UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ISRAEL SANCHEZ, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. CENTENE CORP., MICHAEL F. NEIDORFF, and JEFFREY A. SCHWANEKE, Defendants.	Case No. 4:17-cv-00806-AGF

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

Dated: September 21, 2020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Subject to Court approval, Lead Plaintiff has agreed to settle this Action in exchange for a cash payment of $7,500,000.00, which Defendants have now deposited into an escrow account. Lead Plaintiff respectfully submits that the proposed Settlement is fair, reasonable, and adequate and satisfies all the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure. As detailed in the accompanying Declaration of Jonathan D. Uslaner ("Uslaner Declaration") and summarized below, the Settlement is an excellent result for the Settlement Class in light of the significant risks posed by ongoing litigation, including the substantial risks in proving the falsity of Defendants' statements, scienter, loss causation, and the amount of potential damages that would likely be proven at trial.

The Settlement was reached only after arm's-length settlement negotiations between experienced counsel, which included a full-day mediation facilitated by an experienced class-action mediator. Before the Settlement was agreed to, Lead Counsel had (i) conducted an extensive investigation into the claims asserted, including through interviews with dozens of former employees of Centene and Health Net and a review of public information such as SEC filings, analyst reports, conference call transcripts, and news articles; (ii) drafted a detailed consolidated complaint based on Lead Counsel's investigation; (iii) successfully opposed Defendants' motion to dismiss through briefing and oral argument; (iv) engaged in fact discovery, including serving comprehensive document requests to Defendants and subpoenas to thirteen third parties; (v) consulted with experts on accounting issues, market efficiency, and class-wide damages; and (vi) participated in arm's-length settlement negotiations. As a result of these efforts, Lead Plaintiff and Lead Counsel were well informed of the strengths and weaknesses of the claims and defenses in the Action at the time they achieved the proposed Settlement.

Michelle Yoshida of Phillips ADR, an experienced class-action mediator, assisted the settlement negotiations. The mediation process included the preparation of detailed written mediation statements concerning liability and damages, and a full-day mediation session. ¶¶ 38-42. At the conclusion of the

mediation session, Ms. Yoshida made a mediator's recommendation, on a double-bind basis, that the Parties settle the Action for $7,500,000.00, which the parties accepted. ¶ 42.[1]

Lead Plaintiff and Lead Counsel believe that the Settlement is particularly favorable given, among other things, the risks of continued litigation. ¶¶ 47-62. This was not a case with restated financial statements or a parallel government enforcement action to support Lead Plaintiff's claims. To the contrary, the Action presented many significant risks to establishing both liability and damages through continued litigation that could have resulted in no recovery at all for the Settlement Class. *Id*. In addition, if the litigation had continued, Lead Plaintiff would have to prevail at several additional stages, including class certification, summary judgment, trial, and appeals. This process would take years and presented risks at each stage. The Settlement avoids these risks and provides a substantial and certain benefit rather than the mere possibility of a recovery after additional years of litigation.

The Settlement has the full support of the Court-appointed Lead Plaintiff, a sophisticated institutional investor that took an active role in supervising the litigation and settlement negotiations. *See* Declaration of Osey McGee, Jr. on behalf of Louisiana Sheriffs (Ex. 2) ("McGee Decl."), at ¶¶ 3-7. In addition, although the deadline to request exclusion from the Settlement Class or object to the Settlement has not yet passed, to date, no Settlement Class Members have objected to the Settlement and just three requests for exclusion have been received. ¶ 69; Segura Decl. ¶ 13.[2]

Given these considerations and the other factors discussed below, Lead Plaintiff respectfully submits that the Settlement is fair, reasonable, and adequate and warrants final approval by the Court. Additionally, Lead Plaintiff requests that the Court approve the Plan of Allocation, which was set forth

[1] In this memorandum, citations to "¶ __" refer to paragraphs in the Uslaner Declaration.

