

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:18-cv-23786-MARTINEZ-OTAZO-REYES**

CHARLES STEINBERG, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

OPKO HEALTH, INC., PHILLIP FROST,  
ADAM LOGAL, and JUAN RODRIGUEZ,

Defendants.

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
(A) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF  
SETTLEMENT AND PLAN OF ALLOCATION AND (B) LEAD COUNSEL'S  
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
ARGUMENT .....	2
I.    The Robust Notice Program.....	2
II.   The Reaction of the Settlement Class Supports Approval of the Settlement and Plan of Allocation and the Motion for Attorneys’ Fees and Expenses .....	3
CONCLUSION.....	5

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>Page(s)</b>
<i>Access Now, Inc. v. Claire Stores, Inc.</i> , 2002 WL 1162422 (S.D. Fla. May 7, 2002) .....	4
<i>Bennett v. Behring Corp.</i> , 737 F.2d 982 (11th Cir. 1984) .....	3
<i>Camden I Condo. Ass’n, Inc. v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991) .....	4
<i>Cotton v. Hinton</i> , 559 F.2d 1326 (5th Cir. 1977) .....	3
<i>Hugo on behalf of BankAtlantic Bancorp, Inc. v. Levan</i> , 2011 WL 13173025 (S.D. Fla. July 12, 2011).....	4
<i>In re Arby’s Rest. Grp., Inc. Data Sec. Litig.</i> , 2019 WL 2720818 (N.D. Ga. June 6, 2019).....	5
<i>In re AT&amp;T Corp. Sec. Litig.</i> , 2005 WL 6716404 (D.N.J. Apr. 25, 2005).....	4
<i>In re Bisys Sec. Litig.</i> , 2007 WL 2049726 (S.D.N.Y. July 16, 2007).....	5
<i>In re Cathode Ray Tube (CRT) Antitrust Litig.</i> , 2017 WL 2481782 (N.D. Cal. June 8, 2017).....	4
<i>In re Facebook, Inc. IPO Sec. &amp; Derivative Litig.</i> , 343 F. Supp. 3d 394 (S.D.N.Y. 2018).....	4
<i>In re Food Serv. Equip. Hardware Antitrust Litig.</i> , 2011 WL 13175440 (N.D. Ga. Dec. 28, 2011).....	5
<i>In re Heritage Bond Litig.</i> , 2005 WL 1594403 (C.D. Cal. June 10, 2005) .....	4
<i>In re Rite Aid Corp. Sec. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....	5
<i>In re Veeco Instruments Inc. Sec. Litig.</i> , 2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007).....	4
<i>Jairam v. Colourpop Cosmetics, LLC</i> , 2020 WL 5848620 (S.D. Fla. Oct. 1, 2020).....	3

*Pinto v. Princess Cruises Lines, Ltd.*,  
513 F. Supp. 2d 1334 (S.D. Fla. 2007) ..... 5

*Strube v. Am. Equity Inv. Life Ins. Co.*,  
2006 WL 1232816 (M.D. Fla. May 5, 2006)..... 5

*Thorpe v. Walter Inv. Mgmt. Corp.*,  
2016 WL 10518902 (S.D. Fla. Oct. 17, 2016)..... 3

Lead Plaintiff The Amitim Funds, on behalf of itself and the Settlement Class, and Lead Counsel respectfully submit this reply brief in further support of (i) Lead Plaintiff's motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation, and (ii) Lead Counsel's motion for an award of attorneys' fees and litigation expenses.<sup>1</sup>

### **INTRODUCTION**

The proposed Settlement resolves this litigation in exchange for a cash payment of \$16,500,000. As detailed in Lead Plaintiff's and Lead Counsel's opening papers (ECF Nos. 118-120), the proposed Settlement is the product of lengthy arm's-length settlement negotiations between experienced counsel, including mediation with an experienced mediator. Lead Plaintiff and Lead Counsel believe that the Settlement is a favorable 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, and loss causation; the costs and delays of continued litigation; and the amount of potential damages that could likely be proven at trial. The Settlement will be distributed fairly to Settlement Class Members under the proposed Plan of Allocation. Finally, the request for attorneys' fees of 20% of the Settlement Fund is fair and reasonable in light of the recovery obtained for the Settlement Class, the substantial risks that counsel faced, the time and resources that counsel devoted to the litigation, and fees awarded in comparable cases.

