UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

PLYMOUTH COUNTY RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. PATTERSON COMPANIES, INC., et al., Defendants.	Civ. No. 0:18-cv-00871-MJD-HB CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

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I. INTRODUCTION

Pursuant to Rule ("Rule") 23(e) of the Federal Rules of Civil Procedure, Plymouth County Retirement Association, Pembroke Pines Pension Fund for Firefighters and Police Officers, Central Laborers Pension Plan, and Gwinnett County Public Employees Retirement System (collectively, "Plaintiffs," "Lead Plaintiffs" or "Class Representatives"), respectfully submit this memorandum of law in support of their motion for final approval of the Settlement reached in the above-caption securities class action (the "Action" or "Litigation"), and approval of the Plan of Allocation (the "Plan" or "Plan of Allocation"). The terms of the proposed Settlement are set forth in the Stipulation of Settlement dated October 11, 2021, which was previously filed with the Court ("Stipulation" or "Settlement"). ECF 241.[1] The Court granted preliminary approval of the Settlement on February 3, 2022 ("Preliminary Approval Order"). ECF 248.

The proposed Settlement before the Court provides for the payment of $63,000,000 to investors who purchased or acquired Patterson Companies, Inc. ("Patterson" or the "Company") common stock between June 26, 2013 and February 28, 2018, inclusive (the "Class Period"). The $63,000,000 recovery represents an excellent result for the Class, and exceeds both the average and median settlement amounts in securities class actions resolved during 2021. *See* Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements: 2021 Review and Analysis*, at 1 (Cornerstone Research 2022) ("Cornerstone

[1] Unless otherwise noted, all terms capitalized herein are defined in the Stipulation or the Joint Declaration of Lucas F. Olts and Lester R. Hooker in Support of (I) Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Motion for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Joint Decl." or "Joint Declaration"), submitted herewith.

Report"), available at https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf. The Settlement Amount far exceeds the $14.7 million median settlement amount for cases settled in the Eighth Circuit between 2012 and 2021. *Id.* at 19, Appendix 3. Lead Counsel estimate that the recovery here represents between 7% and 73% of the Class's reasonable recoverable class-wide aggregate damages. *See* Joint Declaration, ¶5. This result exceeds the median ratio of settlement amount to "simplified tiered damages" in securities litigation according to Cornerstone's most recent report. Cornerstone Report at 20, Appendix 5. If approved, the Settlement would rank in the top-ten largest securities class action settlements ***ever*** in the District of Minnesota.

Further confirming the fairness of the proposed Settlement is the fact that, to date, there have been no objections to the Settlement filed by Class Members. In accordance with the Order Granting Preliminary Approval Pursuant to Fed. R. Civ. P. 23(e)(1) and Permitting Notice to the Class (the "Preliminary Approval Order"), over 183,000 copies of the Notice were sent to potential Class Members and nominees beginning on February 24, 2022, and notice was published in *The Wall Street Journal* and transmitted over the *Business Wire* on March 3, 2022. *See* accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Gilardi Decl."), ¶¶5-12. Joint Decl., Ex. A.

Finally, Lead Counsel, with substantial experience successfully prosecuting securities class actions, and the Court-appointed Plaintiffs, which actively and faithfully oversaw this Litigation for years in accordance with their duties as to the Class, have concluded that the

proposed Settlement and proposed Plan are fair, reasonable, and adequate and in the best interests of the Class. Accordingly, for the reasons set forth herein and in the accompanying Joint Declaration, the proposed Settlement and proposed Plan warrant the Court's approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

To avoid repetition, Plaintiffs respectfully refer the Court to the accompanying Joint Declaration for a detailed discussion of the factual background and procedural history of the Litigation, the extensive efforts undertaken by Plaintiffs and their counsel during the course of the Litigation, and the factors bearing on the approval of the Settlement and Plan of Allocation. *See generally* Joint Decl.

III. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

A. The Standards for Final Approval of Class Action Settlements

The policy of favoring voluntary resolution through settlement is particularly strong. *Beaver Cnty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 U.S. Dist. LEXIS 91651, at *5 (D. Minn. June 14, 2017); *see George v. Uponor Corp.*, 2015 WL 5255280, at *6 (D. Minn. Sept. 9, 2015) ("'The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context.'").[2] In the Eighth Circuit, "'strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor.'" *In re Centurylink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *6 (D. Minn. Dec. 4, 2020) (Davis, J.); *see also In re Resideo Techs., Inc., Sec. Litig.*, 2022 WL 872909, at *1 (D. Minn. Mar. 24, 2022) ("A class-action settlement agreement is 'presumptively valid.'") (citing *Ortega v. Uponor, Inc.*, 716 F.3d

[2] All citations are omitted and emphasis is added throughout unless otherwise noted.

