SEEGER WEISS LLP
CHRISTOPHER A. SEEGER
JENNIFER R. SCULLION
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Telephone: (201) 639-9100
Facsimile: (201) 639-9393

Local Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
JAMES E. BARZ
FRANK A. RICHTER
200 South Wacker Drive, 31st Floor
Chicago, IL 60606
Telephone: 312/674-4674
312/674-4676 (fax)

Lead Counsel for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re VALEANT PHARMACEUTICALS INTERNATIONAL, INC. SECURITIES LITIGATION	Master No. 3:15-cv-07658-MAS-LHG CLASS ACTION Judge Michael A. Shipp Magistrate Judge Lois H. Goodman Special Master Dennis M. Cavanaugh, U.S.D.J. (ret.)
This Document Relates To: ALL ACTIONS.	

CLASS PLAINTIFFS' RESPONSE REGARDING TIMBER HILL LLC'S COUNSEL'S APPLICATION FOR FEES

Class Plaintiffs submit this response to correct the latest unsupported attacks by Objector Cathy Lochridge ("Lochridge") and her "known vexatious" counsel, the Bandas Law Firm, P.C. ("Bandas Firm"),[1] in their opposition to the application for fees by counsel for Timber Hill LLC ("Timber Hill"). ECF No. 883.

I. INTRODUCTION

From the typographical error that opens its brief attacking "Cass [sic] counsel" to the unsupported arguments that follow, the Bandas Firm continues to demonstrate that it has little regard for the burden and cost its meritless filings impose. *See* ECF No. 804 at 28-39 (citing examples of the Bandas Firm's vexatious and burdensome conduct in this case). Justice is not the goal for the Bandas Firm; rather, its playbook is to consistently increase the burden on settling parties in the misguided strategy that it will get paid to go away. *See, e.g.*, *In re Wal-Mart Wage & Hour Emp. Pracs. Litig.*, No. 2:06-CV-00225-PMP-PAL, 2010 WL 786513, at *1 (D. Nev. Mar. 8, 2010) (describing the Bandas Firm's "documented history of filing notices of appeal from orders approving other class action settlements, and thereafter dismissing said appeals when they and their clients were compensated by the settling class or counsel for the settling class"); ECF No. 642 at 10 (Judge Goodman's order denying Clore's

[1] *See, e.g.*, *In re GE Co. Sec. Litig.*, 998 F. Supp. 2d 145, 156-57 (S.D.N.Y. 2014) (imposing appeal bond and stating that objector's "relationship with Bandas, a known vexatious appellant, further supports a finding that [the objector] brings this appeal in bad faith").

pro hac vice motion because "[i]t is too apparent that the application is part of a pattern that the Bandas Firm has established" of filing objections without sufficient basis); ECF No. 558 at 4-14 (prior briefing providing examples of the Bandas Firm's conduct). However, the Bandas Firm's latest "poison pen" brief[2] again fails on substance, and its arguments should be rejected.

II. ARGUMENT

The Bandas Firm asserts the court lacks jurisdiction to consider the application for fees by counsel for Timber Hill while interspersing unsupported attacks on Lead Counsel. But those arguments and attacks all lack merit.

First, it is clear that its opposition to Timber Hill's motion is a vexatious tactic because the allocation of fees sought by Timber Hill from those already awarded to Lead Counsel will have no impact on Lochridge's recovery. *See generally Glasser v. Volkswagen of Am., Inc.*, 645 F.3d 1084, 1088-89 (9th Cir. 2011) (holding objector lacked standing where modification to fee award "would not 'actually benefit the objecting class member'") (citation omitted). Despite claiming to be an "interested member of the settlement class" (ECF No. 883 at 2), Lochridge simply has no stake

[2] *See* ECF No. 883 at 1, 4 (falsely alleging a "secret deal" between Lead Counsel and Timber Hill's counsel); 3d Cir. No. 21-1390 ECF No. 44 at 1 n.2 (falsely claiming the Special Master "erroneously believed" Lochridge's objection was based on the lodestar method); ECF No. 596 at 3-5 (falsely claiming the Special Master made a "strawman finding" and "fail[ed] to grapple" with facts).

in the allocation of fees.[3] The Bandas Firm's purpose is to increase the costs of litigation by forcing Lead Counsel to respond to the unsupported attacks.

