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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ

**JOINT STATUS REPORT IN RESPONSE  
TO MAY 31, 2023 MINUTE ORDER**

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**PRELIMINARY STATEMENT**

1  
2           Lead Plaintiffs Wies Rafi and Antonio Bachaalani Nacif (collectively, “Lead Plaintiffs”  
3 or “Plaintiffs”), through their counsel Labaton Sucharow LLP and Glancy Prongay & Murray  
4 LLP (collectively, “Co-Lead Counsel”), together with Athira Pharma, Inc. (“Athira” or the  
5 “Company”); Dr. Leen Kawas, Glenna Mileson, Dr. Tadataka Yamada, Joseph Edelman, James  
6 A. Johnson, and John M. Fluke, Jr. (the “Individual Defendants”); and Goldman Sachs & Co.  
7 LLC, Jefferies LLC, Stifel, Nicolaus & Company, Inc., and JMP Securities LLC (the  
8 “Underwriter Defendants,” together with Athira and the Individual Defendants, “Defendants”  
9 and, Defendants together with Lead Plaintiffs, the “Parties”), through their counsel, submit this  
10 Joint Status Report in response to the May 31, 2023 Minute Order (“Minute Order”). ECF No.  
11 119.<sup>1</sup>

12           The Parties herein address the issues raised in the Minute Order using the same  
13 organizational structure used in the Minute Order. In addition to the matters below, attached  
14 hereto are the following documents:

15           **Exhibit 1** – clean and redlined versions of the proposed revised Notice to Class  
16 Members;

17           **Exhibit 2** – clean and redlined versions of the proposed revised Summary Notice;

18           **Exhibit 3** – clean and redlined versions of the proposed revised Preliminary Approval  
19 Order;

20           **Exhibit 4** – Declaration of Paul Mulholland on Behalf of Strategic Claims Services in  
21 Support of Lead Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and in  
22 Response to Questions Posed by the Minute Order Dated May 31, 2023, dated June 30, 2023;

23           **Exhibit 5** – Declaration of Bryan King, dated June 29, 2023;

24  
25  
26 \_\_\_\_\_  
27 <sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meanings as those set  
28 forth in the Stipulation and Agreement of Settlement, dated April 27, 2023 (the “Stipulation”),  
previously filed with the Court. *See* ECF No. 118-2. All internal citations are omitted, unless  
otherwise noted.



1           **Exhibit 6** – Declaration of F. Paul Bland, Jr. of the Public Justice Foundation, dated  
2 June 29, 2023; and

3           **Exhibit 7** – copy of the previously issued notice pursuant to §1715 of the Class Action  
4 Fairness Act of 2005, without the exhibits given that the exhibits have each been previously  
5 filed with the Court.

6           Filed herewith under seal are: (i) the additional confidential documents provided to Co-  
7 Lead Counsel pursuant to the Term Sheet and (ii) the Parties’ Supplemental Agreement, dated  
8 April 27, 2023.

9           **a. Definition of Settlement Class**

10           Courts in the Ninth Circuit and nationwide recognize that “there is an overriding public  
11 interest in settling and quieting litigation[.]” which is “particularly true in class action[s].” *Van*  
12 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Class Plaintiffs v. City*  
13 *of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (Ninth Circuit maintains a “strong judicial  
14 policy that favors settlements, particularly where complex class action litigation is concerned.”);  
15 *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (“strong judicial  
16 policy in favor of settlements, particularly in the class action context”); *Vassalle v. Midland*  
17 *Funding, LLC*, No. 3:11 cv 00096, 2014 WL 5162380, at \*6 (N.D. Ohio Oct. 14, 2014), *aff’d*,  
18 655 F. App’x. 352 (6th Cir. 2016) (“axiomatic that the settlement of class-action litigation is  
19 favored”); *see generally*, 4 William B. Rubenstein, *Newberg & Rubenstein on Class Actions* §  
20 13.44, n.1 (6th ed. 2022) (collecting cases) (“Newberg on Class Actions”).

21           Lead Plaintiffs’ Consolidated Amended Complaint for Violations of the Federal  
22 Securities Laws (“Complaint”), ECF No. 74, filed January 7, 2022, asserted claims against  
23 Athira, the Individual Defendants, and the Underwriter Defendants. The Complaint asserted  
24 claims for alleged violations of Section 10(b) of the Securities and Exchange Act of 1934  
25 (“Exchange Act”) (and Rule 10b-5 promulgated thereunder) against Athira and the Individual  
26  
27  
28

1 Defendants. Complaint ¶¶ 14-18, 147-156 (Count I).<sup>2</sup> It also asserted claims for alleged  
2 violations of Section 20(a) of the Exchange Act against the Individual Defendants. *Id.* ¶¶ 23-26,  
3 157-162 (Count II). The Complaint asserted claims for alleged violations of Sections 11 and  
4 12(a)(2) of the Securities Act of 1933 (“Securities Act”) against all Defendants. *Id.* ¶¶ 19-22,  
5 191-211 (Counts III and IV). And it asserted claims for alleged violations of Section 15 of the  
6 Securities Act against the Individual Defendants. *Id.* ¶¶ 23-26, 212-214 (Count V).

7 On July 29, 2022, the Court granted in part and denied in part Defendants’ motions to  
8 dismiss. ECF No. 89. The Court dismissed all claims against all Defendants except for (i) a  
9 Section 11 claim against Dr. Kawas and Athira, and (ii) a Section 15 (control person) claim  
10 against Dr. Kawas, both solely as to Statement 3 relating to the description of the WSU License  
11 Agreement in Athira’s Registration Statement. On October 4, 2022, the Court denied Dr.  
12 Kawas’s motion for partial reconsideration of the Court’s dismissal order. ECF No. 95.  
13 Although the Court gave Lead Plaintiffs leave, Co-Lead Counsel states that Plaintiffs did not  
14 file an amended complaint given the delay that would cause, choosing instead to proceed to  
15 discovery. On November 4, 2022, the Defendants filed answers to the Complaint. ECF Nos.  
16 101, 102.

17 Although the Exchange Act claims were dismissed in the Court’s July 29, 2022 Order,  
18 ECF No. 89 at 49-50, the Exchange Act claims are based on the same underlying events and  
19 could still be revived in this litigation. *See* ECF No. 105 at 4 (“the risk would remain that  
20 plaintiffs might reverse course at some indeterminate date in the future and seek to bring the  
21 Underwriter Defendants back into the case”); ECF No. 111 at 4-5 (arguing that the Court’s July  
22 29, 2022 Order was not an ultimate disposition of Plaintiffs’ claims against the Underwriter  
23 Defendants). Accordingly, a valuable aspect of the proposed Settlement from the Defendants’  
24 perspective is to achieve finality regarding all claims that were asserted in the Complaint or that  
25 could have been asserted in the Complaint based upon the underlying alleged facts. The  
26

27 <sup>2</sup> Plaintiffs clarified in their Opposition to Defendants’ Motion to Dismiss that the  
28 Complaint did not allege Exchange Act claims against the Underwriter Defendants. *See* ECF  
No. 81 at 16 n.27.

1 proposed Settlement therefore applies to both Securities Act and Exchange Act claims, and the  
2 Settlement Class is defined as:

3 [A]ll persons and entities who or which purchased or otherwise acquired Athira  
4 Pharma, Inc. publicly traded common stock: (a) during the period from  
5 September 17, 2020[,] through June 17, 2021, inclusive; (b) pursuant and/or  
6 traceable to the registration statement and prospectus issued in connection with  
7 the Company’s September 2020 initial public offering; and/or (c) pursuant and/or  
8 traceable to the registration statement and prospectus issued in connection with  
9 the Company’s January 2021 secondary public offering, and were damaged  
10 thereby.

11 Stipulation, ECF No. 118-2 at 13-14, ¶ 1 (ss).

12 Defendants in class action settlements often obtain such comprehensive settlements and  
13 releases of claims in order to obtain “global peace,” which is viewed as a “valid, and valuable,  
14 incentive to class action settlements.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 310–12 (3d Cir.  
15 2011); *Klein v. O’Neal, Inc.*, No. 7:03 CV 102-D, 2009 WL 1174638, at \*3 (N. D. Tex. Apr. 29,  
16 2009) (“In a class action settlement setting, defendants seek and pay for global peace—i.e., the  
17 resolution of as many claims as possible.”). The Ninth Circuit has held that federal district  
18 courts may properly release claims “not alleged in the underlying complaint where those claims  
19 depended on the same set of facts as the claims that gave rise to the settlement.” *Hesse v. Sprint*  
20 *Corp.*, 598 F.3d 581, 590 (9th Cir. 2010); *see, e.g., Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*,  
21 442 F.3d 741, 749 (9th Cir. 2006) (affirming dismissal of a class action against credit card  
22 companies predicated on the same price-fixing allegations and injury as claims settled in an  
23 earlier class action, even though the subsequent suit “posit[ed] a different theory of anti-  
24 competitive conduct”). The U.S. Supreme Court has even held that a state court may approve a  
25 settlement and release claims that only federal courts can adjudicate, highlighting the ability for  
26 courts to approve broad settlement and releases of claims. *See Matsushita Elec. Indus. Co. v.*  
27 *Epstein*, 116 S. Ct. 873, 879-80, 883 (1996) (holding release in state court class settlement could  
28 include claims for which federal courts have exclusive jurisdiction).<sup>3</sup>

<sup>3</sup> *See also* 2 McLaughlin on Class Actions, §6:29 (“Preclusive effect of judgment entered on class action settlement”) (18th ed., Oct. 2021 update) (“*Matsushita* ratified the long line of authority holding that a court need not have subject matter jurisdiction over a claim in order to

1 Courts regularly approve settlements that include the release of claims that previously  
 2 were dismissed. For example, in approving a plan of allocation that included claims that had  
 3 been dismissed, the court in *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420 YGR  
 4 (DMR), 2020 WL 7264559 (N.D. Cal. Dec. 10, 2020), *aff'd on other grounds*, Nos. 21-15120,  
 5 15200, 2022 WL 16959377 (9th Cir. Nov. 16, 2022), explained:

6 To infer that those [dismissed] claims have *no* value would be to ignore the  
 7 practical realities of litigation including the right to appeal. The parties and  
 8 lawyers here are sophisticated. They are entitled to continue to pursue litigation.  
 9 They are also entitled to “buy peace,” even where some claims are not as strong  
 10 as others. *Cf. Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San*  
 11 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (“voluntary conciliation and  
 12 settlement are the preferred means of dispute resolution.”); *Van Bronkhorst v.*  
*Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) (“[T]here is an overriding public  
 interest in settling and quieting litigation” and this is “particularly true in class  
 action suits.”); *see also Sullivan*, 667 F.3d at 311 (“achieving global peace is a  
 valid, and valuable, incentive to class action settlements” and making proof of  
 validity of all claims a prerequisite would prevent “the parties from seriously  
 getting to, and engaging in, settlement negotiations”).

13 *Id.* at \*13 (emphasis in original); *see also Infoneuro Grp. v. Aetna Life Ins. Co.*, No. 22-55239.  
 14 2023 WL 2052781, at \*2 (9th Cir. Feb. 16, 2023) (“Nor can Playa claim that it did not agree ‘to  
 15 dismiss the entire action’ under Federal Rule of Civil Procedure 41. The settlement terms  
 16 plainly state that they apply to all claims and counterclaims filed in this lawsuit, including those  
 17 claims previously dismissed in the district court's grant of partial summary judgment.”). In  
 18 short, there is nothing improper about including the dismissed Exchange Act claims in the  
 19 proposed Settlement.

20 **(i) Traceability and the Class Period**

21 The Court ordered the Parties to explain the meaning of the term “traceable,” which  
 22 appears in the proposed settlement class definition. Minute Order, ¶ 1(a)(i). To have statutory  
 23 standing to assert a claim for violation of Section 11 of the Securities Act, 15 U.S.C. § 77k, a  
 24 plaintiff must “plead and prove that he purchased shares traceable to the allegedly defective  
 25 registration statement.” *Slack Techs., LLC v. Pirani*, 143 S. Ct. 1433, 1442 (2023); *see also In*  
 26 *re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1106-07 (9th Cir. 2013) (plaintiff must  
 27 approve a settlement incorporating its release.”).  
 28

1 have bought the stock “directly” in the initial public offering or be able to trace it back to the  
2 initial public offering); *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 495-96 (5th Cir. 2005) (same).  
3 Unlike Section 11, traceability is not a statutory standing requirement to assert claims for  
4 violation of Section 10(b) of the Exchange Act.

5 For Section 11 claims, federal courts “have consistently held that shares bought on the  
6 market after unregistered shares have entered the market cannot be traced back to the IPO.” *In*  
7 *re Atossa Genetics, Inc. Sec. Litig.*, No. C13-1836, 2014 WL 4983551, at \*5-6 (W.D. Wash.  
8 Oct. 6, 2014), *aff’d in part, vacated in part and rev’d in part on other grounds*, 868 F.3d 784  
9 (9th Cir. 2017); *see also In re Initial Pub. Offering Sec. Litig.*, 227 F.R.D. 65, 117-18 (S.D.N.Y.  
10 2004) (plaintiff must have bought “shares in a market containing only shares issued pursuant to  
11 the allegedly defective registration statement”). Indeed, courts “have uniformly interpreted  
12 section 11 as requiring more than a showing that a plaintiff’s stock ‘might’ have come from the  
13 relevant offering.” *Abbey v. Comput. Memories, Inc.*, 634 F. Supp. 870, 874 (N.D. Cal. 1986).  
14 It is insufficient to establish that it is more probable than not—or even “highly probable”—that  
15 the plaintiff’s shares were issued pursuant to an allegedly defective registration statement. *In re*  
16 *Quarterdeck Off. Sys., Inc. Sec. Litig.*, No. CV 92-3970-DWW(GHKX), 1993 WL 623310, at  
17 \*2 (C.D. Cal. Sept. 30, 1993).

18 Lead Plaintiffs’ Section 11 claim was brought on behalf of a putative class that  
19 purchased or otherwise acquired Athira publicly traded common stock pursuant and/or traceable  
20 to Athira’s September 2020 initial public offering (“IPO”) or January 2021 secondary public  
21 offering (“SPO”), Complaint ¶ 215(b). After the SPO, when additional shares entered the  
22 market, it became impossible to trace shares bought in the open market to one offering or the  
23 other because shares are “fungible.” *Abbey*, 634 F. Supp. at 874. Accordingly, after the SPO,  
24 the class’s Section 11 claims became significantly weaker both in terms of establishing Section  
25 11 standing and certification on a class-wide basis. The proposed Settlement Class is designed  
26 to fairly encompass both the Section 11 claims of Class Members who bought shares traceable  
27 to the IPO or SPO registration statements, as well as the Section 10(b) claims of Class Members  
28 who cannot trace their shares.

1 An examination of the offerings' timeline delineates the differences in Section 11  
2 traceability for shares purchased in Athira's IPO, SPO, and in the aftermarket from January 21,  
3 2021 through the end of the Class Period on June 17, 2021.

4 ***Shares Purchased from September 17, 2020 to January 20, 2021.*** Athira conducted its  
5 IPO on September 17, 2020. All pre-existing, unregistered shares owned by Athira or its  
6 executives, officers, and other insiders were subject to a lockup agreement, which prohibited the  
7 sale of those unregistered shares for 180 days following the IPO — or until March 16, 2021.  
8 Athira completed its SPO on January 21, 2021, before the IPO lockup of pre-existing,  
9 unregistered shares expired. The SPO had a separate Registration Statement, and thus the  
10 shares issued pursuant to the SPO were not issued pursuant to the IPO Registration Statement.  
11 When they entered the market, the SPO shares created a mixed pool of Athira stock comprised  
12 of undifferentiated shares of IPO and SPO shares. Until the SPO —all shares *i.e.*, those  
13 purchased between September 17, 2020 (the IPO) and January 20, 2021 (the day before Athira's  
14 SPO)—are clearly traceable to Athira's IPO Registration Statement. *See DeMaria v. Andersen*,  
15 318 F.3d 170, 176-77 (2d Cir. 2003) (“[W]here there has been only one stock offering, any  
16 person who acquires the security may sue under § 11, regardless of whether he bought in the  
17 initial offering, a week later, or a month after that.”).