Pursuant to the Court's Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 115) (the "Preliminary Approval Order"), the Claims Administrator, under the supervision of Lead Counsel, has conducted an extensive notice program, including mailing notice of the Settlement to over 271,000 potential Settlement Class Members and nominees. In response to this notice program, no Settlement Class Member has objected to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and expenses. In addition, no requests for exclusions were received from institutional investors, and just nine valid requests for exclusion—representing approximately 0.003% of the total number of Notices mailed—were received from individual investors. As explained below, this

---

<sup>1</sup> Unless otherwise defined in this memorandum, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated June 26, 2020 (ECF No. 112-2) (the "Stipulation").

reaction of the Settlement Class further demonstrates that the proposed Settlement, the Plan of Allocation, and the request for attorneys' fees and expenses are fair and reasonable.

### ARGUMENT

Lead Plaintiff and Lead Counsel respectfully submit that their opening papers demonstrate that approval of the motions is warranted. The reaction of the Settlement Class, including the lack of any objections by Settlement Class Members, provides additional support for approval of the motions.

#### **I. The Robust Notice Program**

Pursuant to the Preliminary Approval Order, the Claims Administrator, JND Legal Administration ("JND") conducted an extensive notice program under Lead Counsel's supervision, which included mailing the Notice and Claim Form (together, the "Notice Packet"), publishing the Summary Notice in *The Wall Street Journal* and the Israeli daily newspaper *Globes*, and over the *PR Newswire*, and establishing a settlement website, [OPKOHealthSecuritiesLitigation.com](http://OPKOHealthSecuritiesLitigation.com), which provides copies of the Notice, Claim Form, and other information and documents.

JND began mailing the Notice Packet to potential Settlement Class Members on September 22, 2020. *See* Segura Decl. (ECF No. 120-3), at ¶¶ 2-6. As of December 7, 2020, JND had mailed 271,415 Notice Packets. *See* Supplemental Declaration of Luiggy Segura ("Supp. Segura Decl."), filed herewith, at ¶ 2. The Notice informed Settlement Class Members of the terms of the proposed Settlement and Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 20% of the Settlement Fund and for Litigation Expenses not to exceed \$300,000. *See* Notice at ¶¶ 5, 53. The Notice also advised Settlement Class Members of their right to object to the proposed Settlement, to the Plan of Allocation, and/or to the request for attorneys' fees and expenses, as well as to request exclusion from the Settlement Class. *See id.* at p. 3 and ¶¶ 54-67. On November 10, 2020, the opening papers in support of the motions were made available on both the settlement website and Lead Counsel's website, as well as the public docket. *See* Supp. Segura Decl. ¶ 3.

As noted above, following this notice program, ***not a single Settlement Class Member has objected*** to the Settlement, the Plan of Allocation, or Lead Counsel's application for fees and expenses. In addition, no institutional investors requested exclusion from the Settlement Class,

and a total of eleven exclusion requests were received from individuals or family trusts. *See* Supp. Segura Decl. ¶ 4 & Ex. 1. One of the requests for exclusion, from David and Kristina Engelbert as trustees of the Engelbert Family Trust, was deficient because it did not provide any information on the Trust’s transactions in OPKO common stock during the Class Period, as required by the Notice and Preliminary Approval Order. *See* Notice ¶ 54(iii); Preliminary Approval Order ¶ 15(b)(iii); Supp. Segura Decl. ¶ 4. Another request was deficient because it was received after the deadline for receipt of requests for exclusion and did not provide all the transaction information required. The nine valid requests for exclusion collectively represent purchases of 32,347 shares of OPKO common stock that were damaged by the alleged misconduct (*i.e.*, shares that were purchased during the Class Period and held until the alleged corrective disclosure on September 7, 2018). The valid requests for exclusion represent just 0.01% of the total number of damaged shares of OPKO common stock purchased during the Class Period, as estimated by Lead Plaintiff’s damages expert, and 0.003% of the total number of Notices mailed to potential Settlement Class Members—by any measure, a miniscule portion of the Settlement Class. In the letters submitted requesting exclusion, none of the individuals requesting exclusion criticized the proposed Settlement, the Plan of Allocation, or the requested fees and expenses.

