UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION SECURITIES LITIGATION	Civil Action No. 2:16-cv-06509 (ES) (CLW) Motion Date: December 20, 2021

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

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Court-appointed Lead Plaintiffs Union Asset Management Holding AG ("Union"), Amalgamated Bank, as Trustee for the Long View Collective Investment Funds ("Amalgamated"), and the Fire and Police Pension Association of Colorado ("Colorado FPPA" and, with Union and Amalgamated, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully move this Court, pursuant to Federal Rule of Civil Procedure 23(e), for: (i) final approval of the proposed settlement of the above-captioned action ("Action") on the terms set forth in the Stipulation and Agreement of Settlement dated September 2, 2021 (ECF No. 165-3) ("Stipulation"); (ii) approval of the proposed plan for allocating the net proceeds of the Settlement to the Settlement Class ("Plan of Allocation" or "Plan"); and (iii) certification of the Settlement Class for purposes of effectuating the Settlement.[1]

I. PRELIMINARY STATEMENT

After more than four years of hard-fought litigation—including two rounds of motions to dismiss, two motions for interlocutory appeal of the Court's motion to dismiss rulings, substantial fact discovery, and arm's-length settlement negotiations facilitated by an experienced mediator—Lead Plaintiffs and Lead Counsel have succeeded in securing a $95 million cash recovery for the Settlement Class. Subject to the Court's final approval, this Settlement will resolve all claims

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[1] Unless otherwise defined, all capitalized terms have the meanings set forth in the Stipulation or in the Declaration of John Rizio-Hamilton in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Rizio-Hamilton Declaration" or "Rizio-Hamilton Decl."). The Rizio-Hamilton Declaration is an integral part of this submission and, for the sake of brevity herein, Lead Plaintiffs respectfully refer the Court to the Rizio-Hamilton Declaration for a detailed description of, *inter alia*: the claims asserted, the procedural history of the Action, the negotiations resulting in the Settlement, the risks of continued litigation, compliance with the Court-approved notice plan, and the Plan of Allocation. Citations to "¶ __" herein refer to paragraphs in the Rizio-Hamilton Declaration and citations to "Ex. __" herein refer to exhibits to the Rizio-Hamilton Declaration.

asserted in the Action. The Settlement provides an outstanding result for the Settlement Class and readily satisfies the standards for final approval under Rule 23(e)(2).

As set forth herein, the Settlement provides a near-term, certain recovery for the Settlement Class in a case that presented numerous risks, and also represents a significant percentage of the Settlement Class's damages—*i.e.*, approximately 15% of the maximum classwide damages that Lead Plaintiffs would realistically be able to prove at trial. *See infra* Section II.C.3. This percentage compares favorably to other securities class action recoveries. *Id.*

In reaching the Settlement, Lead Plaintiffs and Lead Counsel carefully considered the risks of continued litigation. While Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants are meritorious, they recognize that the Action presented a number of substantial risks to establishing Defendants' liability, including challenges to establishing the materiality of Defendants' alleged misstatements and scienter. With respect to materiality, Defendants would continue to argue, as they did at the motion-to-dismiss stage, that the alleged underlying misconduct was insignificant to Cognizant's financial performance and thus not actionable under the securities law. ¶¶ 71-73. In support, Defendants would argue, *inter alia*, that the alleged misconduct had a minimal impact on Cognizant's financial results—less than $6 million over five years as compared to the Company's more than $50 billion in revenue and approximately $7 billion in net income during the relevant time period—and that Cognizant continued to report positive financial results in the quarters following the bribery scheme's disclosure. ¶¶ 72-73. Had the Action continued, Cognizant would also continue to vigorously challenge scienter, asserting that the conduct at issue in the Action was carried out by a small group of officers, whose culpable intent may not, and should not, be imputed to Cognizant. ¶ 76. Cognizant would further point to the fact that, upon discovering the payments at issue, it promptly

self-reported to the Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC"), cooperated with their investigations, and ultimately, the DOJ declined to prosecute Cognizant. ¶ 77. Further, the Individual Defendants continue to deny that the bribery scheme even took place. ¶ 70.

Even if Lead Plaintiffs established liability, they would have faced significant hurdles in also proving loss causation and damages. For example, Defendants would have argued that the decline in Cognizant's stock price immediately following the disclosure of the Company's internal investigation was not a reasonable measure of damages because much of the price decline was due to the uncertainty created by the investigation. ¶ 82. Defendants would have argued that much of that decline was reversed within the next trading day, and as more information regarding the bribery scheme and its limited impact on the Company's previously reported financial results was disclosed, Cognizant's stock price continued to increase—fully recovering less than 40 days later. ¶¶ 82-84. As explained further herein, Defendants also had meaningful arguments that realistic damages were even less than the Settlement Amount. These damages challenges had the potential to significantly diminish, or even eradicate, the Settlement Class's recovery.

