CARELLA, BYRNE, CECCHI,
BRODY & AGNELLO, P.C.
JAMES E. CECCHI
DONALD A. ECKLUND
5 Becker Farm Road
Roseland, NJ 07068
Telephone: 973/994-1700
973/994-1744 (fax)
jcecchi@carellabyrne.com
decklund@carellabyrne.com

Local Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re AURORA CANNABIS INC. SECURITIES LITIGATION	No. 2:19-cv-20588-BRM-JBC
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	DECLARATION OF ALAN I. ELLMAN IN SUPPORT OF: (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

ALAN I. ELLMAN hereby declares under penalty of perjury as follows:

1. I am a partner of the law firm Robbins Geller Rudman & Dowd LLP ("Robbins Geller") which, along with Hagens Berman Sobol Shapiro LLP ("Hagens Berman" and together with Robbins Geller, "Lead Counsel"), has been appointed Lead Counsel for the plaintiffs in the above-captioned action (the "Litigation").[1]

2. I respectfully submit this declaration pursuant to Rule 23 of the Federal Rules of Civil Procedure, in support of: (a) Plaintiffs' motion for final approval of the settlement of this Litigation and for approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and expenses, including awards to Lead Plaintiffs for their time representing the Settlement Class.

I. PRELIMINARY STATEMENT

3. The plaintiffs in this action are Doug Daulton, Francisco Quintana, Donald S. Parrish, and Quang Ma (collectively, "Lead Plaintiffs" or "Plaintiffs"). The defendants are Aurora Cannabis Inc. ("Aurora" or the "Company"), Terry Booth, and Allan Cleiren (collectively, "Defendants").

4. This Litigation was brought on behalf of the Settlement Class for alleged violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the

[1] Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the Stipulation of Settlement, dated June 7, 2024 (ECF 112-2) (the "Stipulation") and the Third Amended Complaint (the "TAC") (ECF 68). "¶__" refers to paragraphs in the TAC. Unless otherwise noted, emphasis has been added and internal citations and quotations have been omitted.

"Exchange Act") (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

5. Plaintiffs have entered into a settlement, on behalf of themselves and the other Members of the Class, with Defendants, which provides a recovery of $8,050,000 in cash to resolve this securities class action against all Defendants (the "Settlement"). The Settlement is described in the Stipulation entered into by all Settling Parties.

6. This declaration sets forth the nature of the claims asserted, the principal proceedings in the Litigation, the legal services provided by Lead Counsel, the settlement negotiations between the Settling Parties, and also demonstrates why the Settlement and Plan of Allocation are fair, reasonable, adequate and in the best interests of the Settlement Class, and why the application for attorneys' fees and expenses is reasonable and should be approved by this Court.

7. As detailed herein, both procedurally and substantively the Settlement is fair because, among other things: (i) it was reached with the assistance of a nationally recognized mediator; (ii) it was negotiated at arm's length by highly experienced, determined counsel; (iii) counsel came into the mediation negotiations furnished with a considerable wealth of factual and legal information about the strengths and weaknesses of the case, enabling them to make a precise evaluation of the expected value of continued litigation; and (iv) the Settlement was approved by the Settling

Parties and, to date, no Settlement Class Member has objected and only ten requests for exclusion have been received.

8. Plaintiffs and Lead Counsel believe that the claims alleged have merit and that evidence obtained through discovery, which although at an early stage at the time of the Settlement, would corroborate the allegations in the TAC and would also uncover additional facts to support Plaintiffs' claims.

9. Plaintiffs and Lead Counsel also believe that they would have prevailed on their motion for leave to amend their complaint and any subsequent motion to dismiss related to the proposed Fourth Amended Complaint ("FAC").

10. Plaintiffs and Lead Counsel recognize, however, the challenges and risks associated with continuing the Litigation, which would require Plaintiffs to prove (and defeat Defendants' counterarguments regarding) falsity, materiality, scienter, loss causation, and damages at trial.

11. Defendants consistently maintained that Plaintiffs could not prove: (i) loss causation on any of the alleged corrective disclosure dates because the disclosures did not disclose any fraud regarding Radient Technologies Inc. ("Radient"); (ii) loss causation related to the October 9, 2019 and October 17, 2019 dates because Aurora's stock traded downward in lockstep with other cannabis stocks; or (iii) scienter or an actionable omission because there was no round-trip transaction

and that Plaintiffs failed to allege that Aurora improperly recorded revenue on a round trip sale. Indeed, Defendants took the position that Plaintiffs suffered zero damages.