18 ***Shares Purchased from January 21, 2021 to February 10, 2021.*** All shares trading  
19 from January 21, 2021, the day of the SPO, to March 16, 2021, the day the IPO lockup expired,  
20 were issued pursuant to either the IPO or SPO Registration Statements. As the Court noted in  
21 its July 29, 2022 Order, Statement 3 is contained in both the IPO and SPO Registration  
22 Statements. *See* Order at 39 (ECF No. 89) (“Statement 3 appeared in the IPO and SPO  
23 Prospectus”). Thus, regardless of whether a share purchased in the aftermarket was registered  
24 pursuant to the IPO or SPO Registration Statements, the share was certainly traceable to one of  
25 two Registration Statements that contained the same alleged misstatement (Statement 3). While  
26 all shares trading in the market until the IPO lockup expired on March 16, 2021 were certainly  
27 issued pursuant to one of these two Registration Statements, it is difficult to trace a share to one  
28 Registration Statement or the other. To overcome this technical traceability issue presented by



1 these additional SPO shares, Lead Plaintiffs' proposed Plan of Allocation requires that, to be  
2 presumed traceable to the SPO for purposes of the Settlement, shares must have been purchased  
3 from "January 21, 2021 through February 10, 2021, inclusive, at a price of \$22.50 per share  
4 (excluding commissions and other charges)[,]" which was the SPO offering price. *See* ECF  
5 Nos. 118-2 at 13 n.4; 118-6 at 4.

6 ***Shares Purchased from February 11, 2021 through June 17, 2021.*** Athira shares  
7 purchased from February 11, 2021 through the end of the Class Period on June 17, 2021 are not  
8 traceable to either the IPO or SPO Registration Statements for purposes of Section 11. These  
9 shares, however, were still purchased before the proposed Class Period ends on June 17, 2021  
10 when the purported truth was alleged by Plaintiffs to have been revealed to the market. These  
11 aftermarket purchasers are presumed to have relied upon the alleged misstatement (Statement 3)  
12 in the Registration Statements to their detriment allegedly in violation of the Exchange Act.  
13 Again, traceability is not a requirement for pursuit of Section 10(b) claims. The source of the  
14 shares does not matter. *Slack*, 143 S. Ct. at 1435. Including shares purchased from February  
15 11, 2021 through June 17, 2021 in the Settlement Class ensures that purchasers of Athira  
16 common stock who cannot trace their shares to the IPO or SPO Registration Statements (and are  
17 thus prevented from pursuing a Section 11 claim) are nonetheless eligible to participate in the  
18 Settlement because they, too, purchased shares before the alleged truth was revealed and did,  
19 and could again, assert a claim under Section 10(b) of the Exchange Act.

20 In short, it is respectfully submitted that the proposed Class Period appropriately runs  
21 from September 17, 2020 to June 17, 2021, in order to include all claims that could be pursued  
22 under both the Securities Act and the Exchange Act. The proposed Plan of Allocation has  
23 separate provisions designed specifically to fairly allocate the Net Settlement Fund to Class  
24 Members with Securities Act claims and, exclusively, Section 10(b) claims, the value of which  
25 may differ from the Section 11 claims.

26 The proposed Notice has been revised to explain traceability within the context of the  
27 definition of the Settlement Class and the relevance of the dates in the proposed Class Period,  
28 September 17, 2020, January 20, 2021, January 21, 2021, and February 10, 2021.

1           **(ii) Exchange Act**

2           The Court asks the Parties to clarify whether the proposed Settlement Class includes  
3 purchasers that have only an Exchange Act claim. Minute Order, ¶ 1(a)(ii). The proposed  
4 Settlement Class does include investors that have only Exchange Act claims. Although the  
5 Exchange Act claims were dismissed in the Court’s July 29, 2022 Order, as explained above,  
6 those claims are based on the same underlying events as the Section 11 claims and could still be  
7 revived in this litigation. *See* ECF No. 105 at 4 (“the risk would remain that plaintiffs might  
8 reverse course at some indeterminate date in the future and seek to bring the Underwriter  
9 Defendants back into the case”); ECF No. 111 at 4-5 (arguing that the Court’s July 29, 2022  
10 Order was not an ultimate disposition of Plaintiffs’ claims against the Underwriter Defendants).  
11 Moreover, the dismissal of the Exchange Act claims was only as to the Lead Plaintiffs.  
12 Accordingly, Defendants faced the ongoing prospect of future litigation with respect to the  
13 Exchange Act claims by members of the Settlement Class and sought to achieve “global peace”  
14 for all claims arising from the facts underlying the instant Action. *See Sullivan*, 667 F.3d at  
15 310–12.

16           The Court asks the Parties to address whether the interests of Exchange Act-only Class  
17 Members are antagonistic to the interests of Class Members who have viable Securities Act  
18 claims. Minute Order, ¶ 1(a)(ii). Courts, including this one, have approved settlements that  
19 contained both Securities Act and Exchange Act claims, including where the recovery for the  
20 two types of claims was calculated in different manners. For example, in *In re InfoSpace, Inc.*  
21 *Securities Litigation*, No. 01-CV-0913, ECF No. 104 (W.D. Wash. Feb. 17, 2004), some claims  
22 were based on open-market purchases (Exchange Act), while others were pursuant to a  
23 registration statement (Securities Act). The proposed settlement gave 60% of the net recovery  
24 to purchasers in an offering and 40% to open-market purchasers. The difference was justified  
25 by the “views of counsel for the Lead Plaintiffs concerning the relative strengths of these  
26 different investor group's claims,” *Id.*, Ex. A-1 at 14 (proposed settlement notice).

27           As reflected in this Court’s preliminary approval of the proposed settlement in  
28 *InfoSpace*, Securities Act claims do not conflict with, and are not antagonistic to Exchange Act



1 claims, and therefore the two may proceed in the same settlement, even though some class  
2 members possess only Exchange Act claims, some possess only Securities Act claims, and some  
3 possess both. *See In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x. 760, 764-65 (2d Cir. 2020);  
4 *see also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 37 (2d Cir. 2009) (affirming  
5 district court's holding that no sub-classing was necessary because the Securities Act and  
6 Exchange Act claims were not antagonistic to each other); *In re Flag Telecom Holdings, Ltd.*  
7 *Sec. Litig.*, 245 F.R.D. 147, 160 & n.14 (S.D.N.Y. 2007) (“[T]he [Exchange Act and Securities  
8 Act] claims are not antagonistic to each other because proof of one does not negate an essential  
9 element of the other.”), *aff'd in part, vacated on other grounds*, 574 F.3d 29 (2d Cir. 2009).

10 The issue of the interplay between the Securities Act claims and the Exchange Act  
11 claims was raised at the start of this litigation in connection with the motions for appointment of  
12 a lead plaintiff. *See generally* ECF Nos. 32-33, 40-43, 46-50, 56-60. In its order appointing  
13 Lead Plaintiffs Nacif and Rafi, the Court noted that the Slynnes movants contested Nacif's  
14 appointment with respect to the Securities Act claims because he had no losses traceable to the  
15 offering and that they proposed two lead plaintiffs, one for each group of claims. *See* Order,  
16 ECF No. 60 at 7. In this regard, the Court wrote:

17 Given the general consensus of the parties, Nacif is appointed lead plaintiff, at  
18 least with respect to the Exchange Act claims, and the remaining issues before  
19 the Court are (i) whether to appoint another lead plaintiff as to the Securities Act  
20 claims; and (ii) if co-lead plaintiffs are to be appointed, whether Rafi (rather than  
21 the Slynnes) is the “most adequate plaintiff” with respect to the Securities Act  
22 claims. The Court answers both questions in the affirmative.

23 *Id.* Accordingly, the Court appointed Lead Plaintiff Rafi precisely in order to protect the  
24 interests of class members with Securities Act claims. Indeed, in the proposed Plan of  
25 Allocation, Recognized Loss Amounts arising from purchases in the IPO or SPO will be  
26 increased by a 25% premium. It is respectfully submitted that Lead Plaintiff Rafi and his  
27 counsel, Glancy Prongay & Murray LLP, have protected the interests of Class Members with  
28 Securities Act claims and will continue to do so throughout the completion of the settlement  
process.

1 **b. Numerosity**

2 As the Court is aware, Rule 23(a)(1) requires that a class be so numerous that joinder of  
3 all members is “impracticable.” “Numerosity is presumed when the plaintiff class contains  
4 forty or more members.” *In re Wash. Mut. Mortg.-Backed Sec. Litig.*, 276 F.R.D. 658, 665  
5 (W.D. Wash. 2011). In securities litigation, courts regularly find the numerosity requirement is  
6 satisfied with respect to putative purchasers of nationally traded securities based on the volume  
7 of outstanding shares. *See Howell v. JBI, Inc.*, 298 F.R.D. 649, 654-55 (D. Nev. 2014) (“in  
8 securities cases, when millions of shares are traded during the proposed class period, a court  
9 may infer that the numerosity requirement is satisfied.”); *In re Zillow Grp., Inc. Sec. Litig.*, No.  
10 C17-1387, 2020 WL 6318692, at \*3 (W.D. Wash. Oct. 28, 2020) (“Common sense assumptions  
11 support a finding of numerosity in class actions brought on behalf of shareholders in publicly  
12 owned corporations.”); *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009)  
13 (finding numerosity where the defendant had more than 36 million shares of stock outstanding  
14 during the class period).

15 Submitted herewith as Exhibit 4 is the Declaration of Paul Mulholland on Behalf of  
16 Strategic Claims Services in Support of Lead Plaintiffs’ Motion for Preliminary Approval of  
17 Class Action Settlement and in Response to Questions Posed by the Minute Order Dated May  
18 31, 2023, dated June 30, 2023 (“Mulholland Decl.”). The Mulholland Declaration, among other  
19 things, explains the various sources of information concerning the identity of (and, relatedly, the  
20 number of) absent class members in a case involving publicly traded securities, such as the  
21 Action. Unfortunately, the bottom line is that there is no single source or way to determine the  
22 identity of class members or the number of class members given the way trading in the financial  
23 markets is structured. Indeed, the vast majority of investors are beneficial owners whose  
24 securities are held in the “street name” of third-party banks, brokers, and custodians, *i.e.*,  
25 “nominees.” This notwithstanding, based on the information below, it is respectfully submitted  
26 that there are certainly more than 40 members of the Settlement Class and thus numerosity can  
27 be established.

28 As requested in the Minute Order, Athira can report the following:

- 1 (i) In the September 2020 IPO, Athira sold a total of 13,397,712 shares of common  
2 stock to the Underwriter Defendants in a firm commitment underwriting in  
3 which the Underwriter Defendants then allocated an estimated 97% of these  
4 shares to 168 institutions (it is reasonable to assume that at least some of the  
5 institutional investors resold some of their allocated shares, including to their  
6 own customers and individual investors) and 3% of these shares to retail  
7 investors and participants in a directed share program (“DSP Participants”), *see*  
8 Declaration of Bryan King, dated June 29, 2023 (“King Declaration”), ¶¶ 3-5,  
9 attached hereto as Exhibit 5;
- 10 (ii) In the January 2021 SPO, Athira sold a total of 4,600,000 shares of common  
11 stock to the Underwriter Defendants in a firm commitment underwriting in  
12 which the Underwriter Defendants then allocated an estimated 97% of these  
13 shares to 100 institutions (it is reasonable to assume that at least some of the  
14 institutional investors resold some of their allocated shares, including to their  
15 customers and individual investors) and 3% of these shares to retail investors and  
16 DSP Participants, *see* King Declaration, ¶¶ 6-8; and
- 17 (iii) As of March 29, 2021, approximately three months before the end of the Class  
18 Period, Athira had 5,331 non-objecting beneficial accounts, *see* King  
19 Declaration, ¶ 9.<sup>4</sup>

20 Moreover, as explained in the Mulholland Declaration, estimates about the number of  
21 Class Members can be derived from the information in the King Declaration, Athira’s trading  
22 volume during the Class Period, and publicly available information about institutional  
23 ownership. Mulholland Decl. ¶¶ 29-31. Mr. Mulholland estimates there are approximately  
24 30,000 to 45,000 members of the Settlement Class. *Id.*

25  
26  
27 <sup>4</sup> A non-objecting beneficial owner (“NOBO”) is a beneficial owner of a company who  
28 gives permission to a financial intermediary to release their name and address to the companies  
or issuers in which they have bought securities.

1 The Court also asked the Parties to provide a reasonable estimate as to the number of  
 2 shares held by individuals or entities that are excluded from the Settlement Class or otherwise  
 3 ineligible to participate in the settlement. Minute Order, ¶ 1(b).

4 As an initial matter, Athira states that shares purchased or otherwise acquired by anyone  
 5 prior to Athira's September 17, 2020 IPO, *i.e.*, before the start of the Class Period, and not  
 6 subsequently sold, are not eligible to participate in the Settlement. The Parties state that shares  
 7 purchased or otherwise acquired from September 17, 2020 through June 17, 2021 by (a)  
 8 Defendants; (b) any Person who served as a partner, control person, executive officer and/or  
 9 director of Athira or the Underwriter Defendants during the Class Period, and members of their  
 10 Immediate Family; (c) present and former parents, subsidiaries, assigns, successors, affiliates,  
 11 and predecessors of Athira and the Underwriter Defendants, (d) any entity in which the  
 12 Defendants have or had a controlling interest; (e) any trust of which an Individual Defendant is  
 13 the settlor or which is for the benefit of an Individual Defendant and/or member(s) of their  
 14 Immediate Family; (f) liability insurance carriers for Athira or the Individual Defendants; and  
 15 (g) the legal representatives, heirs, successors, and assigns of any person or entity excluded  
 16 under (a) through (f), are excluded from the Settlement Class. Stipulation, ¶ 1(ss).<sup>5</sup>

17 Athira estimates that the following shares purchased or otherwise acquired by the  
 18 aforementioned during the Class Period are excluded from the Settlement Class: (a)  
 19 approximately 1,465,000 shares purchased or otherwise acquired by Section 16 officers or their  
 20 affiliates; (b) approximately 5,600 shares purchased in the IPO's Directed Share Program by  
 21 members of the Individual Defendants' or Section 16 officers' Immediate Family; and (c)  
 22  
 23

24  
 25 <sup>5</sup> The Settlement Class does not exclude Investment Vehicles, Stipulation, ¶ 1(ss), which is  
 26 defined as "any investment company or pooled investment fund, including, but not limited to,  
 27 mutual funds, mutual fund families, exchange traded funds, fund of funds, and hedge funds, in  
 28 as to which it or its affiliates may act as an investment advisor, but in which any of the  
 Underwriter Defendants alone or together with their respective affiliates is not a majority owner  
 or does not hold a majority beneficial interest." *Id.* ¶ 1(v).

1 approximately 8,300 shares purchased by Athira’s Employee Stock Purchase Plan (“ESPP”).<sup>6</sup>

2 **c. “Opt In” Approach**

3 The Court asked the Parties to address the possibility of an “opt in” settlement. Minute  
4 Order, ¶ 1(c). Counsel for the Parties have conferred, and Co-Lead Counsel have conferred  
5 with the proposed Claims Administrator and other experienced administrators, and they  
6 respectfully submit that for the reasons discussed below and in the Mulholland Declaration there  
7 is no viable fair method for distributing the Net Settlement Fund in a settlement of this Action  
8 without a claims process. Although this does mean that small investors will have to  
9 affirmatively take action in order to recover, it is respectfully submitted that this does not create  
10 a flaw requiring that preliminary approval be denied. Steps have been proposed, and will be  
11 implemented, that will assist smaller investors so that they can readily complete their claims and  
12 recover from the Settlement. Fundamentally, there is nothing inherently unfair or unreasonable  
13 about asking investors, large and small, to provide basic proof of their losses.

14 From a historical perspective, under the original version of Rule 23, “class actions  
15 seeking money damages effectively operated on an opt-in basis, with a judgment treated as  
16 binding only upon those absent class members who affirmatively intervened in the case. But the  
17 1966 amendments introduced a new procedure—the so-called “opt out” class action authorized  
18 by Rule 23(b)(3)—which reversed the operative presumption of the original Rule by requiring  
19 class members to affirmatively request exclusion from the class in order to avoid being bound to  
20 the class judgment.” Ryan C. Williams, *Due Process, Class Action Opt Outs, and the Right Not*  
21 *To Sue*, 115 Colum. L. Rev. 599, 602 (2015); *see also* Benjamin Kaplan, *Continuing Work of*  
22 *the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*, 81 Harv. L.  
23 Rev. 356, 397 (1969) (noting that the Advisory Committee on Civil Rules rejected the  
24 suggestion that judgment in Rule 23(b)(3) class actions would bind only those who  
25 affirmatively indicated their desire to be included in the class). Thus, “The [Rule 23] class  
26

27 <sup>6</sup> Subsection (c) excludes ESPP purchases for Section 16 officers that were previously  
28 reported on a Form 4 in order to avoid double-counting because these shares are included in the  
total in subsection (a).

