters of 2016, senior market access executives presented Otezla data and warned expressly that the 2017 net sales guidance for Otezla was not attainable. *Id.*

20. The FAC further alleges that Curran and other executives received and discussed internal Otezla market share assessments which assumed that Otezla's share of the PsO market would decline through the second quarter of 2017 and through year-end. Curran was provided with additional information demonstrating that Otezla underperformed with respect to multiple performance indicators during this quarter. *Id.* ¶¶ 187-207. Among other things, Curran received internal documents showing a decrease in new patient growth, that sales were tracking at only 82% to the 2017 budget, and that Otezla's overall market share had decreased by a full percentage point over the second quarter. *Id.* ¶¶ 189, 202.

21. The FAC alleges that, notwithstanding these undisclosed facts, in the first and second quarters of 2017, Defendants misrepresented and otherwise failed to provide complete and accurate information to investors regarding key Otezla sales and performance metrics, which formed the basis for Otezla's budget and internal forecasts, as well as its 2017 Otezla net sales guidance. First, during Celgene's first

quarter 2017 conference call on April 27, 2017, an analyst asked Curran to "walk through what gives you confidence [that Otezla] growth will bounce back" from disappointing results in 1Q17. *Id.* ¶ 380. In response, Curran falsely claimed that the "underlying dynamics of the business" were "exceptionally strong"; that "Otezla continues to grow market share"; that there was only a "minimal drawdown in inventory" in the first quarter; and that, due to "exit run rates out of quarter 1 and into quarter 2, we do see the net sales rebounding and on track to deliver our 2017 guidance." *Id.*

22. Then, during Celgene's second quarter conference call on July 27, 2017, Curran falsely claimed that "Q2 was an outstanding quarter of Celgene I&I, highlighted by significant sequential growth for Otezla," and that "[k]ey Otezla performance indicators continue to strengthen, and market share and prescriber adoption increased significantly in both U.S. and internationally." *Id.* ¶ 385.

23. The FAC alleges that on October 26, 2017, Celgene reversed course and admitted that Otezla would not hit the net sales guidance the Company had long affirmed, and cut its Otezla guidance by a quarter of a billion dollars. *Id.* ¶¶ 427-28. The FAC further alleges that in response to this news, the price of Celgene's common stock fell $19.57, or more than 16% per share, on October 26, 2017. *Id.* ¶ 429.

2. The Ozanimod Claims

24. Celgene acquired Ozanimod in July 2015, when it bought Receptos, the company that first developed the drug. Ozanimod was coined the "crown jewel" of the $7.2 billion acquisition due to strong results from the drug's advanced clinical studies, and Celgene projected FDA approval and launch by 2018, with potential Ozanimod sales of up to $6 billion per year. FAC ¶ 218. Following the acquisition, Celgene took complete control of Receptos, installing Defendant Philippe Martin (Celgene's Vice President of Leadership & Project Management – Immunology) as *de facto* CEO. *Id.* ¶¶ 219-21.

25. The FAC alleges that Celgene's Ozanimod development portfolio was missing a crucial component throughout 2015 and into 2016. *See id.* ¶¶ 228-47. Namely, Celgene lacked complete testing of Ozanimod's metabolites. Metabolites are essentially the chemical byproducts of the body breaking down a drug and can be inactive or active. *Id.* Active metabolites produce their own effects on the body and can impact the functioning of drugs. An NDA must address drug metabolism, and in guidance dating back to at least 2008, the FDA has stated that testing and understanding the properties of active metabolites associated with a drug is a priority that should be undertaken "as early as possible" in drug development. *Id.* ¶ 233. The FDA also warns that a failure to ascertain metabolite effects can "cause development and marketing delays." *Id.*

26. The FAC alleges that despite this FDA guidance, Celgene had pushed forward with large scale Phase III clinical trials of Ozanimod without conducting the requisite metabolite testing. *Id.* ¶¶ 242-46. Specifically, the Company had put off performing the critical test to conclusively identify all active metabolites—the "human radiolabeled mass balance study," which is "generally accepted" in the field as the "gold standard." *Id.* Instead, Celgene sought to backfill clinical pharmacology testing of Ozanimod (including metabolite testing) after disclosing promising results from the efficacy phases of the drug's development. *Id.*

27. Celgene did not begin the necessary "mass balance" testing for Ozanimod metabolites until October 2016. *Id.* ¶ 247. Unbeknownst to investors, this testing detected the disproportionate presence of a highly active metabolite, named RP112273 by Celgene (the "Metabolite"). *See id.* ¶¶ 254-62. Under FDA guidance, various forms of additional, lengthy testing on the Metabolite were required before submitting the Ozanimod NDA. *See id.* ¶¶ 229-41, 263-69.

28. The FAC alleges that the belated identification of the Metabolite was a significant and well-known development at Celgene. Defendant Martin and other Celgene senior management knew about the results and regularly received updates on the issue. *See generally id.* ¶¶ 254-95. Celgene employees with roles in the Ozanimod development process immediately recognized the need for additional testing on the Metabolite before the Ozanimod NDA could be filed with the FDA,

noting that the FDA would not consider the Metabolite data to be validated without long-term stability ("LTS") data—a fact that was conveyed to their direct management. *Id.* ¶¶ 270-76. The FAC further alleges that Celgene would not have the required LTS data for many months after the targeted year-end 2017 submission. *Id.*

29. Notwithstanding the discovery of the Metabolite and the need to conduct protracted additional testing, the FAC alleges that Defendants knowingly misrepresented that the NDA was on track to be submitted by the end of 2017. Specifically, Defendants told the market on October 26, 2017 that Celgene was "[p]reparing for regulatory submission [of the Ozanimod NDA] to the FDA by year-end" and that it would "[s]ubmit ozanimod U.S. NDA in RMS by YE:17." *Id.* ¶¶ 296, 407; *see also* ¶¶ 408-10.

30. The next day, on October 27, 2017, Celgene submitted a Briefing Book to the FDA and requested that the FDA permit the Company to submit certain data regarding the Metabolite required for the NDA after the initial submission targeted for December 2017. *Id.* ¶¶ 296-99. The FAC alleges that this Briefing Book made clear that Celgene would not have the required LTS data at the time of the anticipated year-end 2017 submission date. *Id.*

31. On October 28, 2017, the day after Celgene submitted the Briefing Book to the FDA, Martin told investors that "[f]or the FDA, we are working hard as

we speak to get ready to file by the end of the year." *Id.* ¶ 300. The FAC alleges that despite the fact that Celgene lacked critical data for the Metabolite and Defendants did not know if the FDA would accept the Company's proposal to submit a deficient NDA, Martin made no reference to the Metabolite. *Id.* ¶¶ 300-02.

32. In preliminary meeting comments provided to Celgene on November 21, 2017, the FDA explicitly rejected Celgene's proposal, informing the Company that it needed to include the LTS data with the NDA—data that Celgene did not have and could not generate before the end of the year. *Id.* ¶¶ 313-17. The FAC alleges that despite this clear directive from the FDA, Defendants filed the deficient Ozanimod NDA in December 2017. *Id.* ¶¶ 333-34.

33. The FAC alleges that after submitting the NDA to the FDA, Defendants continued to mislead investors. On January 8, 2018, Celgene filed a Form 8-K, attaching a press release that identified as one of its "2018 Expected Operational Milestones" the "FDA decision on the submission of an NDA for ozanimod in patients with relapsing multiple sclerosis (RMS)." *Id.* ¶¶ 339, 420. Approximately two weeks later, on January 25, 2018, Celgene filed another Form 8-K, again highlighting that "a New Drug Application (NDA) was submitted with the FDA for Ozanimod in relapsing multiple sclerosis (RMS) based on data from the phase III RADIANCE™ Part B and SUNBEAM™ trials for evaluating Ozanimod in patients with RMS." *Id.* ¶¶ 339, 422. Then, on February 7, 2018, Celgene filed an Annual

Report on a Form 10-K again representing that "a New Drug Application (NDA) was submitted with the FDA for ozanimod in RMS based on data from the phase III trials evaluating ozanimod in patients with RMS." *Id.* ¶¶ 339, 424. None of these filings made any mention of the Metabolite or the fact that Celgene had filed the NDA without the required Metabolite data. *Id*. ¶ 339.

34. On February 27, 2018, Celgene disclosed that it had received an RTF rejection of its Ozanimod NDA application from the FDA. Celgene stated that, "[u]pon its preliminary review, the FDA determined that the . . . pharmacology sections of the NDA were insufficient to permit a complete review." *Id.* ¶ 439. The FAC alleges that as a result of this disclosure, Celgene's common stock price fell by $8.66 per share in a single day. *Id.* ¶ 440.

35. In late April 2018, Celgene disclosed additional information about the Metabolite. *Id.* ¶ 445. Based on this presentation, analysts from Morgan Stanley reported that completion of the required metabolite testing would delay the refiling of the Ozanimod NDA by ***up to three years***, or until 2021. *Id.* ¶¶ 449-50. The FAC alleges that in response to this final disclosure, which concludes the alleged Class Period, Celgene's common stock price fell an additional $4.08 on heavy trading. *Id.* ¶ 451.

B. Commencement of the Action, Appointment of Lead Plaintiff, Investigation into the Class's Claims, and Lead Plaintiff's Filing of the Amended Complaint

36. On March 29, 2018, a class action captioned *City of Warren General Employees Retirement System v. Celgene Corp.*, No. 2:18-cv-04772, was filed in the United States District Court for the District of New Jersey. This action asserted violations of the Exchange Act against Celgene and certain of its officers and directors on behalf of persons and entities that acquired Celgene common stock between September 12, 2016 and February 28, 2018. The case was assigned to Judge John Michael Vazquez and Magistrate Judge James B. Clark, III. ECF 1.

37. The same day, notice advising putative class members of the pendency of the litigation, the allegations, and class members' right to move the Court to serve as lead plaintiff in accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA") was issued via *Business Wire*.

38. On May 3, 2018, an additional class action, captioned *Charles H. Witchcoff v. Celgene Corp.*, No. 2:18-cv-08785, was filed in this Court, alleging violations of the Exchange Act against Celgene and certain of its officers and directors on behalf of all persons who purchased or otherwise acquired Celgene common stock between January 12, 2015 and February 27, 2018. Class Action Complaint and Demand for July Trial, *Charles H. Witchcoff v. Celgene Corp.*, No. 2:18-cv-08785 (D.N.J. May 3, 2018), ECF 1.

39. On May 29, 2018, ten motions were filed in the *City of Warren* action and one motion was filed in the *Witchcoff* action, each seeking appointment as lead plaintiff and consolidation of the two cases. ECF 36 at 2. On September 26, 2018, the Court consolidated the two actions under the caption *In re Celgene Corp., Inc. Securities Litigation* and appointed AMF Pensionsförsäkring AB (n/k/a AMF Tjänstepension AB) as Lead Plaintiff and Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz") as Lead Counsel in the consolidated action. The Court also appointed Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (n/k/a Carella, Byrne, Cecchi, Brody & Agnello, P.C.) ("Carella Byrne") and Seeger Weiss, LLP ("Seeger Weiss") as Co-Liaison Counsel for the class. ECF 36 at 3-5.

40. In the months leading up to and immediately following AMF's appointment as Lead Plaintiff, Lead Counsel conducted a thorough investigation into the potential claims. This investigation included a detailed review and analysis of: (i) Celgene's public filings with the SEC; (ii) press releases and other public statements issued by the potential defendants; (iii) research reports and commentary published by securities and financial analysts; (iv) transcripts of Celgene's earnings calls and other investor calls; (v) publicly available press releases, presentations, and interviews with Celgene and its employees; (vi) media and news reports related to Celgene and its products; (vii) economic analysis of the movement and pricing of Celgene's publicly traded securities; (viii) scientific journals and databases;

(ix) FDA documents concerning the Ozanimod NDA; and (x) other media reports and publicly available information concerning Defendants. Lead Counsel also researched and studied up on basic concepts of clinical pharmacology, toxicology, and the regulatory framework surrounding the NDA process by reviewing journal articles and textbooks. Kessler Topaz was assisted in its investigation by Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz"), which Kessler Topaz brought in as additional counsel for the class.

41. Plaintiff's Counsel also undertook a far-ranging effort to identify, contact, and interview former employees of Celgene. As part of this effort, Kessler Topaz and its in-house investigative team developed over 200 leads and conducted over 100 interviews.

42. In addition to this factual research, Plaintiff's Counsel conducted extensive legal research to develop and support Plaintiff's potential theories of liability.

43. In formulating its theory of liability with respect to Ozanimod, Plaintiff also consulted with a highly-regarded clinical pharmacologist who previously served in a senior position at the FDA's Center for Drug Evaluation and Research.

44. Based upon the foregoing investigation and research, on December 10, 2018, Plaintiff filed the 199-page Amended Consolidated Class Action Complaint ("Amended Complaint") against Celgene, Mark J. Alles, Robert J. Hugin, Scott A.

Smith, Peter N. Kellogg, Terrie Curran, Jacqualyn A. Fouse, Philippe Martin, Nadim Ahmed, Jonathan Q. Tran, and Peter Callegari, M.D., alleging: (i) violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder against Celgene and the individual defendants; and (ii) violations of Section 20(a) of the Exchange Act against Defendants Alles, Kellogg, Smith, Curran, Hugin, and Fouse ("Section 20(a) Defendants"). *See* ECF 40. To support the allegations in the Amended Complaint, Plaintiff included information gathered through interviews with 22 former Celgene employees.

C. Defendants' Motion to Dismiss the Amended Complaint/Second Amended Complaint and the Court's Subsequent Opinion

45. On February 8, 2019, Defendants filed their motion to dismiss the Amended Complaint, which was accompanied by a supporting memorandum of law and 63 exhibits. ECF 52. On February 27, 2019, with Defendants' agreement and the Court's permission, Plaintiff filed the Second Amended Consolidated Class Action Complaint ("Second Amended Complaint" or "SAC") to remove a single allegation attributed to a Celgene former employee. ECF 57. Defendants' motion to dismiss the Amended Complaint was not impacted by this amendment and the parties agreed that the motion applied to the SAC. In moving to dismiss, Defendants argued: (i) the alleged false and misleading statements were inactionable puffery or statements of opinion, or were forward-looking statements protected under the PSLRA's safe harbor provision; (ii) Plaintiff's Section 10(b) claim lacked the

necessary particularity to satisfy the pleading standards of the PSLRA and Rule 9(b); (iii) Plaintiff failed to plead a strong inference of scienter; (iv) Plaintiff failed to plead loss causation; and (v) Plaintiff's Section 20(a) claim should be dismissed for lack of an underlying Section 10(b) violation. *See* ECF 52-1.