[2] The deadline for filing of objections and receipt of requests for exclusion is October 5, 2020. Lead Plaintiff will address all requests for exclusion and any objections received in its reply papers, which will be filed on October 19, 2020.

in the Notice previously approved by the Court. The Plan of Allocation, which Lead Counsel developed in consultation with Lead Plaintiff's damages expert, provides a reasonable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on damages they suffered on purchases of Centene common stock.

ARGUMENT

I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) requires that a court find a proposed class-action settlement "fair, reasonable, and adequate" before approving it. Fed. R. Civ. P. 23(e)(2). The Court's role in reviewing a class settlement is to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned. *See Keil v. Lopez*, 862 F.3d 685, 693 (8th Cir. 2017).

The Eighth Circuit has recognized that "[a] strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor." *See Petrovic v. Amoco Oil Co*., 200 F.3d 1140, 1148 (8th Cir. 1999). This policy is "particularly strong in the class action context." *In re Uponor, Inc.*, *F1807 Plumbing Fittings Prods. Liab. Litig.*, 2012 WL 2512750, at *7 (D. Minn. June 29, 2012).

In reviewing a settlement for final approval, Rule 23(e)(2) provides that the Court should determine whether a proposed settlement is "fair, reasonable, and adequate" after considering whether:

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

Fed. R. Civ. P. 23(e)(2). Traditionally, the Eighth Circuit has held that district courts should also consider following four factors in evaluating a class-action settlement:

> (1) the merits of the plaintiff's case weighed against the terms of the settlement, (2) the defendant's financial condition, (3) the complexity and expense of further litigation, and (4) the amount of opposition to the settlement.

In re Target Corp. Customer Data Sec. Breach Litig., 892 F.3d 968, 978 (8th Cir. 2018); *Keil*, 862 F.3d at 693; *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988) (the "*Van Horn* Factors").

As discussed further below, all of these factors support approval of the Settlement.

A. Lead Plaintiff and Lead Counsel Have Adequately Represented the Settlement Class

In determining whether to approve a class-action settlement, the court considers whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Adequacy of representation focuses on two issues: whether "(1) the class representatives have common interests with members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 562-563 (8th Cir. 1982).

Here, there is no antagonism or conflict between Lead Plaintiff and the proposed Settlement Class. Lead Plaintiff and the other Settlement Class Members all purchased Centene's common stock during the Class Period and were allegedly damaged by the same alleged false and misleading statements about Centene's merger with Health Net, the value of Health Net's assets and liabilities, and Centene's reserves. If Lead Plaintiff proved its claims at trial, it would also prove the Settlement Class's claims. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460 (2013) (the investor class "will prevail or fail in unison" because claims are based on common misrepresentations and omissions).

Moreover, Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class in both their vigorous prosecution of the Action for over three years and in the negotiation and achievement of the Settlement. Lead Counsel BLB&G is highly qualified and experienced in securities litigation, as set forth in its firm resume (*see* Ex. 5A-4 to the Uslaner Declaration) and was able to successfully conduct

the litigation against skilled opposing counsel.

B. The Settlement Was Reached After Arm's-Length Negotiations with the Assistance of Experienced Mediators

In weighing approval of a class-action settlement, the Court also considers whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B).

Here, the Settlement was reached after several months of arm's-length negotiations between experienced counsel, including a mediation conducted with the assistance of an experienced mediator, Michelle Yoshida. *See* Declaration of Michelle Yoshida (Ex. 1), at ¶¶ 3-9. Before the mediation, the Parties submitted detailed confidential written submissions concerning liability and damages to Ms. Yoshida. *Id*. ¶ 7. At the mediation session, the Parties engaged in a full day of vigorous settlement negotiations. *Id*. ¶ 7. At the end of the session, Ms. Yoshida issued a mediator's recommendation that the parties settle the case for $7,500,000, which the Parties accepted. *Id*.; Uslaner Decl. ¶ 42. The fact that the Settlement was reached following arm's-length negotiations between experienced counsel and with the assistance of an experienced mediator supports a finding that Settlement is procedurally fair and without collusion. *See Khoday v. Symantec Corp.*, 2016 WL 1637039, at *8 (D. Minn. Apr. 5, 2016) (fact that settlement was "reached through the assistance of an experienced, independent mediator" weighed in favor of approval).