12. Even with the most competent experts in the field, there could be no assurance that Plaintiffs would prevail on liability or damages, as Defendants would present equally qualified experts to counter Plaintiffs' experts. Finally, even if Plaintiffs ultimately prevailed on any or all of their claims at a trial and were awarded damages, there was a substantial risk that Defendants would appeal any verdict or award, a process that could take years, during which time the Settlement Class would receive no distribution at all. *See, e.g.*, *In re Tesla, Inc., Sec. Litig.*, 2024 WL 4688894, at *1 (9th Cir. Nov. 6, 2024) (affirming district court's denial of plaintiff's motion for new trial and for judgment as a matter of law); *In re Apollo Grp., Inc. Sec. Litig.*, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, 2010 WL 5927988 (9th Cir. 2010) (reversing and remanding trial court's granting of defendants' motion for judgment as a matter of law and entering judgment in favor of defendants and against plaintiffs). Of course, any appeal would include the risk of reversal, even after prevailing at trial. *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing trial jury verdict for failure to present adequate evidence of loss causation).

13. As such, Plaintiffs would likely face numerous obstacles in proving liability and damages. Considering all the circumstances and risks in continuing to

pursue years of further litigation, after having already spent nearly four years at the pleading stage, Plaintiffs believe that settlement on the agreed terms is a good result and in the best interest of the Settlement Class. The Settlement confers a substantial benefit on the Settlement Class now and eliminates the risks and costs of another round of motion-to-dismiss briefing (if the Court were to grant Plaintiffs' motion for leave to amend), discovery, class certification, summary judgment, and trial, the outcome of which would be uncertain.

14. The parties engaged Mr. Meyer to mediate the case prior to the Court deciding the motion for leave to amend. After preparing extensive mediation statements which were provided to Mr. Meyer and exchanged with the other side, the parties engaged in a day-long mediation and ultimately accepted Mr. Meyer's proposal to settle this Litigation, which was subsequently followed by negotiations as to the specific terms of the Settlement.

15. As described below, Lead Counsel have aggressively prosecuted this Litigation on a wholly contingent basis for nearly five years and have already incurred significant litigation expenses. Specifically, Lead Plaintiffs' Counsel have incurred costs, charges, and expenses of more than $100,800.00. This amount includes, among other things: (a) fees and expenses of consultants whose services were required in the successful prosecution and resolution of this case; (b) travel and court expenses; (c) online factual and legal research expenses; and (d) mediation fees.

16. As set forth in more detail in the accompanying declarations in support of the fee and expense award, each of the requested expenses was reasonably and necessarily incurred to plead Plaintiffs' claims with particularity.

17. The fee application for 25% of the Settlement Fund is fair both to the Settlement Class and Lead Counsel, and warrants this Court's approval. This fee request is within the range of fees frequently awarded in these types of actions and is justified in light of the substantial benefits conferred on the Settlement Class and the quality of representation and extent of legal services performed to date.

18. Accordingly, it is respectfully submitted that the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate, and counsel for Plaintiffs should be awarded attorneys' fees in the amount of 25% of the Settlement Fund and expenses in the amount of $100,882.88, plus interest.

19. Plaintiffs allege that beginning in January of 2019, Defendants began to make false and misleading statements projecting positive, unrealistic EBITDA [earnings before interest, taxes, depreciation and amortization] for 4Q19, the quarter ending on June 30, 2019. ¶3. Despite massive cannabis over-production and limited retail stores, Defendants made these bold projections because they devised a $21.7 million round-trip sham sale with Radient, an affiliated entity. Even as late as August 6, 2019—weeks after the fiscal quarter had ended—investors were told Aurora continued on track for positive EBITDA. ¶¶5, 7, 56-101, 179, 192.

20. In truth, Aurora's undisclosed financial situation was unfavorable rather than positive, and its reliance upon a $21.7 million sham sale still failed to push its earnings into positive territory. ¶10. Aurora, just weeks after confirming expectations of positive EBITDA, reported an adjusted EBITDA loss of C$11.7 million in its 4Q19 filing. Thus began a series of partial disclosures that allegedly caused Plaintiffs to suffer losses.

II. RELEVANT PROCEDURAL HISTORY

21. On November 21, 2019, William Wilson initiated this Litigation by filing a complaint against Defendants[2] in this District alleging claims under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5). ECF 1.

22. On January 21, 2020, Plaintiffs filed an unopposed motion seeking to be appointed lead plaintiffs and to appoint Robbins Geller and Hagens Berman as Lead Counsel. ECF 11. On July 23, 2020, this Court issued an Order appointing Francisco Quintana, Matt Golis, Donald S. Parrish, Quang Ma, and Doug Daulton as Lead Plaintiffs and approving their selection of Robbins Geller and Hagens Berman as Lead Counsel.[3] ECF 16.

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[2] Stephen Dobler, Cam Battley, Michael Singer, and Jason Dyck, were originally named as individual defendants and were subsequently dismissed.