46. Plaintiff filed its opposition on April 9, 2019 after reviewing and analyzing the arguments in Defendants' motion to dismiss the SAC and the applicable case law. ECF 70. Plaintiff argued: (i) the alleged false and misleading statements were actionable and not protected by the PSLRA's safe harbor; (ii) the SAC adequately alleged falsity and scienter; and (iii) Plaintiff established an underlying Section 10(b) claim to support the Section 20(a) claim. *See id.* Defendants filed their reply in further support of their motion on May 9, 2019, reiterating the arguments from their opening brief. ECF 71.

47. On December 19, 2019, Judge Vazquez issued a 49-page opinion and order granting in part and denying in part Defendants' motion to dismiss. ECF 75. Judge Vazquez dismissed all claims based on Defendants' statements regarding one of Celgene's developmental stage drugs, GED-0301, without prejudice, but sustained Plaintiff's claims based on certain of the alleged false and misleading statements regarding Otezla and Ozanimod. *See id.* Following the order, Plaintiff elected not to amend the complaint and to instead proceed on the sustained claims. Defendants filed their answer to the SAC on March 5, 2020. ECF 83.

D. The Parties' Extensive Discovery Efforts

48. Commensurate with the breadth of the Class's sustained claims, which involved two separate drugs, discovery in the Action was voluminous, highly detailed, and hard-fought. While the Parties ultimately were successful in resolving most discovery disputes through the exchange of letters and meet-and-confers, the scope and timing of discovery was contested at every turn.

49. Plaintiff pursued several avenues of discovery available under the Federal Rules as necessary to litigate its claims, including serving comprehensive interrogatories and requests for production of documents, taking or defending twelve expert depositions (including two depositions of both Plaintiff's expert on market efficiency and damages and Defendants' expert on these topics), and noticing, preparing for, and conducting twenty-one fact witness depositions. As described below, as a result of these efforts, Plaintiff obtained well over 4.8 million pages of documents from Defendants and various third parties. As also set forth below, Plaintiff's careful review and analysis of these documents, as well as other evidence obtained from its efforts during discovery, provided a basis for Plaintiff's engagement with experts, preparation for depositions, the class certification record, preparation for briefing on Defendants' summary judgment motions, the Parties' mediations, and ultimately, trial.

50. Defendants likewise sought discovery from Plaintiff through requests for production and interrogatories. Plaintiff reviewed and produced more than 1,100 pages of documents in response to Defendants' discovery requests. In addition, a representative of AMF, Anders Grefberg, sat for a deposition in June 2020.

51. Plaintiff's Counsel's extensive efforts in obtaining and thoroughly reviewing the voluminous discovery collected in this Action equipped them to parse the relative strengths and weaknesses of the Class's claims, which ultimately allowed for a fruitful mediation process and the resolution of the Action.

1. Joint Discovery Plan, Initial Disclosures, Confidentiality Order, and ESI Protocol

52. In the wake of Judge Vazquez's order and opinion granting in part and denying in part Defendants' motion to dismiss the SAC, the Parties negotiated and filed a Joint Proposed Discovery Plan on February 20, 2020. ECF 82. This plan addressed a wide range of topics, including initial disclosures, amended pleadings, the number of interrogatories and depositions, fact and expert discovery deadlines, interim discovery deadlines, and deadlines related to class certification. *Id.* The Parties largely agreed on the proposed case deadlines, with the exception of the deadlines for substantial completion of document production and completion of fact discovery, with Plaintiff proposing shorter time frames than Defendants. *Id.* Judge Clark set an initial case conference for April 15, 2020. ECF 84.

53. Consistent with the Parties' jointly-proposed deadline, Plaintiff and Defendants exchanged initial disclosures pursuant to Rule 26 on March 19, 2020.

54. In the weeks following the Court's motion to dismiss decision, the Parties also negotiated and filed a Stipulated Proposed Discovery Confidentiality Order, which Judge Clark entered on April 2, 2020. ECFs 85-1, 86. In addition, the Parties continued to discuss the case deadlines over the next couple of months, and on May 15, 2020, the Parties filed an Amended Joint Proposed Discovery Plan that reflected an agreed-upon proposed schedule. ECF 91.

55. Judge Clark held the initial case conference on May 15, 2020 and entered a pretrial scheduling order later that day. ECF 93.

56. Thereafter, the Parties negotiated and filed a Proposed Stipulation and Order Governing Electronic Discovery on July 31, 2020, and Judge Clark entered this order on August 3, 2020. ECFs 101-02.

2. Plaintiff's Document Discovery Propounded on Defendants

57. On January 23, 2020, Plaintiff served its first set of requests for production of documents on Defendants, comprised of 61 separate requests. Among other things, these requests sought documents and communications related to Defendants' discovery of the Metabolite, Defendants' preparation of the NDA submission and the underlying data and testing, Otezla sales and market share and Defendants' guidance regarding the same, and Defendants' alleged false and

misleading statements to investors. Defendants served their responses and objections to these requests on March 2, 2020. Even before Defendants served their responses and objections, the Parties began meeting and conferring regarding the scope of Defendants' document productions, which led to Plaintiff's initial electronic search term and document custodian proposals in mid-March 2020. In all, the Parties conducted six meet and confers between February 27 and April 2, 2020 (on February 27, March 12, March 17, twice on March 18, and April 2), collectively spanning over ten hours.

58. On April 13, 2020, Plaintiff filed a letter seeking guidance from Judge Clark regarding certain disputes that had arisen during the course of the Parties' discovery negotiations, including disputes with respect to the time period applicable to Plaintiff's document requests, the limitation that Defendants sought to impose on the scope of Ozanimod discovery, Defendants' refusal to allow discovery into potential economic motives, and Plaintiff's search term and custodian proposal. ECF 87.

59. Judge Clark ordered Defendants to respond to Plaintiff's letter by April 27, 2020 and rescheduled the initial case conference for May 18, 2020. ECF 88. Defendants filed their responsive letter on April 27, 2020. ECF 89.

60. Through continued negotiations, the Parties were largely able to resolve their discovery disputes without assistance from the Court. *See* ECF 91.

61. After producing a small number of organizational charts and related documents in the spring of 2020, Defendants began their rolling productions of documents in response to Plaintiff's document requests on August 3, 2020.

62. Near the end of fact discovery, Plaintiff raised a discovery dispute with Judge Clark regarding Defendants' document productions. Specifically, by letter dated July 16, 2021, Plaintiff sought to compel the production of a document that it asserted was improperly withheld on privilege grounds. In early September 2021, Judge Clark ordered letter briefing on the dispute and also ordered Defendants to produce the disputed document for *in camera* review. *See* ECF 155. On December 13, 2021, Judge Clark determined that the disputed document was not privileged and ordered Defendants to produce it, along with other withheld versions of the document.

3. Plaintiff's Written Discovery Propounded on Defendants

63. In addition to requests for documents, Plaintiff served interrogatories on Defendants on January 15, 2021. Among other things, these interrogatories sought information regarding Defendants' affirmative defenses asserted in their answer to the SAC, Celgene's 2017 Otezla sales guidance, the studies that Defendants conducted regarding Ozanimod and the Metabolite, Defendants' preparation of the Ozanimod NDA, and Defendants' communications with the FDA

leading up to the NDA filing. Defendants served their responses and objections to these interrogatories on April 15, 2021.

64. On May 17, 2021, Plaintiff submitted a letter to Judge Clark regarding a dispute that had arisen with respect to Defendants' interrogatory responses, requesting that the Court compel Defendants to supplement their responses to the interrogatories regarding Defendants' affirmative defenses. Defendants submitted a responsive letter on May 19, 2021. Judge Clark held a conference regarding the dispute on June 7, 2021. ECFs 131-33. At the conclusion of the conference, Judge Clark ordered that Defendants provide supplemental responses to certain of Plaintiff's interrogatories by June 14, 2021. ECF 131. In accordance with this order, Defendants supplemented their interrogatory responses on June 14, 2021.

65. Plaintiff's analyses of these written discovery responses informed its approaches throughout the Action, including in depositions and motion practice.

4. Defendants' Discovery Propounded on Plaintiff

66. Defendants also served substantial discovery on Plaintiff. On March 4, 2020, Defendants served their first set of requests for the production of documents on Plaintiff, comprised of 34 separate requests. These requests primarily sought documents related to Plaintiff's investments in Celgene and its overall investment strategy, Plaintiff's investigation prior to filing the Action and its decision to commence the Action, and Plaintiff's allegations that Defendants made materially

false or misleading statements and violated the securities laws. Plaintiff served responses and objections to Defendants' document requests on April 3, 2020.

67. Defendants also served Plaintiff with interrogatories on August 28, 2020. By these interrogatories, Defendants sought information regarding the identity of the former Celgene employees cited in the SAC and Plaintiff's calculation of damages. Plaintiff responded to these interrogatories on September 28, 2020.

68. The Parties met and conferred over the scope and parameters of this discovery during the spring and summer of 2020. Among other actions, Plaintiff performed diligent and reasonable searches, reviewed all potentially relevant documents for responsiveness and privilege, and ultimately produced approximately 1,100 pages of documents to Defendants.

5. Non-Party Discovery

69. During the litigation, Plaintiff served subpoenas on more than ten third parties, including the FDA, Ashfield Healthcare, Morgan Stanley, Naxion, ICON Clinical Research, LLC, Xceleron Inc., Pharmaron ABS, Inc., and the ex-FDA consultants Celgene retained to advise the Company regarding the Ozanimod NDA.

70. Plaintiff met and conferred with the each of these third parties with respect to the subpoenas. These third parties ultimately produced thousands of pages of documents in response to the subpoenas, including more than 3,300 pages produced by the FDA.

6. Implementation of Review Protocol and Document Review

71. Plaintiff's approach to reviewing the substantial documentary record it successfully obtained in this case was multifaceted. Document review began immediately following Defendants' initial document productions in August 2020. The document review effort increased in late 2020 and into 2021, as substantial subsequent productions were received.

72. *First*, well before receiving large volumes of documents as part of the discovery process, Plaintiff began to set up a review platform hosted by Bernstein Litowitz that could accommodate the size of the anticipated production, enable the review of documents by dozens of users, and offer the latest coding, review, and search capabilities for electronic discovery management. Plaintiff utilized this electronic database to organize and search the large volume of documents produced during discovery. The database allowed attorneys performing document review to categorize documents by issues and level of relevance, and to identify the most critical documents supporting the Class's claims.

73. *Second*, to enable effective document review and analysis, Plaintiff researched and developed a detailed document coding manual, which provided instructions on: (i) the key facts at issue in the Action, (ii) evaluation of each document's relevance, and (iii) "tagging" documents with relevant issues and sub-issues via coding options built into the electronic discovery database. Plaintiff

regularly updated this coding manual throughout the review process to reflect new information and insights obtained by Plaintiff during discovery.

74. *Third*, Plaintiff's review of the voluminous discovery record relied on the persistent efforts of tens of attorneys devoted to reviewing and analyzing documents and sharing their findings with the litigation team. This team of attorneys, overseen by associate attorneys, was split into various project-specific groups to maximize the efficiency of the review, and partners, associates, and review team attorneys met weekly to discuss highly-relevant documents and trends observed in the review process. In requiring the attorneys involved in document analysis to meet at least weekly with senior associates and/or partners, Plaintiff sought to ensure that the reviewing attorneys were aware of: (i) the issues underlying the Class's claims; (ii) key facts, individuals, and timelines identified concurrently in the document review process; (iii) why certain documents were high-value; and (iv) how such documents informed and built out Plaintiff's theories of liability. Additionally, the review team communicated frequently to ensure that coding decisions were applied consistently and that all review team members were apprised of important developments with respect to the document review process, case theories, and the stage of the overall litigation.

75. Further, Plaintiff acted proactively to ensure that the document review process would prepare it to effectively elicit integral deposition testimony and

establish liability at summary judgment and trial. Therefore, simultaneously with a broad linear review of the document production, Plaintiff engaged a subset of review team attorneys in several discovery projects requiring targeted document searches, document organization, and synthesis. These projects included preparing a timeline of key events as well as presentations and memoranda concerning, for example, key factual aspects of the case, such as the non-clinical issues related to the Metabolite and the related data and internal communications, an analysis of FDA guidance documents and related expectations or requirements, and Otezla's sales and market share, as well as information regarding key players and potential deponents, which were critical to Plaintiff's determination of which witnesses to notice for depositions. Plaintiff's early and continuing efforts to identify and analyze key research topics enabled Plaintiff's Counsel's partners, associates, and review team attorneys to make detailed, subject-specific internal presentations which in turn informed the larger review efforts and the development of case theories. The review team attorneys also assisted in preparing for depositions, as discussed more below.

7. Fact Depositions

76. On May 20, 2020, after Plaintiff filed its motion for certification of the Class on May 1, 2020 ("Class Certification Motion") (discussed *infra* at ¶¶ 92-96), Defendants served a notice of deposition pursuant to Rule 30(b)(6) on AMF. AMF subsequently set forth its responses and objections to that notice in a letter to

Defendants. AMF's representative, Anders Grefberg, prepared for the noticed deposition and sat for the deposition on June 10, 2020.

77. Prior to beginning deposition discovery, Plaintiff reviewed and analyzed the voluminous document discovery from Defendants not only to gather facts but also to identify potential deponents. Plaintiff compiled lists of potential deponents and organized them by priority and topic areas. Plaintiff's Counsel internally discussed each potential witness and what information each could likely provide. Given the limitation on the number of depositions permitted, the selection of witnesses was critical to Plaintiff's ability to explore and ultimately prove every aspect of its case.

78. After reviewing and analyzing the documents produced by Defendants, Plaintiff served notices of deposition and/or deposition subpoenas on twenty witnesses, in accordance with the twenty-deposition limit set forth in the pretrial scheduling order.

79. In light of the ongoing COVID-19 pandemic, the Parties negotiated and filed a proposed protocol to govern depositions conducted through remote means prior to the start of fact depositions. ECF 123. The Court "so ordered" this protocol on February 3, 2021. ECF 125.