1057, 1063 (8th Cir. 2013) (internal quotation marks omitted)). Indeed, "the presumption . . . of such settlements reflects courts' understandings that vigorous negotiations between experienced counsel protect against collusion and advance the fairness concerns underlying Rule 23(e)." *Yarrington v. Solvay Pharm., Inc.*, 2010 WL 11453553, at *7 (D. Minn. Mar. 16, 2010).

Pursuant to Rule 23, a court may approve a class action settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Rule 23(e)(2) provides that:[3]

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3).
>
> (D) the proposal treats class members equitably relative to each other.

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

[3] The amended Rule 23(e) identified specific factors for district courts to assess in evaluating fairness, reasonableness, and adequacy. The "goal of this amendment is not to displace any [of the circuit's unique] factor[s]." Fed. R. Civ. P. 23(e)(2) Advisory Committee Notes to 2018 Amendments.

The Eighth Circuit has also established four factors to determine whether a proposed settlement is fair, reasonable, and adequate, which overlap with those in Rule 23(e)(2): "the merits of the plaintiff's case, weighed against the terms of the settlement; the defendant's financial condition; the complexity and expense of further litigation; and the amount of opposition to the settlement." *Van Horn v. Trickey*, 840 F. 2d 604, 607 (8th Cir. 1988). As discussed herein and in the Joint Declaration, an analysis of the relevant factors weighs unequivocally in favor of granting final approval of the Settlement.

In exercising its discretion, the court's examination is limited to determining that the settlement agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. *See Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) (judges should not substitute their judgment for that of the litigants); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) ("'neither the trial court in approving the settlement nor this Court in reviewing [the] approval have the right or the duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute'") (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 456 (2d Cir. 1974), *abrogated sub nom. by Goldberger v. Integrated Res., Inc.*, 209 F 3d. 43 (2d Cir. 2000)). "'The district court need not make a detailed investigation consonant with trying the case; it must, however, provide the appellate court with a basis for determining that its decision rests on well-reasoned conclusions and is not mere boilerplate.'" *In re Centurylink Sales Pracs. & Sec. Litig.*, 2021 WL 3080960, at *5 (D. Minn. July 21, 2021) (citing *In re Wireless Tele. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932-33 (8th Cir. 2005)).

B. The Proposed Settlement Satisfies Both the Rule 23(e)(2) and the Eighth Circuit Requirements

As acknowledged by the Preliminary Approval Order, Plaintiffs have met all of the requirements imposed by Rule 23(e)(2). *See generally* Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Settlement (ECF 240). Courts analyzing the Rule 23(e)(2) factors have noted that a plaintiff's satisfaction of these factors is virtually assured where, as here, little has changed between preliminary approval and final approval. *See In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Pracs. & Prod. Liab. Litig.*, 2019 WL 2554232, at *2 (N.D. Cal. May 3, 2019) (finding that the "conclusions [made in granting preliminary approval] stand and counsel equally in favor of final approval now"). As set forth below, Plaintiffs respectfully submit that applying these criteria and the requirements under Eighth Circuit jurisprudence warrants this Court's final approval.

1. Plaintiffs and Lead Counsel Have Adequately Represented the Class

To determine whether the "class representatives and class counsel have adequately represented the class" pursuant to Fed. R. Civ. P. 23(e)(2)(A), the Court must ascertain whether "(1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 562-63 (8th Cir. 1982).

At every stage of the Litigation, Plaintiffs and Lead Counsel have adequately represented the Class. Here, there is no conflict between Plaintiffs and the Class, and as this Court previously found, Plaintiffs' interests in this case are directly aligned with those of the

other Class Members. *Plymouth Cnty. Ret. Sys. v. Patterson Cos., Inc.*, 2020 WL 5757695, at *5-*8 (D. Minn. Sept. 28, 2020).

Plaintiffs also retained counsel who "have extensive experience in securities class action litigation," and "demonstrated diligence and expertise in their work in this case." *Id.* at *8. The record reflects that Plaintiffs and Lead Counsel have diligently prosecuted this Litigation over the years by, among other things: conducting a thorough pre-trial investigation into the Class' claims; drafting a detailed amended class action complaint; opposing and largely defeating Defendants' motion to dismiss (which included responding to Defendants' Objection to Magistrate Judge Rau's Report and Recommendation); obtaining class certification over Defendants' opposition; defeating Defendants' Rule 23(f) petition; conducting extensive fact discovery, including the request for, negotiation over, reviewing and analyzing over nearly 800,000 pages of documents produced by Defendants and third parties, reviewing and producing over 136,000 pages of documents to Defendants; conducting 23 fact depositions and 3 expert depositions; defending 11 fact and expert depositions; responding to discovery propounded by Defendants; opposing Defendants' motions for summary judgment and motion to exclude Plaintiffs' loss causation and damages expert; preparing three expert reports from three experts; preparing for trial; and negotiating this proposed Settlement with the assistance of Jill Sperber, Esq., a well-known and experienced mediator. *See generally* Joint Decl. Plaintiffs and Lead Counsel stood ready to, and at all times did, advocate for the best interests of the Class, and were actively preparing for trial at the time the proposed Settlement was reached. Accordingly, Plaintiffs satisfy Rule 23(e)(2)(A).