1 action mechanism is an opt-out, not opt-in, procedure.” 3 Newberg on Class Actions, § 9:48; *see*  
 2 *also Millan v. Cascade Water Servs., Inc.*, 310 F.R.D. 593, 602 (E.D. Cal. 2015) (“Rule 23  
 3 simply does not provide for an opt-in class.”).

4 Indeed, “substantial legal authority supports the view that by adding the ‘opt out’  
 5 requirement to Rule 23 . . . Congress prohibited ‘opt in’ provisions by implication.” *Kern v.*  
 6 *Siemens Corp.*, 393 F.3d 120, 124 (2d Cir. 2004); *see also Ackal v. Centennial Beauregard*  
 7 *Cellular L.L.C.*, 700 F.3d 212, 216 (5th Cir. 2012) (“[n]ot only is an opt in provision not  
 8 required, but substantial legal authority supports the view that by adding the opt out requirement  
 9 to Rule 23. . . , Congress prohibited opt in provisions by implication.”); *Thorpe v. Abbott*  
 10 *Laboratories, Inc.*, 534 F. Supp. 2d 1120, 1123 (N.D. Cal. 2008) (“[S]ignificant precedent bars  
 11 courts from requiring absent class members in Rule 23 class actions to opt in to the action.”).  
 12 Accordingly, “no court has ever certified an opt-in class under 23(b)(3), and courts have denied  
 13 certification of classes for which plaintiffs request an opt-in provision.” 3 Newberg on Class  
 14 Actions § 9:48; *see also, e.g., Andrews Farms v. Calcot, Ltd.*, 258 F.R.D. 640, 656 (E.D. Cal.  
 15 2009) (“Based on well-settled authority, this Court will employ an opt out procedure, as  
 16 provided by Rule 23(c), and denies Defendants’ request for an opt in class action.”).

17 Moreover, as long as there is not an affirmative opt-in requirement, the use of an opt-out  
 18 provision fully complies with procedural due process requirements. As the U.S. Supreme Court  
 19 ruled in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985),

20 We reject petitioner's contention that the Due Process Clause of the Fourteenth  
 21 Amendment requires that absent plaintiffs affirmatively “opt in” to the class,  
 22 rather than be deemed members of the class if they do not “opt out.” We think  
 23 that such a contention is supported by little, if any precedent, and that it ignores  
 the differences between class-action plaintiffs, on the one hand, and defendants  
 in nonclass civil suits on the other. . . .

24 We think that the procedure followed by Kansas, where a fully descriptive notice  
 25 is sent first-class mail to each class member, with an explanation of the right to  
 26 “opt out” satisfies due process. Requiring a plaintiff to affirmatively request  
 27 inclusion would probably impede the prosecution of those class actions involving  
 28 an aggregation of small individual claims, where a large number of claims are  
 required to make it economical to bring suit. *See, e.g., Eisen, supra*, 417 U.S. at  
 161, 94 S.Ct., at 2144. The plaintiff’s claim may be so small, or the plaintiff so  
 unfamiliar with the law, that he would not file suit individually, nor would he  
 affirmatively request inclusion in the class if such a request were required by the  
 Constitution. If, on the other hand, the plaintiff’s claim is sufficiently large or  
 important that he wishes to litigate it on his own, he will likely have retained an



1 attorney or have thought about filing suit, and should be fully capable of  
2 exercising his right to “opt out.

3 *Id.* at 812-13 (footnote omitted); *accord Mitchell v. L.A. Unified Sch. Dist.*, 963 F.2d 258 (9th  
4 Cir.) (analogizing to “opt out” procedure used in class action lawsuits, court held that “the  
5 burdensome ‘opt in’ requirement” sought by a class of non-union members of a bargaining unit  
6 who challenged the requirement that they must opt out if they did not want the union to deduct  
7 the full amount of dues from their paychecks, “would unduly impede the union in order to  
8 protect ‘the relatively rare species’ of employee who is unwilling to respond to the union’s  
9 notifications but nevertheless has serious disagreements with the union’s support of its political  
10 and ideological causes.”).

11 Neither counsel for the Parties nor the proposed Claims Administrator are aware of a  
12 single securities class action settlement involving publicly traded securities purchased in an IPO  
13 or SPO, or on the open market, that did not have a claims process. The Court has also  
14 previously approved securities class action settlements that had a claims process, like that  
15 proposed here, and *pro rata* distributions of net settlement funds. *See, e.g., In re Boeing Sec.*  
16 *Litig.*, No. C97-1715Z, ECF Nos. 649 & 663 (W.D. Wash. Dec. 11, 2001; Feb. 20, 2002)  
17 (granting preliminary and final approval to securities settlement with claims process and *pro*  
18 *rata* distribution); *In re InfoSpace, Inc. Sec. Litig.*, No. 01-CV-0913, ECF Nos. 104 & 139  
19 (W.D. Wash. Feb. 17, 2004; May 7, 2004) (same); *In re Sonus Pharm., Inc. Sec. Litig.*, No. C-  
20 98-1164-Z, ECF No. 175 & 196 (W.D. Wash. Nov. 21, 2000; Feb. 22, 2001) (same); *In re*  
21 *CellPro Inc. Sec. Litig.*, No. C98-298Z, ECF Nos. 113 & 127 (W.D. Wash. Nov. 18, 1999; Jan.  
22 24, 2000) (same).

23 Moreover, courts within the Ninth Circuit regularly recognize the propriety of claims  
24 procedures. *See, e.g., In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 568 (9th Cir. 2019)  
25 (“[T]he district court properly exercised its discretion in finding that ‘some sort of claims  
26 process is necessary. . .’ and rejecting argument that defendant automakers “should have  
27 automatically made lump sum payments to class members” where the automakers lacked  
28 “complete records of resales of the class vehicles” and “could [not] have identified subsequent

1 purchasers who were also part of the class”); *In re Groupon, Inc., Mktg. and Sales Prac. Litig.*,  
2 No. 11-2238, 2012 WL 13175871, at \*5 (S.D. Cal. Sept. 28, 2012) (“the requirement of ...  
3 proof of purchase serves to ensure that money is fairly distributed for valid claims.”); *Shames v.*  
4 *Hertz Corp.*, No. 07-2174, 2012 WL 5392159, at \*9 (S.D. Cal. Nov. 5, 2012) (“there is nothing  
5 inherently objectionable with a claims-submission process, as class action settlements often  
6 include this process, and courts routinely approve claims made settlements.”).<sup>7</sup>

7 As explained in the Mulholland Declaration, in order to fairly and reasonably distribute  
8 the Net Settlement Fund to members of the Settlement Class that have suffered losses, two  
9 fundamental matters must be determined (1) Settlement Class Members must be identified and  
10 (2) their trading during the Class Period (and the PSLRA’s 90-day look back) must be analyzed  
11 under a Court-approved “Plan of Allocation” for the distribution of the Net Settlement Fund to  
12 determine whether losses have been suffered and to quantify the losses. Mulholland Decl. ¶¶ 7-  
13 23.

14 In securities class actions involving open-market purchases of publicly traded securities,  
15 there are multiple sources of the identities of absent class members. There is no single source  
16 and, given the structure of the financial markets, it is not the case that an issuing company, like  
17 Athira, knows the identities of each of its investors. This information must be gathered from  
18 absent class members and their nominees through a claims process. *Id.* ¶¶ 8-18.

19 With respect to the second element, in securities class action cases involving publicly  
20 traded securities like this case, the only viable way to determine each class member’s *pro rata*  
21 share of the recovery is to know how many shares of stock each class member purchased, the  
22 date they purchased and sold the stock (if sold), the price of each purchase and sale, and the  
23 shares held at the end of the relevant time periods. *Id.* ¶ 19. This information is needed in order

24  
25 <sup>7</sup> See also *In re Wachovia Equity Sec. Litig.*, No. 08-6171, 2012 WL 2774969, at \*4  
26 (S.D.N.Y. June 12, 2012) (overruling objection to class members having to submit transactional  
27 data in order to participate in settlement, noting “the requirement that potential members of  
28 securities class actions prove their membership is common and does not impose an onerous  
burden on class members.”); *Trombley v. Nat’l City Bank*, 759 F. Supp. 2d 20, 28 (D.D.C. 2011)  
(citing cases and stating that “[c]lass actions often require a claims process to ensure money is  
fairly distributed for valid claims.”).



1 to determine whether an investor even is a member of the settlement class, whether the share  
2 purchased was damaged (for instance, shares purchased at an allegedly inflated price and sold at  
3 an allegedly inflated price are not damaged), the amount of the alleged damage, and the class  
4 member's *pro rata* share of the settlement given the amount of other class members' losses.  
5 This information can only be ascertained through a review of trading records provided directly  
6 by class members or nominees that they have contracted with to provide this information on  
7 their behalf. *Id.* ¶¶ 19-23.

8 In sum, this is simply not a case with a known class where the Parties have reliable  
9 information about the identity and alleged losses of each class member prior to a claims process.  
10 Reducing the requirements of the claim process would necessarily open the door to fraudulent  
11 claims, and lead to some class members receiving more than they are entitled to under the  
12 securities laws, and others receiving less, jeopardizing the integrity of the Settlement.

13 **d. Plan of Allocation**

14 The Court has asked the Parties to address Lead Plaintiffs' proposed Plan of Allocation.  
15 Minute Order, ¶ 1(d). As is standard in settlements like the proposed Settlement, and has been  
16 previously approved by the Court, the proposed Notice contains the full Plan of Allocation for  
17 calculating claimant's losses ("Plan of Allocation" or "Plan"). Class members can use the  
18 formulas in the Plan to determine their losses and estimate their recoveries. As is also explained  
19 in the proposed Notice, class members can object to any aspect of the proposed Plan of  
20 Allocation and present their views to the Court in connection with the Court's consideration of  
21 the Plan.

22 Because the Settlement does not recover 100% of alleged damages, eligible claimants  
23 will receive their *pro rata* share of the Net Settlement Fund in proportion to how their losses  
24 compare to the losses of all other eligible claimants. As described below, Lead Plaintiffs can  
25 provide more detail about the amount of the Net Settlement Fund and examples of potential  
26 recoveries, and have revised the Notice accordingly. However, eligible claimants' actual *pro*  
27 *rata* shares necessarily will not be known until the end of the administration of the Settlement  
28 (assuming the Settlement becomes effective). Accordingly, it is not feasible to tell class

1 members the actual amount of their recoveries before the objection and exclusion deadlines; nor  
2 is it required.<sup>8</sup>

3 Because class members are given notice of the proposed Plan, and the opportunity to  
4 object to it, due process is satisfied. *See Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374  
5 (9th Cir. 1993) (“Due process requires that notice provide affected parties with the opportunity  
6 to be heard.”); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due  
7 process requires “notice reasonably calculated, under all the circumstances, to apprise interested  
8 parties of the pendency of the action and afford them an opportunity to present their  
9 objections”). This Court has also previously found due process with respect to plans of  
10 allocation, among other aspects of a settlement, satisfied by notices similar to that proposed  
11 here. *See In re Boeing*, ECF Nos. 649 (¶ 9 of Preliminary Approval Order) & 663 (¶ 5 of  
12 Judgment); *In re InfoSpace*, ECF Nos. 104 (¶ 5 of Preliminary Approval Order) & 139 (¶ 12 of  
13 Judgment); *In re Sonus Pharms.*, ECF Nos. 175 (¶ 9 of Preliminary Approval Order) & 196 (¶ 5  
14 of Judgment); *In re CellPro*, ECF Nos. 113 (¶ 11 of Preliminary Approval Order) & 127 (¶ 5 of  
15 Judgment).

16 Given the costs of notice, it is standard to advise class members that they will not  
17 receive additional notice of any modifications to a plan of allocation. However, if the Court  
18 does alter the Plan of Allocation after the Notice is issued, the Settlement Website can be  
19 updated to reflect the revised plan. The proposed Notice has been modified to reflect this.

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<sup>8</sup> *See Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (“The  
23 aggregate amount available to all claimants was specified and the formula for determining one’s  
24 recovery was given. Nothing more specific is needed.”); *In re WorldCom, Inc. Sec. Litig.*, 388  
25 F. Supp. 2d 319, 341 (S.D.N.Y. 2005) (overruling objection to description of the relief provided  
26 where “[t]he Class Notice and the Executives’ Settlement Notice together listed the amounts of  
27 all of the 2005 Settlements” and “[t]he Supplemental Plan describes in detail the allocation of  
28 the settlement proceeds among Class Members who filed proofs of claim.”); *In re Checking  
Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1343–44 (S.D. Fla. 2011) (“Contrary to what  
certain Objectors suggest, the law does not require that notice be given of the amount an  
individual class member will recover, either as a lump sum or as a range or percentage of  
potential recovery.”).

1 As is the convention in securities class action settlements, because Defendants have not  
 2 conceded that any alleged damages have been suffered by class members and they do not  
 3 represent class members and have no fiduciary responsibilities towards them, the Plan of  
 4 Allocation proposed by Lead Plaintiffs is not a term of the Settlement and Defendants had no  
 5 role in drafting it. Accordingly, if the Court revises the Plan of Allocation, the Settlement can  
 6 still go forward and become effective.<sup>9</sup> Pursuant to Fed. R. Civ. P. 23(e)(2), the Court will need  
 7 to approve a plan of allocation and consider “the effectiveness of any proposed method of  
 8 distributing relief to the class, including the method of processing class-member claims” and  
 9 whether the Settlement “treats class members equitably relative to each other,” but Rule  
 10 23(e)(2) is not antithetical to the Defendants not taking a position on the proposed Plan of  
 11 Allocation or the proposed Plan not being a necessary term of the Settlement. The Court  
 12 previously approved similar provisions in *In re Boeing*, ECF No. 642 (W.D. Wash. Nov. 16,  
 13 2001) (Stipulation, §A, ¶ 23, “Any Plan of Distribution or Allocation is not part of this  
 14 Stipulation. Defendants have no rights, responsibility or liability with respect thereto.”) and *In*  
 15 *re Sonus*, ECF. No. 175 (W.D. Wash. Nov. 21, 2000) (Stipulation, ¶ 4, “It is understood and  
 16 agreed by the Settling Parties that any proposed Plan of Distribution of the Net Settlement Fund.  
 17 . . . is not a part of the Stipulation. . . the Defendants take no position with respect to the Plan of  
 18 Distribution. . .”).

19 **e. Net Settlement Proceeds**

20 The Court asked the Parties to address Net Settlement Proceeds. Minute Order, ¶ 1(e).  
 21 With respect to a more detailed estimate of the amount of the Net Settlement Fund, Co-Lead  
 22

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23 <sup>9</sup> This conclusion is consistent with the well-recognized rule that courts may approve a  
 24 class settlement even when the plan of allocation is not presented to the court for approval until  
 25 after approval of the settlement. *See, e.g., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,  
 26 1275 (9th Cir. 1992) (affirming final approval of class action settlement entered one year prior  
 27 to final approval of plan of allocation); *In re Agent Orange Prod. Liab. Litig.* MDL No. 381,  
 28 818 F.2d 145, 170 (2d Cir. 1987) (approval of settlement fund can be granted prior to adoption  
 of a distribution scheme “so long as the distribution scheme does not affect the obligations of  
 the defendants under the settlement agreement” and to require otherwise “would immensely  
 complicate settlement negotiations and might so overburden the parties and the district court as  
 to prevent either task from being accomplished.

1 Counsel estimate that the gross Settlement Amount of \$10 million may earn \$500,000 in  
2 interest, assuming T-Bill yields of 5% over the span of one year, and the following are estimates  
3 of the costs that may be deducted: (i) attorneys' fees of no more than \$3,333,333.33 (33⅓% of  
4 the Settlement Fund); (ii) Litigation Expenses of no more than \$125,000, which may include an  
5 application for reimbursement by the Lead Plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4); (iii)  
6 Taxes (including tax return preparation) of approximately \$200,000, assuming T-Bill yields of  
7 5% over the span of one year; (iv) escrow account fees of approximately \$5,200, assuming  
8 Settlement Fund held in escrow for one year; and (v) Notice and Administration Costs of  
9 approximately \$200,000 (as explained below and set forth in the Mulholland Decl. ¶¶ 32-34).<sup>10</sup>  
10 Accordingly, a reasonable estimate of the Net Settlement Fund, assuming the costs above,  
11 would be approximately \$6,636,500.

