Adam M. Apton
LEVI & KORSINSKY, LLP
33 Whitehall Street, 17th Floor
New York, New York 10004
T: (212) 363-7500
F: (212) 363-7171
Email: aapton@zlk.com

Brenda Szydlo (admitted *pro hac vice*)
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
Email: bszydlo@pomlaw.com

Attorneys for Plaintiffs and the Class

[Additional counsel on signature page]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **PLAINTIFFS' NOTICE OF MOTION FOR FINAL APPROVAL OF SETTLEMENT** **CLASS ACTION** **Motion Day: September 10, 2024**

PLEASE TAKE NOTICE that under Rule 23 of the Federal Rule of Civil Procedure, on September 10, 2024 at 12:00 P.M., in Courtroom MLK 4B of this Court located at 50 Walnut Street, Newark, New Jersey 07102, Co-Lead Plaintiffs Dr. Scott Greenbaum and Joshua Mailey, and Plaintiff Alejandro Pieroni (collectively, "Plaintiffs"), will move this Court for an Order (i) granting final approval of the proposed class action Settlement, (ii) certifying a class for settlement purposes, and (iii) approving the proposed Plan of Allocation.

This motion is based upon this notice of motion, and the accompanying memorandum of law, declarations, and exhibits filed in support hereof.

Plaintiffs also previously submitted a proposed order granting this motion. *See* Dkt. No. 44-6.

Dated: July 30, 2024

LEVI & KORSINSKY, LLP

/s/ Adam M. Apton
Adam M. Apton
Devyn R. Glass
33 Whitehall Street, 17th Floor
New York, New York 10004
T: (212) 363-7500
F: (212) 363-7171
Email: aapton@zlk.com
Email: dglass@zlk.com

-and-

POMERANTZ LLP
/s/ Brenda Szydlo

Jeremy A. Lieberman (*pro hac vice*)
Brenda Szydlo (*pro hac vice*)
Thomas H. Przybylowski
Dean P. Ferrogari (*pro hac vice*)
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
jalieberman@pomlaw.com
bszydlo@pomlaw.com
tprzybylowski@pomlaw.com
dferrogari@pomlaw.com

Attorneys for Plaintiffs and the Class

-and-

SCHALL LAW FIRM
Brian Schall
2049 Century Park East, Ste. 2460
Los Angeles, California 90067
Telephone: (310) 301-3335
Facsimile: (213) 519-5876
brian@schallfirm.com

Additional Counsel to Lead Plaintiff Joshua Mailey

-and-

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
Peretz Bronstein
60 East 42nd Street, Suite 4600
New York, New York 10165
Telephone: (212) 697-6484
Facsimile: (212) 697-7296
peretz@bgandg.com

Additional Counsel to Plaintiff
Alejandro Pieroni

Adam M. Apton
LEVI & KORSINSKY, LLP
33 Whitehall Street, 17th Floor
New York, New York 10004
Telephone: (212) 363-7500
Facsimile: (212) 363-7171
Email: aapton@zlk.com

Brenda Szydlo (admitted *pro hac vice*)
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
Email: bszydlo@pomlaw.com

Attorneys for Plaintiffs and the Class

[Additional counsel on signature page]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

Co-Lead Plaintiffs Dr. Scott Greenbaum and Joshua Mailey, and Plaintiff Alejandro Pieroni (collectively, "Plaintiffs"), respectfully submit this memorandum of law in support of Plaintiffs' Motion for Final Approval of Settlement.[1]

I. PRELIMINARY STATEMENT

The Settlement pending before this Court is a strong result for the Class. Settlement Class Members will receive a total of $3,000,000 before costs of administration, attorneys' fees, reimbursement of litigation expenses, and compensatory awards to Plaintiffs. This did not come easily. Simply put, although Plaintiffs faced a number of significant obstacles, including their theory of liability and contentious proceedings in the wake of Humanigen, Inc.'s ("Humanigen" or the "Company") bankruptcy, Plaintiffs were still able to secure a settlement that restores a considerable amount of compensation back to the Class. But for this Settlement, the Class would not receive anything to offset the damages it sustained.

In this Action, Lead Counsel (i) conducted a comprehensive investigation which included interviews with former employees of Humanigen, detailed reviews of Humanigen's SEC filings, press releases, and other publicly available information; (ii) had consultations with experts on issues pertaining to the FDA and

[1] Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation of Settlement (the "Stipulation"), dated September 22, 2023 (Dkt. No. 44). All internal quotations and citations are omitted unless otherwise noted.

damages; (iii) researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) prepared and filed the Complaint and the Amended Complaint; (v) engaged in arm's-length settlement negotiations, including a mediation session facilitated by a private mediator; and (vi) devoted substantial time and resources needed to secure and protect the $3 million Settlement through bankruptcy.

In exchange for the payment of $3 million for the benefit of the Settlement Class, the Settlement will release all Released Persons from all Released Claims, as set forth in the Stipulation. The Settlement is not "claims-made" and all proceeds of the Settlement, after the deduction of administrative costs and Court-approved fees, expenses, and class representative awards, will be distributed to eligible claimants. Given the facts, the applicable law, and the risk and expense of continued litigation, Plaintiffs and Lead Counsel submit that the proposed Settlement is fair, reasonable and adequate, represents a very favorable result, and is in the best interests of the Settlement Class.

Plaintiffs also request that the Court approve the Plan of Allocation, which is set forth in the Notice (*see* Dkt. No. 44-2 at 9-17). The Plan of Allocation, which was developed by Plaintiffs' consulting damages expert in consultation with Lead Counsel, provides a reasonable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on the losses they

suffered as result of the conduct alleged in the Action. For the reasons set forth below, the Plan of Allocation is fair, reasonable, and adequate, and should likewise be approved.

Accordingly, Plaintiffs respectfully request that the Court grant (i) final approval of the proposed class action Settlement, (ii) certify a class for settlement purposes, and (iii) approve the proposed Plan of Allocation.

II. LEGAL STANDARD

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be approved by the Court upon a finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001). "The strong judicial policy in favor of class action settlement[s] contemplates a circumscribed role for the district courts in settlement review and approval proceedings." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). Although this Court has discretion in determining whether to approve the Settlement, it should be hesitant to substitute its judgment for that of the parties who negotiated the Settlement. *See Sutton v. Med. Serv. Ass'n of Pa.*, No. 92-4787, 1994 WL 246166, at *5 (E.D. Pa. June 8, 1994). "Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the

settlement. They do not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 642-43 (D.N.J. 1983), *aff'd*, 726 F.2d 956 (3d Cir. 1983).

In determining the adequacy of a proposed settlement, a court should ascertain "whether the settlement is within a range that responsible and experienced attorneys could accept considering all relevant risks and factors of litigation." *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *4 (D.N.J. Nov. 9, 2005) (*citing Walsh*, 96 F.R.D. at 642). That analysis "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id.*

Courts should also assess the reasonableness of the settlement pursuant to the factors set forth in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975):

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

(Omissions in original.) *See also In re AT & T Corp., Sec. Litig.*, 455 F.3d 160, 164-65 (3d Cir. 2006).

The Third Circuit also advises courts to consider, where applicable, the additional factors set forth in *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998):

> [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

III. ARGUMENT

A. The Proposed Settlement Warrants Final Approval Because It Is Fair, Reasonable, and Adequate

1. Plaintiffs' Motion for Preliminary Approval Demonstrated the Fairness, Reasonableness, and Adequacy of the Settlement

In moving for preliminary approval of the Settlement, Plaintiffs complied with Rule 23(e)(1)(A) by making an evidentiary showing that the Court would "likely be able to . . . approve the [Settlement] under Rule 23(e)(2)" and "certify the class for purposes of judgment." Fed. R. Civ. P. 23(e)(1)(B). Plaintiffs previously submitted a declaration from Lead Counsel that outlined the litigation and described the basis for the Settlement. *See* Declaration of Adam M. Apton and Brenda Szydlo in Support

of Plaintiffs' Motion for Preliminary Approval of Settlement (the "Joint Declaration" or "Joint Decl.") (Dkt. No. 45-2). In pertinent part, the Joint Declaration demonstrated the complexity of the case and the work that was performed in order to arrive at the proposed Settlement. *See* Joint Decl. ¶¶3-32.

As evidence of the adequacy of the Settlement, Plaintiffs provided the Court with information concerning past settlements in similar cases. *Id*. ¶26. Relative to median settlement values of approximately 1.6% of overall damages for 2023 securities cases with damages ranging from $400 million to $599 million, the Settlement at hand represents approximately 0.58% of total recoverable damages.[2] While this result is below the median recovery for similar cases, the Settlement is nonetheless fair, reasonable, and adequate given the substantial risks Plaintiffs faced. *Id*. ¶27. These risks included the following: (i) Plaintiffs' potential inability to prove that Defendants' statements were false and/or materially misleading, given that additional published research may have ultimately supported Defendants' decision to repurpose the drug for use in treating COVID-19 (*id.* ¶27); (ii) Plaintiffs would have been forced to explain at some point in the litigation why the NIH approved

[2] Edward Flores & Svetlana Starykh, *Recent Trends In Securities Class Action Litigation: 2023 Full-Year Review*, NERA Econ. Consulting, at 25 (Jan. 23, 2024), available at https://www.nera.com/content/dam/nera/publications/2024/PUB_2023_Full-Year_Sec_Trends_0123.pdf.

the testing of lenzilumab in its ACTIV-5/BET-B trial (*id.* ¶28); (iii) Plaintiffs faced additional risks concerning class certification and, in particular, their ability to rely on the "fraud-on-the-market" presumption of reliance for the period before Humanigen traded on the NASDAQ *(id.* ¶30); and (iv) Humanigen officially filed for bankruptcy on January 3, 2024 (Dkt. No. 50), leaving Plaintiffs with collectability problems if the Settlement is not approved (Joint Decl. ¶31). These risks are, of course, in addition to the general risks inherent in all litigation, such as appeals or the unpredictability of juries. Thus, Plaintiffs believe that the Settlement is a favorable outcome for the Class as it secures an immediate benefit in light of the expected difficulties in proving liability. *See Alves v. Main*, No. 01-789, 2012 WL 6043272, at *21 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014) (finding settlement approval was warranted as the recovery provides immediate benefits and "continued litigation involves considerable risk that the Plaintiffs would lose the merits of the case").

2. Additional Evidence Supports Granting Final Approval of the Settlement

Plaintiffs' Brief in Support of Motion For Preliminary Approval of Settlement addressed each of the factors identified in Rule 23(e)(2). *See* Dkt. No. 45-1. As additional evidentiary support for the Settlement, Plaintiffs have submitted with their motion for final approval the (i) Supplemental Declaration of Adam M. Apton and Brenda Szydlo in Support of Plaintiffs' Motion for (1) Final Approval of Settlement;

and (2) Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs, dated July 30, 2024 (the "Supplemental Joint Declaration" or "Supp. Joint Decl."); (ii) Declaration of Ann Cavanaugh Regarding Settlement Class Notice and Report On Objections and Requests for Exclusion Received, dated July 26, 2024 (the "Cavanaugh Decl.") (Supp. Joint Decl. Ex. 3); and (iii) supplemental declarations from each of the Plaintiffs. These declarations, as explained below, strengthen Plaintiffs' basis for seeking final approval.