2. The Settlement Was Reached After Arm's-Length Negotiations with the Assistance of An Experienced Mediator

Courts in the Eighth Circuit have held that when a "settlement was negotiated at arms' length between experienced and sophisticated counsel, . . . [there is a] presumption that it is fair and reasonable." *Phillips v. Caliber Home Loans, Inc.*, 2021 WL 3030648, at *6 (D. Minn. July 19, 2021). Here, the parties engaged in initial mediation sessions with Ms. Sperber, Esq. in 2019 and 2020. After the Court adopted the Report and Recommendation of United States Magistrate Judge Rau, granting in part and denying in part Defendants' motion to dismiss, the parties held an initial mediation on November 5, 2019. In preparation for the mediation, both parties submitted and exchanged substantial materials in support of their respective positions. Throughout the day, both parties engaged in detailed, substantive discussions with Ms. Sperber, each advancing their perceived strengths and weaknesses of the Litigation. While the mediation was not successful, the parties came to better understand the other sides' positions. The parties engaged in a second mediation with Ms. Sperber on August 3, 2020, while Plaintiffs' motion for class certification was pending. Again, the parties produced substantive materials in support of their respective positions to Ms. Sperber in advance of the mediation, and engaged in vigorous discussions throughout this second mediation. *See Centurylink,* 2020 WL 7133805, at *6 (the utilization of "an experienced mediator" during settlement negotiations supports a finding that the settlement is reasonable and should be approved); *Phillips v. Caliber Home Loans, Inc.*, 2022 WL 832085, at *2 (D. Minn. Mar. 21, 2022) (settlement approved where the parties "participated in a full-day mediation session conducted by Jill Sperber").

At all times, the negotiations were hard fought and at arm's length. Indeed, the parties engaged in intensive back-and-forth negotiations in the months following the second mediation and both sides appeared fully prepared, qualified, and ready to proceed down the path to trial rather than accept a settlement that was not in the best interests of their respective clients. It was not until after the completion of fact and expert discovery, with Defendants' motions for summary judgment and motion to exclude Plaintiffs' loss causation damages expert pending, and trial imminent, that the parties reached an agreement to settle the Litigation on August 27, 2021. The parties spent the following weeks negotiating the specific terms of the Settlement set forth in the Stipulation and accompanying exhibits, which was executed on October 11, 2021.

At this advanced stage of the litigation, after multiple rounds of mediation and the completion of fact and expert discovery, the parties each had a thorough understanding of their respective strengths and weaknesses. *See, e.g.*, *Yarrington*, 2010 WL 11453553, at *8 (settlement negotiated at arms' length as "settlement discussions in this case were protracted, with attempts to reach resolution spanning several years," and "[a]ttorneys on both sides are very experienced . . . well-versed in the legal and factual issues implicated in this action"); *CenturyLink*, 2020 WL 7133805, at *6 (approving settlement reached "at a stage in the litigation in which the parties understood the strengths and weakness of their case").

3. The Settlement Is Fair, Reasonable, and Adequate

Under Rule 23(e)(2)(C), in determining whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," courts take into consideration "'the merits of the plaintiff's case, weighed against the terms of the

settlement'" and "'the complexity and expense of further litigation.'" *Ortega*, 716 F.3d at 1063; *Centurylink*, 2020 WL 7133805, at *6. As set forth below, the record demonstrates that these factors weigh in favor of approval.

a. The Merits of the Class's Claims, Weighed Against the Terms of the Settlement, Support Final Approval of the Settlement

"The most important consideration in deciding whether a settlement is fair, reasonable, and adequate is 'the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.'" *Wireless*, 396 F.3d at 933. Courts have long recognized that securities fraud class actions such as this one present a myriad of risks that a plaintiff must overcome to ultimately secure a recovery. *See, e.g.*, *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 844 (E.D. Va. 2016) ("[S]ecurities fraud cases require significant showings of fact in order to prevail before a jury, and 'elements such as scienter, reliance, and materiality of misrepresentation are notoriously difficult to establish.'").

This Action alleged that Defendants violated federal securities laws by making material misstatements and omissions regarding Patterson's scheme with its competitors to boycott organized groups of independent dentists known as Group Purchasing Organizations ("GPOs"). This scheme allegedly caused Patterson stock to trade at artificially inflated prices.