80. Over the course of the next five months, Plaintiff deposed the following twenty individuals:

- David Wilson, Ph.D. (2/10/21), former clinical bioanalytical lead at Receptos;

- Gerlee Thomas (2/25/21), former Director of Regulatory Affairs at Receptos;

- James MacDonald, Ph.D. (3/19/21), external consultant retained by Celgene to provide advice on non-clinical issues;

- James Kilgallon (3/23/21), Celgene's former Executive Director, U.S. Market Access, Pricing and Contracting;

- Lawrence Lesko, Ph.D. (4/6/21), external consultant retained by Celgene to provide advice on clinical issues;

- Betty Jean Swartz (4/14/21), Celgene's former Vice President, U.S. Market Access;

- David Kao (4/16/21), former Executive Director, Regulatory Affairs at Receptos;

- Susan Meier-Davis (5/6/21), former Senior Director in Pre-Clinical Sciences at Receptos;

- Jonathan Tran, PharmD (5/14/21), former Executive Director of Clinical Pharmacology at Receptos;

- Doug Bressette (5/25/21), Celgene's former Senior Director, Global Business Planning and Analysis for Inflammation and Immunology;

- Hunter Smith (5/27/21), Celgene's former Vice President of Finance for Inflammation and Immunology;

- Jean-Louis Saillot, M.D. (5/27/21), former Vice President of Project Leadership, Regulatory Affairs, and Clinical Pharmacology at Receptos;

- Philippe Martin (6/3/21), former Vice President of Leadership & Project Management – Immunology and Managing Director at Celgene-Receptos;

- Steven Rosen (6/4/21), Celgene's former Executive Director of Corporate Financial Planning and Analysis;

- Robert Tessarolo (6/7/21), Celgene's former Vice President, General Manager, U.S. Market, U.S. Inflammation and Immunology;

- Scott Smith (6/10/21), Celgene's former President and Chief Operating Officer;

- Florence Houn, M.D. (6/11/21), Celgene's former Vice President of Global Regulatory Science;

- David Jacobson-Kram, Ph.D. (6/15/21), external consultant retained by Celgene to provide advice on non-clinical issues;

- Matthew Lamb (6/16/21), Celgene's former Vice President and Global Head of Regulatory Affairs, Inflammation and Immunology; and

- Terrie Curran (6/16/21), Celgene's former President of Global Inflammation and Immunology.

81. After completing the above depositions, near the end of June 2021, Plaintiff sought leave to depose an additional witness—Jay Backstrom, M.D., Celgene's former Chief Medical Officer. On September 1, 2021, Judge Clark granted Plaintiff's request. ECF 157. Plaintiff deposed Dr. Backstrom on October 4, 2021.

82. Preparation for these depositions was arduous and time-consuming. Plaintiff's Counsel relied on the knowledgeable team of attorneys assigned to review

documents to assist in deposition preparation. Document reviewers worked directly under the instruction of associates and partners tasked with taking the depositions. Together they distilled clear, overarching goals for each deposition based on the deponent's knowledge of facts and documents relevant to Plaintiff's claims and theories of the case.

83. Review attorneys completed a first-tier document review to identify those documents most likely to contain useful information for a given deponent. Often, this involved a linear review of a substantial portion of the deponent's custodial file or of documents that mentioned the deponent's name, alongside targeted searches based on subject matter and time periods likely to return highly-relevant documents.

84. Following this initial research, review attorneys summarized documents which, in their view, were most relevant for each deponent. The attorneys assigned to take the depositions analyzed the materials assembled by the review attorneys, including by conducting a secondary review of the documents flagged by the review attorney to prioritize and cut documents as necessary. The deposing attorneys continued working with the review attorneys as they sought additional detailed information and documents during their deposition preparation, often necessitating second and third reviews of each witness's documents.

85. Finally, in order to prepare for depositions (as well as analyze the discovery record more broadly), Plaintiff's Counsel had to become well-versed in complex topics, including LTS data, metabolite testing, non-clinical toxicology testing, and exposure multiples, as well as FDA guidance related to each of these topics, the market for Otezla and other medications for psoriasis and psoriatic arthritis, and sales forecasting and guidance practices and the underlying data.

86. Overall, Plaintiff's Counsel dedicated hundreds of hours preparing for, taking, and analyzing fact depositions.

E. Plaintiff's Filing of the Third Amended Complaint

87. On July 9, 2021, near the end of fact discovery, Plaintiff filed a motion to amend the complaint in order to conform the SAC to the facts adduced in discovery. ECF 136. The proposed 185-page Third Amended Consolidated Class Action Complaint ("Third Amended Complaint" or "TAC") included one new alleged misstatement regarding Otezla and also summarized the facts developed through document discovery and depositions regarding the previously-sustained statements, and bolstered the evidence supporting corporate scienter for the Ozanimod corporate statements. *Id.* Plaintiff also removed all of the allegations related to the dismissed GED-0301 statements. *Id.*

88. On August 2, 2021, Defendants opposed Plaintiff's motion to amend, arguing that Plaintiff's amended corporate scienter allegations were futile because

Judge Vazquez previously dismissed the alleged corporate Ozanimod statements with prejudice, and that Plaintiff unduly delayed in adding the new Otezla statement. *See* ECF 145. Plaintiff filed its reply in further support of its motion on August 17, 2021. ECF 149.

89. On February 24, 2022, Judge Clark granted Plaintiff's motion to amend the complaint and Plaintiff filed the TAC on March 1, 2022. ECFs 173, 175.

90. On March 9, 2022, Defendants appealed Judge Clark's order granting Plaintiff's motion to amend to Judge Vazquez, asserting that the Court had previously dismissed with prejudice the alleged corporate misstatements regarding Ozanimod. *See* ECF 180. Defendants also moved to stay their obligation to answer the TAC. ECF 181. Plaintiff opposed Defendants' motion to stay on March 15, 2022, and then opposed Defendants' appeal of Judge Clark's order on March 21, 2022. ECFs 186, 189-90. Defendants filed their replies in further support of both their appeal of Judge Clark's order and their motion to stay on March 28, 2022. ECFs 193-94.

91. On June 1, 2022, Judge Vazquez issued an order and opinion denying Defendants' appeal of Judge Clark's order granting Plaintiff's motion to amend. ECF 206. In denying the appeal, Judge Vazquez rejected Defendants' assertion that he had previously dismissed the corporate Ozanimod statements, finding that Judge Clark had correctly concluded that he had not addressed those specific statements in

his motion to dismiss opinion. *See id.* Judge Vazquez also denied as moot Defendants' motion to stay. *Id.* Defendants answered the TAC on August 15, 2022. ECF 222.

F. Plaintiff's Motion for Class Certification, Defendants' Motion to Modify the Class Period, and the Class Notice Campaign

1. Plaintiff's Class Certification Motion and Defendants' Rule 23(f) Petition

92. While the Parties' discovery efforts were ongoing, Plaintiff filed its Class Certification Motion on May 1, 2020, accompanied by a supporting memorandum of law and an expert report from Dr. Tabak. ECF 90. Plaintiff's Class Certification Motion sought certification of a class of all persons and entities who purchased or otherwise acquired Celgene common stock during the period from April 27, 2017 through and including April 27, 2018, both dates inclusive, and were damaged thereby. ECF 90-1 at 39. In his expert report, Dr. Tabak opined that Celgene common stock traded on an efficient market and that damages could be computed on a class-wide basis using a common methodology. *Id.* at 26-27.

93. Defendants filed an opposition to the Class Certification Motion on June 25, 2020, along with a rebuttal expert report from Paul A. Gompers, Ph.D. ECFs 94-96. In opposing Plaintiff's motion, Defendants argued that AMF was an inadequate class representative and atypical, and that AMF had failed to establish predominance because it was not entitled to a presumption of reliance under *Basic*

v. Levinson, 485 U.S. 224 (1988) or *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972). *See* ECF 95. On July 31, 2020, Plaintiff filed a reply in further support of its Class Certification Motion, along with a reply expert report from Dr. Tabak. ECF 99.

94. On November 25, 2020, Judge Vazquez granted Plaintiff's Motion for Class Certification, certifying the following class ("Class"):

> All persons and entities who purchased the common stock of Celgene Corp. between April 27, 2017 through and April 27, 2018, and were damaged thereby. Excluded from the Class are: (i) Celgene; (ii) any directors and officers of Celgene during the Class Period and members of their immediate families; (iii) the subsidiaries, parents and affiliates of Celgene; (iv) any firm, trust, corporation or other entity in which Celgene has or had a controlling interest; and (v) the legal representatives, heirs, successors and assigns of any such excluded party.

ECFs 114-15.

95. On December 14, 2020, Defendants filed a petition for leave to appeal Judge Vazquez's order granting Plaintiff's Class Certification Motion under Rule 23(f). Petition for Leave to Appeal, *In re Celgene Corporation Securities Litigation*, No. 20-8050 (3rd Cir. Dec. 14, 2020), ECF 1. Defendants argued that Judge Vazquez had erred in: (i) finding that rebutting the presumption of reliance under *Basic* requires direct evidence of a lack of price impact; (ii) finding that Defendants bore the burden of production of evidence to rebut the presumption; (iii) finding that Defendants had failed to rebut the presumption; and (iv) certifying the Class. *See id.*

96. Plaintiff opposed Defendants' petition for leave to appeal on January 7, 2021, after consulting with outside attorneys specializing in appellate work, arguing that: (i) interlocutory review of the class certification decision was unnecessary given the Supreme Court's recent grant of certiorari in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 2020 WL 7296815, at *1 (U.S. Dec. 11, 2020); and (ii) interlocutory review was unwarranted because Judge Vazquez applied the standards Defendants advocated for and considered all price impact rebuttal evidence. *See In re Celgene Corporation Securities Litigation*, No. 20-8050 (3d Cir. Jan. 7, 2021), ECF 7. The Third Circuit denied Defendants' petition for leave to appeal on March 2, 2021. *In re Celgene Corporation Securities Litigation*, No. 20-8050 (3d Cir. Mar. 2, 2021), ECF 11.

2. Defendants' Motion to Modify (Shorten) the Class Period

97. On August 30, 2021, following the Supreme Court's decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113 (2021), Defendants filed a motion to modify the Class Period. ECF 151. Defendants argued that Judge Vazquez failed to consider all evidence related to the lack of price impact as required by the Supreme Court's decision in *Goldman Sachs*, and that their proffered evidence established a lack of price impact for the April 29, 2018 Morgan Stanley report. *Id.* Defendants therefore requested that the Class Period be modified to end on February 27, 2018, rather than April 27, 2018. *Id.*

98. Plaintiff opposed Defendants' motion on September 27, 2021, arguing that the Court properly considered all price impact rebuttal evidence, and even if the Court were to reconsider this evidence, Defendants still failed to prove a lack of price impact. ECF 162. Defendants submitted a reply in further support of their motion on October 12, 2021. ECF 165. On April 13, 2022, Judge Vazquez denied Defendants' motion, finding that because the Court had never found that it could not consider Defendants' cited evidence, their motion amounted to an untimely motion for reconsideration. *See* ECF 198. Judge Vazquez further found that Defendants' motion failed on its merits, noting that it was more likely than not that the April 29, 2018 Morgan Stanley report provided the market with new, corrective information. *Id.*

3. Issuance of Class Notice

99. On September 10, 2021, Plaintiff filed its motion to approve the form and manner of Class Notice, accompanied by a supporting memorandum of law. ECF 159. In connection with this motion, Plaintiff submitted proposed versions of the Notice of Pendency of Class Action, the Postcard Notice, the Summary Notice of Pendency of Class Action, and the Notice Plan (setting forth the proposed manner and timing for dissemination of notice). ECF 159-3 at Exs. 1-4. Plaintiff proposed JND as the administrator to supervise and disseminate Class Notice. ECF 159-1 at 4. The Court approved the form and manner of Class Notice on April 21, 2022

("Class Notice Order"). ECF 199. Among other things, the Court found the proposed Class Notice met the requirements of Rule 23 and due process and constituted the best notice practicable under the circumstances. *Id.*

100. Pursuant to the Court's Class Notice Order, JND began disseminating notice to potential Class Members and nominees on May 11, 2022. *See* ECF 215 ¶ 4. The Class Notice provided Class Members with the opportunity to request exclusion from the Class, explained that right, and set forth the procedures for doing so. *Id.* at Exs. A & B. The Class Notice also advised Class Members that it would be within the Court's discretion whether to permit a second opportunity to request exclusion from the Class if there was a settlement. *Id.* The Class Notice informed Class Members that if they chose to remain a member of the Class, they would "be bound by all past, present, and future orders and judgments in the Action, whether favorable or unfavorable." *Id.* at Ex. A. In accordance with the Court's Class Notice Order, JND also caused a summary notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire* on May 17, 2022. *Id.* ¶ 11.

101. On July 28, 2022, Plaintiff filed the Declaration of Luiggy Segura on behalf of JND, reporting that JND had mailed an aggregate of 751,520 postcard notices and 6,176 notices to potential Class Members and Nominees via First-Class mail. *Id.* ¶ 10. The deadline for submitting requests for exclusion was July 11, 2022.

A total of 30 requests for exclusion from the Class were received. *See* Stipulation at Appendix 1; ECF 215 at Ex. C.

G. Defendants' Summary Judgment Motions

102. On January 27, 2023, Defendants filed a letter requesting leave to file a motion for summary judgment and appending their Rule 56 statement of undisputed material facts. ECFs 231, 232. Plaintiff filed its response to Defendants' letter, as well as its responsive Rule 56 statement of material facts and its supplemental statement of disputed facts, on March 10, 2023. ECF 233. On March 14, 2023, Judge Vazquez granted Defendants' request to file their summary judgment motion, and Defendants subsequently filed their motion, along with over 150 exhibits, on April 21, 2023. ECFs 244-49; *see also* ECFs 263-66. With respect to Plaintiff's Otezla claims, Defendants argued that Plaintiff could not demonstrate any triable issues as to falsity, scienter, or loss causation. ECF 263 at 13-35. Among other things, Defendants asserted that Defendant Curran's April and July 2017 statements were inactionable statements of opinion because Plaintiff was unable to establish that Curran did not honestly believe her statements and that she lacked a reasonable basis for these statements. *Id.* at 13-24, 33-34. With respect to Plaintiff's Ozanimod claims, Defendants argued that many of the statements were inactionable puffery, that Plaintiff could not demonstrate any triable issues as to scienter, that there was no liability for the allegedly false corporate statements that were not

attributed to Smith or Martin, and that Plaintiff could not establish any triable issues as to loss causation in connection with the April 29, 2018 Morgan Stanley report. *Id.* at 44-60.

103. Plaintiff filed its opposition to Defendants' summary judgment motion, along with almost 250 exhibits, on May 19, 2023, and Defendants filed their reply and responsive Rule 56 statement on June 16, 2023. ECFs 251-53, 255; *see also* ECFs 260-62, 267.