3. Analysis of the *Girsh* Factors Confirms That the Settlement Is Fair, Reasonable and Adequate, and Should Be Approved

To determine whether a proposed settlement in a class action is fair, reasonable and adequate, district courts in this Circuit consider the nine factors identified in *Girsh*, 521 F.2d at 157. These factors strongly support approval of the Settlement.

a. The Complexity, Expense and Likely Duration of This Action

The first *Girsh* factor looks to the "complexity, expense and likely duration of the litigation." *Id.* at 157. This factor addresses the "probable costs, in both time and money, of continued litigation." *Cendant*, 264 F.3d at 233. A settlement is favored where "continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial." *In re Warfarin Sodium*

Antitrust Litig., 391 F.3d 516, 536 (3d Cir. 2004). Courts have noted that "[s]ecurities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *In re Par Pharm. Sec. Litig.*, No. 06-3226, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013). This case is no exception, which supports approval of the Settlement. *See In re Suprema Specialties, Inc. Sec. Litig.*, No. 02 Civ. 168, 2008 WL 906254, at *4-5 (D.N.J. Mar. 31, 2008) (finding complexity of securities class action supports final approval).

Here, the Company has filed for bankruptcy protection. ECF No. 53 (Suggestion of Bankruptcy). Achieving a litigated verdict in this Action for Plaintiffs and the Class against the Individual Defendants would require a substantial outlay of additional time and expense. Plaintiffs reasonably expect that the continued prosecution of this Action through the motion to dismiss, and likely motion for summary judgment, *Daubert* motions, and other pre-trial motions would have involved significant additional work and expense. Trial would be complex and expensive, requiring significant factual and expert testimony to prove the elements of Plaintiffs' claims. Importantly, even a jury verdict would not guarantee the recovery of damages for the Settlement Class that this $3 million cash recovery does. *See In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07–61542–CIV, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning jury verdict in favor of plaintiff class and granting judgment for defendants as a matter of law), *aff'd sub*

nom. Hubbard v. BankAtlantic Bancorp, Inc., 688 F.3d 713 (11th Cir. 2012). Defendants would likely appeal any favorable verdict, and the appellate process could last several years, with no assurance of a favorable outcome for the Settlement Class. Thus, even after additional protracted and expensive efforts, the Settlement Class might obtain a result less than the Settlement Amount, or even nothing at all.

b. The Reaction of the Settlement Class

The reaction of the settlement class factor "requires the Court to evaluate whether the number of objectors, in proportion to the total class, indicates that the reaction of the class to the settlement is favorable." *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08–397, 2013 WL 5505744, at *2 (D.N.J. Oct. 1, 2013). It is well-established that the lack of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members. *See In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 578 (E.D. Pa. 2003) ("[U]nanimous approval of the proposed settlement by the class members is entitled to nearly dispositive weight in this court's evaluation of the proposed settlement.").

Plaintiffs submit a declaration from Plaintiffs' Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), in support of this motion. *See* Supp. Joint Declaration Ex. 3 (Cavanaugh Decl.) As described therein, over 78,500 Postcard Notices were disseminated to potential Settlement Class Members. *Id.* ¶10. A.B. Data also

published notice of the Settlement over *PR Newswire* on November 29, 2023. *Id.* ¶11. Moreover, A.B. Data also created a website providing information about the Settlement that has been available for public viewing since November 22, 2023. *Id.* ¶12. The website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim filing deadlines, and the date, time, and location of the Court's Settlement Hearing. *Id.* Additionally, copies of the Notice, Proof of Claim, Stipulation, Preliminary Approval Order, the Company's Suggestion of Bankruptcy and other documents related to the Action are posted on the website. *Id.* Moreover, the website includes the ability to file a claim online and a link to a document with detailed instructions for Settlement Class Members submitting their claims electronically. *Id.* Further, the website has contact information for A.B. Data and Lead Counsel, including a toll-free telephone number, that Settlement Class Members can use to obtain additional information. *Id.* Having fully complied with the Court's Notice directives (as ordered in the Preliminary Approval Order (Dkt. No. 48)), and not receiving any objections, only four exclusion requests covering eight individual investors, and no complaints with regard to the Settlement (Cavanaugh Decl. ¶¶14-15), the Court can infer that the Class supports approval of the Settlement.

"[T]he Third Circuit Court of Appeals has recognized the practical conclusion that it is generally appropriate to assume that 'silence constitutes tacit consent to the

agreement' in the class settlement context." *Harlan v. Transworld Sys., Inc.*, No. 13-5882, 2015 WL 505400, at *8 (E.D. Pa. Feb. 6, 2015) (quoting *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15 (3d Cir. 1993)). "The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption . . . in favor of the Settlement." *Cendant*, 264 F.3d at 235; *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 "strongly favors settlement"). The fact that there are no objections and only four exclusion requests covering eight individual investors provide strong support for the Plan of Allocation as well. *See Maley v. DelGlobal Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (finding that "the favorable reaction of the Class supports approval of the proposed Plan of Allocation").

c. The Stage of the Proceedings and Amount of Discovery Completed

The third *Girsh* factor, the stage of the proceedings and amount of discovery completed, requires a court to consider "the degree of case development that class counsel have accomplished prior to settlement" in order to "determine whether counsel had an adequate appreciation of the merits of the case before negotiating" the settlement. *Cendant*, 264 F.3d at 235; *see also Warfarin*, 391 F.3d at 537.

Here, Plaintiffs and Lead Counsel had a sound basis for assessing the strengths and weaknesses of the claims and the defenses thereto when they entered into the

Settlement. As set forth in the Supplemental Joint Declaration, Plaintiffs' and Lead Counsel's efforts included, among others, an extensive investigation into the merits of the case prior to filing the Complaint and Amended Complaint; analyzing SEC filings, analyst reports, and regulator statements; conducting interviews with former employees of the Company; consulting with experts on issues pertaining to the FDA and damages; and engaging in in arm's-length settlement negotiations, all before devoting the substantial time and resources needed to secure the $3 million Settlement. *See* Supp. Joint Decl. ¶5.

On May 23, 2023, the parties also participated in a formal mediation session with Mr. Jed Melnick, Esq., where the strengths and weaknesses of Plaintiffs' claims were fully vetted. *See* Joint Decl. ¶¶16-18. The mediation was unsuccessful initially but, following subsequent negotiations by and through Mr. Melnick, the parties ultimately agreed to a "mediator's recommendation" to settle the lawsuit for $3 million, which the parties memorialized in the Stipulation. *Id.* ¶21. There is no question that Plaintiffs and Lead Counsel were in an excellent position to evaluate the strengths and weaknesses of the claims asserted and defenses raised by Defendants, as well as the substantial risks of continued litigation and the propriety of settlement. Having sufficient information to properly evaluate the case, the Action was settled on terms highly favorable to the Settlement Class.

Within the Third Circuit and throughout the United States, "a strong public policy exists, which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation." *Ehrheart*, 609 F.3d at 593; *see also In re Gen. Motors Corp. Pick-Up Trucks Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*GMC Trucks*") ("The law favors settlement …."). The Third Circuit has noted that this strong presumption in favor of voluntary settlement agreements "is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Ehrheart*, 609 F.3d at 595. This policy will be well-served by approving this complex securities class action Settlement that, absent resolution, would consume years of additional time of the Court and likely, years of additional appellate practice.

d. The Risks of Establishing Liability

The fourth *Girsh* factor looks to "the risks of establishing liability." *Girsh*, 521 F.2d at 157. Under this factor, "[b]y evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them." *GMC Trucks*, 55 F.3d at 814. In considering this factor, the Court has recognized that "[a] trial on the merits always entails considerable risk," (*In re Schering-Plough/Merck Merger Litig.*, No. 09-cv-1099, 2010 WL 1257722, at *10

(D.N.J. Mar. 26, 2010)), and "no matter how confident one may be of the outcome of litigation, such confidence is often misplaced." *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 343 (E.D. Pa. 2007). Indeed, "[c]lass action securities litigation cases are notoriously difficult cases to prove." *In re Viropharma Inc. Sec. Litig.*, No. CV 12-2714, 2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016). Although Plaintiffs believe that their claims have merit, the risks of establishing liability in this Action were particularly significant and weigh heavily in favor of approving the Settlement.

To establish their Section 10(b) claim, Plaintiffs must prove that Defendants: (1) made a misstatement or an omission of a material fact; (2) with scienter; (3) in connection with the purchase or sale of a security; (4) upon which the Plaintiffs reasonably relied; and (5) that proximately caused Plaintiffs' injuries. *In re Ikon Off. Sols., Inc.*, 277 F.3d 658, 666 (3d Cir. 2002). Here, Defendants filed a motion to dismiss Plaintiffs' claims in their entirety. *See* Dkt. No. 40-1. Defendants argued that the Amended Complaint failed to meet the heavy pleading requirements under the Private Securities Litigation Reform Act of 1995 ("PSLRA") and therefore should be dismissed. *See id.* at 7-8. In particular, Defendants argued that Plaintiffs failed to identify actionable false statements and sufficiently allege scienter. *Id.* at 9-40.

Plaintiffs would have had to overcome significant obstacles to successfully establish falsity. Plaintiffs' alleged misrepresentations fall into four categories: (1)

failure to disclose the risk associated with lenzilumab; (2) misrepresentations regarding the exclusivity of lenzilumab's clinical status; (3) failure to disclose the LIVE-AIR trial lacked sufficient data for EUA approval; and (4) misrepresentations that the FDA did not identify any safety issues with lenzilumab. *Id.* at 10. Because Plaintiffs' falsity theory was heavily omission based, Plaintiffs would need to convince a jury that Defendants were obligated to disclose facts necessary to ensure that their statements were not misleading. *See Macquarie Infrastructure Corp. v. Moab Partners, L. P.*, 601 U.S. 257, 264 (2024) ("Rule [10b-5] prohibits omitting material facts necessary to make the statement made … not misleading"). Thus, Plaintiffs faced significant obstacles in proving falsity.

With respect to scienter, Plaintiffs would have been forced to show why lenzilumab posed material patient-safety risks when the National Institutes of Health ("NIH") "agreed that lenzilumab showed promise for treating COVID-19 patients" and elevated lenzilumab in its ACTIV-5/BET-B trial. Dkt. No. 40-1 at 3-4. Lenzilumab was one of only three candidate therapeutic agents chosen by the NIH for the ACTIV-5/BET-B study. *Id.* at 4. Moreover, the NIH continued to show confidence in lenzilumab and independently decided to advance the ACTIV-5/BET-B study to a Phase 2/3 study. *Id.* at 5. Thus, the NIH's confidence in lenzilumab would have bolstered Defendants' competing scienter inference of non-culpable conduct. Having evaluated the facts and applicable law, and recognizing the risk and

expense of continued litigation, Plaintiffs and Lead Counsel respectfully submit that the proposed Settlement is in the best interests of the Settlement Class. Before entering into the Settlement, Plaintiffs and Lead Counsel understood the relevant claims and defenses and engaged in significant efforts to protect the interests of the Settlement Class. While Plaintiffs believe the merits of the case are strong, the proposed Settlement is an excellent result and is in the best interests of the Settlement Class in light of the risks and costs of litigating this Action through trial. Accordingly, Plaintiffs respectfully request final approval of the Settlement as fair, reasonable, and adequate.

e. The Risks of Establishing Loss Causation and Damages

Even if Plaintiffs successfully established liability, they would also face challenges establishing loss causation and ultimately proving damages. Plaintiffs bear the burden of proving loss causation and damages for their claims under Section 10(b) – that is, they must show that the alleged false statements or omissions caused the investors' losses. *See ViroPharma*, 2016 WL 312108, at *12. The Supreme Court's decision in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005), and the subsequent cases interpreting *Dura*, have made proving loss causation even more difficult and uncertain than it was in the past. *See In re Ocean Power Techs., Inc.*, No. 14-CV-3799, 2016 WL 6778218, at *19 (D.N.J. Nov. 15, 2016) ("[P]roving loss causation would be a major risk faced by Plaintiff.").

While Plaintiffs believed they would have been able to accomplish this, Defendants argued that Plaintiffs failed to adequately allege loss causation. Dkt. No. 40-1 at 17. Plaintiffs' estimated class-wide damages are approximately $514.9 million. Joint Decl. ¶26. Although Plaintiffs disagreed strongly with Defendants' loss causation argument, this was a critical risk to proceeding with the litigation because damages may have been reduced substantially.