[3] Matt Golis was removed as a lead plaintiff in the Third Amended Complaint.

23. On September 21, 2020, Plaintiffs filed their first Amended Complaint alleging violations of §§10(b) and 20(a) of the Exchange Act. ECF 24. Defendants subsequently filed their motion to dismiss on November 20, 2020 (ECF 32, 33), which Plaintiffs opposed. ECF 35. On July 6, 2021, the Court dismissed the first Amended Complaint for failure to plead false or misleading statements, with leave to amend. ECF 42 at 30. Specifically, the Court found that Plaintiffs failed to contest why Defendants' risk disclosures discussing the alleged risks were insufficient and that Plaintiffs failed to allege how certain omissions rendered statements misleading. *Id*. at 25. The Court, however, observed "it is suspicious that on August 6, 2019 – after the close of FQ4 2019 but before the results from that quarter were released – Defendants reiterated their expectation of achieving positive EBITDA." *Id*. at 30.

24. In the Second Amended Complaint (ECF 49, "SAC"), filed on September 7, 2021, Plaintiffs continued to allege that Aurora's sale of cannabis in Canada, as well as its EBITDA projection, was "severely constrained by at least" the overproduction of cannabis by Aurora and other Canadian licensed producers and the limited number of retail stores in Ontario and Quebec. SAC, ¶56. Plaintiffs also pursued a new theory of the case adding allegations that, beginning in January or February 2019, Defendants orchestrated and executed a $21.7 million round-trip, sham transaction with Radient. Plaintiffs alleged that Defendants devised the sham transaction in order to achieve their baseless projections of positive adjusted EBITDA

for the fourth fiscal quarter of 2019, ending June 30, 2019 ("FQ4 2019"), which they repeatedly made during the Class Period. Defendants moved to dismiss the SAC on December 6, 2021. ECF 55, 56. Plaintiffs opposed Defendants' motion to dismiss the SAC on February 23, 2022. ECF 57. Defendants filed their reply on March 25, 2022. ECF 61.

25. On September 23, 2022, the Court found that the SAC adequately alleged that Defendants made actionable omissions with scienter. ECF 64 at 9-18. Specifically, the Court found that Defendants' "statements about Aurora's positive 4Q19 EBITDA projection were false because they knew that the Radient transaction was fraudulently engineered to boost Aurora's sales." *Id.* at 4. In its Opinion, the Court found that Plaintiffs adequately alleged that the sham transaction was orchestrated as a "round-trip" transaction to boost Aurora's financials, and rejected Defendants' alternate factual arguments. *Id*. The Court also concluded that Plaintiffs provided sufficient information to establish their confidential sources' bases of knowledge related to the sham transaction. *Id*. at 12.

26. The Court, however, dismissed the SAC for failure to sufficiently plead loss causation. *See id.* at 18-19. The Court held that Plaintiffs: (i) failed to identify any corrective disclosures related to the sham transaction; and (ii) failed to plead that Aurora's stock price declined after two analyst articles, dated October 9, 2019 and October 18, 2019, discussing the sham transaction were published. *Id*.

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27. On November 7, 2022, Plaintiffs filed the TAC. The TAC alleged four loss-causing events with respect to the alleged fraud:

- September 11, 2019 – Aurora disclosed, *inter alia*, that it missed its EBITDA guidance, causing a 9% decline in its share price (ECF 68 ¶¶177-206) (the "September 11, 2019 Statements");
- October 9, 2019 – Craig Wiggins ("Wiggins"), a cannabis industry analyst, published a report raising concern about a potential sham sale between Aurora and Radient, causing a 9.5% decline in Aurora's share price (*id.*, ¶¶207, 211, 215-16, 219, 267);
- October 17, 2019 – *Yahoo Finance Canada* reported on Wiggins' investigation into Aurora's financial condition and the Radient transaction, further raising the possibility of a sham sale and causing a 5.4% decline in Aurora's share price (*id.*, ¶¶220, 223, 268); and
- November 14, 2019 – Aurora disclosed additional negative financial news, including revenue decline and EBITDA losses, causing a 17% decline in its share price (*id.*, ¶¶157, 225, 269).

28. Defendants moved to dismiss the TAC on January 6, 2023 (ECF 72) and Plaintiffs filed their opposition on March 7, 2023. ECF 73. Defendants filed their reply on April 6, 2023. ECF 74.