12 Strategic Claims Services (“SCS”) is a nationally recognized notice and claims  
13 administrator. *See* Mulholland Decl. ¶ 2, Exhibit A thereto. Co-Lead Counsel state that pricing  
14 proposals from two other administrators were also requested and considered. SCS had the  
15 lowest proposal overall, and Co-Lead Counsel state that they have had consistently positive  
16 experiences with SCS. As explained in the Mulholland Declaration, the cost of a securities  
17 class action settlement administration is driven by two main factors: (i) the number of Notice  
18 Packets printed and mailed and the associated broker research costs and (ii) the number of  
19 claims processed. Administrators are generally compensated for their time and effort, and also  
20 their expenses (the largest of which are for printing, postage, and broker costs). Assuming the  
21 assumptions in the request for proposal hold through the notification and administration process,  
22 SCS anticipates that its fees will total approximately \$77,000 and that its expenses will range  
23 from \$92,000 to \$100,000. The total costs will, however, depend on, among other things, the  
24 number of Notice Packets disseminated and claims received, and will not be known until the  
25 end of the administration process.

26  
27  
28 <sup>10</sup> Pursuant to paragraph 9 of the Stipulation, the appointed Claims Administrator will be  
paid from the Settlement Fund.

1 Co-Lead Counsel state that the per share recoveries and costs in the original and revised  
2 Notice are based on an estimate of the number of allegedly damaged shares purchased by  
3 members of the Settlement Class. As in any securities case, the precise number of damaged  
4 shares in this case is unknown. Instead, economic experts attempting to estimate damages in  
5 securities cases such as this one use a company's "float" (the number of shares available for  
6 trading) and various probability-based trading models to estimate the frequency with which the  
7 same shares may be traded multiple times during a given period. This informs an estimation of  
8 how many distinct shares of common stock may have been purchased or acquired during the  
9 Class Period and held at the relevant points of time, *i.e.*, an estimate of the number of shares  
10 alleged to have been damaged. Here, Co-Lead Counsel's consulting financial expert employed  
11 a widely accepted "multi-trader model" to estimate the number of damaged shares. This type of  
12 model assumes that some traders have a greater propensity to trade than others. The model thus  
13 divides a company's shares into two groups—those held by active traders and those held by  
14 passive traders—and from those assumptions, estimates the trading volume attributed to each  
15 group. Co-Lead Counsel's consulting financial expert has estimated that 21,362,253 shares were  
16 allegedly damaged.

17 The proposed Notice reports the Settlement Amount on a "gross" per share basis before  
18 any earned interest (\$0.47) and it reports the average cost per share, if the Court were to approve  
19 Co-Lead Counsel's fee and expense application, of \$0.16 per share. The Notice has been  
20 revised to report the additional information about the total Net Settlement Fund explained  
21 above, including on a per share basis, and to include language about how these per share  
22 recovery figures were computed and an estimated range of payments among class members.

23 **f. \$10.00 "Nominal Amount"**

24 The Court asked the Parties to address the Plan of Allocation's exclusion of Distribution  
25 Amounts below \$10.00. Minute Order, ¶ 1(f). Co-Lead Counsel respectfully submit that a  
26 \$10.00 floor for prorated payments is very standard in the context of securities class actions and  
27 has been part of dozens of plans of allocation proposed by Co-Lead Counsel, which have been  
28 approved by numerous courts across the country, and hundreds of plans proposed by other

1 counsel. *See, e.g., In re Coinstar Inc. Sec. Litig.*, No. C11-133-MJP, ECF No. 155 (W.D. Wash.  
2 Aug. 23, 2012) (approving settlement plan of allocation with \$10.00 threshold); *In re Amgen*  
3 *Inc. Sec. Litig.*, No. CV 07-2536, ECF No. 602 (C.D. Cal. Oct. 25, 2016) (same); *In re Intuitive*  
4 *Surgical Sec. Litig.*, No. 5:13-cv-01920, ECF No. 316 (N.D. Cal. Dec. 20, 2018) (same);  
5 *Hatamian v. Advanced Micro Devices, Inc.*, Case No. 14-cv-00226, ECF No. 363 (N.D. Cal.  
6 Mar. 2, 2018) (same); *Schneider v. Champignon Brands Inc., et al.*, No. 21-cv-03120, ECF No.  
7 95 (C.D. Cal. Feb. 28, 2023) (same); *Derr v. Ra Med. Sys., Inc.*, No. 19-cv-01079, ECF No. 97  
8 (S.D. Cal. Sept. 23, 2022) (same). This Court also approved the use of a \$10.00 threshold in *In*  
9 *re Boeing Sec. Litig.*, No. C97-1715Z, ECF Nos. 649 & 663 (W.D. Wash. Dec. 11, 2001; Feb.  
10 20, 2002) (Plan of Allocation in Notice at §B, ¶ 9 reported \$10.00 threshold amount; settlement  
11 approved on Feb. 20, 2002).

12 As explained in paragraph 35 of the Mulholland Declaration, on average, it costs  
13 approximately \$3.25 per issued settlement check. A nominal threshold balances the costs of  
14 printing and mailing checks, concerns about mailing checks with a value that will not lead to  
15 checks being cashed, and providing payments to as many eligible claimants as possible. If the  
16 amount were reduced to \$5.00, additional claimants would receive a check, but the rate at which  
17 such checks would be negotiated would, in SCS's experience, be lower than the cashing rate for  
18 higher value checks. SCS reports that typically 5% to 10% of eligible claims fall below a  
19 \$10.00 *de minimis*.

20 The benefits of a minimum threshold were recognized in *Redwen v. Sino Clean Energy,*  
21 *Inc.*, No. 11 cv 3936, 2013 WL 12303367, at \*8 (C.D. Cal. July 9, 2013), where the court  
22 overruled an objection to a \$20.00 nominal threshold that argued only class members owning a  
23 substantial number of shares would be compensated. The Court found that such a threshold "is  
24 commonly used in distributions from private securities litigation settlement funds in order to  
25 preserve the Settlement Fund from being overburdened with potentially disproportionate  
26 administrative expenses. Such a threshold is beneficial to the class as a whole since it saves the  
27 settlement fund from being depleted by the administrative costs."  
28



1           Nonetheless, if the Court prefers that the Plan of Allocation be adjusted to provide for  
2 payments to eligible claimants who would have received less than \$10.00 in the initial  
3 distribution, Lead Plaintiffs would suggest an amount no lower than a \$5.00 nominal value,  
4 which would at least cover the costs of issuing the payments.

5 **g. Dispute Resolution**

6           The Minute Order questions the provision in the Stipulation stating that unresolved  
7 claim disputes will be presented to the Court for resolution. This is a standard provision, but the  
8 Parties are not opposed to amending Stipulation ¶ 24(c)-(e) to provide that claim disputes will  
9 be resolved through review by Co-Lead Counsel, in consultation with the Claims Administrator.  
10 The proposed revised Preliminary Approval Order has been revised to make this modification.

11 **h. Cy Pres Recipient**

12           The Court asked the Parties to address the proposed *cy pres* recipient Public Justice  
13 Foundation. Minute Order, ¶ 1(h). Plaintiffs proposed Public Justice Foundation as a *cy pres*  
14 recipient; Defendants took no part in this decision. Plaintiffs respectfully submit that the Public  
15 Justice Foundation (“Public Justice”) would be an appropriate *cy pres* recipient, consistent with  
16 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011) (“*Cy pres* distributions must  
17 account for the nature of the . . . lawsuit, the objectives of the underlying statutes, and the  
18 interests of the silent class members, including their geographic diversity.”) and *Dennis v.*  
19 *Kellogg Co.*, 697 F.3d 858 (9th Cir. 2012) (following *Nachshin*).

20           As explained in the declaration of its Executive Director F. Paul Bland, Jr., submitted  
21 herewith, the Public Justice Foundation is a nationwide non-sectarian, not-for-profit 501(c)(3)  
22 organization that was founded in January 1982. *See* Declaration of F. Paul Bland, Jr., dated  
23 June 29, 2023 (“Bland Decl.”), ¶ 2, attached hereto as Exhibit 6. Through policy education  
24 initiatives and litigation, the Public Justice Foundation seeks to advance the rights of, among  
25 many others, consumers, investors, workers, and students, and to provide and improve access to  
26 the legal system. *Id.* Through its policy initiatives, *amici curiae* submissions, and litigation, the  
27 Public Justice Foundation regularly advocates for investors, like members of the proposed  
28 Settlement Class, who allegedly have been deceived by materially false and misleading

1 statements and violations of the federal securities laws. It is respectfully submitted that given  
2 its goal of furthering the rights of allegedly wronged investors, its work and efforts are properly  
3 aligned with the interests of members of the Settlement Class.

4 If the Court is not inclined to approve the Public Justice Foundation, Plaintiffs propose  
5 that additional potential *cy pres* recipients are the Council of Institutional Investors and  
6 Consumer Federation of America.

7 The Council of Institutional Investors (“CII”) is a nonprofit, nonpartisan nationwide  
8 association of pension funds and other employee benefit funds, foundations, and endowments  
9 that seeks to educate its members, policymakers, and the public about corporate governance,  
10 shareowner rights, and related investment issues. *See* [www.cii.org](http://www.cii.org). CII has developed an  
11 extensive body of corporate governance best practices that many U.S. companies follow and it  
12 advocates policies on many investment-related issues through correspondence, amicus briefs  
13 and reports and publications. CII has been approved as a *cy pres* beneficiary in many securities  
14 class actions, such as *In re Hewlett-Packard Co. Sec. Litig.*, Case No. SACV 11-1404 AG  
15 (RNBx) (C.D. Cal.); *Ramsey v. MRV Commc’ns, Inc.*, No. 08-04561 (C.D. Cal.); *Royal Ahold*,  
16 MDL No. 1539 (D. Md.); and *In re Genworth Fin., Inc. Sec. Litig.*, No. 14-cv-02392-AKH  
17 (S.D.N.Y.).

18 Consumer Federation of America (“CFA”) is a non-profit, consumer advocacy  
19 organization established in 1968 to advance consumer interests through policy research,  
20 advocacy, and education before the judiciary, Congress, the White House, federal and state  
21 regulatory agencies, and state legislatures. *See generally* [www.consumerfed.org](http://www.consumerfed.org). With respect  
22 to victims of financial fraud, CFA has an Investor Protection program that works nationwide to  
23 promote consumer-oriented policies that safeguard investors against fraud through: (i) the  
24 development of educational material for investors; (ii) drafting policies and legislation; and (iii)  
25 providing testimony and comments on legislation and regulations. *See*  
26 [www.consumerfed.org/issues/investor-protection](http://www.consumerfed.org/issues/investor-protection). CFA has also been approved as a *cy pres*  
27 beneficiary in many securities class actions, such as, *In re Broadcom Corp. Sec. Litig.*, No. 01-  
28 CV-00275-MLR (C.D. Cal.); *Hatamian v. Advanced Micro Devices, Inc.*, No. 14-cv-00226-



1 YGR (N.D. Cal.); and *In re Extreme Networks, Inc. Sec. Litig.*, No. 3:15-cv-04883-BLF (N.D.  
2 Cal.).

3 **i. CAFA Notices to Attorneys General**

4 The Court asks the Parties to address the topic of notices sent pursuant to Section  
5 1715(b) of the Class Action Fairness Act (“CAFA”). Minute Order, ¶ 1(i). CAFA requires that  
6 defendants send notice of a proposed class action settlement to “the appropriate State official of  
7 each State in which a class member resides and the appropriate Federal official” within ten days  
8 of filing a proposed settlement of a class action. 28 U.S.C. § 1715(b). Pursuant to this statute,  
9 and within seven days of the April 27, 2023 filing of the proposed settlement, Athira sent  
10 notices via certified mail on May 4, 2023 to all appropriate state and federal officials, including  
11 the U.S. Attorney General, the Securities and Exchange Commission, and each individual state  
12 and territory attorney general. The notices included all relevant materials outlined in 28 U.S.C.  
13 § 1715(b)(1)-(8). To date, Athira has received no objections to the notices. Should the Court  
14 approve a revised settlement, Athira will re-issue these notices in the same manner described  
15 above. A copy of the CAFA notice and certificate of service, without its voluminous exhibits  
16 which have previously been filed with the Court, is attached hereto as Exhibit 7.

17 **j. Derivative Actions**

18 The Court asked the Parties to address what claims remain viable in the related  
19 shareholder derivative actions and to what extent the Parties have explored the possibility of a  
20 global settlement. Minute Order, ¶ 1(j). The Parties to the Action have not explored the  
21 possibility of a global settlement involving the derivative actions. Neither Lead Plaintiffs nor  
22 Co-Lead Counsel represent the nominal plaintiffs in either derivative action.

23 The proposed Settlement excludes the claims asserted in the pending derivative lawsuits  
24 from the release. *See* Stipulation, ECF No. 118-2 ¶ 1(r) (“‘Excluded Claim(s)’ means . . . and  
25 (iii) any derivative claims asserted by shareholders on behalf of Athira in the related  
26 consolidated shareholder derivative lawsuits, captioned *Bushansky v. Kawas et al.*, No. 2:22-cv-  
27 497-TSZ (W.D. Wash.) and *Houlihan v. Kawas et al.*, No. 2:22-cv-620-TSZ (W.D. Wash.); *Id.*  
28 ¶ 1(mm) (“Released Plaintiffs’ Claims do not include: . . . (c) any derivative claims asserted by

1 shareholders on behalf of Athira in the related consolidated shareholder derivative lawsuits,  
2 captioned *Bushansky v. Kawas, et al.*, No. 2:22-cv-497-TSZ (W.D. Wash.) and *Houlihan v.*  
3 *Kawas et al.*, No. 2:22-cv-620-TSZ (W.D. Wash.)). This exclusion of the claims asserted in the  
4 pending derivative actions is described in the settlement notice.

5 If the parties in the shareholder derivative lawsuit were to agree to a proposed  
6 settlement, any associated corporate governance reforms or other settlement consideration  
7 would redound to the benefit of Athira, not directly to any individual shareholders. This is so  
8 because shareholder derivative lawsuits are not direct actions but instead are bought by  
9 shareholders on behalf of the nominal defendant corporation against the corporation's directors  
10 and officers. Any settlement of the derivative actions would not impact the Settlement of this  
11 Action, generally, or the Settlement Amount.

12 **k. Requests for Exclusion and the Parties' Confidential Supplemental Agreement**

13 As requested by the Court, the Parties are filing under seal their confidential  
14 Supplemental Agreement concerning the circumstances under which Athira may terminate the  
15 Settlement given the level of requests for exclusion, *i.e.*, "opt-outs." See Stipulation ¶35.

16 Class Members who opt out of a settlement can "pursue later individual litigation against  
17 the defendant," and thus if too many members opt out and bring their own claims, "the  
18 defendant must pay both the class's relief and then the sum of all of these individual  
19 judgments." 3 Newberg on Class Actions, § 13:6. Termination rights and so-called "blow-up"  
20 provisions encourage settlement by allowing defendants to limit their total potential liability.  
21 Such provisions are "common in securities class actions." *In re BofI Holding, Inc. Sec. Litig.*,  
22 No. 15 cv 02324, 2022 WL 9497235, at \*7 (S.D. Cal. Oct. 13, 2022).

23 Footnote 3 of the Minute Order states, among other things, that the Court will not  
24 approve a form of notice that requires "putative class members [to] provide information about  
25 their shares as a condition of opting out of the settlement." However, information about an opt-  
26 out's shares purchased during the Class Period is essential to Athira being able to exercise its  
27 right to terminate the Settlement under the Supplemental Agreement. This is a key term  
28 negotiated by Athira in connection with the Settlement. As stated above, defendants settle class

1 actions to achieve “global peace,” or at least as much of it as possible. Without a blow-up  
2 provision and a way to ascertain whether it has been triggered (*i.e.*, information about the opt-  
3 out shares), securities class action defendants would be forced to settle securities class actions  
4 for fixed, and oftentimes large, settlement amounts only to have a large percentage of the  
5 settlement class opt out and proceed with individual actions. Here, Athira has agreed to settle  
6 this securities class action for \$10 million, assuming the risk that some class members opt out  
7 up to the limit set forth in the Supplemental Agreement. Without this limit and a way of  
8 ascertaining whether it has been reached, shareholders who purchased a majority of the  
9 damaged shares could, in theory, opt out of the Settlement Class, committing Athira to a \$10  
10 million settlement that resolves only a minority portion of the claims against it, and therefore  
11 exposing Athira to the costs of defense and additional settlements that could significantly  
12 exceed the \$10 million.