In addition, had the Action continued, Lead Plaintiffs would have likely experienced years of additional delay before any recovery could be achieved. This is because discovery was partially stayed pending the completion of the trial in the criminal action brought against Individual Defendants Gordon Coburn and Steven Schwartz (the "Criminal Action"). ¶ 87. Further, once that trial was completed at some point in 2022, the case required protracted fact and expert discovery, including depositions of witnesses in India, which would be an unusually slow process without any guarantee of success and would require significant cooperation from foreign governmental bureaucracies. ¶ 89. Such foreign discovery would have added substantial time and

complexity to the normal discovery process, and it is possible, if not likely, that trial in this case would not have occurred until the end of 2023 or even 2024. *Id*.

As detailed in the Rizio-Hamilton Declaration, based on their extensive prosecution of the claims in the Action, Lead Plaintiffs and Lead Counsel were well-informed of the strengths and weaknesses of the case prior to reaching the Settlement. In addition, the Settlement is the product of arm's-length negotiations between the Parties, including formal mediation before retired United States District Judge Layn R. Phillips ("Judge Phillips"), an experienced mediator of complex class actions. The mediation process included the preparation and exchange of comprehensive detailed mediation statements; a full-day, in-person mediation session in February 2020 (at which the Parties did not reach agreement); and extended further negotiations assisted by Judge Phillips. The settlement negotiations culminated in the Parties' acceptance of a mediator's recommendation from Judge Phillips to resolve the Action for $95 million in cash in August 2021. ¶¶ 60-61.

In September 2021, the Court preliminarily approved the Settlement, finding it likely that the Court could approve the Settlement at final approval. *See* ECF No. 167, ¶ 4. The Settlement has the support of the three sophisticated, institutional investor Lead Plaintiffs (*see* Exs. 1, 2 & 3), and the reaction of the Settlement Class to date has been positive. While the deadline for objections has not yet passed, following the dissemination of more than 321,000 Notices to Settlement Class Members and nominees as well as publication of a summary notice online and in high-circulation media, there have been no objections to the Settlement or the Plan of Allocation. ¶¶ 97-100, 109.

For the reasons set forth herein, Lead Plaintiffs and Lead Counsel respectfully submit that: (i) the Settlement meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class; and (ii) the Plan of Allocation is a fair and reasonable

method for equitably distributing the Net Settlement Fund. Lead Plaintiffs also request that the Court certify the Settlement Class for purposes of effectuating the Settlement.

II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e)(2) requires judicial approval of any class action settlement. Whether to grant such approval lies within the discretion of the district court. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).[2] In exercising its discretion over a proposed settlement, a court should review the settlement in light of the strong judicial policy favoring settlement. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010) (recognizing "strong presumption in favor of voluntary settlement agreements"). The Third Circuit has noted that the policy favoring settlement "is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Id.* at 595; *see also McDonough v. Horizon Blue Cross Blue Shield of N.J.*, 641 F. App'x. 146, 150 (3d Cir. 2015) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.") (alteration in original).

Under Rule 23(e)(2), the Court should approve a proposed class action settlement if it finds it to be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) ("*NFL Players*"). In making this determination, Rule 23(e)(2) provides that a court should consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

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[2] Unless otherwise noted, all internal quotation marks, citations, and other punctuation are omitted, and all emphasis is added.

(i) the costs, risks, and delay of trial and appeal;

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

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

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

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

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

In addition, courts in the Third Circuit have long considered the following nine factors enumerated in *Girsh v. Jepson* in deciding whether to approve a proposed class action settlement, many of which overlap the factors set forth in Rule 23(e)(2):

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

521 F.2d 153, 157 (3d Cir. 1975); *see also Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at *2 (E.D. Pa. Sept. 16, 2021); *NFL Players*, 2016 WL 1552205, at *17. The Third Court has further advised courts to consider, where applicable, the additional factors set forth in *In re Prudential Insurance Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283 (3d Cir. 1998). *See Zynerba Pharms.,* 2021 WL 4206696, at *3; *In re ViroPharma Inc. Sec. Litig.*, 2016 WL 312108, at *9 (E.D. Pa. Jan. 25, 2016). "These factors are a guide and the absence of one or more does not automatically render the settlement unfair." *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *7 (D.N.J. June 15, 2020).

The advisory committee notes to the 2018 amendments to Rule 23 explain that the four Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 Advisory Committee Notes to 2018 Amendments, Subdivision (e)(2). Accordingly, Lead Plaintiffs discuss the fairness, reasonableness, and adequacy of the Settlement below principally in relation to the four Rule 23(e)(2) factors, but also discuss the application of the factors identified in *Girsh* and *Prudential* where relevant.

Lead Plaintiffs submit that consideration of all of the Rule 23(e)(2) and Third Circuit factors strongly supports a finding that the Settlement is fair, reasonable, adequate, and warrants final approval.

A. Lead Plaintiffs and Lead Counsel Have Adequately Represented the Settlement Class in this Action

In determining whether to approve a class action settlement, the Court should first consider whether Lead Plaintiffs and Lead Counsel "have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). *See Vinh Du v. Blackford*, 2018 WL 6604484, at *4 (D. Del. Dec. 18, 2018) ("The Third Circuit applies a two-prong test to assess the adequacy of the proposed class representatives. First, the court must inquire into the qualifications of counsel to represent the class, and second, it must assess whether there are conflicts of interest between named parties and the class they seek to represent."). This factor clearly weighs in favor of the Settlement.