"Courts in this district have recognized that competing expert testimony presents significant risks to Lead Plaintiff's success in establishing damages." *Par Pharm.*, 2013 WL 3930091, at *6 (citing *Cendant*, 264 F.3d at 239 ("[E]stablishing damages at trial would lead to a 'battle of experts' with each side presenting its figures to the jury and with no guarantee whom the jury would believe.")). Plaintiffs could not be certain which expert's view would be credited by the jury and, accordingly, this "battle of the experts" creates an additional level of litigation risk. *See ViroPharma*, 2016 WL 312108, at *13 ("The conflicting damage theories of defendants and plaintiffs would likely have resulted in an expensive battle of the experts and it is impossible to predict how a jury would have responded."); *Schuler v. Meds. Co.*, No. CV 14-1149, 2016 WL 3457218, at *7 (D.N.J. June 24, 2016) ("In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have

been caused by actionable, rather than the myriad nonactionable factors such as general market conditions.").

In short, Plaintiffs and Lead Counsel recognized the possibility that a jury could be swayed by experts for the Defendants, and find that there were no damages or only a fraction of the amount of damages Plaintiffs might have sought at trial. Accordingly, this factor supports final approval of the Settlement.

f. The Risks of Maintaining Class Action Status Through Trial

Even if Plaintiffs defeated the motion to dismiss, Plaintiffs would still need to undertake the somewhat complex and expensive task of certifying the putative class. In any securities fraud class action, a plaintiff faces significant challenges to certifying a class and maintaining certification throughout trial. Joint Decl. ¶¶30, 32. For example, Defendants could have appealed Plaintiffs' class certification (assuming the Court would have granted it) or successfully excluded expert testimony at trial under *Daubert*, leaving Plaintiff unable to establish liability or damages in front of a jury. *Id*. ¶32. Alternatively, even if Plaintiffs were successful in obtaining class certification, they faced a risk that they would not be able to sustain class certification through judgment. *Id.* Rule 23(c)(1) expressly provides that a class certification order may be "altered or amended before final judgment." Fed. R. Civ. P. 23(c)(1)(C). These uncertainties, as well as others, all stand in support of approving the Settlement. *See Prudential*, 148 F.3d at 321 ("There will always be a

'risk' or possibility of decertification, and consequently the court can always claim this factor weighs in favor of settlement."); *see also In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 506-07 (W.D. Pa. 2003) ("[A]s in any class action, there remains some risk of decertification in the event the Propose[d] Settlement is not approved. While this may not be a particularly weighty factor, on balance it somewhat favors approval of the proposed Settlement."). Thus, the necessity of complex and potentially costly class certification proceedings, together with the risk that this Court may deny certification, supports the Settlement's adequacy. Joint Decl. ¶¶30, 32.

g. The Ability of Defendants to Withstand a Greater Judgment

This factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *Cendant*, 264 F.3d at 240; *Karcich v. Stuart (In re Ikon Off. Sols., Inc., Sec. Litig.)*, 194 F.R.D. 166, 183 (E.D. Pa. 2000) (noting defendants' inability to pay a greater sum would support approval of settlement). Even "the fact that [defendants] could afford to pay more does not mean that [they are] obligated to pay any more than what the … class members are entitled to under the theories of liability that existed at the time the settlement was reached." *Warfarin*, 391 F.3d at 538; *In re Schering-Plough Corp. Sec. Litig*, No. 01–CV–0829, 2009 WL 5218066, at *4 (D.N.J. Dec. 31, 2009) ("[P]ushing for more in the face of risks and delay would not be in the interests of the class.").

Here, Humanigen has already filed for bankruptcy and it has little or no remaining Director & Officer liability insurance. *See* Supp. Joint Decl. ¶10; *see also* Dkt. No. 59. On January 3, 2024, Humanigen filed a chapter 11 bankruptcy petition seeking relief under Title 11, United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Dkt. No. 50. Pursuant to the Stipulation filed prior to Humanigen's bankruptcy petition, the Company's insurer funded the $3 million proposed Settlement which is currently held in an escrow account controlled by Lead Counsel. *See* Dkt. No. 52. However, the terms of the Settlement required approval from the Bankruptcy Court in the event the Company filed a bankruptcy petition. Dkt. No. 44 (Stipulation) at 38. Such approval needed to be obtained through the filing of a Bankruptcy Rule 9019 motion with the Bankruptcy Court. *See* Dkt. No. 65. Lead Counsel negotiated extensively with Humanigen's bankruptcy counsel and the official committee of unsecured creditors to protect the Settlement and force Humanigen to file the Rule 9019 motion. *Id.* On May 16, 2024, Humanigen finally filed the Rule 9019 Motion styled *Debtor's Motion for an Order (I) Approving the Stipulation of Settlement and (II) Modifying the Automatic Stay as Necessary in Connection Therewith* ("Motion for Approval"). *See In re Humanigen, Inc.*, No. 1:24-bk-10003, ECF No. 272 (Bankr. D. Del. May 16, 2024). On June 10, 2024, the Bankruptcy Court granted Humanigen's Motion for Approval under Rule 9019. *Id.*, ECF No. 290. Thus, the proposed Settlement

truly is the only avenue for damaged shareholders to receive any compensation from the Company for their losses. Supp. Joint Decl. ¶10.

h. The Size of the Settlement Fund in Light of the Range of Possible Recovery and the Risks of Litigation

The final two *Girsh* factors, typically considered in tandem, ask "whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial." *Prudential*, 148 F.3d at 322. "In making this assessment, the Court compares the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, with the amount of the proposed settlement." *Par Pharm.*, 2013 WL 3930091, at *7 (citing *GMC Trucks*, 55 F.3d at 806).

The proposed $3 million Settlement is the best possible recovery and reasonable in light of the risks of litigation, as discussed above. Although the Settlement is below the 1.6% median recovery for cases with damages ranging from $400 million to $599 million in 2023 securities cases,[3] the Settlement still falls in line with the range of reasonableness in class action settlements of this nature. Joint Decl. ¶26. Plaintiffs' class-wide damages in this case are approximately $514.9 million for the Settlement Class Period. *Id.* Measured against that yardstick, the Settlement recovery represents approximately 0.58% of total estimated class-wide

[3] Flores & Starykh, *supra* note 2, at 25.

damages – a strong recovery in light of the procedural posture of this Action, Defendants' pending motion to dismiss, the Company's bankruptcy, and the risk that continued litigation might result in a vastly smaller recovery or no recovery at all. *Id*. ¶¶26, 31; *see In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05-232, 2008 WL 4974782, at *3, *9, *13 (E.D. Pa. Nov. 21, 2008) (approving $16,767,500 settlement representing 2.5% of maximum recoverable damages); *Smith v. NetApp, Inc.*, No. 4:19-cv-04801, ECF No. 74 at 3, 19 & ECF No. 84 (N.D. Cal. 2022) (approving final settlement of $2.25 million representing approximately 1.24% of the recoverable damages of $181.7 million); *Huang v. Assertio Therapeutics, Inc.*, No. 4:17-cv-04830, ECF No. 123 at 17, ECF No. 131 at 9 (N.D. Cal. 2022) (approving final settlement of $1 million representing approximately 0.7% of the estimated maximum damages of $136.6 million); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 n.2 (2d Cir. 1974) ("In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery."), *abrogated on other grounds*, *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

When all the *Girsh* factors are considered, the proposed Settlement is fair, reasonable and adequate, and provides a certain outcome in the best interests of the Settlement Class. Lead Counsel, on behalf of Plaintiffs, have weighed the strengths and weaknesses of the relevant claims, defenses, and likelihood of recovery and,

after extensive arm's-length negotiations through a mediator, reached this Settlement. Under these circumstances, Plaintiffs respectfully submit that the Settlement should be finally approved.

4. The *Prudential* Considerations Also Support the Settlement

When evaluating the adequacy of a settlement, the Third Circuit also advises that "it may be useful to expand the traditional *Girsh* factors to include, when appropriate," certain *Prudential* factors. *See Prudential*, 148 F.3d at 323. *Prudential* takes into consideration, *inter alia*, "factors that bear on [counsel's] ability to assess the probable outcome of a trial on the merits of liability and individual damages." *Id.* Here, Plaintiffs and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the case gained through an extensive investigation, the drafting of a thorough and detailed Amended Complaint, motion practice, consultations with experts in the fields of damages, and the mediation process. *See* Supp. Joint Decl. ¶5. As such, the applicable *Prudential* factors mentioned above further support approval of the Settlement.

The *Prudential* factors also consider (i) "whether class or subclass members [were] accorded the right to opt out of the settlement;" (ii) "whether any provisions for attorneys' fees are reasonable;" and (iii) "whether the procedure for processing individual claims under the settlement is fair and reasonable." *Prudential*, 148 F.3d at 323. These additional factors all support approval of the Settlement because (i)

Settlement Class Members were afforded the right to opt out of the Settlement and, to date, there are only four exclusion requests; (ii) Lead Counsel's request for attorneys' fees is reasonable as set forth in the accompanying Brief in Support of Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Award to Plaintiffs (the "Fee Motion") (and, in any event, approval of the Settlement is separate from and not dependent on any outcome of the Fee Motion); and (iii) the Plan of Allocation which will govern the processing of claims and the allocation of the Net Settlement Fund, is fair and reasonable as explained below.

B. The Plan of Allocation Is Fair, Reasonable, and Adequate.

The "approval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *In re Merck & Co. Vytorin ERISA Litig.*, No. 08-CV-285, 2010 WL 547613, at *6 (D.N.J. Feb. 9, 2010). "In evaluating a plan of allocation, the opinion of qualified counsel is entitled to significant respect. The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis." *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014).

Here, the proposed Plan of Allocation, which was developed by Lead Counsel in consultation with Plaintiffs' consulting damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid claim forms. *See* Joint Decl. ¶¶34-36. The Settlement does, in fact, treat Settlement Class Members equitably. This is because the proposed Plan of Allocation treats all claimants uniformly. "An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005).

As described in the Notice, the Plan of Allocation has a rational basis and was formulated by Lead Counsel ensuring its fairness and reliability. *See* Dkt. No. 44-2 (Notice) at 9-14; s*ee also In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525, 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007) (granting final approval of settlement as "[t]he Plan of Allocation is rational and consistent with Lead Plaintiffs' theory of the case"). Under the proposed Plan of Allocation, each Authorized Claimant will receive a *pro rata* share of the Net Settlement Fund, with that share to be determined by the ratio that the Authorized Claimant's allowed claim bears to the total allowed claims of all Authorized Claimants. *See* Joint Decl. ¶¶34-36; *see also In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis

for their recognized losses based largely on when they bought and sold their shares of [Company] stock"). The Plan of Allocation is based upon the Amended Complaint's premise that Settlement Class Members sustained damages by purchasing Humanigen securities at artificially inflated prices and seeks to compensate them in accordance with the devaluation that occurred when the alleged corrective disclosures entered the public sphere. *See* Joint Decl. ¶¶35-36. The Plan of Allocation relies on the corrective disclosures listed in the Amended Complaint, which is common in securities class actions. *Datatec Sys.*, 2007 WL 4225828, at *5.

The Plan of Allocation is substantially similar to plans of allocation that have been approved and successfully implemented in other securities class action settlements, including within this Circuit. *See Ocean Power*, 2016 WL 6778218, at *23 ("[P]ro rata distributions are consistently upheld, and there is no requirement that a plan of allocation 'differentiate within a class based on the strength or weakness of the theories of recovery.'") (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011)); *see also In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d at 431.

Lead Counsel submits that the Plan of Allocation fairly and rationally allocates the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered as a result of the conduct alleged in the Amended Complaint. Moreover, to date, there have been no objections to the proposed Plan of

Allocation. Accordingly, for all of the reasons set forth herein and in the Joint Declaration (¶¶34-36), the Plan of Allocation is fair, reasonable and adequate, and should be approved.