29. On August 24, 2023, Judge Vazquez issued an Opinion granting in part and denying in part Defendants' motion to dismiss the TAC (the "MTD Opinion"). ECF 75. Specifically, the MTD Opinion granted Defendants' motion for failure to plead loss causation with respect to the September 11, 2019 Statements and the November 14, 2019 statements. ECF 75 at 7-10. The Court found that Plaintiffs failed to plead loss causation for these statements because there were no allegations that the sham transaction was revealed therein. *Id*. at 10. The Court, however, found

that Plaintiffs adequately pled loss causation with respect to the October 9, 2019 Wiggins article and the October 17, 2019 *Yahoo Finance Canada* article, holding that those articles revealed the sham transaction and Aurora's stock price declined following the disclosures. *Id*. at 12.

30. On September 8, 2023, Plaintiffs timely filed a motion for reconsideration of the MTD Opinion (ECF 80, 80-1, the "Reconsideration Motion"), which asked the Court to reconsider its dismissal of Plaintiffs' loss causation allegations with respect to the September 11, 2019 Statements. In the Reconsideration Motion, Plaintiffs argued that the Court overlooked Plaintiffs' basis for establishing loss causation, to wit, that Aurora's disclosures on September 11, 2019 were the first in a series of partial corrective disclosures of the subject of the fraud – Aurora's sham transaction with Radient. *See* ECF 80-1 at 2-3, 7-8, 11.

31. On September 14, 2023, this Litigation was reassigned from Judge Vazquez to Judge Martinotti. ECF 81. On September 22, 2023, Defendants filed their Answer to the TAC (ECF 84), and on September 26, 2023, Defendants filed their brief in opposition to the Reconsideration Motion. ECF 85.

32. On October 19, 2023, the parties submitted a joint discovery plan to the Court (ECF 89) and on October 26, 2023, Magistrate Judge Clark held a conference to discuss the joint discovery plan with the parties. On the same day, Magistrate Judge Clark entered the Pretrial Scheduling Order (ECF 90), and the parties commenced

discovery. Magistrate Judge Clark scheduled February 23, 2024 as the deadline for Plaintiffs to file a motion to amend the pleadings. *See id*. at 3.

33. On November 16, 2023, the parties appeared before Judge Martinotti for a status conference. ECF 91. During the status conference, the Court discussed the status of Plaintiffs' Reconsideration Motion with the parties. The Court discussed with Plaintiffs the possibility of withdrawing their Reconsideration Motion and, alternatively, filing a motion for leave to amend the TAC. Following the status conference, Plaintiffs decided to withdraw the Reconsideration Motion and move to amend the TAC. Subsequently, Plaintiffs met and conferred with Defendants and informed them of their intention to amend. On November 30, 2023, Plaintiffs submitted a letter informing the Court that Plaintiffs decided to withdraw the Reconsideration Motion and instead move for leave to amend the TAC. ECF 92.

34. On December 1, 2023, the Court issued an Order: (i) withdrawing Plaintiffs' Reconsideration Motion; (ii) ordering Plaintiffs to send a draft proposed FAC to Defendants by December 18, 2023; and (iii) ordering Defendants to inform Plaintiffs whether or not they consent to the filing of the amendment by January 5, 2024. ECF 93. Plaintiffs sent a draft proposed FAC to Defendants on December 18, 2023, and on January 5, 2024, Defendants informed Plaintiffs that they did not consent to Plaintiffs' filing of the amendment. On January 8, 2024, the parties

submitted a proposed briefing schedule for Plaintiffs' motion for leave to amend. ECF 95. On January 9, 2024, the Court So-Ordered the briefing schedule. ECF 98.

35. On January 22, 2024, Plaintiffs filed their motion for leave to amend with the proposed FAC annexed as an exhibit. ECF 100. On February 12, 2024, Defendants filed their opposition to Plaintiffs' motion for leave to amend (ECF 105), and on February 28, 2024, Plaintiffs filed their reply. ECF 106. Plaintiffs' motion for leave to amend was administratively terminated by the Court on April 9, 2024 after the parties informed the Court that they reached a settlement in principle of the Litigation. ECF 109.

A. Plaintiffs' Discovery Efforts

36. On October 19, 2023, the parties submitted their Joint Discovery Plan to the Court. ECF 89-1. Defendants sought to bifurcate discovery into class certification discovery and then fact discovery if the Court were to grant Plaintiffs' future motion for class certification, while Plaintiffs strongly opposed this position and argued that discovery should not be conducted in phases. On October 26, 2023, Magistrate Judge Clark denied Defendants' request to bifurcate discovery, and entered the Pretrial Scheduling Order. ECF 90. Plaintiffs immediately began serving discovery requests on Defendants. Prior to the mediation, Plaintiffs served on Defendants two sets of requests for the production of documents, a set of interrogatories, and a set of requests for admission. Defendants also served on Plaintiffs sets of requests for the production

of documents and interrogatories. The parties subsequently exchanged responses and objections to their respective discovery requests, and met-and-conferred thereon.