104. On September 7, 2023, Judge Vazquez held oral argument on Defendants' motion. ECF 270. Ruling from the bench, Judge Vazquez denied Defendants' motion with respect to the Otezla claims and granted in part and denied in part Defendants' motion with respect to the Ozanimod claims. ECFs 271-72. Regarding the Ozanimod claims, Judge Vazquez granted Defendants' motion with respect to Smith's alleged false statements in April, July, and October 2017, but denied the motion with respect to Martin's alleged false statements in October 2017. *Id.* Judge Vazquez deferred ruling on Celgene's corporate Ozanimod statements from July, September, and October 2017 and January and February 2018. *Id.*

105. The case was reassigned to this Court on September 20, 2023. ECF 274. On October 18, 2023, the Court set a schedule for Defendants' partial summary judgment motion regarding Celgene's corporate Ozanimod statements. ECF 277. Pursuant to this schedule, Defendants filed their motion, along with a revised Rule

56 statement and 76 exhibits, on October 27, 2023. ECF 278. In moving for summary judgment, Defendants argued that Smith did not "make" any of the challenged corporate statements under the Supreme Court's decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), and that he did not have the requisite scienter in light of Judge Vazquez's prior dismissal of the claims against him. *Id.* at 16-19. In addition, Defendants asserted that Plaintiff could not invoke the corporate scienter doctrine with respect to these statements and could not otherwise establish scienter for these statements. *Id.* at 19-25. Plaintiff filed its opposition to Defendants' motion on November 17, 2023, along with its revised responsive and supplemental Rule 56 statements and 150 exhibits. ECFs 279-81; *see also* ECF 284. Plaintiff argued that the corporate scienter doctrine applied to impute Smith's scienter to Celgene, given Smith's involvement in the preparation of the corporate statements at issue. ECF at 284 at 21-25. Defendants filed their reply, along with their responsive Rule 56 statement, on December 8, 2023. ECF 282.

106. On May 15, 2024, the Court heard oral argument on Defendants' partial summary judgment motion. ECF 292.[6] At the conclusion of the argument, the Court requested supplemental letter briefing on the issue of Defendant Curran's scienter

[6] Plaintiff agreed during the argument to stipulate to the dismissal of the April 2017 corporate Ozanimod statements. *See* ECF 294. Plaintiff submitted a proposed stipulation on May 30, 2024, and the Court entered the stipulation and dismissed these statements that same day. ECF 298.

and her role in the Company's review process with respect to its SEC filings and earnings releases. ECFs 292-94. The Parties filed their respective five-page opening letter briefs on May 24, 2024, attaching various documents and deposition transcript excerpts. ECFs 295-96. The Parties then filed their two-page reply letters, with additional exhibits, on May 31, 2024. ECFs 300-01.

107. On July 23, 2024, the Court issued a 16-page opinion and order granting summary judgment as to Smith for the Company's January and February 2018 corporate statements. ECF 306. In so holding, the Court found that Smith did not make any of the challenged statements and that his role in reviewing and commenting on the Company's draft SEC filings was insufficient to render him liable for those statements. *Id.* The Court's order indicated that the Parties would be given an opportunity to address the other Individual Defendants' liability with respect to these statements after the Court ruled on the summary judgment motion with respect to Celgene. *Id.*

108. On September 4, 2024, the Court issued a 72-page opinion and order granting summary judgment with respect to the July and September 2017 corporate statements, finding that the Company could not be liable for these statements on the basis of the Individual Defendants' scienter. ECF 310. The Court denied Defendants' summary judgment with respect to the January and February 2018 corporate statements, holding that a reasonable jury could find that both Smith and

Curran had scienter for these statements and that their scienter could be imputed to Celgene given their knowledge of the allegedly misrepresented and omitted facts and their involvement in the preparation and review of the statements. *Id.* With respect to the October 2017 corporate statements, the Court determined that it required additional information on Curran's scienter and her role in the preparation of the statements before ruling. *Id.* To this end, the Court requested letter briefing from the Parties, accompanied by record evidence, regarding Curran's scienter for purposes of evaluating the October 2017 corporate statements. ECF 311.

109. On September 26, 2024, the Parties filed their respective six-page letter briefs. ECFs 314-15. Plaintiff submitted twenty-eight exhibits in support of its arguments and Defendants submitted eleven. *Id.* The Parties then filed their three-page reply letter briefs on October 7, 2024, along with several additional exhibits. ECFs 317-18.

110. On October 10, 2024, the Court held oral argument regarding Celgene's motion for summary judgment with respect to the October 2017 corporate statements. ECF 330. At the conclusion of the argument, the Court denied Celgene's motion, finding that Curran's scienter could be imputed to the Company, and citing to the analysis discussed during the argument and in the Court's prior summary judgment order, as well as the Parties' briefing. ECF 331. This ruling cleared the way for the Parties' trial preparations.

H. Plaintiff's Work With Experts

111. Given the complexity of the issues implicated by the Class's claims, Plaintiff retained multiple experts as either consultants or testifying experts. These experts analyzed and/or offered opinions on certain matters at different stages of the litigation.

112. While investigating the potential claims against Defendants and drafting the amended complaint, Plaintiff consulted with a highly-regarded and experienced clinical pharmacologist who previously served in a senior position at the FDA's Center for Drug Evaluation and Research, and Dr. Tabak, who provided analyses on the issues of damages and loss causation.

113. At the class certification stage of the case, Plaintiff retained Dr. Tabak to provide expert opinions and testimony in reports and at a deposition regarding market efficiency and to respond to arguments made by Defendants and their expert, including concerning price impact.

114. During the merits phase of the case, Plaintiff retained five experts to provide expert opinions and testimony related to Plaintiff's claims: (i) Chris Stomberg, Ph.D., who provided testimony regarding the industry norms for pharmaceutical forecasting, Celgene's forecasting practices with respect to the 2017 Otezla budget, and Otezla's 2017 performance; (ii) Simon Helfgott, M.D., who provided testimony concerning the available treatments for psoriasis and psoriatic

arthritis and Otezla's efficacy, tolerability, and costs relative to other treatments; (iii) Frederick Guengerich, Ph.D., who provided testimony regarding drug metabolism and toxicology, the identification, characterization, and safety testing of drug metabolites, and FDA guidance and industry customs regarding non-clinical toxicology; (iv) Nicholas Fleischer, R.ph., Ph.D., who provided testimony regarding FDA guidance and industry customs regarding LTS testing and data and the risks resulting from incomplete clinical pharmacology data, including LTS; and (v) Dr. Tabak, who provided expert testimony concerning loss causation and damages. All five experts submitted opening reports on May 12, 2022, and then submitted reply reports on October 14, 2022.

115. Plaintiff engaged in extensive preparations with each of these five experts in advance of their merits depositions. In late 2022, Plaintiff: (i) defended the deposition of Dr. Stomberg on November 3, 2022; (ii) defended the deposition of Dr. Helfgott on December 2, 2022; (iii) defended the deposition of Dr. Guengerich on November 21, 2022; (iv) defended the deposition of Dr. Fleisher on November 4, 2022; and (v) defended the deposition of Dr. Tabak on November 9, 2022.

116. Plaintiff also consulted extensively with these experts to prepare for the depositions of Defendants' five experts, who each served a rebuttal expert report on August 12, 2022: (i) Brian Reisetter, Ph.D., who offered opinions regarding Otezla market research, the data and methods Celgene used for the Otezla sales forecast,

and Celgene's opportunity to increase Otezla sales; (ii) Dr. Gary Solomon, who offered opinions regarding the safety, usefulness, and efficacy of Otezla, and the supporting study data; (iii) Dr. William David McGuinn, who offered opinions regarding FDA guidance and the sufficiency of the non-clinical Metabolite data Defendants submitted with the Ozanimod NDA; (iv) Dr. James H. Sherry, who offered opinions regarding FDA guidance and the sufficiency of the clinical study reports and LTS data that Defendants submitted with the Ozanimod NDA; and (v) Paul Gompers, Ph.D., who offered opinions on loss causation and damages.

117. Dr. Tabak also assisted Plaintiff's Counsel in developing the proposed Plan of Allocation (set forth in Appendix A of the Settlement Notice) after the Parties reached their agreement in principle to settle the Action.

I. Preparations for Trial

118. The Parties had completed a significant portion of the pretrial work by the time they reached an agreement to settle. Prior to reaching the Settlement, Plaintiff took the actions described below, among others, to prepare for trial.

1. Pretrial Order and Final Pretrial Conference

119. On October 16, 2024, Judge Clark entered an order scheduling a final pretrial conference for December 20, 2024[7] and requiring that the Parties submit a

[7] This conference was subsequently rescheduled for December 19, 2024. ECF 357.

draft final pretrial order by December 9, 2024. ECF 334. Over the next several weeks, Plaintiff worked to prepare its various sections of the pretrial order, including its statement of contested facts, witness list, and list of contemplated pretrial motions. Plaintiff also spent significant time compiling deposition designations for its case-in-chief and its trial exhibit list.

120. On October 24, 2024, pursuant to an agreed-upon schedule for the exchange of the various parts of the final pretrial order, Plaintiff provided Defendants with drafts of its sections of the order, its trial exhibit list, and its deposition designations. On November 14, 2024, Defendants provided Plaintiff with drafts of their sections of the order, their exhibit list, and their objections to Plaintiff's exhibit list. Defendants then provided their deposition designations and objections to Plaintiff's designations on November 15, 2024. Plaintiff provided Defendants with its responsive sections of the pretrial order on December 4, 2024, and the Parties met and conferred regarding the draft order on December 5, 2024. After exchanging additional objections to designated deposition testimony and counter-designations, the Parties submitted the 348-page pretrial order, which included the Parties' respective exhibit lists and deposition designations, to Judge Clark on December 9, 2024.

121. Judge Clark held the final pretrial conference on December 19, 2024 and entered the final pretrial order that day. ECF 363. Judge Clark also ordered that

the Parties engage in a meaningful meet and confer to try and narrow the list of contemplated pretrial motions, motions in limine, and *Daubert* motions. ECF 362. Judge Clark also set a schedule for these motions, ordering that all opening motions be filed by March 31, 2025. *Id.*

2. The Parties' Pretrial Motions

122. On November 15, 2024, while the Parties were in the midst of preparing the pretrial order, Defendants submitted a letter to the Court seeking leave to file a Rule 12(c) motion asserting that three of Defendants' Ozanimod statements were protected by the PSLRA's safe harbor. ECF 348 at 1. On November 18, 2024, the Court ordered Defendants to provide authority supporting their request to file a Rule 12(c) motion after the Court had already decided their summary judgment motion (ECF 349), and Defendants submitted their letter in response to this order on November 19, 2024. ECF 351. The Court subsequently denied Defendants' request to file a Rule 12(c) motion on April 30, 2025, finding that the request came "years too late." ECF 402.

123. On November 21, 2024, Defendants filed a Motion to Bifurcate Trial, arguing that the trial in the Action should be separated into two trials—one for the Otezla claims and one for the Ozanimod claims. ECF 352. Plaintiff filed its opposition to Defendants' motion on December 2, 2024. ECF 354. Defendants filed a reply in further support of their motion on December 11, 2024. ECF 358. The Court

later denied Defendants' motion on May 1, 2025, finding that "the facts as to Ozanimod and Otezla are, to an extent, overlapping and intertwined," as Plaintiff argued. ECF 403.

124. In the weeks after Judge Clark's December 19, 2024 order requiring the Parties to meet and confer regarding their contemplated pretrial motions, the Parties convened several lengthy telephonic meet and confers and also exchanged multiple letters setting forth their respective positions. Through these discussions, the Parties succeeded in narrowing the scope and number of contemplated pretrial motions.

125. After receiving a one-week extension of the original deadline for submission of their pretrial motions (ECF 374), the Parties filed their respective motions on April 7, 2025. Plaintiff filed the following twelve motions, each accompanied by a supporting memorandum of law:

- Motion to Bifurcate Trial into Two Phases and to Exclude Evidence and Argument Concerning Lead Plaintiff from Phase One (ECF 377) ("Bifurcation Motion");
- Motion in Limine to Preclude Evidence of Celgene's Resubmission of the New Drug Application, Ultimate Regulatory Approval, and Present-Effectiveness of Ozanimod (ECF 378) ("Post-Class Period Motion");
- Motion in Limine to Preclude Irrelevant and Unduly Prejudicial Evidence Post-Dating the Otezla Misstatements (ECF 379);
- Motion in Limine to Preclude Evidence or Argument Regarding Defendants' Character, the Impact of Any Judgment, and Improper Attacks on Lead Plaintiff's Counsel (ECF 380);

- Motion in Limine to Preclude Reliance on Counsel Defense or Evidence Suggesting Counsel's Involvement (ECFs 381-82);

- Motion in Limine to Introduce Defendant Curran's Deposition in Lead Plaintiff's Case-in-Chief (ECF 383);

- Motion in Limine to Preclude Irrelevant and Unduly Prejudicial Evidence or Argument Regarding Former Celgene Employee (ECFs 384-85);

- Motion in Limine to Preclude Improper Lay Opinion Testimony of Drs. Lawrence Lesko and David Jacobson-Kram (ECFs 386-87) ("Lay Opinion Motion");

- Motion to Exclude Testimony of Drs. James Sherry and William David McGuinn, Jr. (ECF 388);

- Motion to Exclude Specific Opinions and Testimony of Dr. Brian Reisetter (ECF 389);

- Motion to Exclude Specific Opinions and Testimony of Dr. Paul Gompers (ECF 390); and

- Motion to Exclude Specific Opinions and Testimony of Dr. Gary Solomon (ECF 391).

126. Plaintiff's Bifurcation Motion, Post-Class Period Motion, and Lay Opinion Motion were key motions with significant implications for the evidence Defendants could present at trial.

127. The Bifurcation Motion sought to bifurcate the trial into separate Phase One and Phase Two proceedings, with the first phase concerning only class-wide issues. Plaintiff sought to preclude Defendants from introducing any individualized issues of reliance or defenses unique to AMF in Phase One. ECF 377 at 2-4.

128. Through the Post-Class Period Motion, Plaintiff sought to preclude Defendants, pursuant to Federal Rules of Evidence 401, 402, and 403 ("F.R.E."), from introducing any evidence, argument, or opinions regarding Celgene's resubmission of the Ozanimod NDA in 2019, the FDA's approval of that resubmission in 2020, the data and rationale behind that approval, and the present-day patient effectiveness of Ozanimod. *See* ECF 378-2. Plaintiff argued that such evidence, argument, or opinion was irrelevant under F.R.E. 401 and 402 and thus should not be admitted as a basis for a good faith defense to falsity. *Id.* at 7-12. Specifically, Plaintiff argued that because Ozanimod's approval post-dated the Class Period, this fact was irrelevant to Defendants' knowledge at the time the alleged false and misleading statements were made. *Id.* Additionally, Plaintiff argued that such evidence, argument, or opinion was not relevant to Defendants' scienter, as the case did not concern Ozanimod's ultimate approval or effectiveness, but whether Defendants acted knowingly or recklessly when they concealed the deficiencies in Ozanimod's NDA in late 2017 and early 2018. *Id.* at 13. Finally, Plaintiff argued that the evidence of Ozanimod's post-Class Period approval was prejudicial and risked misleading or confusing the jury because it had no relevance to the issues to be tried. *Id.* at 15-17.