C. Notice to the Settlement Class Satisfies the Requirements of Rule 23, Due Process and the PSLRA

Notice to the Settlement Class of the proposed Settlement satisfied Rule 23's requirement of disseminating "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974).

In accordance with the Court's Preliminary Approval Order, the Claims Administrator completed mailing copies of the Postcard Notice to potential Settlement Class Members and their nominees. *See* Supp. Joint Dec. Ex. 3 (Cavanaugh Decl.) ¶10. Since then, over 78,500 Postcard Notices have been disseminated to potential members of the Settlement Class or their nominees. *Id.* ¶10. Pursuant to the Preliminary Order, the Postcard Notice, which directed potential Settlement Class Members to the website containing the Notice, advised potential Settlement Class Members of, among other things: (i) the proposed Settlement of this Action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the Settlement, the Plan of Allocation, the request for attorneys' fees, litigation expenses, and compensatory awards to

Plaintiffs; (iv) the method for submitting a claim form in order to be eligible to receive a payment from the proceeds of the Settlement; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action on all persons not excluded from the Settlement Class. *See* Dkt. No. 44-5 (Postcard Notice); Dkt. No. 44-2 (Notice). In addition, the Summary Notice was published via national newswire on November 29, 2023, and copies of the Notice, Claim Form, Amended Complaint, Stipulation, Preliminary Approval Order, along with other relevant Court documents have been posted to the website established for the Action. *See* Supp. Joint Dec. Ex. 3 (Cavanaugh Decl.) ¶¶11-12. Lead Counsel also caused the settlement website to reflect the updated objection and exclusion deadlines pursuant to the Court's text order dated June 14, 2024 (Dkt. No. 71).

Notice programs such as this have been approved in a multitude of class action settlements. *See In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815, 816 (3d Cir. 2010) (describing notice that combines mailing to known class members, with publication in *Investor's Business Daily* and over newswire, as adequate); *Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985) ("It is well settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause."). The Notice program satisfied Rule 23(e)(1)'s requirement that notice of a settlement be "reasonable" – *i.e.*, it must "fairly apprise the prospective members of

the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings" (*Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 114 (2d Cir. 2005)), and it was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

IV. CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully requests that the Court enter the [Proposed] Final Judgement and Order of Dismissal with Prejudice (Dkt. No. 44-6) granting (i) final approval of the proposed class action Settlement, (ii) certifying a class for settlement purposes, and (iii) approving the proposed Plan of Allocation.

Dated: July 30, 2024

LEVI & KORSINSKY, LLP

/s/ *Adam M. Apton*

Adam M. Apton
Devyn R. Glass
33 Whitehall Street, 17th Floor
New York, New York 10004
T: (212) 363-7500
F: (212) 363-7171
Email: aapton@zlk.com
Email: dglass@zlk.com

-and-

POMERANTZ LLP

/s/ *Brenda Szydlo*

Jeremy A. Lieberman (*pro hac vice*)
Brenda Szydlo (*pro hac vice*)
Thomas H. Przybylowski

Dean P. Ferrogari (*pro hac vice*)
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
jalieberman@pomlaw.com
bszydlo@pomlaw.com
tprzybylowski@pomlaw.com
dferrogari@pomlaw.com

Attorneys for Plaintiffs and the Class

-and-

SCHALL LAW FIRM
Brian Schall
2049 Century Park East, Ste. 2460
Los Angeles, California 90067
Telephone: (310) 301-3335
Facsimile: (213) 519-5876
brian@schallfirm.com

Additional Counsel to Lead Plaintiff Joshua Mailey

-and-

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
Peretz Bronstein
60 East 42nd Street, Suite 4600
New York, New York 10165
Telephone: (212) 697-6484
Facsimile: (212) 697-7296
peretz@bgandg.com

Additional Counsel to Plaintiff Alejandro Pieroni

Adam M. Apton
LEVI & KORSINSKY, LLP
33 Whitehall Street, 17th Floor
New York, New York 10004
Telephone: (212) 363-7500
Facsimile: (212) 363-7171
Email: aapton@zlk.com

Brenda Szydlo (admitted *pro hac vice*)
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
Email: bszydlo@pomlaw.com

Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION

Case No. 2:22-cv-05258-WJM-AME

SUPPLEMENTAL DECLARATION OF ADAM M. APTON AND BRENDA SZYDLO IN SUPPORT OF PLAINTIFFS' MOTIONS FOR (1) FINAL APPROVAL OF SETTLEMENT; AND (2) AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND COMPENSATORY AWARDS TO PLAINTIFFS

We, ADAM M. APTON and BRENDA SZYDLO, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I, Adam M. Apton, am a partner at the law firm of Levi & Korsinsky, LLP ("Levi & Korsinsky"), attorneys for Co-Lead Plaintiffs Dr. Scott Greenbaum and Joshua Mailey, and Plaintiff Alejandro Pieroni (collectively, the "Plaintiffs"), and Co-Lead Counsel for the Class along with Pomerantz LLP ("Pomerantz"). I am admitted to practice before this Court and have personal knowledge of the various matters set forth herein based on my day-to-day participation in the prosecution and settlement of this litigation. I submit this Declaration in support of Plaintiffs' Motions for: (1) Final Approval of Settlement; and (2) Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs.[1]

2. I, Brenda Szydlo, am a partner at the law firm of Pomerantz, attorneys for Plaintiffs and Co-Lead Counsel for the Class along with Levi & Korsinsky. I am admitted *pro hac vice* to practice before this Court and have personal knowledge of the various matters set forth herein based on my day-to-day participation in the prosecution and settlement of this litigation. I submit this Declaration in support of Plaintiffs' Motions for: (1) Final Approval of Settlement; and (2) Award of

[1] Unless otherwise defined, capitalized terms herein have the same meaning as set forth in the Stipulation of Settlement, dated September 22, 2023 (the "Stipulation") (Dkt. No. 44).

Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs.

3. Attached hereto are true and correct copies of Exhibits 1 through 8:

Exhibit 1: Declaration of Adam M. Apton On Behalf of Levi & Korsinsky, LLP Concerning Attorneys' Fees and Expenses (the "Apton Fee Declaration");

Exhibit 2: Declaration of Brenda Szydlo On Behalf of Pomerantz LLP Concerning Attorneys' Fees and Expenses (the "Szydlo Fee Declaration");

Exhibit 3: Declaration of Ann Cavanaugh Regarding Settlement Class Notice and Report On Objections and Requests for Exclusion Received (the "Cavanaugh Declaration" or "Cavanaugh Decl.");

Exhibit 4: Supplemental Declaration of Dr. Scott Greenbaum;

Exhibit 5: Supplemental Declaration of Joshua Mailey;

Exhibit 6: Supplemental Declaration of Alejandro Pieroni; and

Exhibit 7: [Proposed] Order Granting Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs.

FINAL APPROVAL

4. We previously submitted the Declaration of Adam M. Apton and Brenda Szydlo in Support of Plaintiffs' Motion for Preliminary Approval of

Settlement on September 22, 2023 (the "Joint Declaration" or "Joint Decl.") (Dkt. No. 45-2). We adopt those statements and incorporate them herein as if they were set forth below. In the Joint Declaration, we expressed support for the Settlement and explained why we believed that it represented an excellent result for the Class. We continue to believe that today and, in fact, even more so based on the absence of any objections to the Settlement from potential Settlement Class Members.

5. In this Action, Lead Counsel (i) conducted a comprehensive investigation which included interviews with former employees of Humanigen, Inc. ("Humanigen" or the "Company"), detailed reviews of Humanigen's SEC filings, press releases, analyst reports, and other publicly available information; (ii) had consultations with experts on issues pertaining to the FDA and damages; (iii) researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) prepared and filed the Complaint and the Amended Complaint; (v) engaged in arm's-length settlement negotiations, including a mediation session facilitated by a private mediator, as well as negotiations with Humanigen and the Committee of Unsecured Creditors once the Company entered bankruptcy; and (vi) devoted the substantial time and resources needed to secure, prepare, and seek approval by the Court of the $3 million Settlement. Even assuming Plaintiffs could have successfully overcome Defendants' motion to dismiss, Class Counsel anticipated that discovery and trial would have been highly contested.

Plaintiffs would then have been required to successfully overcome likely post-trial appeals.

6. The Court-appointed Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), has faithfully carried out its obligation to disseminate notice to potential Settlement Class Members. As described in the accompanying Cavanaugh Declaration, A.B. Data has published notice of the Settlement in print and online. Cavanaugh Decl. ¶¶11-12. It also mailed the Postcard Notice to over 78,500 potential Settlement Class Members. The Claims Administrator has not received any objections to any aspect of the Settlement and, to date, only four requests for exclusion covering eight individual investors have been received. ¶¶14-15. In our experience as class action securities litigators, this suggests that the Settlement is broadly supported by the Class.

7. In accordance with the Court's Preliminary Approval Order, the Claims Administrator completed mailing copies of the Postcard Notice to potential Settlement Class Members and their nominees. *See* Cavanaugh Decl. ¶10. As described above, over 78,500 Postcard Notices were disseminated to potential Settlement Class Members. *Id.* ¶10. A.B. Data also published notice of the Settlement over *PR Newswire* on November 29, 2023. *Id*. ¶11. Moreover, A.B. Data created a website providing information about the Settlement that has been available for public viewing since November 22, 2023. *Id*. ¶12. Pursuant to the Preliminary

Order, the Postcard Notice, which directed potential Settlement Class Members to the website containing the Notice, advised potential Settlement Class Members of (i) the proposed Settlement of this Action; (ii) their right to exclude themselves from the Settlement Class; (iii) their right to object to any aspect of the Settlement, the Plan of Allocation, the request for attorneys' fees, litigation expenses, and compensatory awards to Plaintiffs; (iv) the method for submitting a claim form in order to be eligible to receive a payment from the proceeds of the Settlement; and (v) the binding effect of the proceedings, rulings, orders, and judgments in this Action on all persons not excluded from the Settlement Class. *See* Dkt. No. 44-5 (Postcard Notice); Dkt. No. 44-2 (Notice).

8. In addition, copies of the Notice, Claim Form, Amended Complaint, Stipulation, Preliminary Approval Order, along with other relevant Court documents have been posted to the website established for the Action. *See* Cavanaugh Decl. ¶¶11-12. The website includes the ability to file a claim online and a link to a document with detailed instructions for Settlement Class Members submitting their claims electronically. *Id.* Further, the website has contact information for A.B. Data and Lead Counsel, including a toll-free telephone number that Settlement Class Members can use to obtain additional information. *Id.* Having fully complied with the Court's Notice directives (as ordered in the Preliminary Approval Order (Dkt. No. 48)), and not receiving any objections and only four exclusion requests

(Cavanaugh Decl. ¶¶14-15), the Court can infer that the Class supports approval of the Settlement.

9. Here, the $3 million Settlement Amount supports the conclusion that the Settlement is fair, reasonable, and adequate. This is primarily because Plaintiffs' theory of liability presented unique risks that, even if overcome, were far from guaranteed to be successful. In addition to the above, and what we identified in the Joint Declaration, we also believe that Humanigen's bankruptcy filing supports approval of the Settlement.