Lead Plaintiff and Lead Counsel were well informed at the time of the settlement negotiations, having (i) conducted an extensive investigation; (ii) performed extensive legal and factual research in preparing the Complaint and the briefing in opposition to Defendants' motion to dismiss; (iii) worked with experts; and (iv) engaged in arm's-length settlement negotiations. ¶¶ 14-42. The informed conclusion of Lead Plaintiff and Lead Counsel that the Settlement is fair and reasonable and in the best interests of the Settlement Class further supports the Settlements' approval.

Further, Lead Plaintiff is a sophisticated institutional investor that took an active role in

supervising this litigation, as envisioned by the PSLRA, and it endorses the Settlement. *See* McGee Decl. at ¶¶ 3-7. A settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor . . . is 'entitled to an even greater presumption of reasonableness.'" *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007).

The judgment of Lead Counsel, which in this case is highly experienced in securities class-action litigation, also is entitled to "great weight." *George v. Uponor Corp.*, 2015 WL 5255280, at *6 (D. Minn. Sept. 9, 2015) ("courts give 'great weight' to and may 'rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement'"); *see also DeBoer v. Mellon Mortg. Co.,* 64 F.3d 1171, 1178 (8th Cir. 1995) ("the views of counsel are to be accorded deference").

C. The Relief that the Settlement Provides for the Settlement Class is Adequate, Taking into Account the Costs and Risks of Further Litigation and All Other Relevant Factors

In determining whether a class action settlement is "fair, reasonable, and adequate," the Court also considers whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This factor under Rule 23(e)(2)(C) encompasses at least two of the four traditional *Van Horn* factors: (1) the merits of the plaintiffs' case weighed against the terms of the settlement, and (3) the complexity and expense of further litigation.

As further detailed in the Uslaner Declaration, continued litigation of the Action presented a number of significant risks that Lead Plaintiff would be unable to establish liability, loss causation, or damages. ¶¶ 47-58. Continuing the litigation through trial and appeals would also impose substantial additional costs on the Settlement Class and result in extended delays before any recovery could be achieved. ¶ 59. The Settlement, which provides a $7.5 million cash payment for the benefit of the Settlement Class, avoids those further costs and delays. The Settlement is also reasonable when considered in relation to the potential recovery, which was far from certain, that might be obtained if

Lead Plaintiff prevailed at summary judgment, trial, and on any appeals. ¶ 61.

1. The Risks of Establishing Liability and Damages Support Approval of the Settlement

While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants in the Action are meritorious, they recognize that this Action presented several substantial risks to establishing both liability and damages.

(a) Risks To Proving Liability

At summary judgment and trial, Defendants would have contested each element of Lead Plaintiff's claims, including falsity and scienter.

Falsity. Lead Plaintiff recognizes that it faced significant challenges in proving that Defendants' statements were materially false and misleading when made. Neither the SEC nor any other governmental entity brought a formal investigation or asserted a parallel enforcement action concerning the claims at issue, and Centene never restated its financial statements. ¶ 50. To the contrary, Defendants have consistently asserted that their statements to investors were accurate when made, based on information available at the time, and that they updated the market as Defendants learned more information. ¶¶ 50-51. Defendants would have vigorously contended that their statements were not false or misleading at summary judgment, at trial, and on appeal. ¶ 50.

Specifically, as to their statements on May 24, 2016, Defendants contended and would likely continue to argue that their statements were couched in cautionary language that rendered them immaterial, and therefore not misleading. ¶ 52. Defendants also would likely continue to argue that, at the time of their statements, they believed, based on the valuations available at the time, that their accounting reserves were accurate. *Id*. Defendants would likely further argue that even if Defendants knew about any increased liabilities owed to their plan deficiencies, Defendants accurately reported Centene's then-current valuation of its liabilities and accurately reported updates as Centene's valuation

progressed. *Id*. There was a meaningful risk that a fact finder might find some or all of these arguments persuasive and determine that Defendants' statements were not false or misleading.