Lead Plaintiffs and Lead Counsel have adequately represented the Settlement Class in both their prosecution of the Action and in negotiating and securing the Settlement. Lead Plaintiffs' claims, all of which are based on a common course of alleged wrongdoing by Defendants, are typical of other Settlement Class Members and Lead Plaintiffs have no interests antagonistic to the

Settlement Class. *See id.* ("Plaintiff's interests are coextensive with, and not antagonistic to, the interests of the class since they all raise the same claims and seek the same relief."); *In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members."). At all relevant times, Lead Plaintiffs diligently supervised and participated in the litigation on behalf of the Settlement Class. As detailed in their supporting declarations, Lead Plaintiffs' efforts included, *inter alia*, communicating regularly with Lead Counsel, reviewing pleadings and briefs, and participating in the settlement negotiation process. *See* Ex. 1, ¶¶ 3-8; Ex. 2, ¶¶ 3-8, Ex. 3, ¶¶ 3-8.

Lead Plaintiffs retained counsel who are highly experienced and qualified in securities litigation, as set forth in Lead Counsel's firm resume. *See* Ex. 5A-3. Lead Counsel actively pursued the claims on behalf of the Settlement Class and aggressively negotiated a favorable Settlement through mediation. *See Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014) ("courts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class").

B. The Settlement Was Negotiated at Arm's Length with the Assistance of an Experienced Mediator

The Court should next consider whether the settlement was "negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). This includes consideration of other related circumstances to ensure the procedural fairness of a settlement, including whether there was sufficient discovery prior to settlement and whether the proponents of the settlement are experienced in similar litigation. *See generally Warfarin Sodium*, 391 F.3d at 535. Courts have also recognized that the participation of an experienced, respected mediator in the settlement process weighs in favor of a proposed settlement's procedural fairness. *See Alves*, 2012 WL 6043272, at *22 ("[t]he participation of an

independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and without collusion between the parties"); *see also In re Mannkind Corp. Sec. Litig.*, 2012 WL 13008151, at *5 (C.D. Cal. Dec. 21, 2012) ("The Court is completely confident that the negotiations and mediation [conducted by Judge Phillips] were conducted at arm's length, were the product of rational compromise on the part of all involved, and were in no way collusive."); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (finding a settlement fair where the parties engaged in "arm's length negotiations," including mediation before "retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases"). These considerations strongly support approval of the Settlement.

Here, while Defendants' second round of motions to dismiss were pending, the Parties participated in a formal mediation with Judge Phillips on February 7, 2020. ¶ 60. Prior to the mediation, the Parties prepared and exchanged detailed mediation statements discussing the strengths and weaknesses of their claims and defenses, including liability and damages. *Id.* Though a resolution was not reached during the February 2020 mediation, the Parties continued negotiating through Judge Phillips, who ultimately issued a mediator's recommendation to resolve the Action for $95 million in cash. ¶ 61. The Parties accepted Judge Phillip's proposal to resolve the Action on August 10, 2021 and, thereafter, negotiated the specific terms of their agreement to settle the Action as forth in the Stipulation. ¶¶ 61-62.

Likewise, the Settlement was negotiated by counsel with extensive experience in securities litigation, who were well versed in the strengths and weaknesses of the case. The knowledge of Lead Plaintiffs and Lead Counsel about the Action, and the proceedings themselves, had reached a stage where they could make a well-founded evaluation of the claims and propriety of settlement.

As detailed in the Rizio-Hamilton Declaration, prior to reaching the Settlement, Lead Counsel had conducted a comprehensive investigation into the claims asserted, including interviews with former Cognizant employees and the review of documents filed in the related actions against the Individual Defendants and SEC administrative proceeding (¶¶ 16-18, 37, 57); researched and prepared two detailed complaints (¶¶ 19, 37); briefed two rounds of motions to dismiss and two requests for interlocutory appeal of the Court's rulings on the motions to dismiss to the United States Court of Appeals for the Third Circuit (¶¶ 23-33, 38-48); engaged in discovery, including the review of over 660,000 pages of documents previously produced by Cognizant to the Government in connection with the Criminal Action (¶¶ 49-56); consulted extensively with various experts and consultants (¶¶ 18, 58); and engaged in extended settlement negotiations, including formal mediation (¶¶ 60-62). Approval of a settlement is warranted "[w]here a court can conclude that the parties had sufficient information to make an informed decision about settlement." 4 NEWBERG ON CLASS ACTIONS § 13:49 (5th Ed.); *see also Schiler v. Medicines Co.*, 2016 WL 3457218, at *7 (D.N.J. Jun. 24, 2016) (finding "Lead Counsel had ample information to evaluate the prospects for the Class and to assess the fairness of the Settlement" where it had reviewed publicly-available information, conducted an extensive investigation, consulted with an expert, drafted initial and amended complaints, opposed defendants' motion to dismiss, and engaged in mediation).