Second, the Bandas Firm's claim that "this Court lacks jurisdiction to rule on Timber Hill's motion" until the appeal is dismissed is based on inapplicable case law stating that an appeal "'divests the district court of its control over those aspects of the case involved in the appeal.'" ECF No. 883 at 3 (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Here, fees for Timber Hill's counsel are not part of Timber Hill's appeal of its objection to the plan of allocation. *See* ECF No. 879 at 3. And, "[a] district court, during the pendency of an appeal is not divested of jurisdiction to determine an application for attorney's fees." *Venen v. Sweet*, 758 F.2d 117, 120 n.2 (3d Cir. 1985); *see also Shah v. Horizon Blue Cross Blue Shield*, No. 16-cv-2528 (NLH/KMW), 2018 WL 6061342, at *1 (D.N.J. Nov. 2, 2018) (quoting *Venen* and holding that district court had jurisdiction to decide motion for attorneys' fees after notice of appeal was filed). Thus, as explicitly recognized by the Order and Final Judgment in this case, this Court has jurisdiction to decide Timber Hill's motion. *See* ECF No. 664, ¶22 (Order and Final Judgment

[3] Moreover, the Bandas Firm lacks any basis to object because it has not submitted an application for fees. *Cf. In re Fine Paper Antitrust Litig.*, 840 F.2d 188 (3d Cir. 1988) (permitting objection to allocation of fees from limited fund among counsel); *see also In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 197 (3d Cir. 2005) (noting that "[a]fter a lead plaintiff is appointed . . . the . . . responsibility for compensation [of non-lead counsel] shifts from the court to that lead plaintiff").

stating "jurisdiction is hereby retained . . . for all matters relating to the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment").

Third, the Bandas Firm's claim that Timber Hill was required to file a motion under Federal Rule of Civil Procedure ("Rule") 62.1 seeking an indicative ruling prior to dismissing its appeal is wrong. The rules were amended to require district court approval of payments to objectors, and the filings in the appellate court make clear that no payment has or will be made without district court approval under Rule 23(e)(5)(B). *See* 3d Cir. No. 21-1218 ECF Nos. 57, 58. Moreover, Rule 62.1 does not provide that an indicative ruling must be issued; rather, it states the court "may" do so or may "defer considering the motion." Rule 62.1(a)(1). Thus, had Timber Hill done so and the court deferred ruling, Timber Hill would have dismissed its appeal and then been in the same position it is in now, filing a Rule 23(h) motion.

The Bandas Firm's error is in its assumption (based on its practice of manufacturing objections with serial objectors connected to the firm in order to extract fees) that objectors will only dismiss appeals if their fee request is approved. For example, the Bandas Firm previously used the Rule 62.1 procedure to make clear that dismissal of its appeal was ***contingent*** upon approval of fees. *See, e.g.*, *Drazen v. Godaddy.com, LLC*, No. 1:19-cv-00563-KD-B, 2021 WL 1881648, at *1 (S.D. Ala. Apr. 22, 2021) (denying fee request of Bandas Firm where objector stated it

would "dismiss his appeal with prejudice ***if*** this Court 'enters an indicative ruling approving the [agreement]'") (citation omitted; emphasis added).[4]

However, this situation is different because Timber Hill has made clear that dismissal of its appeal is ***not contingent*** upon the district court approving its request for fees as it has no intention of pursuing the appeal further. 3d Cir. No. 21-1218 ECF No. 57. Timber Hill has sought to dismiss its appeal without the assurance of an indicative ruling granting its fee request because it has determined that its appeal is moot. *See* 3d Cir. No. 21-1218 ECF No. 58 at 2-3; 3d Cir. No. 21-1218 ECF No. 55; *see also Lusardi v. Xerox Corp.*, 975 F.2d 964, 974 (3d Cir. 1992) (holding that "once the controversy ceases to exist the court must dismiss the case for lack of jurisdiction" and "[n]either spirited advocacy" nor any "agreement between the parties to allow the federal court to hear the case" can "rescue a mooted action"). The Bandas Firm has not cited any authority foreclosing this path. Even assuming, *arguendo*, that the Bandas Firm were correct, the Court could simply convert Timber Hill's Rule 23(h) motion into a motion for indicative ruling under Rule 62.1, as the Bandas Firm has not shown it is a distinction with a difference.