## **II. The Reaction of the Settlement Class Supports Approval of the Settlement and Plan of Allocation and the Motion for Attorneys’ Fees and Expenses**

The reaction of class members to a proposed settlement, including the number of objections, is a significant factor to be considered in judging the fairness and adequacy of a proposed settlement. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977).

The absence of any objections and the small number of requests for exclusions strongly support a finding that the Settlement is fair, reasonable, and adequate. *See, e.g., Jairam v. Colourpop Cosmetics, LLC*, 2020 WL 5848620, at \*7 (S.D. Fla. Oct. 1, 2020) (“Here, there were no objections filed to the Settlement. This lack of opposition weighs strongly in favor of the Court’s approval . . .”); *Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 WL 10518902, at \*4 (S.D. Fla. Oct. 17, 2016) (“The overwhelmingly positive reaction of class members to a proposed settlement is a significant factor, and the absence of objections ‘is excellent evidence of the settlement’s fairness and adequacy.’”); *Hugo on behalf of BankAtlantic Bancorp, Inc. v. Levan*, 2011 WL

13173025, at \*11 (S.D. Fla. July 12, 2011) (“A lack of objections ‘militates strongly in favor of the Court finding that the proposed settlement should be approved.’”); *Access Now, Inc. v. Claire Stores, Inc.*, 2002 WL 1162422, at \*7 (S.D. Fla. May 7, 2002) (“The fact that no objections have been filed strongly favors approval of the settlement.”).

Moreover, it is significant that no institutional investors—which held a substantial portion of OPKO’s publicly traded common stock during the Class Period—have objected to the Settlement. The absence of objections from these institutional investors, which have ample means and incentive to object to the Settlement if they deemed it unsatisfactory, is further evidence of the Settlement’s fairness. *See, e.g., In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018) (“That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness.”); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2017 WL 2481782, at \*4 (N.D. Cal. June 8, 2017) (absence of any objections from institutions means that “the inference that the class approves of the settlement is even stronger”); *In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at \*4 (D.N.J. Apr. 25, 2005) (the reaction of the class “weigh[ed] heavily in favor of approval” where “no objections were filed by any institutional investors who had great financial incentive to object”).

The lack of objections from Settlement Class Members also supports approval of the Plan of Allocation. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at \*14 (S.D.N.Y. Nov. 7, 2007) (“not one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”); *In re Heritage Bond Litig.*, 2005 WL 1594403, at \*11 (C.D. Cal. June 10, 2005) (“The fact that there has been no objection to this plan of allocation favors approval of the Settlement.”).

Finally, the positive reaction of the Settlement Class should also be considered with respect to Lead Counsel’s motion for attorneys’ fees and Litigation Expenses. The Eleventh Circuit has held that “whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel” is a factor that should be considered in determining the award of attorneys’ fees. *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). The lack of any objections is evidence that the requested fee award and expense reimbursements are fair and reasonable. *See In re Arby’s Rest. Grp., Inc.*

*Data Sec. Litig.*, 2019 WL 2720818, at \*1 (N.D. Ga. June 6, 2019) (“The lack of objection is a strong indicator that both the settlement agreement and Application [for attorneys’ fees and expenses] are reasonable and fair.”); *In re Food Serv. Equip. Hardware Antitrust Litig.*, 2011 WL 13175440, at \*4 (N.D. Ga. Dec. 28, 2011) (“The lack of objections to the attorneys’ fee and expense award is evidence that the requested fee is fair.”); *Pinto v. Princess Cruises Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) (“That this sizeable class did not give rise to a single objection on the fees request further justifies the full award.”); *Strube v. Am. Equity Inv. Life Ins. Co.*, 2006 WL 1232816, at \*4 (M.D. Fla. May 5, 2006) (“The lack of objections to a proposed fee award is itself important evidence that the fee arrangement is reasonable.”).