C. The Settlement Provides the Settlement Class Adequate Relief, Considering the Costs, Risks, and Delay of Litigation and Other Relevant Factors

Rule 23(e)(2)(C) overlaps considerably with many of the factors articulated by the Third Circuit in *Girsh*. All of these factors entail "a 'substantive' review of the terms of the proposed settlement" and evaluate the fairness of the "relief that the settlement is expected to provide to" the Settlement Class. Fed. R. Civ. P. 23(e)(2), Advisory Committee Notes to 2018 Amendments,

Subdivision (e)(2), Paragraphs (C) and (D). As discussed below, these factors weigh strongly in favor of the Settlement.

1. The Complexity, Expense, and Likely Duration of the Litigation

Rule 23(e)(2)(C)(i) and the first *Girsh* factor support final approval of the Settlement. Courts consistently recognize that the expense, complexity, and possible duration of the litigation are key factors in evaluating the reasonableness of a settlement. *Girsh*, 521 F.2d at 157; *see also ViroPharma*, 2016 WL 312108, at *9 ("This factor is intended to capture the probable costs, in both time and money, of continued litigation."). Indeed, a settlement is favored where "continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial." *Talone v. Am. Osteopathic Ass'n*, 2018 WL 6318371, at *14 (D.N.J. Dec. 3, 2018); *see also In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015) ("Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

Courts consistently acknowledge that securities class actions are "notably complex, lengthy, and expensive cases to litigate." *In re PAR Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013). This case was no exception. As discussed in the Rizio-Hamilton Declaration and below, continued litigation of this Action presented numerous risks to Lead Plaintiffs' ability to establish liability and damages. ¶¶ 65-94. And, continuing to prosecute the Action through the completion of fact discovery, expert discovery, a motion for class certification, summary judgment motions, pre-trial motions, and trial would have imposed substantial additional costs on the Settlement Class and delayed the Settlement Class's ability to recover. *See In re Ocean Power Techs., Inc., Sec. Litig.*, 2016 WL 6778218, at *12 (D.N.J. Nov. 15, 2016) ("Settlement is favored under this factor if litigation is expected to be complex, expensive and time

consuming.”). Here, there would also be the additional costs and delays associated with the stay of discovery resulting from the pending Criminal Action and the need to conduct discovery and take depositions in India. *See generally In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *10 (E.D.N.Y. Sept. 18, 2007) (finding that complications arising from discovery with foreign defendant weighed in favor of settlement).

Additionally, even if Lead Plaintiffs had prevailed at trial, Defendants would surely have appealed the verdict. Trial, post-trial motions, pre-judgment claims administration, and post-judgment appellate proceedings would have added significantly to the expense of this Action and delayed, potentially for several years, any recovery to Settlement Class Members (with no assurance that plaintiffs would ultimately prevail or recover any more that the Settlement now provides). *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning jury verdict in plaintiff's favor and granting defendants' judgment as a matter of law on the basis of loss causation), *aff'd on other grounds*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

In contrast, the Settlement avoids the risk, expense, and delay of continued litigation while providing a substantial, near-term recovery for the Settlement Class.

2. The Risks of Continued Litigation

In assessing the fairness, reasonableness, and adequacy of a settlement, a court should also consider the “risks of establishing liability,” “the risks of establishing damages,” and “the risks of maintaining the class action through the trial.” *Girsh*, 521 F.2d at 157. “These [*Girsh*] factors balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of immediate settlement.” *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *5 (D. Del. Nov. 19, 2018); *see also W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440, at *5-6 (E.D. Pa. Sept. 20, 2017) (approving settlement where “[e]stablishing

liability would be difficult for the Class [and] [e]stablishing damages would also be no picnic" and finding "these factors weigh heavily in favor of approving the settlement"). As discussed below, Lead Plaintiffs faced significant risks to achieving a better result for the Settlement Class through continued litigation.

a. Risks to Establishing Liability

Although the Court sustained Lead Plaintiffs' claims in part at the pleading stage, Lead Plaintiffs and Lead Counsel recognized that there were many factors that rendered the outcome of continued litigation, and ultimately a trial, in this Action uncertain.

First, Lead Plaintiffs faced challenges to proving that the statements at issue were materially false or misleading when made. Here, Lead Plaintiffs alleged three kinds of misstatements: (i) false financial statements, in which Cognizant improperly booked approximately $6 million in alleged bribes as capital expenses; (ii) statements touting the benefits of the Indian SEZ facilities; and (iii) statements representing that no incidents of corruption have been reported internally. ¶ 67. Throughout the Action, Defendants vigorously argued, and would continue to argue, that these alleged false statements were not material to investors because the underlying misconduct was insignificant to Cognizant's financial performance and, thus, not actionable under the securities laws. *Id.* Specifically, Defendants would assert that: (i) Cognizant's financial results were impacted by less than $6 million over five years—as compared to its more than $50 billion in revenue and approximately $7 billion in net income during the relevant time period; (ii) Cognizant's operations were not impacted because the Company completed all the facilities at issue; (iii) the Company's stock price recovered swiftly; and (iv) Cognizant continued to report positive financial results in the quarters after the scheme was disclosed, demonstrating that its business was unaffected. ¶¶ 72-73. In addition, both Individual Defendants have denied that any bribery scheme took place. ¶ 70.