13 In short, without this basic information from opt-outs, the Parties would not be able to  
14 determine the number of damaged shares opting out of the Settlement Class and could not  
15 determine whether Athira’s blow-up right has been triggered, and Athira would be unable to  
16 consider and potentially exercise its right to walk away from a settlement that no longer  
17 provides sufficient “global peace.” *Cf. Hughes v. Microsoft Corp.*, No. C98–1646C, C93–  
18 0178C, 2001 WL 34089697 (W.D. Wash. Mar. 26, 2001) (“Because [the defendant company]  
19 had the right to withdraw from the settlement if a certain percentage of class members opted  
20 out, [it] was entitled to know the number of opt-outs.”).<sup>11</sup>

## 21 CONCLUSION

22 For the foregoing reasons, as well as those set forth in Lead Plaintiffs’ opening papers,  
23 Lead Plaintiffs respectfully request that the Court issue an order substantially in the form of the

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24  
25 <sup>11</sup> Footnote 3 of the Minute Order also indicates that the Court will not approve a form of  
26 notice that includes (i) language suggesting that the notice or its content has the imprimatur of  
27 the Court, (ii) directions to file materials with the Court Clerk or language indicating that  
28 materials may be inspected in the Clerk’s Office, and (iii) statements suggesting that class  
members are not personally liable for attorneys’ fees or expenses. Counsel for Lead Plaintiffs  
have reviewed the proposed revised Notice and, to the extent it contained any language similar  
to that referenced in items (i) through (iii) in footnote 3, such language has been removed.

1 proposed revised Preliminary Approval Order: (i) preliminarily approving the Settlement;  
2 (ii) approving the manner and forms of notice to the Settlement Class; (iii) setting a date for the  
3 Settlement Hearing; (iv) appointing Strategic Claims Services as Claims Administrator; (v)  
4 preliminarily certifying the Settlement Class; and (vi) granting such other and further relief as  
5 may be required.

6 Dated: June 30, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List served via ECF on all registered participants only.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 30, 2023

/s/ Thomas G. Hoffman, Jr.  
Thomas G. Hoffman, Jr.

# **Exhibit 1**

## **Clean version of the Notice**

**Exhibit 1**

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ and  
21-cv-00864-TSZ)

**[REVISED] NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENT; (II) SETTLEMENT HEARING; AND (III) MOTION FOR AN AWARD  
OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES**

***This is not a solicitation from a lawyer.***

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”) pending in the United States District Court for the Western District of Washington (the “Court”), if you purchased or otherwise acquired Athira Pharma, Inc. (“Athira” or the “Company”) publicly traded common stock: (a) during the period from September 17, 2020 through June 17, 2021, inclusive (the “Class Period”); (b) pursuant and/or traceable to the registration statement and prospectus issued in connection with Athira’s September 2020 initial public offering (“IPO”); and/or (c) pursuant and/or traceable to



the registration statement and prospectus issued in connection with Athira's January 2021 secondary public offering ("SPO"), and were damaged thereby.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed lead plaintiffs, Antonio Bachaalani Nacif and Wies Rafi (collectively, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class (as defined in ¶ 23 below), have reached a proposed settlement of the Action for \$10,000,000 in cash that, if approved, will resolve all claims in the Action and related claims (the "Settlement").

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, Athira, any other Defendants in the Action, or their counsel. All questions should be directed to Co-Lead Counsel or the Claims Administrator (see ¶¶ 7 and 86 below).**

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that Defendants<sup>2</sup> violated the federal securities laws by making false and misleading statements related to allegedly altered images in certain research papers co-authored by Dr. Kawas. A more detailed description of the Action is set forth in paragraphs 12-22 below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in paragraph 23 below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to settle the Action in exchange for a settlement payment of \$10,000,000 in cash (the "Settlement Amount") which Athira shall pay or cause to be paid into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (estimated at approximately \$500,000 assuming U.S. T-Bill yields of 5% over the span of one year) (the "Settlement Fund") less (a) any Taxes (estimated at approximately \$200,000), (b) any Notice and Administration Costs (estimated at approximately \$200,000), (c) any Litigation Expenses awarded by the Court (estimated at no more than \$125,000), and (d) any attorneys' fees awarded by the Court (estimated at no more than 33⅓% of the Settlement Fund) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated

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<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 27, 2023 (the "Stipulation"), which is available at [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

<sup>2</sup> Dr. Kawas, Glenna Miles, Dr. Tadataka Yamada, Joseph Edelman, James A. Johnson, and John M. Fluke, Jr. are collectively referred to herein as the "Individual Defendants." Claims were also brought against Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company, Inc., and JMP Securities LLC (collectively, the "Underwriter Defendants," and together with Athira and the Individual Defendants, the "Defendants"). With the exception of Dr. Kawas and Athira, the Court dismissed all claims against the Individual Defendants and Underwriter Defendants in a July 29, 2022 order that granted in part and denied in part the Defendants' motions to dismiss.

among members of the Settlement Class. The proposed plan of allocation (the “Plan of Allocation”) is set forth on pages \_\_\_-\_\_\_ below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiffs’ consulting damages expert’s estimates of the number of shares of Athira publicly traded common stock purchased during the Class Period that may have been affected by the conduct at issue in the Action (21,362,253 shares) and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average gross recovery (before accrued interest or the deduction of any Court-approved fees, expenses and costs as described herein) per eligible share is \$0.47. The estimated average net recovery per eligible share may be \$0.31, after factoring in estimated interest and the deduction of any Court-approved fees, expenses and costs as described herein. Accordingly, a Class Member who purchased 100 eligible shares may receive a settlement payment of \$31.00. A Class Member who purchased 10,000 eligible shares may receive a settlement payment of \$3,100.00.

4. Settlement Class Members should note, however, that the foregoing average recoveries per share are only estimates. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, the number of shares of Athira common stock they purchased, when and at what prices they purchased/acquired or sold their Athira common stock, and the total number and value of valid Claims submitted. Distributions from the Net Settlement Fund to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* pages \_\_\_-\_\_\_ below) or such other plan of allocation as may be approved by the Court.

5. **Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to prevail in the Action. Among other things, Defendants disagree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

6. **Attorneys’ Fees and Expenses Sought:** Plaintiffs’ Counsel, who have been prosecuting the Action on a wholly contingent basis since its inception in 2021, have not received any payment of attorneys’ fees for their work on behalf of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed lead counsel, Glancy Prongay & Murray, LLP and Labaton Sucharow LLP (collectively, “Co-Lead Counsel”), will apply to the Court for an award of attorneys’ fees for all Plaintiffs’ Counsel in an amount not to exceed 33 $\frac{1}{3}$ % of the Settlement Fund. In addition, Co-Lead Counsel will apply for payment of Litigation Expenses in an amount not to exceed \$125,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs related to their representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Estimates of the average cost per affected share of Athira common stock, if the Court approves Co-Lead Counsel’s fee and expense application, is \$0.16 per eligible share.

7. **Identification of Attorneys’ Representatives:** Lead Plaintiffs and the Settlement Class are represented by Casey E. Sadler, Esq. of Glancy Prongay & Murray, LLP, 1925 Century Park East, Suite 2100, Los Angeles, CA 90067, (888) 773-9224, settlements@glancylaw.com; and Michael P. Canty, Esq., of Labaton Sucharow LLP, 140 Broadway, New York, New York 10005, (888) 219-6877, settlementquestions@labaton.com.

8. **Reasons for the Settlement:** The Court did not finally decide in favor of Lead Plaintiffs or Defendants. Instead, the Parties have agreed to settle. Lead Plaintiffs' principal reason for entering into the Settlement is the substantial certain cash benefit for the Settlement Class without the risk or the delays inherent in further litigation. The substantial cash benefit must be considered against the significant risk that a smaller recovery—or no recovery at all—might be achieved after contested motions, a trial and the likely appeals that would follow a trial. This process could last several years. The Defendants deny the allegations that they made any material misstatements or omissions; that any member of the Settlement Class has suffered any damages; or that the price of Athira stock was artificially inflated by reason of any alleged misstatements or omissions. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN _____, 2023.</b>	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member, you will be bound by the Settlement and you will give up any Released Plaintiffs' Claims (defined in ¶ 28 below) that you have against Defendants and the other Released Defendants' Parties (defined in ¶ 29 below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST THAT IS RECEIVED NO LATER THAN _____, 2023.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you to ever be part of any other lawsuit against the Defendants or the other Released Defendants' Parties concerning the Released Plaintiffs' Claims.
<b>SUBMIT A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____, 2023.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>GO TO A HEARING ON _____, 2023 AT ____:____.M.</b>	The Court will hold a final Settlement Hearing on _____, 2023 at ____: ____ .m.
<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do nothing, you will not receive a payment. You will, however, remain in the Settlement Class and give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

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**WHY DID I GET THIS NOTICE?**

9. This Notice has been mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired Athira common stock during the Class Period. As a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement.

10. The purpose of this Notice is to inform you of the existence of this class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It also informs you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Co-Lead Counsel for an award of attorneys' fees and Litigation Expenses (the "Settlement Hearing"). See paragraph 75 below for details about the Settlement Hearing, including the date and location of the hearing.

11. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim or defense in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

**WHAT IS THIS CASE ABOUT?**

12. The Action was commenced by the filing of a class action complaint on June 25, 2021 in the United States District Court for the Western District of Washington (the "Court"), styled *Fan*

*Wang and Hang Gao v. Athira Pharma, Inc. et al.*, Case No. 2:21-cv-00861. Two other class action complaints—styled *Jawandha v. Athira Pharma, Inc. et al.*, Case No. 2:21-cv-00862, and *Slyne v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00864—were also filed in the Court. The Court subsequently consolidated these three cases.

13. By Order dated October 5, 2021, Antonio Bachaalani Nacif and Wies Rafi were appointed Lead Plaintiffs, Labaton Sucharow LLP and Glancy Prongay & Murray, LLP were approved as Co-Lead Counsel, and Rossi Vucinovich, P.C. was approved as Liaison Counsel.

14. On January 7, 2022, Lead Plaintiffs filed and served the operative consolidated amended complaint in the Action. It asserted claims against Athira and the Individual Defendants under Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, claims against all Defendants under Sections 11 and 12(a)(2) of the Securities Act of 1933 (the “Securities Act”) with respect to the Company’s IPO and SPO, and claims against the Individual Defendants under Section 15 of the Securities Act with respect to the Company’s IPO and SPO (the “Complaint”). Among other things, the Complaint alleged that Defendants made materially false and misleading statements and/or failed to disclose that the Company’s president and chief executive officer, Dr. Kawas, had improperly enhanced images in certain research papers she co-authored that were published from 2011 to 2014, which were referenced in certain applications by Washington State University (“WSU”) for patents that were then exclusively licensed to Athira. The Complaint further alleged that, when information regarding the allegedly enhanced images was publicly disclosed, the Company’s stock price was negatively impacted.

15. Following briefing on Defendants’ motions to dismiss the Complaint, the Court granted in part and denied in part those motions on July 29, 2022 (the “MTD Order”). The MTD Order denied Defendants’ motions with respect to Lead Plaintiffs’ claims under Sections 11 and 15 of the Securities Act against Dr. Kawas and Athira solely as to “Statement 3,” which was contained in Athira’s IPO and SPO Registration Statements and discussed Athira’s exclusive patent licensing agreement with WSU. The MTD Order granted Defendants motions to dismiss with respect to Lead Plaintiffs’ claims under Sections 11 and 15 of the Securities Act against Dr. Kawas and Athira with regard to all statements in the IPO and SPO Registration Statements other than “Statement 3.” In addition, the MTD Order dismissed all claims under Section 12(a)(2) of the Securities Act, all claims under the Exchange Act, all claims against the other Individual Defendants, and all claims against the Underwriter Defendants.

16. Following the MTD Order and the denial of Dr. Kawas’s subsequent motion for partial reconsideration of the order, Athira and Dr. Kawas separately filed answers to the Complaint.

17. Thereafter, the Private Securities Litigation Reform Act of 1995 (“PSLRA”) discovery stay was lifted and the remaining Parties began discovery. Lead Plaintiffs and the remaining Defendants propounded requests for production of documents and interrogatories. The remaining Defendants and Lead Plaintiffs responded to this discovery, including providing verified interrogatory responses and producing documents. At the time the Settlement was reached, Lead Plaintiffs were preparing for class certification and fact depositions.



18. On February 16, 2023, Lead Plaintiffs and the remaining Defendants participated in a full-day mediation session with Jed Melnick, Esq. of JAMS. In advance of the session, Lead Plaintiffs and the remaining Defendants exchanged and provided to the mediator detailed mediation statements and exhibits, which addressed issues of both liability and damages. The session culminated in an agreement in principle to settle the Action.

19. Over the course of the next several weeks, the Parties negotiated a term sheet (the “Term Sheet”) containing the essential terms of the Settlement, which was fully executed on February 28, 2023.

20. In connection with the agreement in principle to settle the Action set forth in the Term Sheet, Athira also provided Co-Lead Counsel with additional document discovery, which consisted of documents that the Special Committee of Athira’s Board of Directors considered and relied on in its investigation into the conduct at issue. Review of the additional documents produced by Athira, together with the previous discovery and Co-Lead Counsel’s investigation to date, has confirmed for Lead Plaintiffs and Co-Lead Counsel that the Settlement is fair, reasonable and adequate to Lead Plaintiffs and the other members of the Settlement Class.

21. Defendants are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Defendants denies any wrongdoing or liability, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Released Defendants’ Parties (defined in ¶ 29 below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants’ defenses to liability had any merit.

22. On \_\_\_\_\_, 2023, the Court preliminarily approved the Settlement and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?  
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

23. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons and entities who or which purchased or otherwise acquired Athira Pharma, Inc. publicly traded common stock: (a) during the period from September 17, 2020 through June 17, 2021, inclusive (the “Class Period”); (b) pursuant and/or traceable to the registration statement and prospectus issued in connection with the Company’s September 2020 IPO; and/or (c) pursuant and/or traceable to the registration statement and prospectus issued in connection with the Company’s January 2021 SPO, and were damaged thereby.<sup>3</sup>

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<sup>3</sup> A shareholder pursuing a claim for a violation of Section 11 of the Securities Act must “plead and prove that he purchased shares traceable to the allegedly defective registration statement.” *Slack Techs., LLC v. Pirani*, 143 S. Ct.

Excluded from the Settlement Class are: (a) Defendants; (b) any person who served as a partner, control person, executive officer and/or director of Athira or the Underwriter Defendants during the Class Period, and members of their Immediate Family; (c) present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Athira and the Underwriter Defendants; (d) any entity in which the Defendants have or had a controlling interest; (e) any trust of which an Individual Defendant is the settlor or which is for the benefit of an Individual Defendant and/or member(s) of their Immediate Family; (f) liability insurance carriers for Athira or the Individual Defendants; and (g) the legal representatives, heirs, successors, and assigns of any person or entity excluded under provisions (a) through (f) hereof. Notwithstanding any provision to the contrary, (a) any Investment Vehicle shall not be excluded from the Settlement Class; and (b) “affiliates” are persons or entities that directly, or indirectly through one or more intermediaries, control, are controlled by or are under common control with one of the Defendants, including Athira’s employee retirement and/or benefit plan(s). Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. *See* “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself,” on page [ ] below.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE A PAYMENT. IF YOU WISH TO BE ELIGIBLE FOR A PAYMENT, YOU MUST SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION POSTMARKED NO LATER THAN \_\_\_\_\_, 2023.**

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

24. If there were no Settlement, the expense and length of continued proceedings necessary to pursue Lead Plaintiffs’ claims against the remaining Defendants through trial and appeals would be substantial. Additionally, the Court’s MTD Order left only one actionable allegedly false and misleading statement from Athira’s IPO materials and SPO materials, which was related to Athira’s exclusive patent licensing agreement with WSU. Defendants had numerous avenues of attack that could preclude a recovery as to this statement. For example, they would likely assert that the statement was not materially false and misleading. Even if the hurdles to establishing liability were overcome, the amount of damages that could be attributed to the allegedly false statement would be hotly contested. Lead Plaintiffs would also have to prevail at several stages before any money could be recovered—motions for class certification and summary judgment, trial, and if they prevailed on those, in the appeals that were likely to follow. If Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all. Thus, there were very significant risks to the continued prosecution of the Action.