B. Consulting Experts

37. Lead Counsel also retained the services of two consultants to assist with investigating and proving Plaintiffs' claims and navigating the economic issues involved in this matter. During the course of fact discovery, Lead Counsel consulted with the following experts:

(a) Scott Hakala, Ph.D., CFA, Principal of ValueScope, Inc., provided various econometric analyses to quantify damages; and

(b) Bjorn Steinholt, CFA, Managing Director of Caliber Advisors, provided various econometric analyses to quantify damages and evaluate loss causation.

III. THE SETTLEMENT

38. The proposed Settlement was the product of arm's-length negotiations between zealous advocates on both sides and could not have been reached without the guidance of a highly esteemed mediator. Lead Counsel believe the proposed Settlement represents a successful and timely resolution of what would likely be a complex, lengthy, and risky class action to litigate through discovery and trial.

39. On March 4, 2024, in Century City, California, the parties participated in a full-day mediation overseen by Robert A. Meyer, Esq. of JAMS. In advance of the

mediation, the parties exchanged and provided mediation statements to Mr. Meyer with supporting exhibits. During the mediation, counsel for all parties engaged in discussions with Mr. Meyer concerning the perceived strengths and weaknesses of their respective cases and addressed challenges presented by Mr. Meyer. After multiple exchanges, Mr. Meyer made a mediator's proposal to resolve the Litigation for $8.05 million, and the parties reached an agreement in principle to settle the claims.

40. Following agreement upon the broad settlement terms, the parties worked diligently to document the Settlement and prepare preliminary settlement approval papers, negotiating the details of a stipulation of settlement, plan of allocation, and notice to the Settlement Class. Plaintiffs filed their unopposed motion for preliminary approval of the Settlement on June 7, 2024. ECF 112. Magistrate Judge Clark held a telephonic hearing on Plaintiffs' motion for preliminary approval of the Settlement on October 10, 2024, and entered the Order Preliminarily Approving Settlement and Providing for Notice the same day (the "Notice Order"). ECF 120.

A. Lead Counsel Had Adequate Information Before Reaching the Settlement

41. As set forth above, the terms of the Settlement were negotiated by the parties at arm's length through adversarial, good-faith negotiations. The Settlement was reached only after comprehensive settlement negotiations – including a mediation session – with the substantial assistance of Mr. Meyer.

42. Furthermore, as detailed at length above, at the time of the mediation Lead Counsel had conducted extremely thorough legal and factual research and analysis. Consequently, Plaintiffs and Lead Counsel entered settlement negotiations with an intimate understanding of the strengths and weaknesses of Plaintiffs' claims, enabling them to confidently evaluate the potential risks and rewards of continued litigation. Plaintiffs participated in this assessment, and were consulted and kept apprised of the Settlement negotiations.

43. Lead Counsel have considerable experience in complex federal civil litigation, particularly the litigation of securities class actions. Lead Counsel believe that their reputation as attorneys who are unafraid to zealously carry a meritorious case through the trial and appellate levels gave them a strong position in engaging in settlement negotiations with Defendants.

B. The Settlement Eliminates the Risks Plaintiffs and the Settlement Class Faced

44. While Lead Counsel believe that all of the claims asserted against Defendants have merit, there were nonetheless serious risks as to whether Plaintiffs would ultimately prevail. Defendants put forward a number of arguments at the motion to dismiss stage concerning falsity, scienter, and loss causation. *See supra* §II.A. Most if not all of these issues would need to be re-litigated in response to any further motions to dismiss, a motion for summary judgment, trial, and on appeal.

Losing on even one of these issues, at any one of these phases of litigation, would most likely result in the Settlement Class obtaining nothing at all.

45. In deciding to settle the Litigation, Plaintiffs and Lead Counsel considered, among other things: (1) the substantial immediate cash benefit to Settlement Class Members under the terms of the Stipulation; (2) the possibility of the Court denying Plaintiffs' motion for leave to amend; (3) the possibility of the Settlement Class not being certified; (4) the time and expense involved in conducting fact and expert discovery; (5) the time required to prepare for and briefing summary judgment and any future appeals; (6) the possibility that the Court would grant summary judgment in Defendants' favor; (7) the likelihood of a "battle of the experts" with respect to falsity, materiality, loss causation, and damages; (8) the possibility of losing at trial; and (9) the probability that, even if Plaintiffs won at trial, Defendants would file post-verdict motions and appeals resulting in additional risk to, and even more delay in obtaining, any recovery for the Settlement Class.

C. The Judgment of the Parties that the Settlement Is Fair and Reasonable Provides Additional Support for Approval of the Settlement

46. Another factor in considering whether to approve class action settlements is the judgment of the parties that the settlement is fair and reasonable. As outlined above, the Settlement is the product of arm's-length negotiations between adversaries with significant experience in securities class action litigation.