Second, regarding scienter—one of the most difficult elements to prove in a securities fraud case, *see, e.g., ViroPharma*, 2016 WL 312108, at *12; *In re Datatec Sys., Inc. Sec. Litig*., 2007 WL 4225828, at *4 (D.N.J. Nov. 28, 2007)—Cognizant has maintained that the conduct at issue was carried out by a small group of officers, whose culpable intent may not, and should not, be imputed to the Company at large. ¶ 76. In support of this contention, Cognizant would point to the Government's decision to decline to prosecute the Company, as well as the fact that when Cognizant discovered the payments at issue, it promptly self-reported to the DOJ and SEC, cooperated with their investigations, and launched an investigation of its own. ¶ 77. Moreover, both Individual Defendant have pleaded not guilty to the criminal charges against them and have asserted that they believe the record contains exculpating evidence demonstrating that they did not participate in any bribery scheme. ¶ 78.

b. Risks to Establishing Loss Causation and Damages

Even if Lead Plaintiffs could establish that Defendants made materially false statements with scienter, they still faced formidable challenges with respect to proving loss causation and the full amount of the Settlement Class's damages. ¶¶ 81-86. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'").

Defendants would likely assert at summary judgment and trial that: (i) the September 30, 2016 price decline was not a measure of true damages because most of that decline was due to the uncertainty created by the open investigation—rather than the revelation of the falsity of the specific alleged misstatements; (ii) the next trading day, a substantial portion of that decline was immediately recovered; (iii) Cognizant's stock price continued to increase as more information was disclosed about the size of the alleged bribery scheme and its limited impact on Cognizant's financial results; and (iv) Cognizant's stock price fully recovered in less than 40 days. ¶¶ 82-85.

Defendants would have contended that there were alternate measures of damages that more accurately reflected the true impact of any alleged misconduct. For example, Defendants could have argued that damages should be limited to (i) the net decline in Cognizant's share price after all information concerning the bribery scheme had been disclosed to investors, which was approximately $40 million; (ii) the total amount of Cognizant's investigation-related costs (including fines and disgorgement paid to the DOJ and SEC), which, according to Cognizant's SEC filings, was approximately $108 million; or (iii) Cognizant's profits from the bribery scheme, which were only $16.3 million to $19.3 million, based on DOJ and the SEC calculations. ¶ 86. If any of these arguments has been accepted, the amount of damages established at trial might have been substantially ***less*** that the $95 million Settlement.

Resolution of these issues—and ultimately, the Settlement Class's damages—would have hinged upon extensive expert discovery and testimony. Defendants were expected to put forth experts at trial who would opine that damages for Settlement Class were less than the Settlement Amount—or nothing at all. Thus, "establishing damages at trial would lead to a battle of experts . . . with no guarantee whom the jury would believe." *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001); *see Ocean Power*, 2016 WL 6778218, at *20 ("the damage valuations of Plaintiff's and Defendants' experts would vary substantially. In the 'battle of experts,' it is impossible to predict with any certainty which arguments would find favor with the jury."). Courts have recognized that this uncertainty arising from a "battle of experts" supports approval of a settlement. *See Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997), *aff'd*, 166 F.3d 581 (3d Cir. 1999) ("[C]ourts have recognized the need for compromise where divergent testimony would render the litigation an expensive and complicated battle of experts.").

c. Risks to Maintaining the Class Action Through Trial

If the Action had continued, Lead Plaintiffs would have moved for certification of the class. While Lead Plaintiffs and Lead Counsel believe that the Action is appropriate for class treatment, the outcome of a contested motion and future appeals of a certification order via Rule 23(f) are far from certain. Moreover, even if the class was certified, "[t]here will always be a 'risk' or possibility of decertification, and consequently . . . this factor weighs in favor of settlement." *Prudential*, 148 F.3d at 321; *see also Christine Asia Co. v. Yun Ma,* 2019 WL 5257534, at *13 (S.D.N.Y. Oct. 16, 2019) ("the risk of maintaining a class through trial supports the approval of a settlement").

3. The Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and the Risks of Litigation

The eighth and ninth *Girsh* factors—the reasonableness of the settlement in light of the best possible recovery and the risks of litigation—also weigh in favor of approving the Settlement. "In making [an] assessment [of these factors], the Court compares the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, with the amount of the proposed settlement." *PAR Pharm.*, 2013 WL 3930091, at *7; *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 170 (3d Cir. 2006) ("[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved. . . . [r]ather, the percentage recovery, must represent a material percentage recovery to plaintiff in light of all the risks") (first alteration in original). The $95 million all cash Settlement easily meets this threshold.

Here, the classwide damages Lead Plaintiffs would likely be able to prove at trial are approximately $650 million. ¶ 90. The Settlement represents approximately 15% of this damages figure—a recovery that compares favorably to recoveries in other securities class action

settlements. *See, e.g., Ocean Power*, 2016 WL 6778218, at *21 (noting that "Courts in this Circuit have routinely approved settlements" comparable to the recovery of 11.5% of maximum damages achieved in that case); *Viropharma*, 2016 WL 312108, at *14 (approving settlement representing "roughly 9-10% of the maximum estimated losses"); *In re Canadian Superior Sec. Litig*., 2011 WL 5830110, at *2 (S.D.N.Y. Nov. 16, 2011) (approving settlement representing 8.5% of maximum damages and noting the recovery "exceed[ed] the average recovery in shareholder litigation").