Although the Federal Trade Commission ("FTC") determined that Patterson had "conspired to refuse to offer discounted prices or otherwise compete for the business of buying groups," which constituted a "*per se* violation" of the federal antitrust laws (FTC Order at 3), the FTC's finding by no means guaranteed success for Plaintiffs in proving their

alleged claims in this securities class action, as there were many key differences between the two actions. As an initial matter, the FTC determined that the evidence failed to prove that one of Patterson's alleged co-conspirators, Henry Schein, Inc. ("Schein"), was involved in the conspiracy, thereby dismissing the government's complaint against Schein. *Id.* Here, even in the wake of the FTC's exoneration of Schein, Plaintiffs continued to maintain that Schein was culpable in the conspiracy, along with Benco Dental Supply Company ("Benco") and Patterson. *See, e.g.*, ECF 219 at 9.

Second, in the FTC action, the government alleged that that the conspiracy between Patterson and its competitors started in February 2013, and this conspiracy began to unravel after April 2014. FTC Order at 34-39. Here, Plaintiffs' alleged class period is much more extensive, running from June 26, 2013 to February 28, 2018. ECF 74 at 1. Plaintiffs allege that the truth regarding Patterson's price-fixing scheme with Schein and Benco did not begin to emerge until November 22, 2016 – more than two full years after the alleged conspiracy was alleged to have begun to unravel by the FTC. *Id.* at 42.

Third, establishing that Patterson was engaged in a conspiracy with its competitors was only one part of Plaintiffs' case, where proving claims under §§10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§78j(b) and 78t(a), requires Plaintiffs to establish falsity, materiality, scienter, and loss causation – all of which Defendants continued to challenge at summary judgment. *See* ECF 204 and 212. The FTC action did not touch on whether Defendants' statements to the market were materially false and misleading and made with scienter, whether those statements caused Patterson's stock price to trade at inflated prices, or whether the revelation of Patterson's anti-competitive conduct caused its

stock price to decline in November 2016 and February and March 2018. Underscoring the uniqueness of this Litigation, Plaintiffs here conducted 23 fact depositions and 3 expert depositions, defended 11 fact and expert depositions, and prepared three expert reports from three experts.

After extensive discovery, the Company was still contesting all of these issues at summary judgment.

Materiality and Falsity: For example, Defendants argued that Plaintiffs failed to establish that Defendants made any materially misleading statements or omissions. *See* ECF 204 at 24-30; *Genworth*, 210 F. Supp. 3d at 841-42 ("plaintiffs would . . . need to prove that the statements made were in fact false, as opposed to mere projections not subject to liability. . . . Even with a strong case, the plaintiffs nonetheless face a large risk before a jury"). Defendants already had substantial success in making such arguments, achieving dismissal of a majority of Plaintiffs' alleged false statements. *See Plymouth Cnty. Ret. Sys. v. Patterson Cos., Inc.*, 2019 WL 3336119, at *15, *17 (D. Minn. July 25, 2019). Moreover, Plaintiffs faced a risk that some of the surviving alleged false statements would be dismissed at summary judgment. For instance, with respect to Defendants' specific statements made in their 2016 and 2017 Forms 10-K regarding attempts to do business with GPOs, Defendants argued that, at the time of those statements, they actually were attempting to do business with GPOs, rendering the statements not false at the time they were made. *See* ECF 204 at 24-26. In support, Defendants cited to a myriad of documentary evidence and deposition testimony from multiple witnesses gathered throughout discovery. *Id*. Similarly, Defendants argued that their statements regarding competition against their competitors in the

Company's 2016 and 2017 Forms 10-K were not actionable, in part, because testimony from both Patterson employees and their competition purportedly demonstrated that their statements were in fact true. *Id.* at 29.

Scienter: Additionally, Defendants also continued to contest scienter, arguing that Defendant Anderson, and in turn Patterson, lacked scienter because: (i) he became Patterson's President and CEO two years after the Company had developed its Code of Ethics; (ii) he believed Patterson had genuinely evaluated GPO proposals from 2010 to 2017; and (iii) he claimed that Patterson did not collude with its competitors. *See id.* at 31-32. If the Action made it to trial, Defendants would also likely argue that the "corporate scienter" doctrine was inapplicable. *See* ECF 226 at 14 n.2.

Loss Causation and Damages: Even if Plaintiffs ultimately prevailed in proving falsity and scienter, this Action would have involved significant risks to establishing loss causation and damages. *See, e.g.*, *Genworth*, 210 F. Supp. 3d at 841-42 ("[P]laintiffs at trial would bear the burden of conveying complex information to a jury using financial records, complicated accounting principles, and expert testimony. . . . The high risk faced by taking the case to a jury verdict demonstrates the adequacy of this . . . settlement."). Defendants vigorously asserted that the price declines in Patterson's common stock on the relevant dates were not corrective of any material misstatement but instead were merely a result of disappointing earnings without any evidence of a link. *See* ECF 204 at 14-16.