10. On January 3, 2024, Humanigen filed a chapter 11 bankruptcy petition seeking relief under Title 11, United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). *See* Dkt. No. 50 (Suggestion of Bankruptcy). Pursuant to the Stipulation filed prior to Humanigen's bankruptcy petition, the Company's insurer funded the $3 million proposed Settlement in this Action which is currently held in an escrow account controlled by Lead Counsel. *See* Dkt. No. 52. However, the terms of the Settlement required approval from the Bankruptcy Court and such approval had to be obtained through the filing of a Bankruptcy Rule 9019 motion with the Bankruptcy Court. *See* Dkt. No. 65. Lead Counsel had to negotiate extensively with Humanigen's bankruptcy counsel and counsel for the official committee of unsecured creditors to enforce the Settlement and obtain approval pursuant to Rule 9019. On May 16, 2023,

Humanigen filed a Rule 9019 Motion styled *Debtor's Motion for an Order (I) Approving the Stipulation of Settlement and (II) Modifying the Automatic Stay as Necessary in Connection Therewith* ("Motion for Approval"). *See Humanigen, Inc.*, 1:24-bk-10003, Dkt. No. 272 (Bankr. D. Del. May 16, 2024). On June 10, 2024, the Bankruptcy Court granted Humanigen's Motion for Approval under Rule 9019. *Id.* at Dkt. No. 290. Thus, the proposed Settlement truly is the only avenue for damaged shareholders to receive any compensation for their losses from the Company.

11. For all the above reasons, in addition to the reasons set forth in Plaintiffs' Brief in Support of Motion for Final Approval of Settlement ("Final Approval Brief") and the previously submitted Joint Declaration, we support the Settlement and respectfully request that the Court approve Plaintiffs' Motion for Final Approval of Settlement.

PLAN OF ALLOCATION

12. Pursuant to the Preliminary Approval Order, the Notice fully described the proposed Plan of Allocation. *See* Dkt. No. 44-2 (Notice) at 9-17. Lead Counsel created the proposed Plan of Allocation after consulting with Plaintiffs' expert and the Claims Administrator, designing it to reimburse Settlement Class Members in a fair and reasonable manner. The Plan of Allocation is based in part on the same damages report Plaintiffs used to estimate its maximum recoverable damages, and it closely tracks Plaintiffs' theory of the case.

13. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Settlement Class Members who timely submit appropriate claim forms. Pursuant to the Plan of Allocation, the Claims Administrator, under the direction of Lead Counsel, will determine each claimant's *pro rata* share of the Net Settlement Fund based upon each claimant's Recognized Loss. Each similarly situated authorized claimant will receive a *pro rata* share of the Recognized Losses attributed to their claim, with that share to be determined by the ratio that the authorized claimant's allowed claim bears to the total allowed claims of all authorized claimants.

14. The Plan of Allocation is tailored to compensate the losses of the Settlement Class Members equitably and is based upon time periods during the Class Period when various corrective disclosures occurred, consistent with loss causation principles of *Dura Pharma. Inc., v. Broudo*, 544 U.S. 336 (2005).

ATTORNEYS' FEES

15. The Postcard Notice and Notice informed Settlement Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 33% of the Settlement Fund and for reimbursement of Lead Counsel's litigation expenses in an amount not to exceed $75,000, plus interest. Dkt. No. 44-5 (Postcard Notice); Dkt. No. 44-2 (Notice) at 20. As set forth in Plaintiffs' Brief in Support of Motion for Award of Attorneys' Fees, Reimbursement of Litigation

Expenses, and Compensatory Awards to Plaintiffs (the "Fee Brief"), Lead Counsel seeks only 25% of the common fund, plus interest, which falls in line with similar awards that courts in this Circuit have granted.

16. Lead Counsel achieved a favorable result for the Settlement Class at risk and expense to themselves. Throughout this litigation, Lead Counsel was committed to the interests of the Settlement Class and invested the time and resources necessary to resolve the Settlement Class's claims. As a result of this Settlement, Settlement Class Members will receive compensation for their losses and avoid the risk of no recovery at all.

17. The total amount of time expended by attorneys and professional staff employed by Levi & Korsinsky, Co-Lead Counsel to Plaintiffs, is 584.05 hours. The total amount of time expended by attorneys and professional staff employed by Pomerantz, Co-Lead Counsel to Plaintiffs, is 793.99 hours. In total, Lead Counsel expended 1,378.04 hours in prosecuting the Action. This number is derived from the time records that Levi & Korsinsky and Pomerantz regularly maintained. A listing of the professionals at Levi & Korsinsky and Pomerantz who worked on this matter, the number of hours spent by each such professional, and their hourly rates is set forth in detail in the Apton Fee Declaration (¶3) and the Szydlo Fee Declaration (¶3), respectively. The total value of the services performed in this case by Levi &

Korsinsky and Pomerantz, based upon our current rates, is $435,135, and $625,632, respectively, for a grand total of $1,060,767.

18. If Lead Counsel's request for 25% of the Settlement Fund as attorneys' fees is granted, Lead Counsel would receive a fee of $750,000, plus interest. This fee award would represent a negative lodestar multiplier— *i.e.*, it would not fully compensate counsel. This fractional multiplier is materially below other multipliers that courts in this Circuit typically award in securities class actions.

19. As reflected in the firms' resumes, Lead Counsel are experienced and skilled practitioners in the securities litigation field and have a successful track record in such securities, shareholder and other complex class action cases. *See* Dkt. No. 45-4 (Levi & Korsinsky Firm Resume); *see also* Dkt No. 45-5 (Pomerantz Firm Resume).

20. Moreover, Lead Counsel's efforts for the benefit of the Settlement Class will continue if the Court approves the Settlement. In addition to the time expended to date, Lead Counsel will expend additional time preparing Plaintiffs' reply in support of final approval, preparing for and attending the final approval hearing, directing the claims administration process, and filing a motion for final distribution, and will not seek additional compensation for this work. *Id.*

21. Lead Counsel undertook this class action on a contingency fee basis. We summarize in the Joint Declaration, and further describe in the Final Approval Brief, the risks counsel assumed in bringing these claims to a successful conclusion.

22. Those risks are also relevant to an award of attorneys' fees. We also describe in detail above and in the Fee Brief the risks Lead Counsel assumed and the time and expenses it incurred without any payment.

23. From the outset, Lead Counsel understood that they were embarking on a complex, expensive, and probably lengthy litigation with no guarantee of being compensated for the investment of their time and money that the case would have required. Lead Counsel has received no compensation during the course of this litigation, pending since August 2022.

24. The commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint and to take a case to trial. Only after such efforts will sophisticated defendants engage in serious settlement negotiations at meaningful levels.

25. As a result of persistent efforts in the face of substantial risks and uncertainties, Lead Counsel achieved a fair, adequate, and reasonable recovery for the Settlement Class. In consideration of Lead Counsel's efforts and the favorable

result achieved, we believe that a 25% fee, plus interest, is reasonable and that the Court should approve it.

REIMBURSEMENT OF LITIGATION EXPENSES

26. Lead Counsel seeks reimbursement of litigation expenses in the amount of $75,000, plus interest. Levi & Korsinsky has incurred $30,962.08, and Pomerantz has incurred $45,559.36, in litigation expenses in connection with the prosecution of this Action. Apton Fee Decl. ¶5; Szydlo Fee Decl. ¶5. The total expenses of Lead Counsel are $76,521.44. These expenses were reasonable and necessary for the prosecution of the Action.

27. From the outset, Lead Counsel was aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the case was successfully resolved. Lead Counsel also understood that, even assuming that the case was ultimately successful, reimbursement of expenses would not compensate them for the lost use of funds they advanced to prosecute this Action. Thus, Lead Counsel took significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

28. A listing of the expenses incurred by Levi & Korsinsky compiled from its regularly maintained records, are set forth in the Apton Fee Declaration ¶¶5-6. A listing of the expenses incurred by Pomerantz compiled from its regularly maintained records, are set forth in the Szydlo Fee Declaration ¶¶5-6. The expenses

incurred pertaining to this case are reflected in the books and records of Levi & Korsinsky and Pomerantz, and are an accurate record of the expenses incurred.

29. Litigation expenses for which Lead Counsel seeks reimbursement include expert consultant fees, investigator fees, mediator fees, legal research fees, document review fees, transportation fees, and filing fees, among others. Each of these expenses were reasonable and necessary for the successful prosecution of this Action. The damages expert performed a damages analysis so that Lead Counsel could properly evaluate the damages in connection with this litigation, as well as negotiate the Settlement.

30. In light of the complex nature of securities class action litigation and the difficulties in pleading and ultimately proving liability, as well as proving loss causation and damages at trial, the litigation expenses incurred were reasonable and necessary to pursue the interests of the Class. Thus, Lead Counsel respectfully requests reimbursement of $75,000, plus interest, for the litigation expenses incurred during the prosecution of this Action.

COMPENSATORY AWARDS TO PLAINTIFFS

31. Lead Counsel is requesting incentive awards for (i) Co-Lead Plaintiff Dr. Scott Greenbaum in the amount of $7,500; (ii) Co-Lead Plaintiff Joshua Mailey in the amount of $7,500; (iii) and Plaintiff Alejandro Pieroni in the amount of $7,500. The supplemental declarations of Dr. Scott Greenbaum, Joshua Mailey, and

Alejandro Pieroni, filed herewith, outline the time they devoted to this litigation. All three Plaintiffs were actively involved in this litigation and (i) reviewed court filings in the Action and received periodic reports from Lead Counsel concerning the work being done; (ii) conferred with Lead Counsel with respect to the Settlement and mediation efforts; and (iii) researched and collected relevant trading documents.

32. As explained in the Fee Brief, awards of similar magnitude are commonly awarded to lead and named plaintiffs in securities class actions. They are necessary to ensure that these plaintiffs are not made worse off for their service to the Class.

33. The awards to Plaintiffs totaling $22,500, are fair and reasonable.

We declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July 2024.

/s/ Adam M. Apton
Adam M. Apton

/s/ Brenda Szydlo
Brenda Szydlo

Adam M. Apton
LEVI & KORSINSKY, LLP
33 Whitehall Street, 17th Floor
New York, New York 10004
Telephone: (212) 363-7500
Facsimile: (212) 363-7171
Email: aapton@zlk.com

Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **DECLARATION OF ADAM M. APTON ON BEHALF OF LEVI & KORSINSKY, LLP CONCERNING ATTORNEYS' FEES AND EXPENSES**

I, ADAM. APTON, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I, Adam M. Apton, am a partner at the law firm of Levi & Korsinsky, LLP ("Levi & Korsinsky"), attorneys for Co-Lead Plaintiffs Dr. Scott Greenbaum and Joshua Mailey, and Plaintiff Alejandro Pieroni (collectively, the "Plaintiffs"), and Co-Lead Counsel for the Class, along with Pomerantz LLP ("Pomerantz"). I am admitted to practice before this Court and have personal knowledge of the various

matters set forth herein based on my day-to-day participation in the prosecution and settlement of this litigation. If called upon, I could and would competently testify thereto.

2. In this Action, Lead Counsel (i) conducted a comprehensive investigation which included interviews with former employees of Humanigen, Inc. ("Humanigen" or the "Company"), detailed reviews of Humanigen's SEC filings, press releases, analyst reports, and other publicly available information; (ii) had consultations with experts on issues pertaining to the FDA and damages; (iii) researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) prepared and filed the Complaint and the Amended Complaint; (v) engaged in arm's-length settlement negotiations, including a mediation session facilitated by a private mediator; and (vi) devoted the substantial time and resources needed to secure, prepare, and seek approval by the Court of the $3 million Settlement.

3. The chart below summarizes the time Levi & Korsinsky attorneys and professional staff spent on this Action (excluding individuals with less than 10 hours) and calculates the lodestar based on their current billing rates. I oversaw preparation of the chart from contemporaneous, daily time records that Levi & Korsinsky regularly prepares and maintains.