Moreover, Defendants had plausible arguments that, even if liability was established, damages were far less than $650 million. As discussed above, Defendants were expected to argue that damages should be limited to (i) the net decline in Cognizant's share price after all information concerning the bribery scheme had been disclosed to investors, which was approximately $40 million; (ii) the total amount Cognizant's investigation-related costs (including fines and disgorgement paid to the DOJ and SEC), which, according to Cognizant's SEC filings, was approximately $108 million; or (iii) the amount of Cognizant's alleged profit from the bribery scheme, which was only $16.3 to $19.3 million, according the government filings. ¶¶ 91-92. If any of these arguments had prevailed, the class's recovery at trial could have been less than the Settlement Amount, and only attained after additional years of costly litigation.

Additionally, this range of possible recoveries is *before* considering the risks to liability discussed above—any of which could have resulted in investors receiving no recovery.

4. Stage of the Proceedings and Amount of Discovery Completed

A settlement following sufficient discovery and genuine arms-length negotiation is "presumptively valid." *Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *5 (E.D. Pa. Dec. 9, 2016) ("[C]ourts generally recognize that a proposed class settlement is presumptively valid

where . . . the parties engaged in arm's length negotiations after meaningful discovery.") (alterations in original).

From the commencement of this Action in October 2016 through the Parties' agreement to settle in August 2021, Lead Plaintiffs and Lead Counsel spent substantial time and resources analyzing and zealously litigating the factual and legal issues involved in the Action. ¶¶ 13-61. Before reaching the Settlement, Lead Plaintiffs, through their counsel, had conducted an extensive investigation as well as substantial discovery. Cognizant produced to Lead Plaintiffs all documents it previously produced to the Government in connection with the Criminal Action. As a result, Lead Plaintiffs obtained and analyzed over 660,000 pages of documents from Cognizant. ¶¶ 53-56. Prior to settlement, Lead Plaintiffs, through their counsel, also briefed two round of motions to dismiss and related requests for interlocutory appeals, and consulted with experts. ¶¶ 23-33, 38-48, 58. In addition, Lead Plaintiffs and Cognizant exchanged detailed mediation statements, and participated in hard-fought settlement negotiations, including formal mediation with Judge Phillips. ¶¶ 60-61.

This record demonstrates that, when the Settlement was reached, Lead Plaintiffs and Lead Counsel had more than enough information to make an informed decision about settlement based on the "strengths and weaknesses of their case." *Dartell v. Tibet Pharms., Inc.,* 2017 WL 2815073, at *5 (D.N.J. June 29, 2017) (finding, in a securities class action, the third *Girsh* factor weighed in favor of settlement where the parties had "fully briefed motions to dismiss, a motion for class certification, and [had] engaged in discovery," as well as the "engage[ment of] two experts").

5. The Ability of Defendants to Withstand a Greater Judgment

The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *Cendant*, 264 F.3d at 240; *In re Ikon Office Sols., Inc., Sec. Litig.,* 194 F.R.D. 166, 183 (E.D. Pa. 2000) (defendants' inability to pay a

greater sum would support approval of settlement). Even the "fact that [defendants] could afford to pay more does not mean that [they are] obligated to pay any more than what the . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached." *Warfarin Sodium*, 391 F.3d at 538.

Here, while Lead Plaintiffs believe that Cognizant could afford to pay more that the Settlement Amount, Lead Plaintiffs respectfully submit that this factor should not be viewed as determinative by this Court, considering all of the other factors supporting approval of the Settlement. *See Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at *20 (E.D. Pa. Apr. 21, 2020) ("simply because a defendant 'could afford to pay more does not mean that it is obligated to'"; and finding that where "there is no question that the Defendants' total resources far exceed the Settlement amount, and Defendants did not profess any inability to pay during settlement negotiations," that factor "is therefore irrelevant in determining the fairness of the Settlement"); *In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *5 (D.N.J. Dec. 31, 2009) ("pushing for more in the face of risks and delay would not be in the interests of the class"); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (a "defendant is not required to 'empty its coffers' before a settlement can be found adequate").

6. The Reaction of the Settlement Class to Date

In assessing a settlement, courts in the Third Circuit also consider "the reaction of the class to the settlement." *Girsh*, 521 F.2d at 157; *NFL Players*, 821 F.3d at 438. The deadline for Settlement Class Members to object to the Settlement or request exclusion from the Settlement Class is November 22, 2021. ¶ 100. As of the date of this filing, the Settlement has received no objections and there have been no requests for exclusion from the Settlement Class. *Id.*; Segura Decl. (Ex. 4), at ¶ 13. Lead Plaintiffs will address any objections to the Settlement, as well as any

requests for exclusion that may be received, in their reply papers, which will be filed by December 6, 2021.

7. The Relevant *Prudential* Factors Also Support the Settlement

In addition to Rule 23(2)(e) and traditional *Girsh* factors, the Third Circuit also advises courts to address the factors set forth in *Prudential*, where applicable. These factors are:

> [1] the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; [2] the existence and probable outcome of claims by other classes and subclasses; [3] the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [4] whether class or subclass members are accorded the right to opt out of the settlement; [5] whether any provisions for attorneys' fees are reasonable; and [6] whether the procedure for processing individual claims under the settlement is fair and reasonable.