As to their June 17, 2016 statements, Defendants would likely continue to argue that these statements were also couched in cautionary language so as to render them immaterial and therefore not misleading. ¶ 53. In addition, Defendants would likely further contend that the public already knew about rising substance-abuse center claims leading to Health Net's rising liabilities as early as January 2016, and thus Defendants' alleged omissions were not actionable. *Id*. Defendants would also likely argue that they did not fail to make any required disclosure when they spoke to investors, but rather candidly disclosed to investors that Centene was making changes to Health Net's products. *Id*.

Scienter. Even if Lead Plaintiff were able to prove that Defendants' statements were false and misleading, it would still need to prove to a jury that Defendants made the alleged false statements with the intent to mislead investors or with deliberate recklessness. Defendants would likely contend that they believed, based on information available at the time, that their statements to investors were accurate when made. ¶ 56. They would also point to the fact that Centene made several cautionary statements to investors about having a year to update the accounting and possible "adjustments" in the "provisional amounts recorded" for the reserves, which, they would argue, were inconsistent with Lead Plaintiff's allegations of intentional fraud on this issue. *Id*. Defendants asserted—and would likely continue to assert at summary judgment and to a jury—that they had no motive to commit fraud and there was no logical basis for them to do so. ¶¶ 55. Among other things, Defendants would likely point to their absence of insider stock sales as evidence of a lack of intent, and to the absence of any "whistleblowers" or SEC inquiry or criticism as further evidence of an absence of scienter. *Id*.

(b) Risks To Proving Damages

Even if Lead Plaintiff were able to prove falsity and scienter at trial, it still faced significant risks in proving loss causation and damages.

Loss Causation. The Court had already limited the Class Period to two months in its order granting, in part, Defendants' motion to dismiss. (ECF No. 89 at 26.) Defendants would have likely contended at summary judgment and trial that Lead Plaintiff could not establish a causal connection between the alleged misrepresentations and the losses investors suffered, as required by law. ¶ 57. In support of this contention, Defendants would likely attempt to point to the fact that the price of Centene's stock has fully rebounded since the Class Period, and the acquisition of Health Net has proven to be extremely successful for Centene. ¶¶ 54, 57. In addition, Defendants would likely have contended that some of the information that was disclosed could not have caused a drop in the stock price because that information was already publicly known or available and therefore, the price of Centene's stock already accounted for that information. ¶ 57.

Damages. Resolution of disputed issues regarding damages would have boiled down to a "battle of experts," and Defendants would undoubtedly have been able to present a well-qualified expert who would opine that the class's damages were smaller or nonexistent. ¶ 58. Because Lead Plaintiffs could not be certain which expert's view would be credited by the jury, this "battle of the experts" posed an additional litigation risk. *See In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at *7, *16 (E.D. Mo. June 30, 2005) (securities class action was "subject to a battle of experts").

Lead Plaintiff recognizes that the above risks posed a possibility that the Settlement Class would not be able to recover at all or would have recovered a lesser amount if the Action proceeded through summary judgment, trial, and appeals.

2. The Settlement Is Reasonable in Light of the Likely Recoverable Damages

The Settlement is also a favorable result when considered in relation to the amount of damages that could realistically be established at trial. Lead Counsel has consulted with experts in damages and loss causation issues in securities class actions. Even assuming Lead Plaintiff prevailed on all liability

issues, Lead Counsel believes that the maximum total damages Lead Plaintiff could realistically establish at trial was approximately $43 million. ¶ 61. Thus, the $7.5 million Settlement Amount represents approximately 17% of the realistic maximum recoverable damages for the Settlement Class. *Id*. However, if Defendants succeeded on some or all of their other loss causation and damages arguments, damages would be reduced substantially below this amount. *Id*.