Employee	Hourly Rate	Total Hours	Lodestar
Adam M. Apton (P)	$900	291.00	$261,900.00
Devyn Glass (A)	$600	196.75	$118,050.00
Gregory Potrepka (P)	$900	14.00	$12,600.00
Shannon Hopkins (P)	$1,000	14.00	$14,000.00
Rachel Berger (A)	$500	36.50	$18,250.00
Matthew Snitzer (AL)	$325	20.00	$6,500.00
Amaranta Elder (PL)	$325	11.80	$3,835.00
Total:	-	584.05	$435,135.00

* (P) – Partner | (A) – Associate | (PL) – Paralegal | (AL) – Analyst

4. From the inception of this Action through June 14, 2024, Levi & Korsinsky professionals spent **584.05** hours prosecuting this Action. Levi & Korsinsky's lodestar is **$435,135.00**.

5. Lead Counsel seeks reimbursement of litigation expenses in the amount of $75,000, plus interest. Levi & Korsinsky spent **$30,962.08** on out-of-pocket expenses prosecuting this action for which it has not been reimbursed, broken down as follows:

Category	Amount
Mediation	$7,705.45
Filing Fees	$402.00
Notices	$9,025.20
Electronic Research	$5,959.09
Document Review	$7,778.10

Photocopies	$92.24
TOTAL EXPENSES	**$30,962.08**

6. Levi & Korsinsky's books and records reflect in detail the expenses I summarize above. Levi & Korsinsky prepares these books and records in the normal course of business from expense vouchers, check records, and billing statements. To the best of my knowledge, these expenses are an accurate record of the expenses incurred in the prosecution of this Action.

We declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July 2024.

/s/ Adam M. Apton
Adam M. Apton

Brenda Szydlo (admitted *pro hac vice*)
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
Email: bszydlo@pomlaw.com

Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **DECLARATION OF BRENDA SZYDLO ON BEHALF OF POMERANTZ LLP CONCERNING ATTORNEYS' FEES AND EXPENSES**

I, BRENDA SZYDLO, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner at the law firm of Pomerantz LLP ("Pomerantz"), attorneys for Co-Lead Plaintiffs Dr. Scott Greenbaum and Joshua Mailey, and Plaintiff Alejandro Pieroni (collectively, the "Plaintiffs"), and Co-Lead Counsel for the Class, along with Levi & Korsinsky LLP ("Levi & Korsinsky"). I am admitted *pro hac vice* to practice before this Court and have personal knowledge of the various

matters set forth herein based on my day-to-day participation in the prosecution and settlement of this litigation. If called upon, I could and would competently testify thereto.

2. In this Action, Lead Counsel (i) conducted a comprehensive investigation which included interviews with former employees of Humanigen, Inc. ("Humanigen" or the "Company"), detailed reviews of Humanigen's SEC filings, press releases, analyst reports, and other publicly available information; (ii) had consultations with experts on issues pertaining to the FDA and damages; (iii) researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) prepared and filed the Complaint and the Amended Complaint; (v) engaged in arm's-length settlement negotiations, including a mediation session facilitated by a private mediator; and (vi) devoted the substantial time and resources needed to secure, prepare, and seek approval by the Court of the $3 million Settlement.

3. The chart below summarizes the time Pomerantz attorneys and professional staff spent on this Action and calculates the lodestar based on their current billing rates. I oversaw preparation of the chart from contemporaneous, daily time records that Pomerantz regularly prepares and maintains.

Employee	Hourly Rate	Total Hours	Lodestar
Jeremy Lieberman (P)	$1,325	22.00	$29,150.00
Brenda Szydlo (P)	$1,000	418.60	$418,600.00

James LoPiano (A)	$550	23.74	$13,057.00
Dean Ferrogari (A)	$500	329.65	$164,825.00
TOTAL:	-	**793.99**	**$625,632.00**

* (P) – Partner | (A) – Associate

4. From the inception of this Action through June 10, 2024, Pomerantz professionals spent **793.99** hours prosecuting this Action. Pomerantz's lodestar is **$625,632.00**.

5. Lead Counsel seeks reimbursement of litigation expenses in the amount of $75,000, plus interest. Pomerantz spent **$45,559.36** on out-of-pocket expenses prosecuting this Action for which it has not been reimbursed, broken down as follows:

Category	Amount
Filing Fees	$1,480.00
Online Computer Legal Research Fees	$1,727.04
Expert Fees	$24,771.00
Investigator Fees	$6,197.41
Meal Fees	$90.30
Mediator Fees	$7,705.47
Overtime-Clerical Fees	$370.19
Photocopying Fees	$88.80
Postage and Overnight Mail Fees	$164.42
Press Releases and Newswires Fees	$2,705.00
Travel Fees	$259.73

TOTAL EXPENSES	**$45,559.36**

6. Pomerantz's books and records reflect in detail the expenses I summarize above. Pomerantz prepares these books and records in the normal course of business from expense vouchers, check records, and billing statements. To the best of my knowledge, these expenses are an accurate record of the expenses incurred in the prosecution of this Action.

We declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of July 2024.

/s/ Brenda Szydlo
Brenda Szydlo

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **DECLARATION OF ANN CAVANAUGH REGARDING SETTLEMENT CLASS NOTICE AND REPORT ON OBJECTIONS AND REQUESTS FOR EXCLUSION RECEIVED**

I, ANN CAVANAUGH, hereby declare under penalty of perjury as follows:

1. I am a Project Manager of A.B. Data, Ltd.'s Class Action Administration Company ("A.B. Data"). The following statements are based on my personal knowledge and information provided by other A.B. Data employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. Pursuant to its Order Granting Preliminary Approval of Settlement dated November 8, 2023 (ECF No. 48, the "Preliminary Approval Order"), the Court approved the retention of A.B. Data as the Claims Administrator for the above-captioned action (the "Action").[1] I submit this Declaration to provide the Court with proof of the mailing of the Court-approved Postcard Notice (the "Postcard Notice"), the publication of the Summary Notice, and to report on the requests for exclusion from the Settlement Class in connection with dissemination of the Postcard Notice.

[1] Unless otherwise defined in this Declaration, all capitalized terms have the meanings set forth in the Stipulation of Settlement, dated September 22, 2023 (the "Stipulation"). ECF No. 44.

MAILING OF THE POSTCARD NOTICE

3. Pursuant to the Preliminary Approval Order, A.B. Data was responsible for mailing the Postcard Notice to potential Settlement Class Members and nominees. A copy of the Postcard Notice is attached to this Declaration as Exhibit A.

4. On November 20, 2023, A.B. Data received a data file from Defendants' Counsel containing the names and addresses of 92 unique potential Settlement Class Members. On November 22, 2023, A.B. Data caused the Postcard Notice to be disseminated by First-Class Mail to those 92 potential Settlement Class Members.

5. As in most class actions of this nature, the large majority of potential Settlement Class Members are beneficial purchasers whose securities are held in "street name" – *i.e.*, the securities are purchased by brokerage firms, banks, institutions, and other third-party nominees in the names of the respective nominees, on behalf of the beneficial purchasers. A.B. Data maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees (the "Record Holder Mailing Database"). A.B. Data's Record Holder Mailing Database is updated from time to time as new nominees are identified and others go out of business. At the time of mailing, the Record Holder Mailing Database contained 4,967 mailing records. On November 22, 2023, A.B. Data caused the Postcard Notice to be sent by First-Class Mail to the 4,967 addresses whose mailing records were contained in the Record Holder Mailing Database.

6. In total, 5,059 Postcard Notices were mailed to potential Settlement Class Members and their nominees by First-Class Mail on November 22, 2023.

7. On November 22, 2023, A.B. Data submitted the Notice of Pendency and Proposed Settlement of Class Action (the "Long-Form Notice") and the Proof of Claim and Release (collectively, the "Notice Package") to The Depository Trust Company ("DTC") to post on its

Legal Notice System, which offers DTC member banks and brokers access to a comprehensive library of notices concerning DTC-eligible securities.

8. The Long-Form Notice directed those who purchased or otherwise acquired Humanigen securities during the Settlement Class Period (*i.e.*, May 16, 2020, through July 12, 2022, inclusive) as a nominee for a beneficial owner to, within ten (10) days of receipt of the Postcard Notice, either send a copy of the Postcard Notice by First-Class Mail to such beneficial owners or provide to A.B. Data a list of names and addresses of such Persons.

9. Through the date of this Declaration, A.B. Data has received an additional 13,906 names and addresses of potential Settlement Class Members from individuals or brokerage firms, banks, institutions, and other nominees. A.B. Data has also received requests from brokers and other nominee holders for 59,660 Postcard Notices to be forwarded directly by the nominees to their customers. All such requests have been, and will continue to be, complied with and addressed in a timely manner.

10. Through the date of this Declaration, a total of 78,625 Postcard Notices have been disseminated to potential members of the Settlement Class or their nominees. In addition, A.B. Data has remailed 462 Postcard Notices to persons and entities whose original mailings were returned by the U.S. Postal Service ("USPS") and for which updated addresses were provided to A.B. Data or obtained through a third-party vendor.

PUBLICATION OF THE SUMMARY NOTICE

11. Pursuant to Paragraph 12 of the Preliminary Approval Order, A.B. Data caused the Summary Notice to be published over *PR Newswire* on November 29, 2023. Proof of this publication of the Summary Notice is attached hereto as Exhibits B.

WEBSITE

12. On November 22, 2023, A.B. Data established a website designated for the Action (www.HumanigenSecuritiesLitigation.com). The website includes information regarding the Action and the proposed Settlement, including the exclusion, objection, and claim filing deadlines, and the date, time, and location of the Court's Settlement Hearing. Copies of the Long-Form Notice, Proof of Claim and Release, Stipulation of Settlement, Preliminary Approval Order, and other documents related to the Action are posted on the website and are available for downloading. In addition, the website includes the ability to file a claim online and a link to a document with detailed instructions for Settlement Class Members submitting their claims electronically. Further, the website has contact information for A.B. Data and Lead Counsel, including a toll-free telephone number, that Settlement Class Members can use to obtain additional information. The website is accessible 24 hours per day, 7 days a week.

TOLL-FREE TELEPHONE LINE

13. On November 22, 2023, A.B. Data established and continues to maintain a case-specific, toll-free telephone helpline, 1-877-354-3785, with an interactive voice response system and live operators, to accommodate potential Settlement Class Members with questions about the Action. Callers requiring further help have had the option to be transferred to a live operator during business hours.

REPORT ON OBJECTIONS AND REQUESTS FOR EXCLUSION

14. The Long-Form Notice informed potential Settlement Class Members that requests for exclusion from the Settlement Class are to be mailed to the Claims Administrator postmarked no later than February 8, 2024. Pursuant to the Court's June 14, 2024 Order (the "Text Order") (ECF No. 71), the deadline to submit a request for exclusion was extended to August 6, 2024. The Long-Form Notice set forth the information that was required to be included in each request for

exclusion. As of the date of this Declaration, A.B. Data has received four requests for exclusion covering eight individual investors and 142,500 shares. A.B. Data will submit a supplemental declaration after the August 6, 2024, exclusion deadline summarizing all requests for exclusion received.

15. According to the Long-Form Notice, Settlement Class Members seeking to object to the proposed Settlement, are required to submit their objection in writing such that the request is received by the Parties and filed with the Court no later than February 8, 2024. Per the Text Order the deadline was extended to August 6, 2024. Although Settlement Class Members were not required to send objections to A.B. Data, A.B. Data has not received any misdirected objections.

16. During the claims administration process, A.B. Data, will review and process all Claims received, provide Claimants with an opportunity to cure any deficiency or request judicial review of the denial of their Claims, if applicable, and will ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund, as calculated under the Plan of Allocation.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

Executed on July 26, 2024.

ANN CAVANAUGH

EXHIBIT A

COURT-ORDERED LEGAL NOTICE

In re Humanigen, Inc. Securities Litigation
Case No. 2:22-cv-05258

Important Notice about a Securities Class Action Settlement.

You may be entitled to a CASH payment. This Notice may affect your legal rights. Please read it carefully.