129. Plaintiff's Lay Opinion Motion sought to preclude Defendants under F.R.E. 701 and 702 from introducing lay opinion testimony from former FDA

scientists that Celgene had consulted in preparation of the Ozanimod NDA. ECF 387 at 1-2. Plaintiff argued that such testimony would violate F.R.E. 701's requirements of a proper foundation for lay opinion testimony, as the testimony was unconnected to the witnesses' direct involvement with Celgene during the Class Period, unhelpful to the jury in determining any fact at issue, and based on the witnesses' specialized scientific knowledge rather than every-day reasoning. ECF 387 at 11-14. Plaintiff further argued that if Defendants wished to offer the testimony, the witnesses needed to be qualified as experts under Rule 702, which Defendants had failed to do. *Id.* at 15. Finally, Plaintiff argued that the testimony was inadmissible under F.R.E. 403 because its minimal probative value was outweighed by the risk of unfair prejudice to Plaintiff, confusion of the issues, wasting of time, and the needless presentation of cumulative evidence. *Id.* at 16.

130. On April 7, 2025, Defendants filed the following five pretrial motions, each accompanied by a supporting memorandum of law:

- Motion in Limine to Exclude Evidence Related to Incentive Compensation and Salaries (ECF 394);
- Motion to Exclude the Testimony of Plaintiff's Proffered Expert Witnesses Dr. Simon Helfgott and Dr. Chris Stomberg (ECF 395);
- Motion to Exclude the Testimony of Plaintiff's Proffered Expert Witness Dr. David Tabak (ECF 396);
- Motion to Exclude the Testimony of Plaintiff's Proffered Expert Witnesses Dr. Frederick Guengerich and Dr. Nicholas Fleischer (ECF 397); and

- Motion for Spoliation Sanctions (ECFs 398, 399, 401).

131. In accordance with the Court-ordered schedule (ECF 374), the Parties filed oppositions to the other side's motions on May 19, 2025 (ECFs 408-15, 417-20, 422-28), and replies in further support of their motions on June 20, 2025. ECFs 430-41, 443-48.

132. On August 25, 2025, the Court granted Plaintiff's Bifurcation Motion and ordered that the trial be bifurcated into two phases—one phase addressing common class-wide issues (including Defendants' liability and the measure of class-wide per-share damages) and a second phase addressing class member-specific individualized issues. ECF 468.

133. The remaining sixteen pretrial motions were all fully briefed and pending at the time the Settlement was reached.

J. Plaintiff's Filing of the Operative Fourth Amended Complaint

134. In their November 11, 2024 Motion to Bifurcate Trial, Defendants asserted that AMF did not have standing to pursue the Ozanimod claims remaining after the Court's summary judgment orders because all of AMF's purchases of Celgene stock predated the alleged misstatements. *See* ECF 352-1 at 20-21. While Plaintiff disagreed with Defendants' contention, Plaintiff asserted that it could cure any potential standing deficiency by amending the TAC to allege the November 11, 2024 assignment of claims to AMF by one of its sub-funds, AMF Fonder, which

purchased Celgene stock after each of the alleged misstatements. ECF 354. In denying Defendants' bifurcation motion, the Court permitted Plaintiff to file a short motion to amend, attaching the proposed amended pleading. *See* ECF 403.

135. On May 7, 2025, Plaintiff filed its motion to amend, along with the proposed FAC. ECF 405. The only new allegations in the proposed FAC related to AMF Fonder's assignment of its claims to AMF. *See* ECF 405-2 ¶ 40. Defendants opposed Plaintiff's motion to amend on May 12, 2025. ECF 406.

136. On August 25, 2025, the Court granted Plaintiff's motion to amend, finding that the proposed amendment was narrow, Plaintiff acted diligently in obtaining the assignment, and that the Parties' agreement as to any discovery necessitated by the assignment mitigated any potential prejudice to Defendants. ECF 467.

137. Plaintiff filed the FAC on August 29, 2025. ECF 469.

III. THE SETTLEMENT

A. The Parties' Settlement Negotiations and Mediation

138. The proposed Settlement was reached only after extensive, arms'-length negotiations, including two formal mediations. The second mediation session in September 2025 took place over seven years after the inception of the Action and *four months* before trial was set to commence. By that time (following the completion of fact and expert discovery, certification of the Class, multiple rounds

of summary judgment briefing and argument, and extensive trial preparations), Plaintiff and Class Counsel were intimately attuned to the case's strengths and weaknesses. Given the significant risks and uncertainties of taking this Action to trial, Plaintiff believes that the Settlement—the result of a mediator's proposal—is fair and reasonable and warrants preliminary approval.

139. The Parties initially began discussing a possible resolution of the Action following full briefing and a hearing on Defendants' motion for partial summary judgment with respect to the Ozanimod corporate statements. Defendants refused to engage in settlement discussions prior to this point in the litigation.

140. To assist in their efforts to resolve the Action, the Parties engaged Greg Danilow, Esq. of Phillips ADR Enterprises. On June 3 and 5, 2024, the Parties participated in a two-day mediation session with Mr. Danilow. Before the mediation, the Parties exchanged and also submitted to Mr. Danilow detailed mediation statements (with exhibits) setting forth their respective positions on the claims asserted. The Parties were too far apart in their respective positions to resolve the Action at the mediation and continued towards trial.

141. The Parties did not resume their settlement discussions until the summer of 2025. While preparing for trial, the Parties agreed to participate in a second mediation session (over a year after the first), this time with former U.S. District Judge Layn Phillips and David Murphy, Esq., both of Phillips ADR

Enterprises. In advance of the mediation on September 10, 2025, the Parties again exchanged and submitted to the mediators comprehensive mediation statements. Although the Parties did not resolve the Action at the mediation, they continued their discussions in the weeks following the mediation with the ongoing assistance of Judge Phillips and Mr. Murphy.

142. As a result of these continued discussions, Judge Phillips and Mr. Murphy issued a double-blind mediator's proposal to resolve the Action for $239,000,000. Both sides accepted the proposal on September 25, 2025. On September 26, 2025, the Parties notified the Court that they had reached an agreement in principle to resolve the Action.

B. Preparation of Settlement Documents and Motion

143. Thereafter, Plaintiff's Counsel began working on various documents in connection with the Parties' agreement to settle the Action, as well as Plaintiff's anticipated motion for preliminary approval of the Settlement. During this time, Plaintiff's Counsel also worked with Plaintiff's damages expert, Dr. Tabak of NERA, to develop the proposed Plan of Allocation. *See* § VI below.

144. Over the following weeks, counsel for the Parties negotiated the specific terms of the Stipulation, exchanging multiple drafts of the Stipulation as well as the exhibits thereto. After negotiating the specific terms of their agreement, the Parties executed the Stipulation setting forth their final and binding agreement

to settle the Action on November 4, 2025.[8] On the same day, Plaintiff filed the Stipulation and related exhibits along with their Unopposed Motion for Preliminary Approval of Settlement and Authorization to Disseminate Notice of Settlement and supporting memorandum. ECF 479.

IV. RISKS OF CONTINUED LITIGATION

145. At the time the Settlement was reached, the Parties were preparing for trial. The Parties' pretrial order had been filed with the Court, and sixteen pretrial motions were pending. *See supra* ¶¶ 119-33. While Plaintiff and Class Counsel remained confident in their ability to prove the Class's claims at trial, they also appreciated the risks inherent to taking any case to trial, as well as the case-specific risks they faced here. Several of the most significant risks to continued litigation of the Action are discussed below. Ultimately, consideration of the risks and unique complexities of the Class's claims, thoroughly vetted over the course of the Action as well as during the Parties' settlement negotiations, informed Plaintiff's conclusion that the benefits of a Settlement now—without further delay and expense—outweigh the risks of trial and subsequent appeals.

[8] On the same day, the Parties also entered into a confidential Supplemental Agreement which will apply *only if* the Court requires a second opt-out period. If there is a second opt out, the Supplemental Agreement will provide Defendants with the option to terminate the Settlement if a certain agreed-upon amount of requests for exclusion are received in connection with the Settlement.

A. Risks in Establishing Defendants' Liability for the Otezla Claims

146. At trial, Plaintiff would have sought to prove the falsity of two statements related to Otezla, a drug manufactured and sold by Celgene's I&I franchise, which the FDA had approved for the treatment of adults with PsA and for the treatment of moderate to severe PsO. Based on the arguments Defendants advanced over the course of the litigation, including at summary judgment and in the Parties' pretrial order, Plaintiff expects that Defendants would have raised formidable defenses regarding the Otezla statements as to both falsity and scienter.

147. Specifically, first, on April 27, 2017, Celgene held a Q1 2017 earnings call during which, Carter Gould ("Gould"), an analyst with UBS, asked the following question:

> Good morning, guys. Thanks for taking a question. On OTEZLA, it definitely sounds like you're positioning the performance, the seasonal and sort of temporary and I guess, very much in line with what we heard from Amgen last night in the broader segment. Can you just walk through what gives you confidence growth will bounce back or could we see continued pressure in the near term? Thank you.

In response to Gould's question, Curran stated ("April Otezla Statement"):

> Thank you, Carter. Yeah, I think you're spot on. I think there was really three key drivers to the performance in the first quarter. Firstly, we saw contraction in the market as we saw increased GTN as a result of the contracting, but importantly, ***that really gives us access to double the number of insured lives going forward***. And lastly, ***we saw minimal drawdown of the inventory.***
>
> Importantly, ***if we look at the underlying dynamics to the business, they're exceptionally strong***. If you look at the market share, ***OTEZLA*** continues ***to grow market share.*** We continue to ***gain more than 40% of***

> ***new patients*** and these new contracts will give us access to an additional pool of patients moving forward. Importantly, ***if we look at the exit run rates out of quarter one and into quarter two, we do see the net sales rebounding and on track to deliver the 2017 guidance***.

Ex. 2 at -914.[9]

148. Judge Vazquez found that the April Otezla Statement was actionable as an opinion under *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 575 U.S. 175 (2015). At trial, Plaintiff would have intended to prove that the April Otezla Statement was misleading because: (1) Curran did not subjectively believe the statement given the multiple warnings she received that Otezla could not meet the aggressive 2017 sales guidance; (2) the statement contained multiple false embedded statements of fact, including as to Otezla's market share, level of inventory, managed care contracting strategy, and sales run rate; and (3) Curran omitted material facts about Otezla's inability to meet its sales guidance, the omission of which made the statement misleading to a reasonable person.

149. Plaintiff expects that Defendants would have raised, among others, multiple arguments against the falsity of the April Otezla Statement, each of which

[9] All of the documents and testimony cited in this Section were previously submitted to the Court in connection with Defendants' summary judgment motions. Plaintiff re-attaches certain of these materials hereto for ease of reference.

raised a serious risk that a jury would find in Defendants' favor. Some of those arguments are addressed below.

150. *First*, Defendants would present testimony from Curran, a sophisticated long-time executive, that she believed, as of April 27, 2017, that Otezla would meet its public guidance for 2017. *See* Ex. 3 at 311:13-19. Thus, Plaintiff would face the challenge of convincing a jury that Curran affirmatively misled them in her testimony—not just that she was mistaken or even reckless.

151. *Second*, Defendants would seek to undercut the testimony of former employees who would state at trial that they heard a former Celgene executive warn Curran on multiple occasions that Celgene could not meet its Otezla sales guidance by arguing that: (i) the executive in question denied warning Curran about the need to change the guidance (ECF 363 at 121); (ii) one of the former employees had been terminated by Celgene for misconduct, and the jury would discount that former employee's biased testimony (ECF 425); and (iii) the other former employee testified that he too "had some optimism" that Celgene could meet its 2017 Otezla forecast as of April 2017. Ex. 4 at 231:18-233:13. While Plaintiff sought to exclude improper impeachment evidence (*see* ECF 384), and would point to contemporaneous documents supporting the former employees, it is possible that skilled defense counsel could undercut the former employee testimony effectively at trial. A successful cross-examination of the former employees would impact the first

and third prongs of *Omnicare*, i.e., it would hamper Plaintiff's ability to prove that Curran did not believe the April Otezla Statement and that Curran did not omit any material facts about whether Otezla could meet its sales guidance.

152. *Third*, Defendants would argue that each of the embedded facts alleged by the April Otezla Statement were true, and that Curran did not otherwise fail to disclose any material facts that did not fairly align with her opinion that Otezla would meet the sales guidance. For example:

- **Inventory**: Defendants would argue that Curran's statement to investors that Celgene experienced a "minimal drawdown" of inventory during Q1 2017 was not materially misleading because: (i) Celgene had a higher-than-normal buildup of inventory leading into Q1 2017, making any drawdown "minimal" in nature; and (ii) Celgene quantified the inventory drawdown as "about $35 to $40 million" (ECF 363 at 125), which defined what Curran meant to be "minimal" and rendered her characterization of the drawdown as immaterial. Ex. 5 at 8. While Plaintiff would counter these arguments with evidence that Curran characterized Otezla's inventory drawdown in starkly different terms internally than to investors (as "significant," not "minimal") (Ex. 3 at 74:2-76:5), Defendants' materiality arguments presented a significant trial risk.

- **Market Share**: Defendants would likely have presented evidence that Curran's description of Otezla's market share growth was correct because she was referring to demonstrable growth over a two-year period, not just in Q1 2017, as depicted in a graph used during the conference call. Ex. 6 at 27. Plaintiff would present evidence that Otezla's market share clearly decreased in the quarter, including as set forth in internal presentations that Curran gave to other executives characterizing Otezla's market share as "relatively flat" and lowering key market share assumptions during the quarter. Ex. 7 at -257; Ex. 8 at -089. Nonetheless, it is uncertain how the jury would have resolved the Parties' competing arguments.

- **New Patient Share**: Defendants would likely have presented evidence that Curran's statement that Otezla "continue[d] to gain more than 40% of new patients" was corroborated by a document she received suggesting that Otezla led the market with a 44.3% new-to-brand share of a certain subset of new patients receiving Otezla for PsO. Ex. 9 at -357-58. Plaintiff would respond that Curran's claim that Otezla "continue[d] to gain more than 40% of new patients" was misleading given that Otezla's new prescription development metric dropped sharply in Q1 2017. ECF 363 at 43. But if the jury credited Curran's explanation that "new patient share" meant "new-to-brand" share, Defendants would prevail on this issue at trial.