The level of recovery achieved through the Settlement is significantly greater than the normal recovery amount in comparable securities class action settlements. Specifically, the 17% recovery here is over twice the median recovery in securities fraud class actions from 2010 through 2018 with damages estimated between $25 and $74 million, and almost three times the median recovery of all securities class actions in the Eighth Circuit from 2010 and 2019 regardless of the amount of damages estimated. *See* CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2019 REVIEW AND ANALYSIS (2020) (Ex 3) at 6, 20; *see also Beaver Cty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2574005, at *3 (D. Minn. June 14, 2017) (approving $9.5 settlement representing 6.8% to 9.5% of estimated maximum provable damages and noting that the range "exceeds the median recovery").

3. The Costs and Delays of Continued Litigation Support Approval of the Settlement

The substantial costs and delays that would be required before any recovery could be obtained through litigation also strongly support approval of the Settlement. If the litigation had continued, Lead Plaintiff would have to prevail at several additional stages: class certification, summary judgment, and finally, at trial. Further, if Lead Plaintiff were to prevail at trial, it would also need to prevail on any appeal that would likely follow. This process would take years and presented new risks at each stage. The Settlement avoids these risks and provides a substantial and certain benefit to the Settlement Class. *See In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 702 (E.D. Mo. 2002) (finding that "the complexity, expense and duration of litigation weigh in favor of approving the proposed settlement"

because trial of the securities action "would be lengthy, costly and complex," and, "[r]egardless of the outcome at trial, post-judgment appeals were likely").[3]

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

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

First, the procedures for processing Settlement Class Members' claims and distributing the proceeds of the Settlement to eligible claimants in this case are well-established, effective methods that have been widely used in securities class-action litigation. As set forth in the notice approved by the Court at the preliminary approval stage, the proceeds of the Settlement will be distributed to class members who submit eligible Claim Forms with required documentation to the Court-appointed Claims Administrator, JND Legal Administration ("JND"). JND will provide claimants with an opportunity to cure any deficiencies in their claims or request review of the denial of their claim by the Court and will then mail or wire claimants their *pro rata* share upon approval of the Court.[4]

[3] Defendants' ability to pay an amount greater than the Settlement Amount does not suggest that the Settlement is inadequate. *See Petrovic*, 200 F.3d at 1152 ("While it is undisputed that [defendant] could pay more than it is paying in this settlement, this fact, standing alone, does not render the settlement inadequate."); *Rawa v. Monsanto Co.*, 2018 WL 2389040, at *7 (E.D. Mo. May 25, 2018) (this factor was "neutral" where Defendants' financial condition would not prevent it paying a larger amount).

[4] The Settlement is not a claims-made settlement. If the Settlement is approved, Defendants will have no right to the return of any portion of Settlement based on the number or value of Claims submitted. *See* Stipulation ¶ 13.

Second, the relief provided for the Settlement Class is also adequate when the terms of the proposed award of attorney's fees are taken into account. As discussed in the accompanying Fee Memorandum, the proposed attorneys' fees of 25% of the Settlement Fund, to be paid upon approval by the Court, are reasonable in light of the efforts of Lead Counsel and the risks in the litigation. Moreover, approval of attorneys' fees is entirely separate from approval of the Settlement in this case, and neither Lead Plaintiff nor Lead Counsel may terminate the Settlement based on any ruling with respect to attorneys' fees. *See* Stipulation ¶ 16.

Lastly, Rule 23 asks the court to consider the fairness of the proposed settlement in light of any agreements required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, the only such agreement (other than the Stipulation itself) is the Parties' confidential Supplemental Agreement, which sets forth the conditions under which Defendants may terminate the Settlement if the requests for exclusion from the Settlement Class reach a specified threshold. *See* Stipulation ¶ 36. "This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020); *see also Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *7 (N.D. Cal. Dec. 18, 2018) ("The existence of a termination option triggered by the number of class members who opt out of the Settlement . . . does not weigh against approval" of settlement).