Website:
www.HumanigenSecuritiesLitigation.com
Email:
info@HumanigenSecuritiesLitigation.com

In re Humanigen, Inc. Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 173107
Milwaukee, WI 53217
Toll-Free Number: 877-354-3785

Postal Service: Please Do Not
Mark or Cover Barcode

THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT. PLEASE VISIT WWW.HUMANIGENSECURITIESLITIGATION.COM FOR MORE INFORMATION.

There has been a proposed Settlement of claims against Humanigen, Inc. ("Humanigen"), Cameron Durrant, and Dale Chappell (collectively, the "Defendants"). The Settlement would resolve a lawsuit in which Plaintiffs allege Defendants disseminated materially false and misleading information to the investing public about Humanigen between May 16, 2020, and July 12, 2022, inclusive (the "Class Period"), in violation of the federal securities laws. Defendants deny any wrongdoing. You received this Postcard Notice because you or someone in your family may have purchased or otherwise acquired Humanigen securities during the Class Period.

Defendants have agreed to pay a Settlement Amount of $3,000,000. The Settlement provides that the Settlement Fund, after deduction of any Court-approved attorneys' fees and expenses, notice and administration costs, and taxes, is to be divided among all Settlement Class Members who submit a valid Proof of Claim, in exchange for the settlement of this case and the Released Claims by Settlement Class Members. **For all details of the Settlement, read the Stipulation and full Notice, available at www.HumanigenSecuritiesLitigation.com.**

Your share of the Settlement proceeds will depend on the number of valid Claims submitted, and the number, size, and timing of your transactions in Humanigen securities. If every eligible Settlement Class Member submits a valid Proof of Claim Form, the average recovery will be $0.047 per eligible share before expenses and other Court-ordered deductions. Your award will be determined *pro rata* based on the number of claims submitted. This is further explained in the detailed Notice found on the Settlement website.

To qualify for payment, you must submit a Proof of Claim Form. The Proof of Claim Form can be found on the website www.HumanigenSecuritiesLitigation.com or will be mailed to you upon request to the Claims Administrator (877-354-3785). **Proof of Claim Forms must be submitted online or postmarked by March 7, 2024**. If you do not want to be legally bound by the Settlement, you must exclude yourself by February 8, 2024, or you will not be able to sue the Defendants about the legal claims in this case. If you exclude yourself, you cannot get money from this Settlement. If you want to object to the Settlement, you may file an objection by February 8, 2024. The detailed Notice explains how to submit a Proof of Claim Form, exclude yourself, or object.

The Court will hold a hearing in this case on March 7, 2024, to consider whether to approve the Settlement and a request by the lawyers representing the Settlement Class for up to 33% of the Settlement Fund in attorneys' fees, plus actual expenses up to $75,000 for litigating the case and negotiating the Settlement, and awards to Plaintiffs should be approved up to $100,000. You may attend the hearing and ask to be heard by the Court, but you do not have to. For more information, call toll-free (877-354-3785) or visit the website www.HumanigenSecuritiesLitigation.com and read the detailed Notice.

EXHIBIT B

Levi & Korsinsky, LLP and Pomerantz LLP Announce a Proposed Settlement for the In re Humanigen, Inc. Securities Litigation

NEWS PROVIDED BY
Levi & Korsinsky, LLP →
29 Nov, 2023, 10:00 ET

NEW YORK, Nov. 29, 2023 /PRNewswire/ --

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME SUMMARY NOTICE

TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED HUMANIGEN, INC. SECURITIES BETWEEN MAY 16, 2020 AND JULY 12, 2022.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure, that a hearing will be held on March 7, 2024, at 12:00 p.m., before the Honorable William J. Martini, United States District Judge, in Courtroom MLK 4B at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, for the purpose of determining, among other things, whether the following matters should be approved: (1) the proposed Settlement of the claims in the Litigation for the sum of $3,000,000.00 in cash should be approved by the Court as fair, reasonable, and adequate to the Members of the Settlement Class; (2) whether, thereafter, the Litigation should be dismissed with prejudice as set forth in the Stipulation of Settlement dated September 22, 2023 ("Stipulation"); (3) whether the Plan of Allocation is fair, reasonable and adequate and therefore should be approved; and (4) whether

the application of Lead Counsel for the payment of attorneys' fees and reimbursement of expenses incurred in connection with the Litigation and awards to the Plaintiffs should be approved.

If you purchased or otherwise acquired Humanigen securities between May 16, 2020 and July 12, 2022, both dates inclusive, your rights may be affected by the settlement of this Litigation. If you have not received the detailed Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and a copy of the Proof of Claim and Release Form, you may obtain them free of charge by contacting the Claims Administrator, by mail at: *In re Humanigen, Inc. Securities Litigation*, Claims Administrator, c/o A.B. Data, Ltd. P.O. Box 173107, Milwaukee, WI 53217.

If you are a member of the Settlement Class and wish to share in the distribution of the Settlement Fund, you must submit a Proof of Claim no later than March 7, 2024, establishing that you are entitled to recovery. As further described in the Notice, you will be bound by any Judgment entered in the Litigation, regardless of whether you submit a Proof of Claim, unless you exclude yourself from the Settlement Class, in accordance with the procedures set forth in the Notice, no later than February 8, 2024. Any objections to the Settlement, Plan of Allocation or attorneys' fees and expenses must be filed and served, in accordance with the procedures set forth in the Notice, no later than February 8, 2024.

Inquiries, other than requests for the Notice, may be made to Lead Counsel for the Settlement Class: Adam M. Apton, Esq., Levi & Korsinsky, LLP, 33 Whitehall Street, 17th Floor, New York, New York 10004, aapton@zlk.com; and Jeremy A. Lieberman, Esq., Pomerantz LLP, 600 3rd Avenue, New York, New York 10016, jalieberman@pomlaw.com.

INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT, THE CLERK'S OFFICE, THE DEFENDANTS, OR DEFENDANTS' COUNSEL.

If you have any questions about the Settlement, you may contact Lead Counsel at the address listed above.

DATED: NOVEMBER 8, 2023

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

SOURCE Levi & Korsinsky, LLP

Select Country

Submit

By signing up you agree to receive content from us.
Our newsletters contain tracking pixels to help us deliver unique content based on each subscriber's engagement and interests. For more information on how we will use your data to ensure we send you relevant content please visit our PRN Consumer Newsletter Privacy Notice. You can withdraw your consent at any time in the footer of every email you'll receive.

EXHIBIT C

***In re Humanigen, Inc. Securities Litigation*, Case No. 2:22-cv-05258-WJM-AME**

Exclusion Report

Exclusion Number	Name	Postmark Date	Share Total
1.	Rob Schaefer	01/10/2024	NA
2.	Charles Caston	02/01/2024	13,500
3.	John D. Johnston	02/08/2024	34,000
3a.	Trudy J. Johnston	02/08/2024	Shares included in total for John D. Johnston.
3b.	Estate of Joyce N. Johnston	02/08/2024	Shares included in total for John D. Johnston.
4.	John and Lisa Nixon Family Trust	02/08/2024	40,000
4a.	Lisa L. Nixon	02/08/2024	35,000
4b.	Norma Jane Holt	02/08/2024	20,000

Exclusion 1

Postmarked January 10, 2024

[redacted]

From: [redacted]
Sent: Wednesday, January 10, 2024 10:52 AM
To: info@humanigensecuritieslitigation.com
Subject: Written Request for Exclusion

EXTERNAL SENDER

Dear Humanigen Suers,

While I agree that the people behind Humanigen should pay for deceiving shareholders and basically stealing from them, I have to disagree with settling for the pittance that is $3M, around 4 cents a share. Please consider this my written request for exclusion from the lawsuit.

Thanks,
Rob Schaefer
[redacted]

Exclusion 2

Postmarked February 01, 2024

January 29, 2024

HUMANIGEN, INC. SECURITIES LITIGATION

EXCLUSIONS

c/o A.B. Data, Ltd.

P.O. Box 173001

Milwaukee, WI 53217

I, Charles Caston, wish to exclude myself from the Settlement Class. My address is [redacted] My Humanigen transactions between May 16, 2020 and July 12, 2022, inclusive are :

Date	Shares	Total Cost	Per Share
03/31/2022	200	$ 602.00	$ 3.01
03/21/2022	112	$ 418.88	$ 3.74
12/21/2021	788	$ 3,015.75	$ 3.83
11/19/2021	500	$ 3,037.50	$ 6.08
11/16/2021	600	$ 4,050.00	$ 6.75
11/15/2021	91	$ 567.84	$ 6.24
11/15/2021	300	$ 1,871.91	$ 6.24
11/15/2021	9	$ 56.07	$ 6.23
10/25/2021	1000	$ 6,709.00	$ 6.71
09/09/2021	1000	$ 6,030.00	$ 6.03
09/08/2021	300	$ 4,524.00	$ 15.08
09/07/2021	300	$ 4,668.00	$ 15.56
09/07/2021	200	$ 3,184.00	$ 15.92
09/03/2021	200	$ 3,186.00	$ 15.93
09/03/2021	99	$ 1,585.00	$ 16.01
09/03/2021	201	$ 3,220.02	$ 16.02
08/30/2021	200	$ 3,350.00	$ 16.75
08/30/2021	300	$ 5,163.00	$ 17.21
08/27/2021	300	$ 5,223.00	$ 17.41
08/26/2021	300	$ 5,331.00	$ 17.77
08/19/2021	200	$ 3,020.00	$ 15.10
08/16/2021	400	$ 6,452.00	$ 16.13
08/11/2021	300	$ 5,079.00	$ 16.93

1/2

08/10/2021	500	$ 9,000.00	$ 18.00
08/06/2021	99	$ 1,556.28	$ 15.72
08/06/2021	1	$ 15.72	$ 15.72
08/06/2021	100	$ 1,581.00	$ 15.81
08/04/2021	100	$ 1,606.99	$ 16.07
07/30/2021	200	$ 3,202.00	$ 16.01
07/26/2021	300	$ 4,893.00	$ 16.31
7/1/2022	800	$ 1,424.00	$ 1.78
7/2/2022	1400	$ 2,828.00	$ 2.02
7/7/2022	1000	$ 2,030.00	$ 2.03
3/30/2022	100	$ 309.00	$ 3.09
3/15/2022	300	$ 753.00	$ 2.51
12/3/2021	500	$ 3,029.60	$ 6.06
7/26/2021	200	$ 3,242.00	$ 16.21
Total	**13,500**	**$ 115,814.56**	

Sincerely yours,

Charles Caston

2/2

[redacted]

[redacted]

CERTIFIED MAIL®

[redacted]

RDC 99

53217

U.S. POSTAGE
FCM LETTER
WASHINGTON, D
FEB 01, 2024

$8.73

R2303S100586-77

HUMANIGEN INC. SECURITIES LITIGATION
EXCLUSIONS
C/O A.B. DATA, LTD
PO BOX 173001
MILWAUKEE, WI 53217
53217-801201

Exclusion 3

Postmarked February 08, 2024

Humanigen, Inc. Security Litigation Exclusions

c/o A.B. Data, Ltd

P.O. Box 173001

Milwaukee, WI 53217

Ref: exclusions from Humanigen Class Action Suit Case No. 2:22-cv-05258-WJM-AME

Dear Sir/Mam

My name is John D. Johnston and I live at [redacted]. along with my wife Trudy J. Johnston Same address and the Estate of the late Joyce N. Johnston Estate would like for our approximately 34,000 shares be excluded from the above designated settlement. Our shares are being held in accounts at RW Baird and Wells Fargo Advisors.

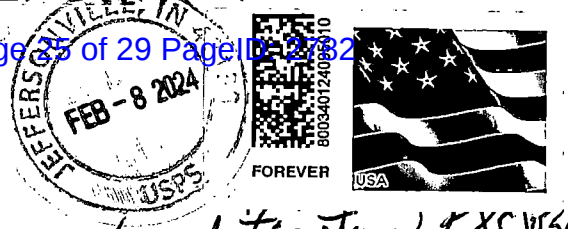
We trust that the information being provided is sufficient for this exclusion, however should you have any questions, do not hesitate to contact me.