- **Increased Market Access**: Defendants would likely have presented evidence that Curran's statement that Celgene's new contracts with insurance companies had given Celgene "access to double the number of insured lives" and "an additional pool of patients" was true. Ex. 10 at -640; Ex. 11 at -228. Defendants also would have pointed to documents showing the growth in market access for Otezla and internal documents reporting that Celgene had already "realized" some of the "market share gains" Celgene had predicted. Ex. 9 at -357-58. Plaintiff would respond that the managed care plans Curran touted as providing access to more patients were forecast internally to lose Celgene over $18 million in 2017 (Ex. 12 at -250, Ex. 13 at -637), a fact Curran never disclosed to investors. Those key plans further underperformed expectations in Q1 2017. Ex. 14 at -725. The jury once again would have to resolve these competing views of the evidence to determine whether Curran misled investors by omitting material information.

- **Exit Run Rates**: Defendants would likely have presented evidence that Curran's statement that exit run rates showed that Otezla's net sales were "rebounding and on track to deliver [Celgene's] 2017 guidance" was true, pointing to internal documents advising Curran that recent sales trends were consistent with the run rate needed to meet full year guidance, and that second quarter sales met 100% of Celgene's quarter-to-date projections. Ex. 15 at -878.

In response, Plaintiff would have pointed to an internal document forwarded to Curran's assistant one week prior to the April Statement showing a run-rate budget shortfall exceeding $500 million (Ex. 16 at -696-98); that April sales failed to make up any of the Q1 2017 miss (Ex. 17, Ex. 15 at -878); and that other Celgene executives with access to the same information remarked accurately in mid-April, "Otezla on track to . . . . again miss the forecast." Ex. 18. The jury would thus be left with yet another dispute over competing interpretations of the evidence.

153. Curran made the second alleged misstatement on July 27, 2017, during Celgene's Q2 2017 earnings call, in which she stated as follows ("July Otezla Statement"):

> Q2 was an outstanding quarter for Celgene I&I, highlighted by significant sequential growth for OTEZLA. Key OTEZLA performance indicators continue to strengthen, and market share and prescriber adoption increased significantly in both U.S. and internationally.

Ex. 19 at -437-438.

154. At trial, Plaintiff intended to prove that the July Otezla Statement was false because Curran acknowledged in an internal email just three days earlier that Otezla's market share was flat-to-declining for the quarter (Ex. 20 at -522), which multiple internal documents corroborated. *E.g.*, Ex. 21 at -471, 479-80. Such

documents further demonstrate that nearly every Otezla performance indicator was flat-to-declining for the quarter. *E.g.*, Ex. 14 at -725; Ex. 22; Ex. 23 at -713.

155. Defendants, however, had strong defenses to the June Otezla Statement, as well. Some of those defenses are addressed below.

156. *First*, as to market share, Defendants would have argued that the alleged market share misstatement was not materially misleading given that: (i) Celgene disclosed the specific market share percentage in Q2 2017, which investors could have compared to the market share percentage disclosed at the end of Q1 2017 to see that there had been a decline over the quarter (Ex. 24 at 26); and (ii) Curran's statement otherwise referred to market growth over a long-term horizon and was not limited to one quarter. *Id.* While Plaintiff has evidence to counter these arguments, including that Curran's statement referred specifically to "Q2," that analysts referred to the market share statement as relating to Q2, and that multiple internal market share metrics declined in Q2 (Ex. 21 at -471, 479-80), Defendants' materiality argument could have gained traction with the jury.

157. *Second*, as to key performance indicators, Defendants would have argued that Curran was referring to a specific metric and chart displayed later in her remarks, Otezla's New-to-Brand market share, which led its peers. Ex. 24 at 26. Defendants would also point to internal documents circulated to Curran shortly before the earnings call that "[i]ncreasing [Otezla] adoption at U.S. and global access

continues to improve" (Ex. 25 at -202), and that quarterly data showed total prescriptions "up ~15% over the comparable period in Q1 and the growth is consistent with our expectations." Ex. 26 at -483. Although Plaintiff would have responses to these arguments as well—including that Otezla missed its budgeted forecast in Q2 2017, new patient growth metrics declined, the crucial managed care contracts continued to miss forecasted metrics, and Otezla's inventory increased (ECF 363 at 43-50), there remains a strong risk that the jury would have sided with Defendants' interpretation, particularly if they credited Curran's trial testimony.

158. With respect to scienter, Plaintiff expects that Defendants would argue that Curran had a good-faith belief that each of the April and July Otezla Statements were true (Ex. 27), backed up by contemporaneous documents, and that Plaintiff was relying on subsequent results in hindsight to manufacture a fraud.

159. Defendants also would have argued that Curran had no motive to engage in fraud: she did not engage in any insider sales, and her bonus was tied to Otezla's actual performance, not maintaining its public guidance. ECF 363 at 140.

160. Of course, Plaintiff would have responses to these arguments, most principally that Curran's scienter could readily be inferred from her knowledge or access to facts contradicting specific false and misleading material misstatements, which is quintessential evidence of scienter. But like so much of the evidence outlined above in relation to falsity, the jury's resolution of Curran's scienter would

likely rise and fall on her trial testimony, which would have presented a significant trial risk.

B. Risks in Establishing Defendants' Liability for the Ozanimod Claims

161. At trial, a jury would also be asked to determine whether Defendants' Ozanimod misstatements were materially false or misleading and made with scienter. Based on the arguments Defendants advanced over the course of the litigation, including at summary judgment and in the Parties' pretrial order, Plaintiff expects that Defendants would have raised formidable defenses to both falsity and scienter at trial. Some of those defenses are described below.

162. With respect to falsity, Plaintiff expects that Defendants would argue that the challenged Ozanimod statements were literally true—i.e., the successful Phase III Ozanimod studies, which demonstrated the efficacy of the drug, did in fact form the basis for the NDA submission; Celgene personnel were working towards submission of the NDA at the end of 2017; and the NDA was submitted by year-end 2017. *See, e.g.*, ECF 268 at 50-51; 278-1 at 12, 21. Thus, Plaintiff would have to convince a jury that even though Defendants' statements were true in a literal sense, they nonetheless misled investors by not disclosing the discovery of the Metabolite and the risks it posed to filing a fully compliant NDA by year-end 2017 (as Celgene indicated to investors it was on track to do).

163. Defendants also would likely argue that their statements were protected by the PSLRA safe harbor because they were forward-looking and accompanied by meaningful cautionary language regarding the risks of regulatory and other setbacks in connection with the NDA process. In fact, Defendants sought leave to file a motion for judgment on the pleadings under Rule 12(c) asserting these safe harbor arguments following the Court's final summary judgment order. ECF 348. Although the Court denied Defendants' request to file a Rule 12(c) motion invoking the safe harbor, Defendants would likely raise these arguments at trial. ECF 349; *see also* ECF 363 at 8 (PTO identifying Defendants' contemplated motion to issue jury instruction on safe harbor).

164. With respect to scienter, Plaintiff expects that Defendants would argue scienter could not be proven for Martin, Smith, or Curran, and even if it could, their scienter could not be imputed to Celgene, the corporate Defendant. Defendants' scienter defense would likely center around Celgene's ex-FDA consultants—Dr. Lawrence Lesko, Dr. Russell Katz, and Dr. David Jacobson-Kram—that the Company engaged to advise it regarding the Ozanimod NDA submission in the wake of the belatedly-discovered Metabolite. Specifically, on July 20, 2017, Martin and other members of the Ozanimod team met with certain of these former senior FDA employees to discuss the Ozanimod data and the Company's submission plan. *See* Ex. 28 at -214, -217, -221, -317; Ex. 29 at 28:12-17; Ex. 30 at 199:2-21; Ex. 31; Ex.

32. Drs. Lesko and Jacobson-Kram both testified at deposition that they believed Celgene's plan for addressing the Metabolite would be acceptable to the FDA and that the agency would not issue an RTF—especially in light of the strong Phase III safety and efficacy data for Ozanimod—and that they were surprised by the RTF. Ex. 29 at 159:11-17 ("When I learned of the RTF, . . . I was surprised."), 166:8-168:11 (describing reasons for surprise, including that the "key information . . . was present" in the NDA); Ex. 33 at 93:21-94:6 ("I didn't think FDA would issue an RTF for a nonclinical issue").

165. In addition, Defendants would likely present the jury with internal Celgene documents communicating the ex-FDA consultants' beliefs that the NDA submission would be deemed sufficient by the FDA. *See, e.g.*, Ex. 34 (email from Martin to Curran: "recent feedback from ex-FDA reviewers (tox, clin pharm and division director level) indicates that our plan/data should be acceptable to the agency and allow us to keep the submission on schedule").

166. Although there is a factual dispute as to whether the consultants were presented with sufficient information to evaluate Celgene's plan regarding the LTS data for the Metabolite (*see, e.g.*, ECF 260 at 39 n.23), there is a significant risk that a jury would find the consultants' testimony and related internal documents persuasive, thereby bolstering Defendants' claim that they had a reasonable basis to believe that the FDA would accept the NDA for filing on its initial submission.

167. Defendants also would likely present testimony from Martin, Smith, and Curran regarding the challenged statements and their beliefs with respect to the Metabolite and the NDA submission at the time these statements were made. Martin would likely testify at trial, as he did at his deposition, that he did not mention the Metabolite during his October 26, 2017 statements "because the metabolite had no impact either on the quality of the data and the robustness of the data . . . and had no impact on the timing of the NDA." Ex. 30 at 320:23-321:10. As Martin elaborated: "we had worked with the team and the various experts that we had engaged including ex-FDA reviewers that all believed that our package looked good, was reasonable, and the plan was reasonable, and that . . . we would not get a Refusal-To-File and that this drug should be eventually approved." *Id.* at 321:13-19.

168. In turn, Smith would likely testify, as he did at his deposition, that he "was told the metabolite issue would be nonmaterial either to the timing or the substance of the NDA, and that there was a remediation plan in place with deal with anything that . . . needed to be dealt with in the timing as appropriate." Ex. 35 at 306:1-6; 306:22-307-5. Plaintiff expects that Smith also would testify that he was "shocked" by the RTF "given the internal/external advice that [the Company] had received relative to . . . filing" the NDA and that the "view from internal experts, from multiple external experts, was that we had remediated any issues relative to . . . the filing specific to the metabolite." *Id.* at 310:1-12; 311:2-6.

169. Similar to Martin and Smith, Curran also would likely testify at trial, as she did at deposition, that she relied on the ex-FDA consultants and the Company's internal team who all believed the submission would be acceptable to the FDA, and that she was "totally shocked" by the RTF. *See* Ex. 3 at 234:17-19; *id.* at 232:1-5 ("[T]he team had the experts internally and they had consulted with external experts, and they were comfortable with the package that we were submitting, and it was approved by the internal authorities to submit that."); *id.* at 234:5-15 ("[T]he team had discussed multiple different scenarios and looked at kind of scenario planning. There wasn't a – I wasn't concerned about the application, because I thought – you know, I had sufficient confidence in the expertise that we had internally, and senior leaders were involved, and we, as I understood, consulted with external experts, and they had agreed with our strategy."); Ex. 36 (email from Maria Palmisano, Celgene's Corporate Vice President for Clinical Pharmacology, to Jay Backstrom stating: "I assess the [Ozanimod] program as having minimal risk of an RTF on the basis of the metabolite.").

170. Plaintiff would counter this testimony by introducing internal Celgene documents evidencing issues and concerns surrounding the NDA, such as the Company's October 27, 2017 Briefing Book submission and the FDA's response to this submission, as well as internal emails discussing "potential RTF issues" and contingency plans in the event that the FDA rejected Celgene's proposal. *See, e.g.*,

Ex. 37; Ex. 38; Ex. 39; Ex. 40; Ex. 41. Plaintiff would also show that Martin, Smith, and Curran all either received or were otherwise aware of these communications. *Id.* In addition, Plaintiff would introduce testimony from Florence Houn, Celgene's Vice President of Global Regulatory Affairs, who advised that the risk of an RTF was substantial, and testified that she was not surprised that Celgene received an RTF. Ex. 42; Ex. 43 at 109:25-110:9.

171. Ultimately, jurors' determination as to whether Martin, Smith, and Curran had scienter would likely turn on their view of these witnesses' credibility, and there is a significant risk that a jury would credit Defendants' testimony and find that they did not harbor an intent to defraud investors.

172. Due to the fact that most of the principal fact witnesses for Plaintiff's Ozanimod claims reside outside of the jurisdiction, beyond the Court's subpoena power, Plaintiff would also be dependent on video deposition testimony to put on its Ozanimod case. *See, e.g.*, ECF 363 at 174-85 (Plaintiff's witness list with witnesses' locations). This would not only complicate Plaintiff's trial presentation, but would also potentially put Plaintiff at a disadvantage from the jury's perspective given that Martin, Smith, Curran, and other key witnesses for Defendants' defense would likely testify live at trial. *See id.* at 186-200 (Defendants' witness list identifying live witnesses).

173. At trial, Defendants would also likely argue that Plaintiff cannot hold Celgene liable for the corporate statements from October 2017 and January and February 2018 based on Curran's and Smith's scienter. For example, Defendants would try to establish that Curran's role in reviewing the Company's press releases and SEC filings was minimal at best, and therefore she was not aware of the challenged statements such that her scienter could not be imputed to Celgene for these statements. *See, e.g.*, ECF 295 at 1-2. Indeed, in denying Defendants' motion for summary judgment with respect to the January 2018 press release, the Court found that "[g]iving the Plaintiff[] the benefit of all reasonable inferences . . . , there is ***just enough*** to conclude that a reasonable jury could find that [Curran] was aware of [this statement]." ECF 310 at 65-66 (emphasis added).

174. Finally, Defendants would likely contend that Plaintiff's theory of liability is implausible—a pharmaceutical company that had devoted significant resources to developing a drug would have no incentive to file an NDA knowing that it was almost certain to be rejected by the FDA. *See, e.g.*, ECF 52-1 at 61; ECF 263 at 45. This sort of common-sense argument may be persuasive to a jury in determining whether Defendants acted fraudulently.

C. Risks in Establishing Class-wide Damages

175. The amount of damages awarded at trial would turn on the jury's findings as to how much inflation (if any) was maintained in Celgene's stock price

on account of the fraud, and for how long. This set up a "battle of the experts." In one corner: David Tabak Ph.D., who opined that damages arose from stock drops following three disclosures: October 26, 2017, when Celgene announced a $250 million guidance reduction due to dismal Otezla sales; February 28, 2018, when Celgene disclosed its receipt of the RTF letter from the FDA; and April 29, 2018, when Morgan Stanley revealed that resubmission of the NDA would be delayed by up to three years based on newly acquired information regarding the concentration of the Metabolite and the heightened potential need for new toxicology studies. Ex. 44 ¶¶ 17-18, 22, 25-27, 28-32, 33-35. In the opposing corner: Paul Gompers Ph.D., who took issue with Dr. Tabak's methodologies and calculations (as detailed below). Ex. 45.