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

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

E. Reaction of the Settlement Class

In considering approval of a settlement, the court also may consider "the amount of opposition to the settlement." *See, e.g.*, *Keil*, 862 F.3d at 693; *Van Horn*, 840 F.2d at 607. To date, the reaction of the Settlement Class has been positive. JND began mailing copies of the Notice and Claim Form (the "Notice Packet") to potential Settlement Class Members and nominees on July 14, 2020. *See* Declaration of Luiggy Segura (Ex. 4), at ¶¶ 3-6. As of September 17, 2020, JND had mailed a total of 79,774 copies of the Notice Packet. *See id.* ¶ 9. The Notice set out the essential terms of the Settlement and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, and the procedure for submitting Claim Forms. While the deadline set by the Court for Settlement Class Members to exclude themselves or object to the Settlement has not yet passed, to date, no objections to the Settlement or the Plan of Allocation and three requests for exclusion have been received. Uslaner Decl. ¶ 69; Segura Decl. ¶ 13.[5]

* * *

In sum, all of factors to be considered under Rule 23(e)(2) and Eighth Circuit law support a finding that the Settlement is fair, reasonable, and adequate.

II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See Charter Commc'ns*, 2005 WL 4045741, at *10. A plan of allocation "'need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel.'" *Id.*

Here, the proposed Plan of Allocation, which was developed by Lead Counsel in consultation

[5] The deadline for submitting objections and requesting exclusion from the Settlement Class is October 5, 2020. As provided in the Preliminary Approval Order, Lead Plaintiff will file reply papers by October 19, 2020 addressing the requests for exclusion and any objections that may be received.

with Lead Plaintiff's damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. In developing the Plan of Allocation, Lead Plaintiff's expert calculated the amount of estimated artificial inflation in the price of Centene common stock which allegedly was proximately caused by Defendants' alleged false and misleading statements by considering the price changes in Centene stock in reaction to the alleged corrective disclosures, adjusting for changes attributable to market and industry factors. ¶ 73.

Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase of Centene common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided. Notice ¶ 53. In general, the Recognized Loss Amount will be the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale, or the difference between the actual purchase price and sales price, whichever is less. *Id*. ¶ 52. Claimants who purchased and sold their Centene common stock before the end of the Class Period will have no Recognized Loss Amount for those transactions because any loss suffered on those sales would not be the result of the alleged misstatements. *Id*. To date, no objections to the proposed Plan of Allocation have been received. *See* Uslaner Decl. ¶ 78.

III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED FOR PURPOSES OF THE SETTLEMENT

As set forth in detail in Lead Plaintiff's motion for preliminary approval of the Settlement, the Settlement Class satisfies all the requirements of Rules 23(a) and (b)(3). *See* ECF No. 117 at 10-14. None of the facts regarding certification of the Settlement Class have changed since approval of Lead Plaintiff's motion for preliminary approval, and there has been no objection to certification.

IV. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The Notice to the Settlement Class satisfied the requirements of Rule 23(c)(2)(B), which requires "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). The Notice also satisfied Rule 23(e)(1), which requires 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." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975).

JND began mailing copies of the Notice Packet to potential Settlement Class Members on July 14, 2020. *See* Segura Decl. ¶¶ 3-6. As of September 17, 2020, JND has disseminated over 79,000 copies of the Notice Packet to potential Settlement Class Members and nominees. *See id*. ¶ 9. In addition, Lead Counsel caused the Summary Notice to be published over the *PR Newswire* on July 22, 2020; and to be published in *Investor's Business Daily* and transmitted over *BusinessWire* on July 27, 202. *See id*. ¶ 10. Copies of the Notice and Claim Form, as well as other relevant documents, including the Complaint, the Stipulation, Lead Plaintiff's memorandum of law in support of preliminary approval of the Settlement, and the Preliminary Approval Order, were made available on the settlement website maintained by JND and on Lead Counsel's website beginning on July 14, 2020. *See* Segura Decl. ¶ 12; Uslaner Decl. ¶ 68. This combination of individual mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely circulated publication, transmitted over newswires, and set forth on internet websites, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *Tile Shop*, 2017 WL 2574005, at *1-*2 (approving comparable notice).

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate.

Dated: September 21, 2020

Respectfully submitted,

/s/ Michael J. Flannery

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