The lack of objections by institutional investors also particularly supports approval of the fee request. See *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (the fact that “a significant number of investors in the class were ‘sophisticated’ institutional investors that had considerable financial incentive to object had they believed the requested fees were excessive” and did not do so, supported approval of the fee request); *In re Bisys Sec. Litig.*, 2007 WL 2049726, at \*1 (S.D.N.Y. July 16, 2007) (lack of objections from institutional investors supported the approval of fee request because “the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive”).

### CONCLUSION

Lead Plaintiff and Lead Counsel respectfully request that the Court approve the Settlement and the Plan of Allocation, and approve the motion for attorneys’ fees and litigation expenses. The proposed Judgment approving the Settlement and proposed Orders approving the Plan of Allocation and awarding attorneys’ fees and expenses are attached hereto as Exhibits 1, 2, and 3, respectively.

Dated: December 8, 2020

Respectfully submitted,

**SAXENA WHITE P.A.**

/s/ Brandon T. Grzandziel

Joseph E. White, III  
Brandon T. Grzandziel  
7777 Glades Road  
Suite 300  
Boca Raton, FL 33434  
Telephone: (561) 394-3399  
Facsimile: (888) 478-6711  
Email: jwhite@saxenawhite.com  
Email: brandon@saxenawhite.com

*Liaison Counsel for Lead Plaintiff The  
Amitim Funds*

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

/s/ John Rizio-Hamilton

Avi Josefson (*pro hac vice*)  
John Rizio-Hamilton (*pro hac vice*)  
Adam D. Hollander (*pro hac vice*)  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444  
Email: avi@blbglaw.com  
Email: johnr@blbglaw.com  
Email: adam.hollander@blbglaw.com

*Lead Counsel for Lead Plaintiff The Amitim  
Funds*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 8, 2020, the foregoing memorandum and its exhibits were filed with the Clerk of the Court using the CM/ECF electronic notification system, which will send a notice of electronic filing to all parties of record.

/s/ Brandon T. Grzandziel  
Brandon T. Grzandziel

# **Exhibit 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:18-cv-23786-MARTINEZ-OTAZO-REYES**

CHARLES STEINBERG, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

OPKO HEALTH, INC., PHILLIP FROST,  
ADAM LOGAL, and JUAN RODRIGUEZ,

Defendants.

**FINAL JUDGMENT APPROVING CLASS ACTION SETTLEMENT  
AND ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, a securities action is pending in this Court entitled *Steinberg v. OPKO Health, Inc.*, Case No. 1:18-cv-23786 (the “Action”);

WHEREAS, (a) Lead Plaintiff The Amitim Funds (consisting of Mivtachim The Workers Social Insurance Fund Ltd., Keren Hgimlaot Hmerkazit Histadrut Central Pension Fund Ltd., Keren Makefet Pension and Provident Center Cooperative Society Ltd., The Hadassah Workers Pension Fund Ltd., and The “Egged” Members Pension Fund Ltd.) (“Lead Plaintiff”), on behalf of itself and the Settlement Class (defined below), and (b) defendant OPKO Health, Inc. (“OPKO” or the “Company”) and defendant Dr. Phillip Frost (“Frost,” and, together with OPKO, “Defendants”) have entered into a Stipulation and Agreement of Settlement dated June 26, 2020 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated September 4, 2020 (the “Preliminary Approval Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B), that it (i) would likely be able to approve the Settlement as fair, reasonable, and adequate under Rule 23(e)(2) and (ii) would likely be able to certify the Settlement Class for purposes of the Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (c) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on December 15, 2020 (the “Settlement Hearing”) to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on June 29, 2020; and (b) the Notice and the Summary Notice, both of which were filed with the Court on November 10, 2020.