Regarding the November 22, 2016, and March 1, 2018 disclosures, Defendants argued that there was no evidence that the market recognized any relationship between those earnings announcements and the alleged misrepresentations. *Id.* at 16-17. Specifically,

Defendants contended that the press releases and conference calls that contained the allegedly corrective information "contain[ed] no discussion or reference to GPOs, the Alleged Collusion Against GPOs, or the Alleged Misrepresentations." *Id*. at 16. Accordingly, Defendants asserted that the market learned nothing about the alleged misrepresentations through these corrective disclosures. *Id*. at 16-17. Defendants also argued that Plaintiffs failed to identify any market commentary that attributed the decline in Patterson stock following the November 22, 2016, and March 1, 2018 disclosures to the alleged collusion of Patterson and its competitors against GPOs. *Id*. at 17.

In addition, Defendants also repeatedly asserted that the February 12, 2018 disclosure was not corrective, as the alleged antitrust misconduct was already known to the market prior to the FTC's announcement. *Id*. at 18-20. Specifically, Defendants argued that the market knew of the alleged collusion by Patterson and its competitors against the GPOs for more than two years before the February 12, 2018 announcement, and that Patterson had disclosed lawsuits and discussed the legal risks related to these allegations – none of which had "prompted any statistically-significant drop in Patterson's stock price." *Id.* at 19. As a result, Defendants argued that the "FTC's announcement simply revealed the fact of a regulatory action, which is not the subject of an Alleged Misrepresentation and cannot form the basis for a corrective disclosure." *Id.* Significantly, at the motion to dismiss stage, the Court acknowledged that it was "sympathetic to Defendants' arguments concerning the causal connection between the FTC complaint and the stock losses" and that "[t]hese entangled facts . . . would be better suited for resolution on summary judgment where experts can weigh in with their analysis." *Patterson*, 2019 WL 3336119, at *21.

Moreover, Defendants argued that Patterson's stock declines following the November 22, 2016, February 12, 2018, and March 1, 2018 disclosures were caused by non-fraud-related factors, and that Plaintiffs failed to disaggregate these confounding factors from their impact on the stock price declines. ECF 204 at 20-21. For example, Defendants contended that on November 22, 2016, Patterson's second quarter earnings results were attributed to margin declines from Patterson's Animal Health segment; dental market softening; the Company's salesforce realignment; and the end of Sirona exclusivity – all non-fraud-related causes. *Id.* at 21-22.

While Plaintiffs believe they had strong counterarguments on all of these points, at bottom, the fact remains that the Court at summary judgment or the jury at trial could have found such arguments persuasive, thereby significantly reducing or even completely eliminating recoverable damages. *See, e.g.*, *DeBruycker v. PM Beef Holdings, LLC*, 2005 WL 681298, at *1 (D. Minn. Mar. 2, 2005) (Davis, J.) (defendants' advancement of arguments that "if successful, would have reduced Plaintiffs' ultimate recovery" justified the settlement). Furthermore, "without settlement, the case would "'likely drag on for years [and] require the expenditure of millions of dollars, all the while class members would receive nothing."'" *Yarrington*, 2010 WL 11453553, at *9; *see also Phillips*, 2021 WL 3030648, at *6 ("continued litigation likely would take several years to resolve").[4]

[4] *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (major portion of plaintiffs' verdict reversed on appeal); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 412, 533 (S.D.N.Y. 2011), *aff'd*, 838 F. 3d 223 (2d Cir. 2016) (after jury verdict for plaintiff, court significantly reduced scope of class by amending class definition to exclude purchasers of ordinary shares); *Anixter v. Home-Stake*

The $63,000,000 all-cash Settlement is well within the range of reasonableness under the circumstances to warrant final approval of the Settlement. Plaintiffs' damages expert estimates that if Plaintiffs fully prevailed on each of their claims at both summary judgment and trial, and if the Court and jury fully accepted Plaintiffs' loss causation and damages arguments – *i.e.*, Plaintiffs' best case scenario – the total recoverable damages would range between $86 million and $855 million. Thus, the $63 million Settlement Amount represents approximately 7% to 73% of the damages potentially available in this Action. Joint Decl., ¶5.

Considering the risks that Plaintiffs would have faced if they continued to litigate the Litigation through trial and beyond, Plaintiffs and Lead Counsel concluded that the Settlement at this juncture is a strong recovery that is in the Class's best interests. Thus, this factor strongly supports the Settlement's approval.

b. The Complexity and Expense of Further Litigation Supports Final Approval of the Settlement

Courts have consistently recognized that the complexity, expense, and likely duration of the litigation are critical factors in evaluating the reasonableness of a settlement, especially when the settlement being evaluated is a securities class action. *See*, *e.g.*, *Phillips*, 2022 WL 832085, at *3 ("'many of the immediate and tangible benefits' of settlement would be lost through continued litigation, making the proposed settlement 'an attractive resolution' of the case"); *Centurylink*, 2020 WL 7133805, at *7 ("even if Plaintiffs were successful, the .