47. Lead Counsel strongly believe that the Settlement represents a highly favorable resolution for the Settlement Class under the circumstances. As outlined above, the Settlement is fair, reasonable and adequate in all respects, and should be approved by the Court.

48. Furthermore, more than 495,800 Postcard Notices have been emailed or mailed to potential Settlement Class Members and nominees. As of the date of this declaration, no objections to the Settlement or the Plan of Allocation have been submitted by a Settlement Class Member. Should any objections be timely filed between the date of this declaration and the objection deadline, Lead Counsel will address them in a supplemental memorandum.

IV. ADDITIONAL FACTORS UNIQUE TO THIS CASE

49. First, Judge Vazquez has twice dismissed Plaintiffs' claims.

50. Second, even if Plaintiffs prevailed on their motion for leave to amend and defeated Defendants' motion to dismiss that complaint, and even if Plaintiffs developed the necessary evidence to establish their claims through discovery, the case would likely involve years of discovery disputes, contested class certification motions, summary judgment motions, challenges to the parties' proffered experts, and potential appeals that could themselves take additional years to complete. If the case ultimately proceeded to trial, Plaintiffs would then face the risks that the jury might not be convinced by the evidence presented in support of its complex financial fraud

allegations. *See, e.g.*, *In re Tesla Inc., Sec. Litig.*, 2023 WL 4032010, at *1 (N.D. Cal. June 14, 2023) (noting jury rejected plaintiff's federal securities law violations). Given the complexity of the issues involved, and at this stage without knowing what evidence discovery will reveal, Plaintiffs face significant hurdles in proving their claims to a jury.

51. Plaintiffs also faced the risk that the Court would find that they failed to allege a false or misleading statement. Defendants argued, among other things, that their statements concerning the alleged round-trip transaction between Aurora and Radient were not false because there was no round-trip transaction. Defendants also argued that since Plaintiffs failed to demonstrate the existence of a round-trip transaction with Radient, they would also be unable to show that Defendants acted with scienter.

52. In addition, there was a substantial risk that Plaintiffs might not be able to prove loss causation and damages at trial. A private plaintiff who claims securities fraud must prove that the defendants' fraud caused an economic loss. Loss causation can be proved with evidence of a stock price decline when the facts revealing the company's true financial condition are disclosed. To establish loss causation, the plaintiff must demonstrate a causal connection between the deceptive acts that form the basis for the claim of securities fraud and the loss suffered by plaintiff. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-36 (2005); *McCabe v. Ernst & Young,*

LLP, 494 F.3d 418, 425-26 (3d Cir. 2007). Even if Plaintiffs succeeded in establishing Defendants' liability, Plaintiffs would likely face risks that could reduce the amount of damages if a jury were to find that other information on the alleged corrective disclosure dates caused Aurora's stock price to fall. For example, Defendants have argued that "Plaintiffs have not adequately alleged a causal connection between any misrepresentation or omission about the Radient transaction and their loss." ECF 72-1 at 15.

53. Even if Plaintiffs successfully litigated the case through discovery and to trial, there would still be a substantial risk that Defendants would appeal any verdict achieved in Plaintiffs' favor. *See, e.g.*, *Apollo*, 2008 WL 3072731; *Household Int'l, Inc.*, 787 F.3d 408. The appeals process could span years, during which time the Settlement Class would receive no recovery. Any appeal would also create the risk of reversal, in which case the Settlement Class would receive nothing even after having prevailed on the claims at trial.

54. Having considered the foregoing and evaluated Defendants' defenses at the pleading stage, which they are likely to maintain throughout the case, it was the informed judgment of Plaintiffs and Lead Counsel, based upon proceedings to date and their extensive experience in litigating shareholder class actions, that the proposed Settlement of this matter for $8.05 million in exchange for a mutual release of all claims, and including the other terms set forth in the Stipulation, provides fair,

reasonable, and adequate consideration; is in the best interests of the Settlement Class; and allows the parties to achieve resolution of a complex and risky case.

A. The Plan of Allocation[4]

55. The Plan of Allocation is set forth in the Notice of Pendency and Proposed Settlement of Class Action, and provides that the Net Settlement Fund will be distributed *pro rata* to Settlement Class Members who submit valid, timely Proofs of Claim. The Plan of Allocation provides that Settlement Class Members will be eligible to participate in the distribution of the Net Settlement Fund only if they purchased Aurora common stock between October 23, 2018 and February 28, 2020, inclusive. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

56. The proposed Plan of Allocation distributes the Net Settlement Fund in a fair and equitable manner. It was developed in consultation with Plaintiffs' damages consultant, who calculated the estimated alleged artificial inflation in the per-share prices of Aurora common stock that was allegedly caused by Defendants' allegedly materially false and misleading statements and omissions.