1. Dr. Tabak's Opinions

176. Dr. Tabak calculated the Class's "per share" damages using a standard "out-of-pocket" damages model that measures the degree by which the market price for Celgene's common stock was inflated as a result of Defendants' false or misleading statements and omissions. Ex. 44 ¶ 10. First, he measured the reaction of Celgene's common stock price to disclosures that corrected these allegedly false or misleading statements and omissions using a statistical technique known as an "event study." *Id.* ¶¶ 13-16. After controlling for market and industry factors and accounting for any potentially confounding (i.e., non-fraud-related) news released

on the corrective disclosure dates, Dr. Tabak "backcasted" the price reaction in Celgene's stock following these disclosures to earlier points during the Class Period, thereby measuring the amount of inflation maintained by Defendants' false or misleading statements and omissions. *Id.*

177. Dr. Tabak further opined that the October 26, 2017 corrective disclosure corrected the April and July 2017 Otezla statements by demonstrating that these prior statements about Otezla's performance metrics (and projections using those metrics) had been false or misleading; more specifically, that adverse Otezla trends and metrics—considered to be key indicators of Otezla's performance—directly contributed to Celgene's decision to lower its guidance. *Id.* ¶¶ 20, 22-23, 27. And while Celgene attributed its guidance reduction to overall market deceleration, Dr. Tabak challenged this assertion, pointing out that, in fact, competitor companies explained in public disclosures that rather than a market deceleration, the overall market growth had accelerated when stripping out Otezla-specific poor performance. Ex. 46 ¶ 30 & n.37.

178. After controlling for the effect of general market and/or industry factors on Celgene's stock, Dr. Tabak determined that the $18.72 price decline following the October 26, 2017 corrective disclosure was statistically significant at the 95% confidence level. *Id.* ¶¶ 17, 22, 26-27. To determine the portion of the stock price decline that was due to changes in the market's views of Otezla, as opposed to other

reasons, Dr. Tabak compiled analyst reports containing estimates for Otezla sales and for overall revenues both before and after October 26, 2017. Dr. Tabak separated the declines in expectations for Otezla from the overall decline in expectations company-wide, and determined that, based on the 2021 forecast (the final year of the forecast, which accounts for the present value of forecasts for all years through that final year), 66.08% of the decline in expectations was due to changes in the revenue expectations for Otezla. *Id.* ¶¶ 17, 35.

179. Dr. Tabak identified two corrective disclosures related to Defendants' allegedly false or misleading statements regarding Ozanimod. The February 27, 2018 disclosure of the RTF led to a $7.77 abnormal price decline. Ex. 44 ¶¶ 4.B, 17-18, 28-32. The April 29, 2018 Morgan Stanley report led to a $2.82 abnormal price decline. *Id.* ¶¶ 17-18, 33-35. Dr. Tabak determined that the price declines on both dates were statistically significant at the 95% confidence level. *Id.* ¶¶ 17-18, 28-35. Dr. Tabak further determined that "[t]hese losses were caused by Defendants' allegedly improper failure to disclose evidence of the Metabolite and meaningful information about that evidence relevant to the NDA submission." *Id.* ¶ 4.B.

180. Dr. Tabak opined that Celgene's February 27, 2018 disclosure was corrective of Defendants' misstatements and omissions because it "indicated one or more severe deficiencies [in the Ozanimod NDA that were related to the Metabolite] that Lead Plaintiff alleges were known or recklessly disregarded by Defendants."

Id. ¶ 29. He further opined that in the event the fact-finder determined that there is a need to adjust inflation to account for changes in Defendants' knowledge over time, "there are ways mathematically to adjust for that" i.e., the fact-finder "could scale down the inflation . . . based on the difference between the market perception and the company perception." Ex. 47 at 104-06. He also determined that the level of inflation associated with the February 27, 2018 corrective disclosure should be adjusted to reflect the anticipated size of the Ozanimod market following FDA approval of Ozanimod. Ex. 44 ¶ 30. Dr. Tabak identified two analyst firms that regularly published forecasts of 2021 Ozanimod sales prior to the February 27 disclosure and adjusted the abnormal decline of $7.77 per share to reflect these analysts' varying estimates of Ozanimod sales. *Id.* ¶¶ 31-32.

181. Dr. Tabak opined that the April 29, 2018 Morgan Stanley report was corrective because it provided "a detailed analysis revealing [Morgan Stanley's] estimate of the effects of the Metabolite on the approval process for Ozanimod, including the heightened potential need for new clinical studies." *Id.* ¶ 33. Since it took Morgan Stanley four days to collect and analyze information and data about the Metabolite following the initial disclosure of the Metabolite on April 25, Dr. Tabak opined that inflation for the abnormal $2.82 price decline associated with the April 29 corrective disclosure should begin four days after the first alleged misrepresentation. *Id.* ¶ 34. Dr. Tabak determined that there was no need to adjust

his measure of inflation associated with the April 29 disclosure based on analyst estimates of potential Ozanimod sales because the average 2021 analyst sales estimate for Ozanimod immediately preceding the corrective disclosure was lower than all of the prior averages and, therefore, any adjustment would have increased inflation beyond the actual price decline associated with this disclosure. *Id.* ¶ 35.

182. Dr. Tabak's calculations of daily inflation during the Class Period is reflected in the attached Exhibit 48.

2. Dr. Gompers' Opinions

183. Dr. Gompers claimed that Dr. Tabak failed to reliably measure inflation and establish loss causation with respect to both the Otezla and Ozanimod claims for several reasons. Ex. 45.

184. *First*, Dr. Gompers claimed that Dr. Tabak failed to account for the impact of confounding information related to revised expectations for 2020 Otezla revenue which, he maintained, is not at issue in the case, and thus revisions to 2020 guidance for the I&I division (which included Otezla) disclosed in the October 26, 2017 earnings release constitute confounding information which Dr. Tabak failed to disaggregate in calculating damages. *Id.* ¶¶ 38, 45-51. In his reply report, Dr. Tabak retorted that the 2020 guidance revision was squarely part of Plaintiff's claims as reflected in the Court's 2019 opinion on Defendants' motion to dismiss; and, moreover, as a factual matter, Celgene's then-CEO had expressly linked the 2020

guidance revision to the shorter-term 2017 revision driven by the Company's poor Otezla sales. Ex. 46 ¶ 20.

185. *Second*, Dr. Gompers claimed that Dr. Tabak failed to appropriately account for variations in inflation related to Otezla during the Class Period. Ex. 45 ¶¶ 38, 59-64. Dr. Tabak replied that varying the level of inflation in the damages model for different points in time was unnecessary given that (i) the inflation released from the stock price following the October 26, 2017 disclosure ($12.37 per share) was *lower* than the inflation prior to the disclosure ($18.02 to $19.61) based on a calculation of rolling average sales as compared to the earnings surprise; and (ii) because the Class, as a matter of law, cannot recover *more* in damages than the amount of inflation that they paid for, Dr. Tabak calculated the Otezla-related inflation as a constant $12.37 per share from the Class Period start date through the October 26, 2017 corrective disclosure. Ex. 46 ¶¶ 6, 17 & Exhibit 4.

186. *Third*, Dr. Gompers averred that Dr. Tabak ignored that the October 26, 2017 disclosure was made against the backdrop of a setback for another of Celgene's drugs, GED-0301, disclosed a week earlier, and that he failed to account for the fact that the price reaction to the disclosure may have been different from the price reaction to the same disclosure made earlier in the Class Period. Ex. 45 ¶¶ 65-68. Dr. Tabak replied that, given the efficiency of the market for Celgene common stock at the time, any price reaction caused by the earlier GED-0301 news would

have already been accounted for in the stock price by the time of the October 26 disclosure. Ex. 46 ¶¶ 32-35.

187. Dr. Gompers also attacked Dr. Tabak's opinions regarding the Ozanimod disclosures. Ex. 45.

188. *First*, Dr. Gompers claimed that the price decline on February 27, 2018 reflected the materialization of a known risk that delays or rejections could occur during the regulatory approval process for Ozanimod, and that Celgene had disclosed risk factors regarding the regulatory approval for products in the development stage prior to the alleged corrective disclosure. *Id.* ¶¶ 81-86. Moreover, before the RTF was issued, analysts were aware that Ozanimod's success was not guaranteed. For example, after commenting on Ozanimod's positive Phase III MS data, Cantor Fitzgerald nevertheless noted significant uncertainty regarding Ozanimod's FDA approval process. *Id.* ¶ 82. Plaintiff was prepared to respond to this argument at trial by pointing to the fact that the Company's risk factors did not mention the specific discovery of the Ozanimod Metabolite or the risks it posed to the Ozanimod regulatory timeline.

189. *Second*, Dr. Gompers claimed that Dr. Tabak cannot show that the April 29, 2018 Morgan Stanley report provided information not already known to the market, in light of the April 26, 2018 Jefferies report which discussed the same type of preclinical toxicology studies and of the same duration contemplated by

Morgan Stanley in the April 29 report. Ex. 45 ¶¶ 92-96. Moreover, to the extent that Celgene ultimately did not need to run either of the studies noted by Morgan Stanley, the disclosure could not be corrective because the Company could not have disclosed the *need* to run those studies. *Id.* ¶ 95. Dr. Tabak rebutted Dr. Gompers' arguments, pointing to the differing information underlying the two reports. Ex. 46 ¶ 50. He explained that the April 29 Morgan Stanley report, in contrast to the April 26 Jefferies report, incorporated critical nonclinical data that Morgan Stanley had subsequently located in posters from the AAN 2013 and 2014 medical conferences; based on its analysis of this data, Morgan Stanley concluded that Celgene would likely need to re-run certain toxicology studies—a process that could take up to three years—and provided this new information to the market on April 29. *Id.* In addition, as to the argument that the tests identified by Morgan Stanley ultimately were not conducted, Dr. Tabak explained that such a fact was not relevant to the loss causation analysis given that this occurred after the end of the relevant period. *Id.* ¶¶ 54-55.

190. Dr. Gompers is a highly credentialed economist and damages expert with extensive experience in securities fraud class action litigation who has testified in over fifty cases. Ex. 45 at Appendix A. His opinions in response to Dr. Tabak and his acumen as an expert posed a considerable risk to Plaintiff's and the Class's ability to succeed at trial and establish the maximum damages sought. The perils faced by Plaintiff included adverse jury findings that: (a) Dr. Tabak did not reliably

disaggregate the Otezla disclosure given the plethora of non-Otezla-related financial information contained in the October 26, 2017 earnings release and investor call; (b) the February 27, 2018 disclosure of the Ozanimod RTF was simply the materialization of a known risk—that new drug applications may be delayed or rejected outright given the uncertain nature of the regulatory approval process; and (c) the April 29, 2018 Morgan Stanley report was not corrective because it simply repeated other analysts' earlier estimates of a multi-year-delay in resubmitting the NDA, and because the toxicology studies discussed in the report were ultimately not required by the FDA. Any of these findings would have significantly reduced the Class's recoverable damages.

3. Calculation of Class-wide Damages

191. The expert reports submitted by Dr. Tabak only reflect per-share damages calculations. However, for purposes of mediation, Dr. Tabak estimated class-wide (or aggregate) damages for the Otezla claims, the Ozanimod claims, and for the combined set of claims by combining his per-share inflation estimates with a trading model. Ex. 1. As Dr. Tabak explains in the attached declaration, the trading model accounts for trading by market makers, institutional traders, unidentified traders, and intraday traders. *Id.* ¶¶ 8-11. The model utilizes the last in, first out (or "LIFO") method of calculation. *Id.* ¶ 9 n.4.

192. Based on this analysis, Dr. Tabak estimates that: (a) total damages are approximately $2.78 billion; (b) damages for just the Otezla-related allegations are approximately $1.52 billion; and (c) damages for just the Ozanimod-related allegations are approximately $1.30 to $1.90 billion (depending on whether damages arise from just the February 27, 2018 corrective disclosure or both the February 27 and April 29, 2018 corrective disclosures).[10]

193. Accordingly, the $239 million Settlement equates to 8.6% to 18.4% of damages depending on which claims succeeded at trial. If Plaintiff failed to prove liability for the Ozanimod claims and prevailed only on the Otezla claims, the estimated damages for just the Otezla claims are $1.52 billion. Tabak Decl. ¶ 15. Conversely, if Plaintiff failed to prove liability for the Otezla claims and only prevailed on the Ozanimod claims, the estimated damages for just the Ozanimod claims are $1.9 billion. *Id.* In addition, had Defendants successfully argued that the

[10] Dr. Tabak's estimates differ slightly from the figures presented in my prior Declaration dated November 5, 2025. *See* ECF 479-3. This is due in part to a mathematical error made by subtracting the Ozanimod-related damages from the total damages for both claims. As Dr. Tabak explains in his attached declaration, the sum of the Otezla-related inflation and the Ozanimod-related inflation is larger than the total inflation because the damages cap in the PSLRA limits total damages regardless of inflationary losses. So, for example, if the Otezla-related damages were $5, the Ozanimod-related damages were $6, and the PSLRA cap was $8, damages for Otezla alone would be $5 (the lesser of $5 and $8), damages for Ozanimod alone would be $6 (the lesser of $6 and $8), but damages for the combined Otezla and Ozanimod claims would be $8 (the lesser of $11 (the sum of $5 and $6) and $8). *Id.* ¶ 15 n.9. The other discrepancies are explained by Dr. Tabak's adjustment to the start date of the Ozanimod-related inflation. *Id.* ¶ 3.

April 29, 2018 Morgan Stanley report could not serve as a corrective disclosure, the Ozanimod-related damages would be reduced further, to approximately $1.3 billion. *Id.*

D. Jury Risks and Risk on Appeal

194. Plaintiff faced significant additional risks at trial. The requirement of a unanimous jury verdict on liability meant that one single juror with entrenched sympathies towards Celgene or antipathies towards, among other things, class action lawsuits or investing in the stock market could defeat an otherwise meritorious case. The prominence of Celgene as a longtime fixture in the jurisdiction and a source of employment for many in the area increased the likelihood that one or more jurors would have difficulty awarding damages that could be seen as negatively impacting the Company.

195. Further, even if Plaintiff prevailed at trial, lengthy Phase Two proceedings would have followed, including discovery as to individualized reliance and possible additional trial procedures. Post-trial motions and appeals would have surely followed and could have included issues of first impression in the Third Circuit relating to corporate scienter and imputation. Moreover, the appellate process could have extended for years, exposing the Class to the risk of having any favorable judgment reversed or reduced below the Settlement Amount.