Sincerely

John D. Johnston

[redacted]

[redacted]



Litigation Executive

HUMANIGEN, INC Security
C/O A.B. DATA, Ltd
P.O. Box 173001
Milwaukee, WI 53217

53217$6012 B050

Exclusion 4

Postmarked February 08, 2024

2/7/2024

Humanigen, Inc. Securities Litigation
Exclusions
c/o A.B. Data
P.O. Box 173001
Milwaukee, WI 53217

Our Family Members wish to be excluded from the settlement:

Norma Jane Holt holding 20,000 shares of Humanigen in the Norma Jane Holt 1999 Trust

Lisa L. Nixon holding 35,000 shares of Humanigen in the Lisa L. Nixon Sep IRA

John and Lisa Nixon previously held 40,000 shares of Humanigen in the John and Lisa Nixon Family Trust.

Lisa L. Nixon, Attorney at Law

[redacted]

CERTIFIED MAIL®

[redacted]

[redacted]

53217

U.S. POSTAGE PAID
FCM LETTER
YREKA, CA 96097
FEB 08, 2024

$8.05

R2307M152496-8

RETURN RECEIPT REQUESTED

HUMANIGEN INC. Securities Litigation Exclusions
C/O A.B. DATA
P.O. Box 173001
MILWAUKEE WI 53217

RETURN RECEIPT REQUESTED

532178012 B080

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **SUPPLEMENTAL DECLARATION OF DR. SCOTT GREENBAUM**

I, DR. SCOTT GREENBAUM, declare as follows:

1. I respectfully submit this declaration in support of Plaintiffs' Motions for: (1) Final Approval of Settlement; and (2) Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs. I have personal knowledge of the statements herein and if called upon as a witness, could and would competently testify thereto.

2. I previously submitted a declaration (Dkt. No. 45-8) in support of Plaintiffs' Motion for Preliminary Approval of Settlement (Dkt. No 45), which described my involvement in this case, beginning with its commencement and continuing through settlement. I adopt those statements and incorporate them herein as if they were set forth below.

3. I continue to support the approval of the Settlement. Dkt. No. 45-8 at ¶7. As explained in my prior declaration, the Settlement of $3,000,000 represents a favorable outcome in the litigation given the obstacles we faced in terms of

establishing liability and damages before a jury. *Id.* Moreover, Humanigen, Inc.'s ("Humanigen" or the "Company") precarious financial situation which led to the Company filing for bankruptcy on January 3, 2024, further supports my approval of the Settlement.

4. I also support my attorneys' request for an award of fees and reimbursement of expenses. The case was litigated extensively. My attorneys incurred significant out-of-pocket expenses and invested heavily in time, effort, and resources to achieve the result at hand. They should be compensated as requested, which is an award of fees in the amount of $750,000, or twenty-five percent of the Settlement Fund, plus interest, plus reimbursement of their out-of-pocket expenses not to exceed $75,000, plus interest.

5. Additionally, I support an award for myself to reimburse me for the time and costs I incurred in serving as a class representative. My involvement in this lawsuit dates back to October 25, 2022, when I first moved to be appointed as lead plaintiff. *See* Dkt. No. 7. I have since spent over 40 hours working with my attorneys on this matter. I have remained engaged and kept up to date with the various proceedings by staying in communication with counsel. I compiled and provided counsel with my trading data, completed a certification, and have received and reviewed Court filings. I was also consulted before and during settlement discussions, during which I was in communication with counsel, and approved the

Settlement before it was finalized. In exchange for my time and effort serving as a class representative, I am seeking an award of $7,500 which I believe is fair and deserved.

6. I also undertook substantial risks in pursuing these claims. I willingly took on the responsibility of prosecuting this action on behalf of the Class.

7. I possess undergraduate and medical degrees from Boston University. I have been and at all relevant times was a licensed ophthalmologist. I own a private practice with offices in Manhattan and Queens, New York. The time I devoted to this action was time that I otherwise would have spent working and focusing on my other investments. I believe that the requested amount of $7,500 approximates the time and effort I spent serving as a lead plaintiff and class representative in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of July 2024.

_____

DR. SCOTT GREENBAUM

[*Signature on following page*]

Settlement before it was finalized. In exchange for my time and effort serving as a class representative, I am seeking an award of $7,500 which I believe is fair and deserved.

6. I also undertook substantial risks in pursuing these claims. I willingly took on the responsibility of prosecuting this action on behalf of the Class.

7. I possess undergraduate and medical degrees from Boston University. I have been and at all relevant times was a licensed ophthalmologist. I own a private practice with offices in Manhattan and Queens, New York. The time I devoted to this action was time that I otherwise would have spent working and focusing on my other investments. I believe that the requested amount of $7,500 approximates the time and effort I spent serving as a lead plaintiff and class representative in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of July 2024.

DR. SCOTT GREENBAUM

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **SUPPLEMENTAL DECLARATION OF JOSHUA MAILEY**

I, JOSHUA MAILEY, declare as follows:

1. I respectfully submit this declaration in support of Plaintiffs' Motions for: (1) Final Approval of Settlement; and (2) Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs. I have personal knowledge of the statements herein and if called upon as a witness, could and would competently testify thereto.

2. I previously submitted a declaration (Dkt. No. 45-9) in support of Plaintiffs' Motion for Preliminary Approval of Settlement (Dkt. No 45), which described my involvement in this case, beginning with its commencement and continuing through settlement. I adopt those statements and incorporate them herein as if they were set forth below.

3. I continue to support the approval of the Settlement. Dkt. No. 45-9 at ¶6. As explained in my prior declaration, the Settlement of $3,000,000 represents a favorable outcome in the litigation given the obstacles we faced in terms of

establishing liability and damages before a jury. *Id.* Moreover, Humanigen, Inc.'s ("Humanigen" or the "Company") precarious financial situation which led to the Company filing for bankruptcy on January 3, 2024, further supports my approval of the Settlement.

4. I also support my attorneys' request for an award of fees and reimbursement of expenses. The case was litigated extensively. My attorneys incurred significant out-of-pocket expenses and invested heavily in time, effort, and resources to achieve the result at hand. They should be compensated as requested, which is an award of fees in the amount of $750,000, or twenty-five percent of the Settlement Fund, plus interest, plus reimbursement of their out-of-pocket expenses not to exceed $75,000, plus interest.

5. Additionally, I support an award for myself to reimburse me for the time and costs I incurred in serving as a class representative. My involvement in this lawsuit dates back to October 25, 2022, when I first moved to be appointed as lead plaintiff. *See* Dkt. No. 9. I have since spent over 45 hours working with my attorneys on this matter. I have remained engaged and kept up to date with the various proceedings by staying in communication with counsel. I compiled and provided counsel with my trading data, completed a certification, and have received and reviewed Court filings. I was also consulted before and during settlement discussions, during which I was in communication with counsel, and approved the

Settlement before it was finalized. In exchange for my time and effort serving as a class representative, I am seeking an award of $7,500 which I believe is fair and deserved.

6. I also undertook substantial risks in pursuing these claims. I willingly took on the responsibility of prosecuting this action on behalf of the Class.

7. I was primarily employed in technology application support of a technology company in banking during the course of this action. The time I devoted to this action was time that I otherwise would have spent working and focusing on my other investments. I believe that the requested amount of $7,500 approximates the time and effort I spent serving as a lead plaintiff and class representative in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this day of 6/27/2024.

DocuSigned by:
Joshua Mailey
7A8EE162974F442...

JOSHUA MAILEY

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **SUPPLEMENTAL DECLARATION OF ALEJANDRO PIERONI**

I, ALEJANDRO PIERONI, declare as follows:

1. I respectfully submit this declaration in support of Plaintiffs' Motions for: (1) Final Approval of Settlement; and (2) Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Compensatory Awards to Plaintiffs. I have personal knowledge of the statements herein and if called upon as a witness, could and would competently testify thereto.

2. I previously submitted a declaration (Dkt. No. 45-10) in support of Plaintiffs' Motion for Preliminary Approval of Settlement (Dkt. No 45), which described my involvement in this case, beginning with its commencement and continuing through settlement. I adopt those statements and incorporate them herein as if they were set forth below.

3. I continue to support the approval of the Settlement. Dkt. No. 45-10 at ¶6. As explained in my prior declaration, the Settlement of $3,000,000 represents a favorable outcome in the litigation given the obstacles we faced in terms of

establishing liability and damages before a jury. *Id.* Moreover, Humanigen, Inc.'s ("Humanigen" or the "Company") precarious financial situation which led to the Company filing for bankruptcy on January 3, 2024, further supports my approval of the Settlement.

4. I also support my attorneys' request for an award of fees and reimbursement of expenses. The case was litigated extensively. My attorneys incurred significant out-of-pocket expenses and invested heavily in time, effort, and resources to achieve the result at hand. They should be compensated as requested, which is an award of fees in the amount of $750,000, or twenty-five percent of the Settlement Fund, plus interest, plus reimbursement of their out-of-pocket expenses not to exceed $75,000, plus interest.

5. Additionally, I support an award for myself to reimburse me for the time and costs I incurred in serving as a class representative. My involvement in this lawsuit dates back to August 26, 2022, when I filed the original complaint in this action. *See* Dkt. No. 1. I have since spent over 160 hours working with my attorneys on this matter. I have remained engaged and kept up to date with the various proceedings by staying in communication with counsel. I compiled and provided counsel with my trading data, completed a certification, and have received and reviewed Court filings. I was also consulted before and during settlement discussions, during which I was in communication with counsel, and approved the

Settlement before it was finalized. In exchange for my time and effort serving as a class representative, I am seeking an award of $7,500 which I believe is fair and deserved.

6. I also undertook substantial risks in pursuing these claims. I willingly took on the responsibility of prosecuting this action on behalf of the Class.

7. I was primarily employed as an engineer during the course of this action. The time I devoted to this action was time that I otherwise would have spent working and focusing on my other investments. I believe that the requested amount of $7,500 approximates the time and effort I spent serving as a named plaintiff and class representative in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of June 2024.

DocuSigned by:
Alejandro Pieroni
4C6DFFE2099E432...

ALEJANDRO PIERONI

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND COMPENSATORY AWARDS TO PLAINTIFFS**

Having read and considered the papers filed and arguments made by counsel, and good cause appearing, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court hereby awards Lead Counsel fees for the class action settlement in the amount of $_____ to be paid pursuant to the terms of the Stipulation of Settlement (Dkt. No. 44).

2. The Court further hereby awards Lead Counsel expenses in the amount of $_____ to be paid pursuant to the terms of the Stipulation of Settlement (Dkt. No. 44).

3. The Court further hereby awards Lead Plaintiff Dr. Scott Greenbaum $_____.

4. The Court further hereby awards Lead Plaintiff Joshua Mailey $_____.

5. The Court further hereby awards Plaintiff Alejandro Pieroni $_____.

IT IS SO ORDERED.

DATED:

_____
THE HONORABLE WILLIAM J. MARTINI
UNITED STATES DISTRICT COURT

Adam M. Apton
LEVI & KORSINSKY, LLP
33 Whitehall Street, 17th Floor
New York, New York 10004
T: (212) 363-7500
F: (212) 363-7171
Email: aapton@zlk.com

Brenda Szydlo (admitted *pro hac vice*)
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
Email: bszydlo@pomlaw.com

Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE HUMANIGEN, INC. SECURITIES LITIGATION	Case No. 2:22-cv-05258-WJM-AME **CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2024 copies of the foregoing motion, brief, and accompanying declarations and exhibits were served upon counsel of record via CM/ECF.

Executed this 30th day of July 2024.

/s/ Adam M. Apton
Adam M. Apton