Prod. Co., 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (reversing $87 million judgment after trial).

. . costs and risks of continued litigation in such a large, complex case would be significant"). This case, with numerous complex legal and factual issues – including those related to falsity, scienter, loss causation, and damages – was no exception.

In the absence of a settlement, this case would require the expenditure of substantial additional time and money, "'all the while class members would receive nothing.'" *Wireless*, 396 F.3d at 933. Assuming Plaintiffs successfully defeated Defendants' motion for summary judgment and motion to exclude Plaintiffs' loss causation and damages expert, a trial in this case would take weeks and would be a complicated undertaking for the Court and jurors. *See In re AOL TimeWarner*, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006) (due to their "notorious complexity," securities class actions often settle to "circumvent[] the difficulty and uncertainty inherent in long, costly trials"). And even if Plaintiffs were successful at trial, post-trial motions and appeals certainly would follow. The post-trial process likely would span years, during which time the Class would receive no distribution of any damages award. In addition, a post-trial motion or an appeal of any favorable verdict would carry the risk of reversal, in which case the Class would receive no recovery at all – ever. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming a lower court ruling that granted defendants' motion for judgment as a matter of law based on plaintiff's failure to prove loss causation, thereby overturning a jury verdict in plaintiff's favor). Accordingly, analysis of this factor supports final approval of the Settlement.

4. Defendants' Financial Condition Supports Final Approval of the Settlement

Defendants have mounted a vigorous defense for years, and there is no indication that Patterson's financial condition is at risk and would prevent Defendants from fulfilling their settlement obligations. *See Khoday v. Symantec Corp.*, 2016 WL 1637039, at *6 (D. Minn. Apr. 5, 2016) ("[T]here is no indication that Defendants' financial condition is not secure. Their financial condition has afforded them a spirited defense in litigation, spanning five years. . . . As such, this factor weighs in favor of approval."). Moreover, the $63,000,000 settlement amount has already been placed in escrow. *See Centurylink*, 2020 WL 7133805, at *7 (no indication that defendant's financial condition is inadequate with settlement amount already in escrow). Accordingly, this factor weighs in support of final approval of the Settlement.

5. The Reaction of the Class to Date Supports Final Approval of the Settlement

Pursuant to this Court's Preliminary Approval Order, the Court-approved Notice and Proof of Claim and Release form ("Claim Form") were mailed to potential Class Members who could be identified with reasonable effort and the Summary Notice was published once in *The Wall Street Journal*, and once over the *Business Wire*. Gilardi Decl., ¶¶5-12. The Notice advises the Class of the terms of the Settlement and the Plan of Allocation as well as the procedure and deadline for filing objections. As of May 2, 2022, over 183,000 Notices and Claim Forms have been mailed to potential Class Members and nominees. *Id.*, ¶11.

The objection deadline is May 19, 2022, and to date, no objections have been received to the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of

attorneys' fees and expenses. In addition, there have been only two requests for exclusion from the Class. *See id.*, ¶18.

Even if there are objection(s), "[t]he fact that some class members object to the Settlement does not by itself prevent the court from approving the agreement." *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001). "'A certain number of . . . objections are to be expected in a class action . . . .'" *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 533 (E.D. Ky. 2010), *aff'd sub nom., Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011). Moreover, "a relatively small number of class members who object is an indication of a settlement's fairness." 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11.48 (3d ed. 1992); *Centurylink*, 2020 WL 7133805, at *7 ("[t]here were 8 objectors out of 17.2 million Class Members, demonstrating that there is little opposition to the Settlement").

6. All Other Factors Set Forth in Rule 23(e)(2)(C) Support Approval of the Settlement

Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," "the terms of any proposed award of attorney's fees, including timing of payment," and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors also supports approval of the Settlement or is neutral and does not suggest any basis for inadequacy of the Settlement.

First, the procedures for processing Class Members' claims and distributing the proceeds of the Settlement to eligible claimants in this case are well-established, effective methods that have been widely used in securities class-action litigation. As set forth in the Notice approved by the Court at the preliminary approval stage, the proceeds of the Settlement will be distributed on a *pro rata* basis to Class Members who submit eligible Claim Forms with required documentation to the Court-appointed Claims Administrator, Gilardi & Co. LLC ("Gilardi"). Gilardi will provide claimants with an opportunity to cure any deficiencies in their claims or request review by the Court of a denial of their claim and will mail or wire eligible claimants their *pro rata* share upon completion of the claims process.