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1433, 1442 (2023). Traceability is the ability to show that a particular share was among those sold as part of a particular registered offering, as opposed to shares that were not.



**HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED  
BY THE ACTION AND THE SETTLEMENT?**

25. As a Settlement Class Member, you are represented by Lead Plaintiffs and Co-Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?” below.

26. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and related claims and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, in their capacities as such only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and unconditionally released as against the Released Defendants’ Parties (as defined in ¶ 29 below) each and every Released Plaintiffs’ Claim (as defined in ¶ 28 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Released Defendants’ Parties.

27. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” below.

28. “Released Plaintiffs’ Claims” means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known claims or Unknown Claims, contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, whether direct, representative, class, or individual in nature, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that Lead Plaintiffs or any other member of the Settlement Class: (a) asserted in the Action; or (b) could have asserted in any court or forum, that arise out of or are based upon (i) the allegations, transactions, facts, matters or occurrences, representations or omissions set forth or referred to in the complaints filed in the Action, and (ii) the purchase, acquisition, sale, or holding of Athira publicly traded common stock during the Class Period or pursuant and/or traceable to the registration statements and prospectuses issued in connection with Athira’s IPO or SPO. Released Plaintiffs’ Claims do not include: (a) any claims relating to enforcement of the Settlement; (b) any claims of any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court; and (c) any derivative claims asserted by shareholders on behalf of Athira in the related consolidated shareholder derivative lawsuits, captioned *Bushansky v. Kawas et al.*, Case No. 2:22-cv-497-TSZ (W.D. Wash.) and *Houlihan v. Kawas et al.*, Case No. 2:22-cv-620-TSZ (W.D. Wash.).

29. “Released Defendants’ Parties” means (a) each Defendant; (b) the Immediate Family members of the Individual Defendants; (c) direct or indirect parent entities, subsidiaries, related

entities, and affiliates of Athira and the Underwriter Defendants; (d) any trust of which any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant and/or his or her Immediate Family members; (e) for any of the entities listed in parts (a) through (d), their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, supervisors, employees, contractors, consultants, experts, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, professionals, predecessors, successors, assigns, legal representatives, heirs, executors, administrators, and any controlling person thereof; and (f) any entity in which a Defendant has a controlling interest; all in their capacities as such.

30. “Unknown Claims” means any Released Plaintiffs’ Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Released Defendants’ Parties shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members and each of the other Released Defendants’ Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

31. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants and the other Released Defendants’ Parties, on behalf of themselves and their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, in their capacities as such only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and unconditionally released as against Lead Plaintiffs and the other Released Plaintiffs’ Parties (as defined in ¶ 33 below) each and every Released Defendants’ Claim (as defined in ¶ 32 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants’ Claims against any of the Released Plaintiffs’ Parties.

32. “Released Defendants’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct,

representative, class, or individual in nature that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Defendants. Released Defendants' Claims do not include any claims relating to the enforcement of the Settlement or any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

33. "Released Plaintiffs' Parties" means (a) Lead Plaintiffs, all Settlement Class members, Plaintiffs' Counsel, and (b) each of their respective family members, and their respective general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, supervisors, employees, contractors, consultants, experts, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, legal representatives, professionals, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such.

#### HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

34. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation to the Claims Administrator **postmarked or submitted online using the Settlement website no later than \_\_\_\_\_, 2023**. A Claim Form is included with this Notice, or you may obtain one from the website for the Settlement, [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com). You may also request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-274-4004. Please retain all records of your ownership of and transactions in Athira common stock, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

#### HOW MUCH WILL MY PAYMENT BE?

35. At this time, it is not possible to make a precise determination as to how much any individual Settlement Class Member may receive from the Settlement. An estimate of the average per share recovery is set forth in paragraph 3 above.

36. Pursuant to the Settlement, Athira has agreed to pay or cause the payment of ten million dollars (\$10,000,000) in cash. The Settlement Amount plus any interest or earnings thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; and (c) any attorneys' fees and Litigation Expenses awarded by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation set forth below or such other plan of allocation as the Court may approve.

37. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

38. Neither Athira, the Individual Defendants, nor any other entity that paid any portion of the Settlement Amount on their behalf is entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund or the plan of allocation.

39. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

40. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked on or before \_\_\_\_\_, 2023 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any judgment entered and the releases given. *See* ¶¶ 26–33 above.

41. Participants in and beneficiaries of a plan covered by ERISA (“ERISA Plan”) should NOT include any information relating to their transactions in Athira common stock held through the ERISA Plan in any Claim Form that they submit. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Athira's employee retirement and/or benefit plan(s) are excluded from the Settlement Class.

42. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds any Claim. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim.

43. Only Settlement Class Members will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition, or that exclude themselves from the Settlement Class pursuant to request, will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. Athira common stock is the only security included in the Settlement.

#### **PROPOSED PLAN OF ALLOCATION**

44. The Plan of Allocation (the “Plan of Allocation” or “Plan”) set forth below is the plan for the distribution of the Settlement proceeds that is being proposed by Lead Plaintiffs and Co-Lead Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it. Any order modifying the Plan of Allocation will be posted on the Settlement website at: [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

45. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of

Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

46. Based on the formulas set forth below, a “Recognized Loss Amount” shall be calculated by the Claims Administrator for each purchase or acquisition of Athira common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided.

47. Recognized Loss Amounts are based primarily on the price declines quantified by Lead Plaintiffs’ consulting damages expert over the period which Lead Plaintiffs allege corrective information was entering the market place. In the Action, Lead Plaintiffs allege that Defendants made false statements and omitted material facts in the IPO materials and SPO materials, as well as during the Class Period (*i.e.*, September 17, 2020 through June 17, 2021, inclusive), which had the effect of allegedly artificially inflating the price of Athira common stock. The estimated alleged artificial inflation in the price of Athira common stock during the Class Period is reflected in Table 1 below.

48. Athira conducted its IPO on September 17, 2020. Athira conducted its SPO on January 21, 2021. For purposes of this Plan of Allocation, all Athira common shares purchased from September 17, 2020 through January 20, 2021 are being treated as traceable to the IPO because only shares issued in the IPO were trading on the open market during that time. The Complaint alleged claims under the Securities Act with respect to these purchases.

49. After January 20, 2021, additional shares entered the market, which became comingled with the IPO shares. Accordingly, for purposes of this Plan of Allocation, Athira common stock purchased or otherwise acquired directly in the SPO, or in the open market during the period from January 21, 2021 through February 10, 2021, inclusive, at the SPO price of \$22.50 per share (excluding commissions and other charges), will be considered a purchase pursuant or traceable to the SPO materials. The Complaint alleged claims under the Securities Act with respect to these purchases.

50. Athira shares purchased from February 11, 2021 through the end of the Class Period on June 17, 2021 are not traceable to either the IPO or SPO registration statements for purposes of Section 11. These shares, however, were still purchased before the Class Period ends on June 17, 2021 when the purported truth was allegedly revealed to the market.

51. In order to have recoverable damages in the Action, disclosures correcting the alleged misrepresentations must be the cause of the decline in the price of the Athira common stock. In this matter, Lead Plaintiffs allege that corrective disclosures removed the artificial inflation from the price of Athira common stock on June 18, 2021 (the “Corrective Disclosure Date”). Accordingly, in order to have a Recognized Loss Amount, Athira common stock must have been purchased or acquired during the Class Period and held until the close of the U.S. financial markets on June 17, 2021. To the extent a Claimant does not satisfy the conditions set forth in the preceding sentence, his, her or its Recognized Loss Amount for those transactions will be zero.



<b>Table 1</b>		
<b>Alleged Artificial Inflation in Athira Common Stock</b>		
<b>From</b>	<b>To</b>	<b>Per-Share Price Inflation</b>
September 17, 2020	June 17, 2021	\$7.14
June 18, 2021	Thereafter	\$0.00

52. The Action alleges claims under the Securities Act with respect to Athira common stock purchased pursuant or traceable to the Company’s IPO materials<sup>4</sup> or SPO materials.<sup>5</sup> It alleges claims under the Exchange Act with respect to all purchases/acquisitions of Athira common stock during the Class Period.

53. For shares of Athira common stock eligible for a recovery under both the Exchange Act and the Securities Act, a Recognized Loss Amount will be calculated in the manner set forth in this Plan using an Exchange Act measure of loss, and any Recognized Loss Amount greater than zero will be increased by 25%. Although the Exchange Act claims and the Securities Act claims in the Action generally relate to similar alleged misconduct, this approach to calculating Recognized Loss Amounts is intended to reflect the Court’s rulings on the motions to dismiss the Complaint, which dismissed the Exchange Act claims without prejudice.

54. The “90-day look back” provision of the PSLRA is incorporated into the calculation of Recognized Loss Amounts. This limitation provides that the Recognized Loss Amount on Athira common stock purchased during the Class Period and held as of the close of the 90-day period subsequent to the Class Period (the “90-Day Lookback Period”) cannot exceed the difference between the purchase price paid for such stock and its average price during the 90-Day Lookback Period. The Recognized Loss Amount on Athira common stock purchased during the Class Period and sold during the 90-Day Lookback Period cannot exceed the difference between the purchase price paid for such stock and its rolling average price during the portion of the 90-Day Lookback Period elapsed as of the date of sale.

55. In the calculations below, all purchase and sale prices shall exclude any fees, taxes and commissions. If a Recognized Loss Amount is calculated to be a negative number, that Recognized Loss Amount shall be set to zero. Any transactions in Athira common stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

#### **CALCULATION OF RECOGNIZED LOSS AMOUNTS UNDER THE EXCHANGE ACT**

<sup>4</sup> Athira common stock purchased or otherwise acquired directly in the IPO, or in the open market during the period from September 17, 2020 through January 20, 2021, inclusive, shall be considered a purchase pursuant or traceable to the IPO materials.

<sup>5</sup> Athira common stock purchased or otherwise acquired directly in the SPO, or in the open market during the period from January 21, 2021 through February 10, 2021, inclusive, at a price of \$22.50 per share (excluding commissions and other charges), shall be considered a purchase pursuant or traceable to the SPO materials.

56. Based on the provisions set forth in this Plan, a “Recognized Loss Amount” shall be calculated for each purchase or acquisition of Athira common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided.

- I. For each share purchased or otherwise acquired during the Class Period that was sold prior to the close of the U.S. financial markets on June 17, 2021, the Recognized Loss Amount is \$0.00 per share.
- II. For each share purchased or otherwise acquired during the Class Period that was subsequently sold during the period from June 18, 2021 through September 15, 2021, inclusive (*i.e.*, sold during the 90-Day Lookback Period), the Recognized Loss Amount is *the least of*:
  - a. \$7.14 per share; or
  - b. the purchase price *minus* the sale price; or
  - c. the purchase price *minus* the “90-Day Lookback Value” on the date of sale as appears in Table 2 below.
- III. For each share purchased or otherwise acquired during the Class Period and still held as of the close of trading on September 15, 2021, the Recognized Loss Amount is *the lesser of*:
  - a. \$7.14 per share; or
  - b. the purchase price *minus* the average closing price for Athira common stock during the 90-Day Lookback Period, which is \$10.33 per share.
- IV. For each share purchased or otherwise acquired on or after June 18, 2021, the Recognized Loss Amount is \$0.00 per share.

<b>Sale/ Disposition Date</b>	<b>90-Day Lookback Value</b>	<b>Sale/ Disposition Date</b>	<b>90-Day Lookback Value</b>	<b>Sale/ Disposition Date</b>	<b>90-Day Lookback Value</b>
6/18/2021	\$11.15	7/20/2021	\$10.51	8/18/2021	\$10.25
6/21/2021	\$10.95	7/21/2021	\$10.52	8/19/2021	\$10.23
6/22/2021	\$10.75	7/22/2021	\$10.52	8/20/2021	\$10.22
6/23/2021	\$10.71	7/23/2021	\$10.51	8/23/2021	\$10.22
6/24/2021	\$10.77	7/26/2021	\$10.49	8/24/2021	\$10.22
6/25/2021	\$10.78	7/27/2021	\$10.47	8/25/2021	\$10.22
6/28/2021	\$10.76	7/28/2021	\$10.46	8/26/2021	\$10.22
6/29/2021	\$10.72	7/29/2021	\$10.44	8/27/2021	\$10.23
6/30/2021	\$10.66	7/30/2021	\$10.41	8/30/2021	\$10.24
7/1/2021	\$10.66	8/2/2021	\$10.39	8/31/2021	\$10.25



7/2/2021	\$10.65	8/3/2021	\$10.38	9/1/2021	\$10.26
7/6/2021	\$10.68	8/4/2021	\$10.37	9/2/2021	\$10.27
7/7/2021	\$10.67	8/5/2021	\$10.38	9/3/2021	\$10.28
7/8/2021	\$10.66	8/6/2021	\$10.36	9/7/2021	\$10.29
7/9/2021	\$10.68	8/9/2021	\$10.36	9/8/2021	\$10.30
7/12/2021	\$10.67	8/10/2021	\$10.35	9/9/2021	\$10.31
7/13/2021	\$10.67	8/11/2021	\$10.34	9/10/2021	\$10.33
7/14/2021	\$10.63	8/12/2021	\$10.33	9/13/2021	\$10.33
7/15/2021	\$10.60	8/13/2021	\$10.32	9/14/2021	\$10.33
7/16/2021	\$10.54	8/16/2021	\$10.29	9/15/2021	\$10.33
7/19/2021	\$10.51	8/17/2021	\$10.27	N/A	N/A

### ADDITIONAL PROVISIONS

57. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in paragraph 65 below) is \$10.00 or greater.

58. **FIFO Matching:** If a Settlement Class Member has more than one purchase/acquisition or sale of Athira common stock, all purchases/acquisitions and sales shall be matched on a First In, First Out (“FIFO”) basis. Under FIFO, Class Period sales will be matched against Class Period purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

59. **Calculation of Claimant’s “Recognized Claim”:** A Claimant’s “Recognized Claim” under the Plan of Allocation shall be the sum of his, her, or its Recognized Loss Amounts for all shares of the Athira common stock.

60. **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of Athira common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of Athira common stock during the Class Period shall not be deemed a purchase, acquisition, or sale of Athira common stock for the calculation of an Authorized Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of any Athira common stock unless (i) the donor or decedent purchased or otherwise acquired such Athira common stock during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Athira common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

61. **Short Sales:** The date of covering a “short sale” is deemed to be the date of purchase or acquisition of the Athira common stock. The date of a “short sale” is deemed to be the date of sale of Athira common stock. Under the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in Athira common stock, the earliest Class Period purchases or acquisitions shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

62. **Option Contracts:** Option contracts are not securities eligible to participate in the Settlement. With respect to Athira common stock purchased through the exercise of an option, the purchase date of the Athira common stock shall be the exercise date of the option and the purchase price of the Athira common stock shall be the closing price of Athira common stock on

date of exercise. Any Recognized Loss Amount arising from purchases of Athira common stock acquired during the Class Period through the exercise of an option on Athira common stock shall be computed as provided for other purchases of Athira common stock in the Plan of Allocation.

63. **Market Gains and Losses:** To the extent a Claimant had a market gain with respect to his, her, or its overall transactions in Athira common stock during the Class Period, the value of the Claimant's Recognized Claim shall be zero. To the extent that a Claimant suffered an overall market loss with respect to his, her, or its overall transactions in Athira common stock during the Class Period, but that market loss was less than the total Recognized Claim calculated above, then the Claimant's Recognized Claim shall be limited to the amount of the actual market loss.

64. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its overall transactions in Athira common stock during the Class Period or suffered a market loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount<sup>6</sup> and (ii) the sum of the Total Sales Proceeds<sup>7</sup> and the Holding Value.<sup>8</sup> If the Claimant's Total Purchase Amount *minus* the sum of the Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's market loss on such securities; if the number is a negative number or zero, that number will be the Claimant's market gain on such securities.