[4] The summary of the Plan of Allocation provided herein is intended only to explain the basis on which the plan was developed in order to assist the Court in evaluating the fairness, reasonableness, and adequacy of the proposed Plan of Allocation. Nothing set forth herein is intended to, or does, modify or affect the interpretation of the Plan of Allocation, which is set forth in full in the Notice and will be applied by the Claims Administrator according to its express terms.

57. In calculating the estimated artificial inflation allegedly caused by the misrepresentations and omissions, Plaintiffs' damages consultant considered statistically significant price changes in Aurora common stock in reaction to the public disclosures that allegedly corrected the respective alleged misrepresentations and omissions, adjusting the price changes for factors that were attributable to market or industry forces, and for non-fraud-related, Aurora-specific information.

58. The Settlement Fund will cover certain administrative expenses, attorneys' fees and expenses, settlement administration costs, and any applicable taxes.

59. Pursuant to the Notice Order (ECF 120), and as set forth in the Notice and Postcard Notice, all Settlement Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Proof of Claim postmarked or submitted online on or before February 27, 2025. The Net Settlement Fund shall be distributed according to the Plan of Allocation, which is set forth in detail in the Notice.

60. Based on Lead Counsel's experience in this and other securities actions and their understanding of the factual circumstances giving rise to this action and the risks of litigating this case through trial, including the risks to both liability and damages, Lead Counsel believe the Plan of Allocation set forth in the Notice provides

a fair, reasonable, and adequate method of compensating Settlement Class Members for the economic harm they suffered as a result of the wrongdoing alleged.

61. To date, no written objections have been filed by any potential Settlement Class Member to the Plan of Allocation.

B. Lead Counsel's Motion for Attorneys' Fees and Expenses Is Reasonable

1. Factors to Be Considered in Support of the Requested Attorneys' Fee Award

62. Lead Counsel respectfully request that the Court award attorneys' fees of 25% of the $8,050,000 Settlement Amount, or $2,012,500. As set forth below, Lead Counsel believe such a fee is reasonable and appropriate in light of the resources expended in prosecuting this Litigation, the result obtained, and the inherent risk of nonpayment from representing the Settlement Class on a contingent basis.[5]

a. Labor Invested and Quality of Representation

63. Lead Counsel have devoted a significant amount of time and resources in the research, investigation, and prosecution of this Litigation. The Settlement represents a substantial recovery for the Settlement Class, one that is attributable to the diligence, determination, hard work, and reputation of Lead Counsel.

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[5] The legal authorities supporting the requested fees and expenses are set forth in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum"), submitted herewith.

64. Lead Counsel are among the most experienced securities practitioners in the country. The identification and background of Robbins Geller and Hagens Berman are included as exhibits to the separate fee and expense declarations submitted by Robbins Geller and Hagens Berman ("Fee Declarations").[6]

65. Lead Counsel's representation of the Settlement Class included:

(a) Conducting a thorough investigation into the facts giving rise to this Litigation, including obtaining information from analyst reports, media, former employees of Radient, an entity affiliated with Aurora, Aurora's SEC filings, and conference calls, each of which supported Plaintiffs' allegations;

(b) Drafting the Amended Complaint, which Plaintiffs believed satisfied the Private Securities Litigation Reform Act of 1995's ("PSLRA") heightened pleading standards;

(c) Opposing Defendants' motion to dismiss the Amended Complaint;

(d) Drafting the SAC adding allegations related to a round-trip sham transaction with Radient;

(e) Opposing Defendants' motion to dismiss the SAC;

(f) Drafting the TAC, which alleged four loss-causing events with respect to the alleged fraud;

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[6] Lead Counsel's fee application is also made on behalf of Liaison Counsel, Carella, Byrne, Cecchi, Brody & Agnello, P.C., whose Fee Declaration is submitted herewith.

(g) Opposing Defendants' motion to dismiss the TAC;

(h) Filing a motion for reconsideration of the Court's August 24, 2023 Opinion denying in part and granting in part Defendants' motion to dismiss the TAC, asking the Court to reconsider its dismissal of Plaintiffs' loss causation allegations with respect to statements made on September 11, 2019;

(i) Drafting and serving Plaintiffs' initial disclosures and reviewing Defendants' initial disclosures;

(j) Serving various discovery requests on Defendants, serving responses and objections to the discovery requests Defendants served on Plaintiffs, and meeting and conferring regarding each of the discovery requests;

(k) Filing a motion for leave to file a proposed FAC that incorporated allegations and additional information related to loss-causing events;

(l) Retaining a consultant to facilitate the investigation into the issues of damages; and

(m) Preparing for and participating in a private mediation with the assistance of Robert A. Meyer, Esq. of JAMS, a well-respected mediator.