After the Effective Date of the Settlement, in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund will be distributed to Authorized Claimants. If there is any balance remaining in the Net Settlement Fund after the initial distribution, and it would be feasible and economical to conduct a further distribution, Gilardi will conduct a further distribution of remaining funds among Authorized Claimants who have cashed their initial checks. Any *de minimis* balance that still remains after re-distributions and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to a non-sectarian, not-for-profit charitable organization(s) unaffiliated with any party or their counsel serving the public interest. *See* Stipulation (ECF 241), ¶5.10.

Second, the relief provided for the Class is also adequate when the terms of the proposed award of attorney's fees are taken into account. As discussed in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4), the proposed attorneys' fees of 33-1/3% of the Settlement Fund, to be paid upon approval by the Court, are reasonable in light of the efforts of Lead Plaintiffs' Counsel and the risks in the litigation. Moreover, approval of attorneys' fees is entirely separate from approval of the Settlement in this case, and neither Plaintiffs nor Lead Counsel may terminate the Settlement based on any ruling with respect to attorneys' fees. *See* Stipulation, ¶6.4.

Third, Rule 23 asks the court to consider the fairness of the proposed settlement in light of any agreements required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, the only agreements between the parties concerning the Settlement are the Term Sheet memorializing the agreement in principle, the Stipulation, and the parties' confidential Supplemental Agreement, which sets forth the conditions under which Defendants have the option to terminate the Settlement in the event that requests for exclusion from the Class exceed a certain specified threshold. *See* Stipulation, ¶7.4. This does not weigh against approval. *Centurylink*, 2021 WL 3080960 at *7 ("The Court routinely approves class action settlements when there is a confidential agreement allowing the defendant to terminate the settlement if a particular threshold of class members opt out. The existence of such an agreement does not weigh against approval."); *see also In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020) ("This type of agreement is a standard provision in securities class actions and has no negative impact on

the fairness of the Settlement."). As is standard in securities class actions, the Supplemental Agreement is kept confidential in order to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging a larger individual settlement, to the detriment of the Class.[5]

7. The Settlement Treats Class Members Equitably Relative to Each Other

The proposed Settlement treats Members of the Class equitably relative to one another. *See* Fed. R. Civ. P. 23(e)(2)(D). As discussed below, pursuant to the Plan of Allocation, eligible claimants approved for payment by the Court will receive their *pro rata* share of the recovery based on their purchases or acquisitions of Patterson common stock during the Class Period. Plaintiffs will receive the same level of *pro rata* recovery as all other Class Members.[6]

Each of the above factors fully supports a finding that the Settlement is fair, reasonable, and adequate, and therefore deserves this Court's final approval.

IV. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

Lead Counsel also seek approval of the Plan of Allocation. The Plan of Allocation is set forth in the Notice mailed to Class Members and provides an equitable basis to allocate the Net Settlement Fund among all Class Members who submit an acceptable Claim Form.

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[5] Pursuant to its terms, the Supplemental Agreement may be submitted to the Court *in camera* or filed under seal.

[6] Plaintiffs have separately moved for modest awards to compensate them for their time expended on this Action, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The Settlement is in no way contingent upon whether any such awards are granted.

Assessment of a plan of allocation in a class action under Rule 23 is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair and reasonable. *See Lechner v. Mut. of Omaha Ins. Co.*, 2021 WL 424421, at *4 (D. Neb. Feb. 8, 2021) ("The Plan of Allocation for the Settlement Fund is approved as fair, reasonable, and adequate.").

The objective of a plan of allocation is to provide an equitable basis upon which to distribute the settlement fund among eligible class members. An allocation formula need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *White v. Nat'l Football League*, 822 F. Supp. 1389, 1420 (D. Minn. 1993).

Here, the Plan of Allocation, which was developed by Lead Counsel in consultation with their damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Class Members who submit valid Claim Forms. In developing the Plan, Plaintiffs' damages expert calculated the amount of estimated artificial inflation in the prices of Patterson's common stock during the Class Period that allegedly was caused by Defendants' alleged false and misleading statements. Plaintiffs' expert did so by considering the price changes in Patterson common stock in reaction to certain public announcements regarding Patterson in which such misrepresentations were alleged to have been revealed to the market, adjusting for price changes that were attributable to market forces, the allegations in the Amended Complaint, and the evidence developed in support thereof. Joint Decl., ¶87.