65. **Determination of Distribution Amount:** The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a "Distribution Amount" will be calculated for each Authorized Claimant, which shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant's Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to such Authorized Claimant. Any Distribution Amounts of less than \$10.00 will be included in the pool distributed to those Settlement Class Members whose Distribution Amounts are \$10.00 or greater.

66. After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund at least nine (9) months after the initial distribution, if Co-Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining, after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, and Taxes to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-

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<sup>6</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding commissions and other charges) for all Athira common stock purchased or acquired during the Class Period.

<sup>7</sup> "Total Sales Proceeds" is the total amount received (excluding commissions and other charges) for sales of Athira common stock during the Class Period.

<sup>8</sup> The Claims Administrator shall ascribe a "Holding Value" to shares of Athira common stock purchased or acquired during the Class Period and still held as of the close of trading on June 17, 2021, which shall be \$11.15 per share (*i.e.*, the closing price of Athira common stock on the Corrective Disclosure Date). The total calculated holding values for all Athira common stock shall be the Claimant's "Total Holding Value."

distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 in such additional re-distributions may occur thereafter if Co-Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, and Taxes would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to the Public Justice Foundation, or such other non-sectarian, not-for-profit organization(s) approved by the Court.

67. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Claimants. No person shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, Lead Plaintiffs' consulting damages expert, Defendants, Defendants' Counsel, or any of the other Releasees, or the Claims Administrator or other agent designated by Co-Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiffs, Defendants and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of Taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

68. Plaintiffs' Counsel have not received any payment for their services in pursuing claims in the Action on behalf of the Settlement Class, nor have Plaintiffs' Counsel been paid for their Litigation Expenses.<sup>9</sup> In connection with final approval of the Settlement, Co-Lead Counsel will apply to the Court for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in an amount not to exceed 33 $\frac{1}{3}$ % of the Settlement Fund. At the same time, Co-Lead Counsel also intend to apply for payment of Litigation Expenses in an amount not to exceed \$125,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs related to their representation of the Settlement Class in an aggregate amount not to exceed \$30,000. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?  
HOW DO I EXCLUDE MYSELF?**

69. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written request for exclusion from the Settlement Class, addressed to *Athira Pharma Securities Litigation*,

<sup>9</sup> Plaintiffs' Counsel are Labaton Sucharow LLP, Glancy Prongay & Murray LLP, Rossi Vucinovich, P.C., and the Schall Law Firm. Co-Lead Counsel may also allocate a portion of awarded attorneys' fees to Longman Law, PC, which appeared at the beginning of the case on behalf of proposed lead plaintiffs Timothy and Tai Slyne.

EXCLUSIONS, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063. The exclusion request must be **received no later than** \_\_\_\_\_, **2023**. You will not be able to exclude yourself from the Settlement Class after that date.

70. Each request for exclusion must: (a) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (b) state that such person or entity “requests exclusion from the Settlement Class in *Athira Pharma Securities Litigation*, Case No. 2:21-cv-00861-TSZ”; (c) state the number of shares of Athira common stock that the person or entity requesting exclusion purchased/acquired and sold during the Class Period (*i.e.*, from September 17, 2020 through June 17, 2021, inclusive), as well as the dates and prices of each such purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

71. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have a pending lawsuit, arbitration, or other proceeding, or later file one, relating to any Released Plaintiffs’ Claim against any of the Released Defendants’ Parties.

72. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment from the Net Settlement Fund so do not file a Claim Form.

73. Athira has the right to terminate the Settlement if valid requests for exclusion are received from members of the Settlement Class that exceed an amount agreed to by Lead Plaintiffs and Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE  
SETTLEMENT? HOW DO I OBJECT?  
MAY I SPEAK AT THE HEARING IF I DON’T LIKE THE SETTLEMENT?**

**74. Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any objection made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

75. The Settlement Hearing will be held on \_\_\_\_\_, 2023 at \_\_:\_\_ .m., before the Honorable Thomas S. Zilly at the United States District Court for the Western District of Washington, United States Courthouse, Courtroom 15206, 700 Stewart Street, Seattle, WA 98101. The Court reserves the right to approve the Settlement, the Plan of Allocation, Co-Lead Counsel’s motion for an award of attorneys’ fees and payment of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Hearing.

76. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation and/or Co-Lead Counsel’s motion for an award of attorneys’ fees and payment of Litigation Expenses. Objections must be in writing. You must mail any written objection, together with copies of all other papers supporting the objection, to Co-Lead Counsel and Defendants’ Counsel at the addresses set forth below so that the papers are **received on or before** \_\_\_\_\_, **2023**.

**Co-Lead Counsel**

**Glancy Prongay & Murray LLP**

Casey E. Sadler, Esq.  
1925 Century Park East  
Suite 2100  
Los Angeles, CA 90067

-and-

**Labaton Sucharow LLP**

Michael P. Canty, Esq.  
140 Broadway  
New York, New York 10005

**Defendants' Counsel**

**Wilson Sonsini Goodrich & Rosati,  
P.C.**

Gregory L. Watts, Esq.  
701 Fifth Avenue  
Suite 5100  
Seattle, WA 98104-7036

-and-

**Perkins Coie LLP**

Sean C. Knowles, Esq.  
1201 Third Avenue  
Suite 4900  
Seattle, WA 98101-3099

-and-

**DLA Piper LLP (US)**

Anthony Todaro, Esq.  
701 Fifth Avenue, Suite 6900  
Seattle, WA 98104-7029

77. Any objection: (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, the specific reasons for each objection, including whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Athira common stock that the objecting Settlement Class Member purchased/acquired and sold during the Class Period (*i.e.*, from September 17, 2020 through June 17, 2021, inclusive), as well as the dates and prices of each such purchase/acquisition and sale. You may not object to the Settlement, the Plan of Allocation or Co-Lead Counsel's motion for attorneys' fees and payment of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

78. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

79. You may submit a written objection without appearing at the Settlement Hearing.

80. You are not required to hire an attorney to represent you in connection with objecting or appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Co-



Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 76 above so that the notice is *received on or* \_\_\_\_\_, 2023.

81. The Settlement Hearing may be adjourned by the Court, or held remotely, without further individual notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Co-Lead Counsel.

**82. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation or Co-Lead Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

83. If you purchased or otherwise acquired Athira publicly traded common stock from September 17, 2020 through June 17, 2021, inclusive, including in the IPO and the SPO, for the beneficial interest of persons or entities other than yourself as a nominee, you must within SEVEN (7) CALENDAR DAYS of receipt of this Notice either: (a) request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within SEVEN (7) CALENDAR DAYS of receipt of those Notice Packets forward them to all such beneficial owners; or (b) send a list of the names and addresses of all such beneficial owners to the Claims Administrator at *Athira Pharma Securities Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063, in which event the Claims Administrator shall promptly mail the Notice Packet to such beneficial owners. Nominees shall also provide email addresses for all such beneficial owners to the Claims Administrator, to the extent they are available. If you choose to follow procedure (a), upon such mailing you must send a statement to the Claims Administrator confirming that the mailing was made as directed.

84. Upon full and timely compliance with these directions, nominees may seek reimbursement of their reasonable expenses actually incurred, not to exceed \$0.05 plus postage at the current pre-sort rate used by the Claims Administrator per Notice Packet mailed; or \$0.05 per name, address, and email address (to the extent available) provided to the Claims Administrator, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. **YOU ARE NOT AUTHORIZED TO PRINT THE NOTICE PACKET YOURSELF. NOTICE PACKETS MAY ONLY BE PRINTED BY THE COURT-APPOINTED CLAIMS ADMINISTRATOR.**

#### WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

85. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the Stipulation and Complaint filed in the Action, and any related orders entered by the Court, which will be posted on the website maintained by the Claims Administrator, [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

86. Questions about this Notice or the Settlement should be directed to Co-Lead Counsel using the contact information provided in ¶¶ 7 and 76, above. All inquiries concerning the Claim Form should be directed to:

*Athira Pharma Securities Litigation*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063  
866-274-4004  
[www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com)

**DO NOT CALL OR WRITE THE COURT, THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2023

By Order of the Court  
United States District Court  
Western District of Washington



# **Exhibit 1**

## **Redline version of the Notice**

**Exhibit 1**

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ and  
21-cv-00864-TSZ)

**[REVISED] NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENT; (II) SETTLEMENT HEARING; AND (III) MOTION FOR AN AWARD  
OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES**

**~~A Federal Court authorized this Notice. This is not a solicitation from a lawyer.~~**

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”) pending in the United States District Court for the Western District of Washington (the “Court”), if you purchased or otherwise acquired Athira Pharma, Inc. (“Athira” or the “Company”) publicly traded common stock: (a) during the period from September 17, 2020 through June 17, 2021, inclusive (the “Class Period”); (b) pursuant and/or traceable to the registration statement and prospectus issued in connection with Athira’s September 2020 initial public offering (“IPO”); and/or (c) pursuant

and/or traceable to the registration statement and prospectus issued in connection with Athira's January 2021 secondary public offering ("SPO"), and were damaged thereby.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed lead plaintiffs, Antonio Bachaalani Nacif and Wies Rafi (collectively, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class (as defined in ¶ [2223](#) below), have reached a proposed settlement of the Action for \$10,000,000 in cash that, if approved, will resolve all claims in the Action and related claims (the "Settlement").

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, Athira, any other Defendants in the Action, or their counsel. All questions should be directed to Co-Lead Counsel or the Claims Administrator (see ¶¶ [67](#) and [8286](#) below).**

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors alleging, among other things, that Defendants<sup>2</sup> violated the federal securities laws by making false and misleading statements related to allegedly altered images in certain research papers co-authored by Dr. Kawas. A more detailed description of the Action is set forth in paragraphs ~~11-21~~[12-22](#) below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in paragraph [2223](#) below.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to settle the Action in exchange for a settlement payment of \$10,000,000 in cash (the "Settlement Amount") which Athira shall pay or cause to be paid into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (estimated at approximately \$500,000 assuming U.S. T-Bill yields of 5% over the span of one year) (the "Settlement Fund") less (a) any Taxes (estimated at approximately \$200,000), (b) any Notice and Administration Costs (estimated at approximately \$200,000), (c) any Litigation Expenses awarded by the Court (estimated at no more than \$125,000), and (d) any attorneys' fees awarded by the Court

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 27, 2023 (the "Stipulation"), which is available at [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

<sup>2</sup> Dr. Kawas, Glenna Mileson, Dr. Tadataka Yamada, Joseph Edelman, James A. Johnson, and John M. Fluke, Jr. are collectively referred to herein as the "Individual Defendants." Claims were also brought against Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company, Inc., and JMP Securities LLC (collectively, the "Underwriter Defendants," and together with Athira and the Individual Defendants, the "Defendants"). With the exception of Dr. Kawas and Athira, the Court dismissed all claims against the Individual Defendants and Underwriter Defendants in a July 29, 2022 order that granted in part and denied in part the Defendants' motions to dismiss.

(estimated at no more than 33⅓% of the Settlement Fund) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the “Plan of Allocation”) is set forth on pages \_\_ - \_\_ below.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiffs’ consulting damages expert’s estimates of the number of shares of Athira publicly traded common stock purchased during the Class Period that may have been affected by the conduct at issue in the Action (21,362,253 shares) and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average gross recovery (before accrued interest or the deduction of any Court-approved fees, expenses and costs as described herein) per eligible share is \$0.47. The estimated average net recovery per eligible share may be \$0.31, after factoring in estimated interest and the deduction of any Court-approved fees, expenses and costs as described herein. Accordingly, a Class Member who purchased 100 eligible shares may receive a settlement payment of \$31.00. A Class Member who purchased 10,000 eligible shares may receive a settlement payment of \$3,100.00.

4. Settlement Class Members should note, however, that the foregoing average ~~recovery~~recoveries per share ~~is~~are only ~~an estimate~~estimates. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, the number of shares of Athira common stock they purchased, when and at what prices they purchased/acquired or sold their Athira common stock, and the total number and value of valid Claims submitted. Distributions from the Net Settlement Fund to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* pages \_\_ - \_\_ below) or such other plan of allocation as may be approved by the Court.

5. **4. Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to prevail in the Action. Among other things, Defendants disagree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

6. **5. Attorneys’ Fees and Expenses Sought:** Plaintiffs’ Counsel, who have been prosecuting the Action on a wholly contingent basis since its inception in 2021, have not received any payment of attorneys’ fees for their work on behalf of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed lead counsel, Glancy Prongay & Murray, LLP and Labaton Sucharow LLP (collectively, “Co-Lead Counsel”), will apply to the Court for an award of attorneys’ fees for all Plaintiffs’ Counsel in an amount not to exceed 33⅓% of the Settlement Fund. In addition, Co-Lead Counsel will apply for payment of Litigation Expenses in an amount not to exceed \$125,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs related to their representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. ~~Settlement Class Members are not personally liable for any such fees or expenses.~~ Estimates of the average cost per affected share of Athira common stock, if the Court approves Co-Lead Counsel’s fee and expense application, is \$0.16 per eligible share.

7. **6. Identification of Attorneys’ Representatives:** Lead Plaintiffs and the Settlement Class are represented by Casey E. Sadler, Esq. of Glancy Prongay & Murray, LLP, 1925 Century

Park East, Suite 2100, Los Angeles, CA 90067, (888) 773-9224, settlements@glancylaw.com; and Michael P. Canty, Esq., of Labaton Sucharow LLP, 140 Broadway, New York, New York 10005, (888) 219-6877, settlementquestions@labaton.com.

**8. ~~7.~~ Reasons for the Settlement:** The Court did not finally decide in favor of Lead Plaintiffs or Defendants. Instead, the Parties have agreed to settle. Lead Plaintiffs’ principal reason for entering into the Settlement is the substantial certain cash benefit for the Settlement Class without the risk or the delays inherent in further litigation. The substantial cash benefit must be considered against the significant risk that a smaller recovery—or no recovery at all—might be achieved after contested motions, a trial and the likely appeals that would follow a trial. This process could last several years. The Defendants deny the allegations that they made any material misstatements or omissions; that any member of the Settlement Class has suffered any damages; or that the price of Athira stock was artificially inflated by reason of any alleged misstatements or omissions. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN _____, 2023.</b>	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member, you will be bound by the Settlement and you will give up any Released Plaintiffs’ Claims (defined in ¶ <a href="#">2728</a> below) that you have against Defendants and the other Released Defendants’ Parties (defined in ¶ <a href="#">2829</a> below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST THAT IS RECEIVED NO LATER THAN _____, 2023.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you to ever be part of any other lawsuit against the Defendants or the other Released Defendants’ Parties concerning the Released Plaintiffs’ Claims.
<b>SUBMIT A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____, 2023.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys’ fees and Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>GO TO A HEARING ON _____, 2023 AT ____:____.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____, 2023.</b>	<del>Filing an objection and notice of intention to appear by _____, 2023 allows you to speak in Court, at the discretion of the Court, about your objection.</del> <u>The Court will hold a final Settlement Hearing on _____, 2023 at ____:____.m.</u>

<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do nothing, you will not receive a payment. You will, however, remain in the Settlement Class and give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.
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**WHY DID I GET THIS NOTICE?**

9. ~~8. The Court directed that this~~ This Notice behas been mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired Athira common stock during the Class Period. ~~The Court has directed us to send you this Notice because, as~~ As a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement.

10. ~~9.~~ The purpose of this Notice is to inform you of the existence of this class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It also informs you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation and the motion by Co-Lead Counsel for an award of attorneys' fees and Litigation Expenses (the "Settlement Hearing"). See paragraph ~~74~~ 75 below for details about the Settlement Hearing, including the date and location of the hearing.

11. ~~10.~~ The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim or defense in the Action, and the Court still has to decide

whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

#### WHAT IS THIS CASE ABOUT?

12. ~~11.~~ The Action was commenced by the filing of a class action complaint on June 25, 2021 in the United States District Court for the Western District of Washington (the “Court”), styled *Fan Wang and Hang Gao v. Athira Pharma, Inc. et. al.*, Case No. 2:21-cv-00861. Two other class action complaints—styled *Jawandha v. Athira Pharma, Inc. et al.*, Case No. 2:21-cv-00862, and *Slyne v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00864—were also filed in the Court. The Court subsequently consolidated these three cases.