66. Lead Counsel's experience and advocacy were required in presenting the strengths of the case during mediation to convince Defendants, their insurers, defense counsel, and the Mediator of the risks Defendants faced if the case did not settle.

67. The fee request is also reasonable when cross-checked against the Lead Plaintiffs' Counsel's lodestar. Included with Lead Plaintiffs' Counsel's declarations are schedules that summarize the lodestar of each firm's personnel who performed work on the case, as well as expenses incurred by category after having both been reviewed and reduced in the exercise of billing judgment. Lead Plaintiffs' Counsel have expended more than 6,400 hours in the investigation, prosecution, and resolution of the Litigation, and the total lodestar is $4,713,395.00.

68. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Defendants were represented by experienced lawyers from Jenner & Block LLP and Marino, Tortorella & Boyle, P.C., well-regarded defense firms. Defense counsel have reputations for vigorous advocacy in the defense of complex cases such as this. The ability of Lead Counsel to obtain a favorable settlement in the face of such quality opposition confirms the excellence of Lead Counsel's representation.

69. Based on the extensive efforts on behalf of the Settlement Class, as described above, Lead Counsel are applying for compensation from the Settlement Fund on behalf of all Lead Plaintiffs' Counsel on a percentage basis and are requesting a 25% fee. In light of the nature and extent of the Litigation, the diligent prosecution of the Litigation, the complexity of the factual and legal issues presented, and the other factors described above and in the accompanying motion for approval of

the fee award, Plaintiffs and Lead Counsel believe that the requested fee of 25% of the Settlement Fund, which represents 0.426 of Lead Plaintiffs' Counsel's lodestar, is fair and reasonable.

70. A 25% fee award is justified by the specific circumstances in this case and the substantial risks that Plaintiffs have overcome to date. The $8.05 million cash Settlement was achieved as a result of extensive and vigorous prosecution of this Litigation and involved contentious motion practice and oral advocacy.

71. This Litigation was prosecuted by Lead Counsel on an "at-risk" contingent fee basis. Lead Counsel fully assumed the risk of an unsuccessful result and have received no compensation for services rendered or the significant expenses incurred in litigating this action for the benefit of the Settlement Class. Any fees or expenses awarded to Lead Counsel have always been at risk and completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result and that such a result would be realized only after a lengthy and difficult effort.

72. To date, no written objections have been filed by any potential Settlement Class Member to the fee and expense request.

V. PLAINTIFFS ARE ENTITLED TO AWARDS PURSUANT TO 15 U.S.C. §78u-4(a)(4) BASED ON THEIR REPRESENTATION OF THE SETTLEMENT CLASS

73. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), Plaintiffs seek awards for their time spent representing the Settlement Class in the aggregate amount of $40,000. The amount of time and effort devoted to the Litigation by each of the Lead Plaintiffs is detailed in the accompanying Declarations of Doug Daulton, Francisco Quintana, Donald Parrish, and Quang Ma (the "Lead Plaintiff Declarations").

74. As discussed in Lead Counsel's accompanying Fee Memorandum and in the Lead Plaintiff Declarations, the Plaintiffs have been fully committed to pursuing claims on behalf of the Settlement Class throughout the duration of this Litigation. These efforts required the Plaintiffs to dedicate considerable time and resources to this Litigation that would have otherwise been devoted to their regular employment duties.

75. As more fully set forth in Lead Counsel's accompanying Fee Memorandum, the efforts expended by Lead Plaintiffs during the course of this Litigation are precisely the types of activities courts have found adequate to support an award, and fully support the instant request by Lead Plaintiffs for awards of $10,000 for each Lead Plaintiff.

VI. THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

76. Lead Counsel seek expenses in the amount of $100,882.88 in connection with the prosecution of the Litigation. *See* Fee Declarations, submitted herewith.

77. Lead Counsel submit that the expenses are reasonable and were necessary for the successful prosecution of this Litigation. Lead Counsel were aware that they may not recover any of these expenses unless and until this Litigation was successfully resolved against Defendants.

78. Accordingly, Lead Counsel took steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of Plaintiffs' claims.

79. The requested expenses reflect routine and typical expenditures incurred in the course of litigation, such as the costs of document processing, expert fees, consultant fees, and mediation fees. Lead Counsel believe these expenses are reasonable and were necessary for the successful prosecution of the Litigation.

VII. CONCLUSION

80. For all of the foregoing reasons, Lead Counsel respectfully request the Court to approve the Settlement and Plan of Allocation and to award Lead Plaintiffs' Counsel 25% of the Settlement Fund plus $100,882.88 in expenses, plus interest, plus

an award of $10,000 for each of the Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Settlement Class.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of December, 2024, at Melville, New York.

ALAN I. ELLMAN