V. THE PROPOSED PLAN FOR PROVIDING NOTICE OF THE SETTLEMENT TO THE CLASS

196. Following preliminary approval of the Settlement, Class Counsel will work with JND to, among other things: (i) mail by First-Class mail (or email) a copy of the Postcard Notice to potential Class Members who were previously mailed/emailed a copy of the Class Notice[11] and any other potential Class Members identified through further reasonable effort; (ii) mail a copy of the Settlement Notice and Claim Form (together, the "Notice Packet") to brokers and nominees; (iii) publish/transmit the Summary Settlement Notice in *The Wall Street Journal* and over the *PR Newswire*; and (iv) update the Website, www.CelgeneSecuritiesLitigation.com, to provide information about the Settlement, including downloadable copies of the Settlement Notice and Claim Form. *See* ECF 479-4 at 7 and [Proposed] Preliminary Approval Order.

197. The Postcard Notice contains important information concerning the Settlement and, along with the Summary Settlement Notice, will direct recipients to the Website for additional information regarding the Settlement (and the Action),

[11] As discussed above, in connection with the Court's Class Notice Order (ECF 199), Class Notice was previously disseminated to potential members of the Class to notify them of, among other things: (i) the Action pending against the Defendants; (ii) the Court's certification of the Action to proceed as a class action on behalf of the Court-certified Class; and (iii) their right to request exclusion from the Class, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion. As set forth on Appendix 1 to the Stipulation, 30 requests for exclusion were received pursuant to the Class Notice.

including the long-form Settlement Notice, which includes, among other things, details about the Settlement and a copy of the Plan of Allocation as Appendix A. Collectively, the notices provide the Class definition, a description of the Settlement, information regarding the claims asserted in the Action and information to enable Class Members to determine whether to: (i) participate in the Settlement by completing and submitting a Claim Form; or (ii) object to any aspect of the Settlement, the Plan of Allocation, and/or Class Counsel's requests for attorneys' fees and expenses. Class Members with questions regarding the Settlement can contact JND by calling the toll-free helpline (1-855-648-0893) or by emailing info@CelgeneSecuritiesLitigation.com.

198. Class Counsel will provide the Court with the results of the Settlement notice campaign (i.e., number of notices mailed/emailed, dates when notice was mailed/posted/published, etc.) in its submission in support of final approval of the Settlement.

VI. THE PROPOSED PLAN FOR ALLOCATING THE NET SETTLEMENT FUND

199. As explained in the Stipulation and in the Settlement Notice, Class Members who wish to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) must submit a

valid Claim and all required supporting documentation to JND. As provided in the Settlement Notice, the Net Settlement Fund will be distributed to Authorized Claimants[12] in accordance with the Plan of Allocation, or other plan of allocation approved by the Court.

200. The Plan of Allocation ("Plan") proposed by Plaintiff is attached as Appendix A to the Settlement Notice. An updated Settlement Notice reflecting revisions to the inflation table included in the Plan is being submitted to the Court with this Declaration. In preparing the Tabak Declaration, Class Counsel and Dr. Tabak identified an error in the inflation calculations that were used to generate the Plan. Specifically, the inflation for the Ozanimod-related claims properly begins on October 26, 2017 (not October 30, 2017); the inflation per share for the period running from October 26, 2017 to October 29, 2017 is $7.42 per share (not $0.00); and the inflation per share for the period running from October 30, 2017 (not November 1, 2017) through February 27, 2018 is $10.58. The remainder of the inflation calculations in Table A of the previously-filed Plan are unchanged.

201. Class Counsel developed the Plan in consultation with Dr. Tabak. The Plan creates a framework for the equitable distribution of the Net Settlement Fund among Class Members who suffered economic losses as a result of Defendants'

[12] As defined in Paragraph 1(c) of the Stipulation, an "Authorized Claimant" is a "Class Member who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund."

alleged violations of the federal securities laws. The Plan is not a formal damages analysis and the calculations made pursuant to it are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after trial. The Plan is designed to achieve an equitable and rational distribution of the Net Settlement Fund. The structure of the Plan is similar to the structure of plans of allocation used to apportion settlement proceeds in other securities class actions.

202. In developing the Plan, Dr. Tabak calculated the estimated amount of alleged artificial inflation in the per-share price of Celgene common stock that was allegedly proximately caused by Defendants' alleged materially false and misleading statements and omissions that were sustained following the Court's ruling on Defendants' motions for summary judgment, taking into consideration price changes in Celgene common stock in reaction to public disclosures that allegedly corrected the alleged misrepresentations and omissions and adjusting for price changes on those days that were attributable to market or industry forces or other Company-specific information unrelated to Plaintiff's allegations. The updated Table A of the Plan sets forth the estimated alleged artificial inflation in Celgene common stock for each day of the Class Period and this table will be utilized by JND

in calculating a Claimant's Recognized Loss Amounts, and ultimately their overall Recognized Claim.[13]

203. As set forth in the Plan, a Claimant's Recognized Loss Amount will depend upon several factors, including the date(s) when the Claimant purchased or acquired his, her, or its shares of Celgene common stock during the Class Period, and whether such shares were sold and if so, when and at what price. In order to have a Recognized Claim under the Plan, a Claimant must have suffered damages proximately caused by the disclosure of the relevant truth concealed by Defendants' alleged fraud. Specifically, shares of Celgene common stock must have been purchased or acquired during the Class Period (i.e., the period between April 27, 2017 through April 27, 2018, inclusive) and held through at least one of the dates where new corrective information was released to the market and partially removed the alleged artificial inflation from the price of Celgene common stock. Plaintiff alleges that artificial inflation was removed from the price of Celgene common stock as the result of alleged corrective disclosures that occurred on October 26, 2017, February 27, 2018, and April 29, 2018, which partially removed the artificial

[13] Pursuant to Paragraph 83 of the Settlement Notice, "a 'Recognized Loss Amount' will be calculated for each purchase of Celgene common stock during the Class Period that is listed on the Claim Form and for which adequate documentation is provided." Pursuant to Paragraph 85 of the Settlement Notice, "[a] Claimant's "Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts []."

inflation from the price of Celgene common stock on October 26, 2017, February 28, 2018, and April 30, 2018.

204. JND, as the Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim (i.e., the sum of the Claimant's Recognized Loss Amounts as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Plaintiff's losses will be calculated in the same manner.

205. Class Counsel will provide the Court with preliminary results for the claims process (i.e., number of claims submitted, losses for such claims under the Plan of Allocation, number of damaged shares claimed in the aggregate, etc.) prior to the Settlement Hearing.

VII. CLASS COUNSEL'S FEE AND EXPENSE APPLICATION

206. In connection with final approval of the Settlement, Class Counsel, on behalf of Plaintiff's Counsel, will apply for an award of attorneys' fees and payment of expenses incurred during the course of the Action ("Fee and Expense Application"). Specifically, Class Counsel will request: (i) an award of attorneys'

fees in an amount not to exceed 22.2% of the Settlement Fund,[14] and (ii) payment of expenses incurred by Plaintiff's Counsel in an amount not to exceed $5.75 million.

207. In its forthcoming Fee and Expense Application, Class Counsel will provide a fulsome discussion of the factual bases for their application along with a full analysis of the factors considered by courts in the Third Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority. The Fee and Expense Application will also include declarations from each Plaintiff's Counsel firm reporting on, among other things, the attorneys and professional support staff employees who worked on the Action and their respective hourly rates, the lodestar value of the time expended by each of the attorneys and professional support staff employees, and the expenses incurred by each firm. In their proposed schedule of Settlement-related events set forth in the Motion, Class Counsel propose filing their Fee and Expense Application, along with their motion in support of final approval of the Settlement, with the Court thirty-five (35) days before the Settlement Hearing.

208. Based on an initial review of their contemporaneous time records, Plaintiff's Counsel have devoted over 75,000 hours to this Action, with a lodestar of

[14] In the previously-filed Motion and proposed notices attached to the Stipulation, Class Counsel advised that it would be seeking an award of attorneys' fees in an amount not to exceed 30%. Class Counsel are submitting revised notices to reflect the adjustment to its maximum fee request.

approximately $49 million, and Class Counsel anticipates that the lodestar multiplier for the fee requested will be less than 1.2. Such a multiplier is on the lower end of the range of multipliers commonly awarded in class actions.

209. As noted above, Class Counsel will present more detailed information on Plaintiff's Counsel's hours and lodestar in their forthcoming Fee and Expense Application. The chart below provides a preliminary breakdown by major litigation task of the hours spent by Plaintiff's Counsel.

LITIGATION TASK CATEGORY	NUMBER OF HOURS[15]
Investigation and Initial Two Complaints	7,683
Motion to Amend / Third Amended Complaint / Fourth Amended Complaint	1,378
Motions to Dismiss Briefing	941
Discovery	46,011
Class Certification and Class Notice Campaign	1,784
Summary Judgment	4,179
Trial Preparation	7,954
Mediations & Settlement	1,988
Litigation Strategy & Analysis	1,359
Case Management / Administration / Client Communication	2,133
Lead Plaintiff Motions	141
TOTAL:	75,551

210. Class Counsel also intends to seek payment of Litigation Expenses in an amount not to exceed $5.75 million. These expenses were reasonably and

[15] The number of hours provided are preliminary and may change as Plaintiff's Counsel finalize the Fee and Expense Application.

necessarily incurred by Plaintiff's Counsel in prosecuting and resolving the Action and include, among other things, the costs of Plaintiff's experts and consultants, data/document hosting, online legal and factual research, travel, the Class Notice campaign, and the Parties' mediations. Class Counsel's largest expense category was in connection with the retention of Plaintiff's experts and consultants.

211. Class Counsel's expense request will also include a request for reimbursement of the reasonable costs incurred by Plaintiff directly related to its representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4). This request will be supported by a declaration from Plaintiff to be filed with the Court in connection with the Fee and Expense Application. This declaration will provide detail on the efforts taken by AMF on behalf of the Class as well as the time spent on the Action by AMF employees.

VIII. EXHIBITS

212. Attached hereto are true and correct copies of the following documents previously cited in this Supplemental Declaration:

Exhibit 1: Declaration of David I. Tabak, Ph.D., dated November 11, 2025.

Exhibit 2: A document bearing Bates numbers CELG-AMF_00798904-25.

Exhibit 3: Excerpts of the deposition transcript of Terrie Joanne Curran, dated June 16, 2021.

Exhibit 4: Excerpts of the deposition transcript of James Kilgallon, dated March 23, 2021.

Exhibit 5: Celgene Corp. Q1 2017 Earnings Call Transcript, dated April 27, 2017.

Exhibit 6: Celgene Corp. Q1 2017 Conference Call presentation slides, dated April 27, 2017.

Exhibit 7: A document bearing Bates numbers CELG-AMF_04615254-75.

Exhibit 8: A document bearing Bates numbers CELG-AMF_00763085-147.

Exhibit 9: A document bearing Bates numbers CELG-AMF_04618350-73.

Exhibit 10: A document bearing Bates numbers CELG-AMF_04850629-66.

Exhibit 11: A document bearing Bates numbers CELG-AMF_04651218-56.

Exhibit 12: A document bearing Bates numbers CELG-AMF_01182247-55.

Exhibit 13: A document bearing Bates numbers CELG-AMF_00778631-62.

Exhibit 14: A document bearing Bates numbers CELG-AMF_00716715-66.

Exhibit 15: A document bearing Bates numbers CELG-AMF_00904876-91.

Exhibit 16: A document bearing Bates numbers CELG-AMF_00825694-95.

Exhibit 17: A document bearing Bates numbers CELG-AMF_04756174-76.

Exhibit 18: A document bearing Bates numbers CELG-AMF_04756217-19.

Exhibit 19: A document bearing Bates numbers CELG-AMF_01179431-47.

Exhibit 20: A document bearing Bates numbers CELG-AMF_00718522-44.

Exhibit 21: A document bearing Bates numbers CELG-AMF_00718467-81.

Exhibit 22: A document bearing Bates numbers CELG-AMF_00725231-49.

Exhibit 23: A document bearing Bates numbers CELG-AMF_00716713-14.

Exhibit 24: Celgene Corp. Q2 2017 Conference Call presentation slides, dated July 27, 2017.

Exhibit 25: A document bearing Bates numbers CELG-AMF_04619180-270.

Exhibit 26: A document bearing Bates numbers CELG-AMF_00718482-84.

Exhibit 27: Declaration of Terrie Joanne Curran, dated January 27, 2023.

Exhibit 28: A document bearing Bates numbers CELG-AMF_01204214-317.

Exhibit 29: Excerpts of the deposition transcript of Larry Lesko Ph.D., dated April 6, 2021.

Exhibit 30: Excerpts of the deposition transcript of Philippe Martin, dated June 3, 2021.

Exhibit 31: A document bearing Bates numbers KATZ0000564-65.

Exhibit 32: A document bearing Bates numbers CELG-AMF_01204213-333.

Exhibit 33: Excerpts of the deposition transcript of David Jacobson-Kram, dated June 15, 2021.

Exhibit 34: A document bearing Bates numbers CELG-AMF_01030045-46.

Exhibit 35: Excerpts of the deposition transcript of Scott Andrew Smith, dated June 10, 2021.

Exhibit 36: A document bearing Bates number CELG-AMF_00916884.

Exhibit 37: A document bearing Bates numbers CELG-AMF_04848858-59.

Exhibit 38: A document bearing Bates numbers CELG-AMF_04745372-73.

Exhibit 39: A document bearing Bates numbers CELG-AMF_00934481-615.

Exhibit 40: A document bearing Bates numbers CELG-AMF_00935701-02.

Exhibit 41: A document bearing Bates numbers CELG-AMF_00936009-10.

Exhibit 42: A document bearing Bates numbers CELG-AMF_04848857-59.

Exhibit 43: Excerpts of the deposition transcript of Florence Houn, M.D., dated June 11, 2021.

Exhibit 44: Expert Report of David I. Tabak, Ph.D., dated May 11, 2022.

Exhibit 45: Expert Report of Paul A. Gompers, dated August 12, 2022.

Exhibit 46: Expert Report of David I. Tabak, dated October 12, 2022.

Exhibit 47: Excerpts of the deposition transcript of David I. Tabak, dated November 9, 2022.

Exhibit 48: Celgene Corp. Daily Market Capitalization and Float for Celgene Common Stock – April 27, 2017 to April 27, 2018.

IX. CONCLUSION

213. For all the reasons set forth here and in the Motion, Plaintiff respectfully submits that the Settlement warrants preliminary approval.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Radnor, Pennsylvania this 24th day of November 2025.

Matthew L. Mustokoff