148 F.3d at 323. Each of the *Prudential* factors also weighs in favor of the Settlement.

With respect to the first *Prudential* factor, Lead Plaintiffs and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the case based on their extensive investigation of the Settlement Class's claims, consultation with experts, discovery, and mediation efforts. *See supra* Section II.C.4. With respect to the second and third *Prudential* factors, Lead Counsel is unaware of any other classes or pending individual actions related to the same claims asserted in this Action. With respect to the fourth *Prudential* factor, Settlement Class Members were afforded the opportunity to opt out of the Settlement Class and, so far, none have chosen to do so. With respect to the fifth and sixth *Prudential* factors, Lead Counsel's request for attorneys' fees is reasonable (*see* Section II.D below and accompanying Fee Memorandum), and the Plan of Allocation, which will govern the allocation of the Net Settlement Fund, is fair and reasonable (*see* Section III below).

D. The Remaining Rule 23(e)(2) Factors Support Final Approval

In evaluating the Settlement, Rule 23(e)(2) instructs courts to also consider: (i) the effectiveness of the proposed method of distributing the relief provided to the class, including the method of processing class member claims; (ii) the terms of any proposed award of attorney's fees, including the timing of payment; (iii) any other agreement made in connection with the proposed settlement; and (iv) whether class members are treated equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv) & (e)(2)(D). These factors also support final approval of the Settlement.

First, the proposed method of distribution and claims processing ensures equitable treatment of Settlement Class Members. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii) & (e)(2)(D). Settlement Class Members' claims will be processed and the Net Settlement Fund distributed pursuant to a standard method routinely approved in securities class actions. The Court-authorized Claims Administrator, JND Legal Administration ("JND"), will review and process all Claims received, provide Claimants with an opportunity to cure any deficiency or request judicial review of the denial of their Claims, if applicable, and will ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund, as calculated under the Plan. *See infra* Section III. None of the Settlement proceeds will revert to Defendants. *See* Stipulation ¶ 14.

Second, the relief provided by the Settlement remains adequate upon consideration of the terms of the proposed award of attorneys' fees, including the timing of any such Court-approved payments. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). As discussed in the accompanying Fee Memorandum, the requested attorneys' fees of 20% of the Settlement Fund, net of Litigation Expenses, to be paid upon the Court's approval, are reasonable in light of the efforts devoted by Plaintiffs' Counsel, the recovery obtained for the Settlement Class, and the significant risks Plaintiffs' Counsel shouldered at every step. Moreover, the request for attorneys' fees is on the

lower end of attorneys' fee percentages awarded to counsel in other complex class actions in this Circuit. *See Wilmington Tr.*, 2018 WL 6046452, at *9 (finding 28% to be a "typical fee percentage" in the Third Circuit); *Datatec Sys.*, 2007 WL 4225828, at *8 (fees of 25% to 33 1/3% of the recovery are typical in similar cases). Of particular note, the approval of attorneys' fee awards is entirely separate from the approval of the Settlement, and neither Lead Plaintiffs nor Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees. Stipulation ¶ 16.

Lastly, as previously disclosed, the only agreement the Parties entered into in addition to the Stipulation itself was a confidential Supplemental Agreement regarding requests for exclusion. *See* Stipulation ¶ 37; *see also* Fed. R. Civ. P. 23(e)(2)(C)(iv). The Supplemental Agreement provides Cognizant with the right to terminate the Settlement in the event that Settlement Class Members who timely and validly request exclusion from the Settlement Class meet certain conditions. Stipulation ¶ 37. This type of agreement is standard in securities class actions and has no negative impact on the fairness of the Settlement. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4. 2018) ("The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.").

For the reasons set forth above and in the Rizio-Hamilton Declaration, the Settlement is fair, reasonable, and adequate when evaluated under any standard, or set of factors and, therefore, warrants the Court's final approval.

III. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

Approval of a "plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *PAR Pharm.*, 2013 WL 3930091, at *3; *Ocean Power*,

2016 WL 6778218, at *23 (same). To meet this standard, a plan of allocation recommended by experienced and competent class counsel "need only have a reasonable and rational basis." *PAR Pharm.*, 2013 WL 3930091, at *8. Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See Ikon Office Sols.*, 194 F.R.D. at 184.

Here, the Plan (set forth in Appendix A to the Notice) was developed by Lead Counsel in consultation with Lead Plaintiffs' damages expert. ¶ 102. The Plan is designed to equitably distribute the Net Settlement Fund to Settlement Class Members who timely submit valid Claims demonstrating they suffered economic losses as a result of Defendants' alleged violation of the federal securities laws set forth in the Complaint. *Id*.