3. **Class Certification for Settlement Purposes** – The Court hereby certifies, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all persons or entities that purchased or otherwise acquired OPKO common stock during the Class Period, including, but not limited to, on either a U.S.-based exchange (including the New York Stock Exchange and the Nasdaq), or on the Tel Aviv Stock Exchange (“TASE”), and who were damaged thereby (the “Settlement Class”). Excluded from the Settlement Class are (i) Defendants; (ii) the Officers and directors of OPKO currently and during the Class Period; (iii) members of the Immediate Family of any such excluded persons; (iv) the legal representatives, heirs, agents, affiliates, successors, or assigns of any such excluded persons or entities; and (v) any entity in which any such excluded party has, or had during the Class Period, a controlling interest. Also excluded from the Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which are excluded from the Settlement Class pursuant to request.

4. **Settlement Class Findings** – For purposes of the Settlement only, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so

numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiff in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

5. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby appoints Lead Plaintiff as Class Representative for the Settlement Class, and appoints Lead Counsel Bernstein Litowitz Berger & Grossmann LLP as Class Counsel for the Settlement Class. Lead Plaintiff and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

6. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel’s motion for attorneys’ fees and Litigation Expenses; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel’s motion for attorneys’ fees and Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive

notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules. The Court further finds that the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 et seq. (“CAFA”) was validly provided.

7. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation, the amount of the Settlement, the Releases provided for therein, and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. Specifically, the Court finds that (a) Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class; (b) the Settlement was negotiated by the Parties at arm’s length; (c) the relief provided for the Settlement Class under the Settlement is adequate taking into account the costs, risks, and delay of trial and appeal, the proposed means of distributing the Settlement Fund to the Settlement Class; and the proposed attorneys’ fee award; and (d) the Settlement treats members of the Settlement Class equitably relative to each other. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

8. The Action and all of the claims asserted against Defendants in the Action by Lead Plaintiff and the other Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

9. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Lead Plaintiff, and all other Settlement Class Members (regardless of

whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns. The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request and are not bound by the terms of the Stipulation or this Judgment.

10. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

(b) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim against Lead Plaintiff and the other Plaintiffs' Releasees,

and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any person or entity listed on Exhibit 1 hereto.

11. Notwithstanding paragraphs 10(a) – (b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

12. **Bar Order** – To the fullest extent permitted by the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(f)(7) (the “PSLRA”) and the common law of the U.S. Court of Appeals for the Eleventh Circuit, the Court hereby (a) permanently bars, enjoins, and restrains any persons or entity, including, but not limited to, any trustee appointed in a Chapter 7 or 11 bankruptcy proceeding, a receiver, an assignee for the benefit of creditors, or any similar successor, from commencing, prosecuting, or asserting all claims for contribution, indemnification, or equitable indemnification against any Defendants' Releasee (or any other claim against any Defendants' Releasee where the alleged injury to such person or entity is that person or entity's actual or threatened liability to the Settlement Class or a Settlement Class Member) based upon, arising out of, or related to the Released Plaintiffs' Claims; and (b) permanently bars, enjoins, and restrains Defendants' Releasees from commencing, prosecuting or asserting all claims for contribution, indemnification, or equitable indemnification against any other person or entity (or any other claim against any other person or entity where the alleged injury to the Defendants' Releasee is its actual or threatened liability to the Settlement Class or a Settlement Class Member) based upon, arising out of, or related to the Released Plaintiffs' Claims.

13. **Judgment Reduction** – Any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any person or entity subject

to the bar order set forth in paragraph 12 shall be reduced by the greater of (a) an amount that corresponds to the percentage of responsibility of Defendants for the loss to the Settlement Class or the Settlement Class Member; or (b) the amount paid by or on behalf of Defendants to the Settlement Class or a Settlement Class Member for common damages.

14. **Rule 11 Findings** – The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

15. **No Admissions** – Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or

administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Settlement represents the amount which could be or would have been recovered after trial;

*provided, however,* that the Parties and the Releasees and their respective counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

16. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion

to approve the Plan of Allocation; (e) any motion to approve the Distribution Order; and (f) the Settlement Class Members for all matters relating to the Action.

17. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for attorneys' fees and Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

18. **Modification of the Agreement of Settlement** – Without further approval from the Court, Lead Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiff and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

19. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Lead Plaintiff, the other Settlement Class Members, and Defendants, and the Parties shall revert to their respective positions in the Action immediately prior to the execution of the Stipulation.

20. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

---

The Honorable Jose E. Martinez  
United States District Judge

**Exhibit 1**

**List of Persons and Entities Excluded from the Settlement Class Pursuant to Request**

1. Walter M. Stanislawski and  
Mary T. Stanislawski  
Satellite Beach, FL
2. Anthony G. Tummarello and  
Carol A. Tummarello  
Southlake, TX
3. Nicola Vanin  
Fort Worth, TX
4. L. Jane Jennings and Bill J. Jennings, Trustees  
Jennings Living Trust  
Tulsa, OK
5. Theodore F. Bosnak  
Herndon, VA
6. John E. Johnson and  
Barbara Velez  
Carmel, IN
7. Lawrence Bernard Robbins  
Aventura, FL
8. Robert Gruder  
Cardiff, CA
9. Tammy Hussin  
Cardiff, CA

# **Exhibit 2**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 1:18-cv-23786-MARTINEZ-OTAZO-REYES**

CHARLES STEINBERG, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

OPKO HEALTH, INC., PHILLIP FROST,  
ADAM LOGAL, and JUAN RODRIGUEZ,

Defendants.

**[PROPOSED] ORDER APPROVING  
PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

This matter came on for hearing on December 15, 2020 (the “Settlement Hearing”) on Lead Plaintiff’s motion to determine whether the proposed plan of allocation of the Net Settlement Fund (“Plan of Allocation”) created by the Settlement achieved in the above-captioned class action (the “Action”) should be approved. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and the Israeli daily newspaper *Globes* and released over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the proposed Plan of Allocation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order approving the proposed Plan of Allocation incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated June 26, 2020 (ECF No. 112-1) (the “Stipulation”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order approving the proposed Plan of Allocation, and over the subject matter of the Action and all Parties to the Action, including all Settlement Class Members.

3. Notice of Lead Plaintiff’s motion for approval of the proposed Plan of Allocation was given to all Settlement Class Members who or which could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for approval of the proposed Plan of Allocation satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Copies of the Notice, which included the Plan of Allocation, were mailed to over 271,000 potential Settlement Class Members and nominees, and no objections to the Plan of Allocation have been received.

5. The Court hereby finds and concludes that the formula for the calculation of the claims of Claimants as set forth in the Plan of Allocation mailed to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity.

6. The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Settlement Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead Plaintiff.

7. Any appeal or any challenge affecting this Court's approval of the Plan of Allocation shall in no way disturb or affect the finality of the Judgment.

8. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this \_\_\_\_\_ day of December, 2020.

---

The Honorable Jose E. Martinez  
United States District Judge

#1428828

# **Exhibit 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:18-cv-23786-MARTINEZ-OTAZO-REYES

CHARLES STEINBERG, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

OPKO HEALTH, INC., PHILLIP FROST,  
ADAM LOGAL, and JUAN RODRIGUEZ,

Defendants.

**[PROPOSED] ORDER AWARDING  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

This matter came on for hearing on December 15, 2020 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and the Israeli daily newspaper *Globes* and released over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated June 26, 2020 (ECF No. 112-1) (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all Parties to the Action, including all Settlement Class Members.

3. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 20% of the Settlement Fund, and \$143,841.54 in payment of Lead Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

4. In making this award of attorneys' fees and payment of expenses from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$16,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The requested fee has been reviewed and approved as reasonable by Lead Plaintiff, a sophisticated institutional investor that actively supervised the Action;

(c) Copies of the Notice were mailed to over 271,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 20% of the Settlement Fund and for Litigation Expenses in an amount not to exceed \$300,000, and no objections to the requested attorneys' fees and Litigation Expenses were received;

(d) Plaintiffs' Counsel conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted nearly 2,900 hours, with a lodestar value of over \$1,876,000, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

5. Lead Plaintiff The Amitim Funds is hereby awarded \$17,500.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

6. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

7. Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

8. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

9. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this \_\_\_\_\_ day of December, 2020.

---

The Honorable Jose E. Martinez  
United States District Judge

#1428831