Lead Counsel believe that the Plan of Allocation will result in a fair and equitable distribution of the proceeds among Class Members who submit valid Claim Forms and, thus,

it should be approved. Significantly, no one has objected to the Plan of Allocation. Courts routinely approve substantially similar methods of distributing recoveries in securities class actions such as this one, and Plaintiffs respectfully submit that this Court should approve the Plan of Allocation submitted here. *See, e.g.*, *Peace Officers Annuity & Benefit Fund of Ga. v. DaVita Inc.*, 2021 WL 1387110, at *5 (D. Colo. Apr. 13, 2021) (approving as fair and reasonable a similar plan); *Campbell v. Transgenomic, Inc.*, 2020 WL 2946989, at *5 (D. Neb. June 3, 2020) (finding "formula for the calculation of the claims of the authorized claimants" was "a fair and reasonable basis upon which to allocate the proceeds of the settlement fund").

V. THE NOTICE OF PROPOSED SETTLEMENT SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS AND IS REASONABLE

Rule 23(c)(2) requires the "'best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.'" *Eisen v. Carlisle & Jaquelin*, 417 U.S. 156, 173 (1974) (class notice designed to fulfill due process requirements). Pursuant to Rule 23(e), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." Fed. R. Civ. P. 23(e)(1)(B). The standard for measuring the adequacy of a class action settlement notice is reasonableness. *See Bredthauer v. Lundstrom*, 2012 WL 4904422, at *3 (D. Neb. Oct. 12, 2012); *Reynolds v. Credit Bureau Servs., Inc.*, 2016 WL 389977, at *5 (D. Neb. Feb. 1, 2016) (stating notice is adequate if "'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'").

Here, in accordance with the Preliminary Approval Order, beginning on February 24, 2022, the Claims Administrator caused the Notice and Claim Form to be mailed to potential Class Members and their nominees. Gilardi Decl., ¶¶5-11. In addition, the Summary Notice was published, once in *The Wall Street Journal* and once over the *Business Wire*. *Id.*, ¶12. As of May 5, 2022, over 183,000 copies of the Notice have been mailed to potential Class Members and nominees. *Id.*, ¶11. The Notice contains a description of the claims asserted, the Settlement, the Plan of Allocation, and Class Members' rights to participate in and object to the Settlement or the fees and expenses that Lead Counsel intend to request, or to exclude themselves from the Class. Information regarding the Settlement, including downloadable copies of the Notice and Claim Form, was also posted on a website devoted solely to the administration of the Settlement: www.pattersonsecuritiesclassaction.com. *Id.*, ¶14.

The notice program, approved by the Court, which combined an individual, mailed Notice and Claim Form to all potential Class Member and nominees who could be identified with reasonable effort, and a Summary Notice published once in a preeminent business publication and over the internet, contained all of the information required by §21D(a)(7) of the PSLRA, and is adequate to meet the due process and Rules 23(c)(2) and (e) requirements for providing notice to the Class. *See In re: E.W. BLANCH HOLDINGS, INC. SEC. LITIG.*, 2003 WL 23335319, at *1 (D. Minn. June 16, 2003) (approving similar notice program); *Klug v. Watts Regul. Co.*, 2016 WL 7156478, at *24 (D. Neb. Dec. 7, 2016) (finding that "the combination of the summary postcard notice delivered by mail and the reference to a website that contains the complete notice, the claim form, the proposed settlement

agreement, and other case information, is the best notice practicable under the circumstances").

VI. CONCLUSION

Plaintiffs were prepared to bring this case to trial and believe that they would have won, but trial was certainly fraught with risk. As detailed herein, this $63,000,000 Settlement is an excellent result for the Class, and the product of skilled counsel for all parties, extensive litigation efforts and settlement negotiations, and it avoids the considerable risk, expense, and delay if the Litigation were to continue. In addition, the Plan of Allocation will result in a fair and reasonable distribution of the proceeds. Therefore, Lead Plaintiffs respectfully request that this Court approve the Settlement of this Litigation and the Plan of Allocation as fair, reasonable, and adequate.

DATED: May 5, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on May 5, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ LUCAS F. OLTS

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Mailing Information for a Case 0:18-cv-00871-MJD-HB Plymouth County Retirement System v. Patterson Companies, Inc. et al

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Manual Notice List

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- (No manual recipients)

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

PLYMOUTH COUNTY RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. PATTERSON COMPANIES, INC., et al., Defendants.	Civ. No. 0:18-cv-00871-MJD-HB CLASS ACTION CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1 WORD-COUNT AND TYPE-SIZE LIMITS REGARDING LEAD COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

I, Lucas F. Olts, hereby certify that Lead Counsel's Memorandum of Law in Support of Class Representatives' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation complies with Local Rule 7.1(f) with regard to the word limit and the type size limitation of Local Rule 7.1(h). I further certify that, in preparation of this memorandum, I used Microsoft Word 2016, and that this word processing program has been applied specifically to calculate all text, including headings, footnotes and quotations in the following word count. I further certify that the above referenced memorandum contains 7,117 words, exclusive of the caption designation, tables of contents and authorities and signature-block text.

DATED: May 5, 2022

Respectfully submitted,

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