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*Attorneys for Plaintiff Timber Hill LLC*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE VALEANT PHARMACEUTICALS  
INTERNATIONAL, INC. SECURITIES  
LITIGATION

Case No. 3:15-cv-07658

Judge Michael A. Shipp

Magistrate Judge Lois H. Goodman

Judge Dennis Cavanaugh, Ret.  
Special Master

This Document Relates To:  
  
3:15-cv-07658-MAS-LHG

APPLICATION ON BEHALF OF  
COUNSEL FOR TIMBER HILL LLC FOR  
AN ALLOCATION OF ATTORNEYS'  
FEES PURSUANT TO RULE 23(e)(5)(B)  
and 23(h)

Entwistle & Cappucci LLP (“Entwistle & Cappucci”), on behalf of itself and all other counsel for Plaintiff and Settlement Class Member Timber Hill LLC (“Timber Hill”), respectfully submits this application for an allocation of attorneys’ fees, pursuant to Fed. R. Civ. P. 23(e)(5)(B) and 23(h), in the amount of \$75,000, to be made solely out of the fee award to Lead Counsel previously approved by the Court (ECF 659 p. 17) such that it would in no way reduce the recovery of Settlement Class Members.<sup>1</sup> Lead Counsel has advised that it does not oppose this application.

## **I. RELEVANT PROCEDURAL HISTORY**

The initial complaint in this matter was filed on October 22, 2015, asserting claims solely on behalf of purchasers of Valeant common stock. ECF 1. Following its appointment as lead plaintiff pursuant to the PSLRA, TIAA filed a consolidated complaint on June 24, 2016, asserting claims on behalf of purchasers of equity securities and senior notes. ECF 80 ¶ 1. Timber Hill was concerned that the consolidated complaint might not include investors in Valeant derivative securities (*i.e.* stock options).

## **II. TIMBER HILL’S COUNSEL’S EFFORTS FOR DERIVATIVES INVESTORS**

Based on its concern, Timber Hill, a large institutional investor in Valeant derivative securities, instructed its counsel, Entwistle & Cappucci, to file a complaint asserting claims on behalf of such investors. Entwistle & Cappucci did so, together with additional counsel Susman Godfrey L.L.P. and local counsel Critchley, Kinum & DeNoia LLC, on June 6,

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<sup>1</sup> Capitalized terms not otherwise defined herein have the definitions ascribed to them in the Stipulation of Settlement (ECF 539-5).

2018. 18-cv-10246, ECF 1. Timber Hill's action was consolidated with the action led by TIAA. ECF 318. When Timber Hill sought relief from consolidation on the grounds that TIAA had not brought claims on behalf of investors in derivative securities (ECF 322), TIAA opposed Timber Hill's motion, and submitted a loss chart that included its investments in derivative securities. ECF 323 at 1; ECF 323-3. The Court denied Timber Hill's motion for relief from consolidation and allowed the litigation to proceed as a single consolidated action under TIAA's leadership, but noted that it might reconsider the issue of consolidation if conflicts among the various investor groups arose. ECF 393. Ultimately, TIAA moved for certification of a class that included investors in Valeant derivative securities (as well as stock and notes), and included such investors in its proposed plan of allocation of settlement proceeds, which the Court subsequently approved. ECF 539-5 p. 21 (defining "Valeant Securities" to include options); ECF 539-5 at Ex. A-1 p. 26 (allocating losses to claimants for losses on investments in options). Thus, as a result of Timber Hill's counsel's efforts, any uncertainty regarding whether the proposed class and settlement class included derivatives investors was clarified at an earlier stage of the litigation, and thereby benefitted those investors by ensuring their entitlement to recover a portion of their investment losses.

Following consolidation of the actions, Entwistle & Cappucci continued to participate in the litigation on behalf of its client (and in the interests of derivatives investors) by, among other things, reviewing papers and pleadings, appearing at hearings before the Court and the Special Master, and contacting Lead Counsel in connection with issues relating to class certification and settlement. Additionally, Entwistle & Cappucci

participated in extensive briefing in connection with defendants' motion to dismiss Timber Hill's complaint with prejudice. *See* ECF 407, 417, 420, 481.

Timber Hill's Counsel also prepared, filed and argued an objection to the plan of allocation and took an appeal of the Court's order overruling that objection. Specifically, it argued against a cap on the recovery to be allocated to derivatives investors. Timber Hill's objection (and appeal) became moot when it received information that the cap was not expected to have any practical impact on the recovery of derivatives investors under the Settlement. Dismissal of the appeal was stipulated by all parties. Consistent with Fed. R. Civ. P. 23(e)(5)(b), Timber Hill is seeking court approval of its fee request following dismissal of the appeal, but has also made clear that its dismissal was not contingent upon approval of any fee. *See* Stipulation of Dismissal Pursuant to F.R.A.P. 42(B) in the Third Circuit Court of Appeals (Appeal 21-1218, ECF 55) and Timber Hill's Reply in Support of Stipulation of Dismissal (Appeal 21-1218, ECF 57), copies of which are attached to the accompanying Declaration of Andrew J. Entwistle.

In total, attorneys for Timber Hill expended over two thousand hours, with a lodestar in excess of one million dollars assisting in this action for the benefit of derivatives investors and incurred more than \$50,000 in expenses (including, *inter alia*, fees for electronic research and expert consultation fees, and all billed at actual cost incurred). *See* Declaration of Andrew J. Entwistle Regarding Allocation of Attorneys' Fees, submitted herewith at ¶ 4. The requested fee of \$75,000 is a small fraction of Timber Hill's counsel's lodestar, even before factoring expenses incurred.

### **III. THE MODEST REQUESTED FEE ALLOCATION IS APPROPRIATE AND SUPPORTED BY AUTHORITY**

Attorneys who achieve a benefit for class members in the form of a “common fund” are entitled to be compensated for their services from that settlement fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”). Here, Entwistle & Cappucci created a benefit for derivatives investors by confirming at an early stage that they would be included in the action and the settlement and advocating for their interests throughout the litigation. Thus, for those efforts, and despite the need to ultimately dismiss the appeal of its objection, a modest fee is requested consistent with and pursuant to Fed. R. Civ. P. 23(e)(5)(B) and 23(h).

### **CONCLUSION**

Counsel for Timber Hill expended substantial time and effort and thereby bestowed a significant benefit upon the class. The requested allocation of fees is a small fraction of lodestar, will be funded only from the award previously approved by the Court for Lead Counsel (which does not oppose the award), and will thus have no impact on the substantial recovery on the claims of derivatives investors or other Settlement Class Members. Therefore, Entwistle & Cappucci respectfully requests that the Court enter the proposed order attached hereto as Exhibit 1, allocating \$75,000 to counsel for Timber Hill to be distributed among them at Entwistle & Cappucci’s sole discretion.

Dated: November 3, 2021

Respectfully Submitted,

/s/ Andrew J. Entwistle

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