The Plan is based upon an estimated amount of alleged artificial inflation in the per-share closing price of Cognizant common stock proximately caused by Defendants' alleged false and misleading statements and omissions during the Class Period. ¶ 104. To have a Recognized Claim under the Plan, a Claimant must have purchased or otherwise acquired their Cognizant common stock during the Class Period (*i.e.*, from February 27, 2015 through September 29, 2016) and held such common stock through the end of the Class Period. ¶ 106. Further, a Claimant's loss under the Plan will depend upon several factors, including when the Claimant purchased/acquired their shares of Cognizant common stock during the Class Period, and whether such shares were sold and if so, when and at what price, taking into account the PSLRA's statutory limitation on recoverable damages. ¶ 105.

Authorized Claimants will recover their proportional *pro rata* amount of the Net Settlement Fund based on their calculated loss as a percentage of all Authorized Claimants' calculated losses. ¶ 107. *See Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 105 (D.N.J. Feb. 6, 2018)

("pro rata distributions are consistently upheld . . . ."); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (finding plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of General Instrument stock").

The Plan was fully disclosed in the Notice and, to date, no objections to the Plan have been received. ¶ 109. Accordingly, Lead Plaintiffs and Lead Counsel believe the Plan is fair, reasonable, and adequate and should be approved. Fed. R. Civ. P. 23(e)(2)(C)(ii) & (e)(2)(D).

IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

As set forth in Lead Plaintiffs' motion for preliminary approval of the Settlement, the Settlement Class satisfies all of the requirements of Rules 23(a) and (b)(3). *See* ECF No. 165-1, at 17-23; Preliminary Approval Order (ECF No. 167), at ¶¶ 1-3 (finding the Court will likely be able to certify the Settlement Class in connection with final approval). None of the facts supporting certification of the Settlement Class have changed since Lead Plaintiffs submitted their preliminary approval motion. Accordingly, Lead Plaintiffs respectfully request that the Court certify the Settlement Class under Rules 23(a) and (b)(3) for purposes of effectuating the Settlement.

V. NOTICE TO THE SETTLEMENT CLASS SATISFIED RULE 23, DUE PROCESS, AND THE PSLRA

Lead Plaintiffs have provided the Settlement Class with adequate notice of the Settlement. Here, notice satisfied both: (i) Rule 23, as it was "the best notice . . . practicable under the circumstances" and directed "in a reasonable manner to all class members who would be bound by the" Settlement, Fed. R. Civ. P. 23(c)(2)(B) & (e)(1)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); and (ii) due process, as it was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an

opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

In accordance with the Court's Preliminary Approval Order, JND began mailing copies of the Notice Packet to potential Settlement Class Members and nominees on September 30, 2021. *See* Segura Decl. (Ex. 4), at ¶¶ 3-6. Through November 4, 2021, JND has mailed a total of 321,462 Notice Packets. *See id.* ¶ 9. In addition, JND caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire* on October 15, 2021. *Id.* ¶ 10. JND also established a dedicated website, www.CognizantSecuritiesLitigation.com, to provide additional information about the Action and the Settlement, as well as access to downloadable copies of the Notice and Claim Form and other Settlement-related documents. *See id.* ¶ 12.[3] Copies of the Notice and Claim Form can also be downloaded from Lead Counsel's website, www.blbglaw.com.

The Notice apprises Settlement Class Members of, *inter alia*: (i) the claims asserted in the Action and the definition of the Settlement Class; (ii) the amount of the Settlement; (iii) the reasons why the Parties are proposing the Settlement; (iv) the estimated average recovery per affected share of Cognizant common stock; (v) the maximum amount of attorneys' fees and expenses that will be sought; (vi) the identity and contact information for representatives from Lead Counsel available to answer questions concerning the Settlement; (vii) the right of Settlement Class Members to object to the Settlement; (viii) the right of Settlement Class Members to request exclusion from the Settlement Class; (ix) the binding effect of a judgment on Settlement Class Members; (x) the dates and deadlines for certain Settlement-related events; and (xi) the opportunity to obtain additional information about the Action and the Settlement by contacting Lead Counsel,

[3] Defendants also issued notice to relevant government officials, including the 50 state attorneys general pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) in September 2021. *See* Stipulation ¶ 21.

the Claims Administrator, or visiting the Settlement website. *See* Fed. R. Civ. P. 23(c)(2)(B); 15 U.S.C. § 78u-4(a)(7). The Notice also contains the Plan of Allocation and provides Settlement Class Members with information on how to submit a Claim Form in order to be eligible to receive a distribution from the Net Settlement Fund. *See* Segura Decl. (Ex. 4), at Ex. A, pp. 12, 19-23.

The content disseminated through this notice campaign was more than adequate. *See In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013) ("Generally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class.").

In sum, this combination of individual first-class mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate publication, transmission over a newswire, and publication on an internet website, was "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). Comparable notice programs are routinely approved by Courts in this Circuit. *See, e.g.*, *Valeant*, 2020 WL 3166456, at *6; *Ocean Power*, 2016 WL 6778218, at *10; *ViroPharma*, 2016 WL 312108, at *5-6.

VI. CONCLUSION

For the reasons set forth herein and in the Rizio-Hamilton Declaration, Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement, approve the Plan of Allocation, and grant final certification of the Settlement Class for settlement purposes.

Dated: November 8, 2021

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on November 8, 2021, I caused the foregoing Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

Dated: November 8, 2021

s/ Michael B. Himmel
Michael B. Himmel