[4] When the Bandas Firm's Rule 62.1 motion for fees was denied because the firm "did not confer any benefit on the class" (*id.* at *3), the Bandas Firm pushed forward with the appeal. *See Pinto v. Drazen*, No. 21-10199 (11th Cir. Aug. 20, 2021) (brief on appeal filed by Clore and the Bandas Firm).

Fourth, the Bandas Firm's accusation of a "secret" payment is baseless. No such payment has been made, and no payment will be made absent district court approval. *See* 3d Cir. No. 21-1218 ECF No. 58 at 2-3. The Bandas Firm has, once again, offered only rank speculation to support a meritless objection. *See also, e.g.*, ECF No. 659 at 10-11, 13, 16 (Judge Shipp overruling the Bandas Firm's objection to the fee award because it was based on "speculat[ion]"). The Bandas Firm's assumption that Lead Counsel must have had a motive to protect its fees by entering into a "secret deal to buy Timber Hill's appeals [sic]" (ECF No. 883 at 1) defies common sense. The Bandas Firm has not explained why Lead Counsel would "buy" off an appeal that was meritless, conceded to be moot by Timber Hill, and had already been considered and rejected twice. ECF Nos. 575, 659; 3d Cir. No. 21-1218 ECF No. 55. The Bandas Firm also overlooks that Timber Hill objected only to the plan of allocation of settlement proceeds among Class Members, not to Lead Counsel's fee award. ECF No. 557. The Bandas Firm's position assumes Lead Counsel would trade its fees to "buy" off an objection to the plan of allocation, which makes no sense.

Similarly, the Bandas Firm's purported suspicion over Lead Counsel's decision not to oppose the fee is disingenuous given that it also decided not to oppose the merits of Timber Hill's fee request. Lead Counsel chose not to oppose the fee request because Timber Hill's counsel explained that the request was a tiny fraction

of its lodestar, it had drafted a pleading, and it contacted Lead Counsel several times throughout the process to express its desire and willingness to assist in pursuing Timber Hill's request that options investors be included in the class and receive a fair allocation. *See* ECF No. 879. Significantly, while the Bandas Firm opposes the timing of the Court's consideration of the motion, it does not argue that the fee request is excessive or undeserved. ECF No. 883. Thus, its conduct refutes its speculation that there is something nefarious in Lead Counsel having similarly decided not to oppose the requested fee. In short, there is no "secret deal" between Timber Hill and Lead Counsel, nor is there any violation of Rule 23(e)(5)(B). *See* ECF No. 883 at 1.

III. CONCLUSION

In summary, (i) the Bandas Firm's unfounded attacks on Lead Counsel should be rejected and disregarded, (ii) Lead Counsel does not oppose Timber Hill's requested $75,000 fee award, and (iii) Timber Hill's approach of foregoing an indicative ruling under Rule 62.1 and instead dismissing its appeal prior to filing its Rule 23(h) motion for fees appears reasonable and permissible since the dismissal is not contingent on the success of its fee application.

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Respectfully submitted,

SEEGER WEISS LLP
CHRISTOPHER A. SEEGER
JENNIFER R. SCULLION

s/ Christopher A. Seeger

CHRISTOPHER A. SEEGER

55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Telephone: (201) 639-9100
Facsimile: (201) 639-9393
cseeger@seegerweiss.com
jscullion@seegerweiss.com

Local Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS
THEODORE J. PINTAR
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
darrenr@rgrdlaw.com
tedp@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
JAMES E. BARZ
FRANK A. RICHTER
200 South Wacker Drive, 31st Floor
Chicago, IL 60606
Telephone: 312/674-4674
312/674-4676 (fax)
jbarz@rgrdlaw.com
frichter@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
ROBERT J. ROBBINS
KATHLEEN B. DOUGLAS
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
rrobbins@rgrdlaw.com
kdouglas@rgrdlaw.com

Lead Counsel for Plaintiffs