13. ~~12.~~ By Order dated October 5, 2021, Antonio Bachaalani Nacif and Wies Rafi were appointed Lead Plaintiffs, Labaton Sucharow LLP and Glancy Prongay & Murray, LLP were approved as Co-Lead Counsel, and Rossi Vucinovich, P.C. ~~were~~was approved as Liaison Counsel.

14. ~~13.~~ On January 7, 2022, Lead Plaintiffs filed and served the operative consolidated amended complaint in the Action. It asserted claims against Athira and the Individual Defendants under Section 10(b) and Section 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, claims against all Defendants under Sections 11 and 12(a)(2) of the Securities Act of 1933 (the “Securities Act”) with respect to the Company’s IPO and SPO, and claims against the Individual Defendants under Section 15 of the Securities Act with respect to the Company’s IPO and SPO (the “Complaint”). Among other things, the Complaint alleged that Defendants made materially false and misleading statements and/or failed to disclose that the Company’s president and chief executive officer, Dr. Kawas, had improperly enhanced images in certain research papers she co-authored that were published from 2011 to 2014, which were referenced in certain applications by Washington State University (“WSU”) for patents that were then exclusively licensed to Athira. The Complaint further alleged that, when information regarding the allegedly enhanced images was publicly disclosed, the Company’s stock price was negatively impacted.

15. ~~14.~~ Following briefing on Defendants’ motions to dismiss the Complaint, the Court granted in part and denied in part those motions on July 29, 2022 (the “MTD Order”). The MTD Order denied Defendants’ motions with respect to Lead Plaintiffs’ claims under Sections 11 and 15 of the Securities Act against Dr. Kawas and Athira solely as to “Statement 3,” which was contained in Athira’s IPO and SPO Registration Statements and discussed Athira’s exclusive patent licensing agreement with WSU. The MTD Order granted Defendants motions to dismiss with respect to Lead Plaintiffs’ claims under Sections 11 and 15 of the Securities Act against Dr. Kawas and Athira with regard to all statements in the IPO and SPO Registration Statements other than “Statement 3.” In addition, the MTD Order dismissed all claims under Section 12(a)(2) of the Securities Act, all claims under the Exchange Act, all claims against the other Individual Defendants, and all claims against the Underwriter Defendants.



16. ~~15.~~ Following the MTD Order and the denial of Dr. Kawas’s subsequent motion for partial reconsideration of the order, Athira and Dr. Kawas separately filed answers to the Complaint.

17. ~~16.~~ Thereafter, the Private Securities Litigation Reform Act of 1995 (“PSLRA”) discovery stay was lifted and the remaining Parties began discovery. Lead Plaintiffs and the remaining Defendants propounded requests for production of documents and interrogatories. The remaining Defendants and Lead Plaintiffs responded to this discovery, including providing verified interrogatory responses and producing documents. At the time the Settlement was reached, Lead Plaintiffs were preparing for class certification and fact depositions.

18. ~~17.~~ On February 16, 2023, Lead Plaintiffs and the remaining Defendants participated in a full-day mediation session with Jed Melnick, Esq. of JAMS. In advance of the session, Lead Plaintiffs and the remaining Defendants exchanged and provided to the mediator detailed mediation statements and exhibits, which addressed issues of both liability and damages. The session culminated in an agreement in principle to settle the Action.

19. ~~18.~~ Over the course of the next several weeks, the Parties negotiated a term sheet (the “Term Sheet”) containing the essential terms of the Settlement, which was fully executed on February 28, 2023.

20. ~~19.~~ In connection with the agreement in principle to settle the Action set forth in the Term Sheet, Athira also provided Co-Lead Counsel with additional document discovery, which consisted of documents that the Special Committee of Athira’s Board of Directors considered and relied on in its investigation into the conduct at issue. Review of the additional documents produced by Athira, together with the previous discovery and Co-Lead Counsel’s investigation to date, has confirmed for Lead Plaintiffs and Co-Lead Counsel that the Settlement is fair, reasonable and adequate to Lead Plaintiffs and the other members of the Settlement Class.

21. ~~20.~~ Defendants are entering into the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Defendants denies any wrongdoing or liability, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Released Defendants’ Parties (defined in ¶ ~~2829~~ below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants’ defenses to liability had any merit.

22. ~~21.~~ On \_\_\_\_\_, 2023, the Court preliminarily approved the Settlement; ~~authorized this Notice to be disseminated to potential Settlement Class Members;~~ and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?  
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

23. ~~22.~~ If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons and entities who or which purchased or otherwise acquired Athira Pharma, Inc. publicly traded common stock: (a) during the period from September 17, 2020 through June 17, 2021, inclusive (the “Class Period”); (b) pursuant and/or traceable to the registration statement and prospectus issued in connection with the Company’s September 2020 IPO; and/or (c) pursuant and/or traceable to the registration statement and prospectus issued in connection with the Company’s January 2021 SPO, and were damaged thereby.<sup>3</sup>

Excluded from the Settlement Class are: (a) Defendants; (b) any person who served as a partner, control person, executive officer and/or director of Athira or the Underwriter Defendants during the Class Period, and members of their Immediate Family; (c) present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Athira and the Underwriter Defendants; (d) any entity in which the Defendants have or had a controlling interest; ~~©~~(e) any trust of which an Individual Defendant is the settlor or which is for the benefit of an Individual Defendant and/or member(s) of their Immediate Family; (f) liability insurance carriers for Athira or the Individual Defendants; and (g) the legal representatives, heirs, successors, and assigns of any person or entity excluded under provisions (a) through (f) hereof. Notwithstanding any provision to the contrary, (a) any Investment Vehicle shall not be excluded from the Settlement Class; and (b) “affiliates” are persons or entities that directly, or indirectly through one or more intermediaries, control, are controlled by or are under common control with one of the Defendants, including Athira’s employee retirement and/or benefit plan(s). Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. See “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself,” on page [ ] below.

**PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE A PAYMENT. IF YOU WISH TO BE ELIGIBLE FOR A PAYMENT, YOU MUST SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION POSTMARKED NO LATER THAN \_\_\_\_\_, 2023.**

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

24. ~~23.~~ If there were no Settlement, the expense and length of continued proceedings necessary to pursue Lead Plaintiffs’ claims against the remaining Defendants through trial and appeals would be substantial. Additionally, the Court’s MTD Order left only one actionable

<sup>3</sup> [A shareholder pursuing a claim for a violation of Section 11 of the Securities Act must “plead and prove that he purchased shares traceable to the allegedly defective registration statement.” \*Slack Techs., LLC v. Pirani\*, 143 S. Ct. 1433, 1442 \(2023\). Traceability is the ability to show that a particular share was among those sold as part of a particular registered offering, as opposed to shares that were not.](#)

allegedly false and misleading statement from Athira’s IPO materials and SPO materials, which was related to Athira’s exclusive patent licensing agreement with WSU. Defendants had numerous avenues of attack that could preclude a recovery as to this statement. For example, they would likely assert that the statement was not materially false and misleading. Even if the hurdles to establishing liability were overcome, the amount of damages that could be attributed to the allegedly false statement would be hotly contested. Lead Plaintiffs would also have to prevail at several stages before any money could be recovered—motions for class certification and summary judgment, trial, and if they prevailed on those, in the appeals that were likely to follow. If Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all. Thus, there were very significant risks to the continued prosecution of the Action.

**HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED  
BY THE ACTION AND THE SETTLEMENT?**

25. ~~24.~~ As a Settlement Class Member, you are represented by Lead Plaintiffs and Co-Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?” below.

26. ~~25.~~ If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and related claims and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, in their capacities as such only, shall be deemed to have, and by operation of law and of the ~~judgment~~Judgment shall have, fully, finally and unconditionally released as against the Released Defendants’ Parties (as defined in ¶ ~~2829~~2829 below) each and every Released Plaintiffs’ Claim (as defined in ¶ ~~2728~~2728 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Released Defendants’ Parties.

27. ~~26.~~ If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?” below.

28. ~~27.~~ “Released Plaintiffs’ Claims” means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known claims or Unknown Claims, contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, whether direct, representative, class, or individual in nature, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that Lead Plaintiffs or any other member of the Settlement Class: (a) asserted in the Action; or (b)

could have asserted in any court or forum, that arise out of or are based upon (i) the allegations, transactions, facts, matters or occurrences, representations or omissions set forth or referred to in the complaints filed in the Action, and (ii) the purchase, acquisition, sale, or holding of Athira publicly traded common stock during the Class Period or pursuant and/or traceable to the registration statements and prospectuses issued in connection with Athira's IPO or SPO. Released Plaintiffs' Claims do not include: (a) any claims relating to enforcement of the Settlement; (b) any claims of any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court; and (c) any derivative claims asserted by shareholders on behalf of Athira in the related consolidated shareholder derivative lawsuits, captioned *Bushansky v. Kawas et al.*, Case No. 2:22-cv-497-TSZ (W.D. Wash.) and *Houlihan v. Kawas et al.*, Case No. 2:22-cv-620-TSZ (W.D. Wash.).

29. ~~28.~~ "Released Defendants' Parties" means (a) each Defendant; (b) the Immediate Family members of the Individual Defendants; (c) direct or indirect parent entities, subsidiaries, related entities, and affiliates of Athira and the Underwriter Defendants; (d) any trust of which any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant and/or his or her Immediate Family members; (e) for any of the entities listed in parts (a) through (d), their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, supervisors, employees, contractors, consultants, experts, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, professionals, predecessors, successors, assigns, legal representatives, heirs, executors, administrators, and any controlling person thereof; and (f) any entity in which a Defendant has a controlling interest; all in their capacities as such.

30. ~~29.~~ "Unknown Claims" means any Released Plaintiffs' Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant or any other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members and each of the other Released Defendants' Parties shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants acknowledge, and each of the other Settlement Class Members and each of the other Released Defendants' Parties shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

31. ~~30.~~ The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants and the other Released Defendants' Parties, on behalf of themselves and their respective heirs, executors, administrators, trustees, predecessors, successors, and assigns, in their capacities as such only, shall be deemed to have, and by operation of law and of the ~~judgment~~Judgment shall have, fully, finally and unconditionally released as against Lead Plaintiffs and the other Released Plaintiffs' Parties (as defined in ¶ ~~32~~33 below) each and every Released Defendants' Claim (as defined in ¶ ~~31~~32 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Released Plaintiffs' Parties.

32. ~~31.~~ "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule, or regulation, at law or in equity, whether fixed or contingent, whether foreseen or unforeseen, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, whether direct, representative, class, or individual in nature that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Defendants. Released Defendants' Claims do not include any claims relating to the enforcement of the Settlement or any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

33. ~~32.~~ "Released Plaintiffs' Parties" means (a) Lead Plaintiffs, all Settlement Class members, Plaintiffs' Counsel, and (b) each of their respective family members, and their respective general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, supervisors, employees, contractors, consultants, experts, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, legal representatives, professionals, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such.

#### HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

34. ~~33.~~ To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation to the Claims Administrator **postmarked or submitted online using the Settlement website no later than \_\_\_\_\_, 2023**. A Claim Form is included with this Notice, or you may obtain one from the website for the Settlement, [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com). You may also request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-866-274-4004. Please retain all records of your ownership of and transactions in Athira common stock, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

#### HOW MUCH WILL MY PAYMENT BE?

35. ~~34.~~ At this time, it is not possible to make any precise determination as to how much any individual Settlement Class Member may receive from the Settlement. An estimate of the average per share recovery is set forth in paragraph 3 above.



36. ~~35.~~ Pursuant to the Settlement, Athira has agreed to pay or cause the payment of ten million dollars (\$10,000,000) in cash. The Settlement Amount plus any interest or earnings thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less (a) all federal, state and/or local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; and (c) any attorneys’ fees and Litigation Expenses awarded by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation set forth below or such other plan of allocation as the Court may approve.

37. ~~36.~~ The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

38. ~~37.~~ Neither Athira, the Individual Defendants, nor any other entity that paid any portion of the Settlement Amount on their behalf is entitled to get back any portion of the Settlement Fund once the Court’s order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund or the plan of allocation.

39. ~~38.~~ Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

40. ~~39.~~ Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked on or before \_\_\_\_\_, 2023 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any judgment entered and the releases given. See ¶¶ ~~25–32~~26–33 above.

41. ~~40.~~ Participants in and beneficiaries of a plan covered by ERISA (“ERISA Plan”) should NOT include any information relating to their transactions in Athira common stock held through the ERISA Plan in any Claim Form that they submit. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Athira’s employee retirement and/or benefit plan(s) are excluded from the Settlement Class.

42. ~~41.~~ The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds any Claim. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim.

43. ~~42.~~ Only Settlement Class Members will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition, or that exclude themselves from the Settlement Class pursuant to request, will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. Athira common stock is the only security included in the Settlement.

#### **PROPOSED PLAN OF ALLOCATION**

44. ~~43.~~ The Plan of Allocation (the “Plan of Allocation” or “Plan”) set forth below is the plan for the distribution of the Settlement proceeds that is being proposed by Lead Plaintiffs and

Co-Lead Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it ~~without additional notice to the Settlement Class~~. Any order modifying the Plan of Allocation will be posted on the Settlement website at: [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

45. ~~44.~~ The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

46. ~~45.~~ Based on the formulas set forth below, a “Recognized Loss Amount” shall be calculated by the Claims Administrator for each purchase or acquisition of Athira common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided.

47. ~~46.~~ Recognized Loss Amounts are based primarily on the price declines quantified by Lead Plaintiffs’ consulting damages expert over the period which Lead Plaintiffs allege corrective information was entering the market place. In the Action, Lead Plaintiffs allege that Defendants made false statements and omitted material facts in the IPO materials and SPO materials, as well as during the Class Period (*i.e.*, September 17, 2020 through June 17, 2021, inclusive), which had the effect of allegedly artificially inflating the price of Athira common stock. The estimated alleged artificial inflation in the price of Athira common stock during the Class Period is reflected in Table 1 below.

48. [Athira conducted its IPO on September 17, 2020. Athira conducted its SPO on January 21, 2021. For purposes of this Plan of Allocation, all Athira common shares purchased from September 17, 2020 through January 20, 2021 are being treated as traceable to the IPO because only shares issued in the IPO were trading on the open market during that time. The Complaint alleged claims under the Securities Act with respect to these purchases.](#)

49. [After January 20, 2021, additional shares entered the market, which became comingled with the IPO shares. Accordingly, for purposes of this Plan of Allocation, Athira common stock purchased or otherwise acquired directly in the SPO, or in the open market during the period from January 21, 2021 through February 10, 2021, inclusive, at the SPO price of \\$22.50 per share \(excluding commissions and other charges\), will be considered a purchase pursuant or traceable to the SPO materials. The Complaint alleged claims under the Securities Act with respect to these purchases.](#)

50. [Athira shares purchased from February 11, 2021 through the end of the Class Period on June 17, 2021 are not traceable to either the IPO or SPO registration statements for purposes of Section 11. These shares, however, were still purchased before the Class Period ends on June 17, 2021 when the purported truth was allegedly revealed to the market.](#)



51. ~~47.~~ In order to have recoverable damages in the Action, disclosures correcting the alleged misrepresentations must be the cause of the decline in the price of the Athira common stock. In this matter, Lead Plaintiffs allege that corrective disclosures removed the artificial inflation from the price of Athira common stock on June 18, 2021 (the “Corrective Disclosure Date”). Accordingly, in order to have a Recognized Loss Amount, Athira common stock must have been purchased or acquired during the Class Period and held until the close of the U.S. financial markets on June 17, 2021. To the extent a Claimant does not satisfy the conditions set forth in the preceding sentence, his, her or its Recognized Loss Amount for those transactions will be zero.

<b>Table 1</b>		
<b>Alleged Artificial Inflation in Athira Common Stock</b>		
<b>From</b>	<b>To</b>	<b>Per-Share Price Inflation</b>
September 17, 2020	June 17, 2021	\$7.14
June 18, 2021	Thereafter	\$0.00

52. ~~48.~~ The Action alleges claims under the Securities Act with respect to Athira common stock purchased pursuant or traceable to the Company’s IPO materials<sup>34</sup> or SPO materials.<sup>45</sup> It alleges claims under the Exchange Act with respect to all purchases/acquisitions of Athira common stock during the Class Period.

53. ~~49.~~ For shares of Athira common stock eligible for a recovery under both the Exchange Act and the Securities Act, a Recognized Loss Amount will be calculated in the manner set forth in this Plan using an Exchange Act measure of loss, and any Recognized Loss Amount greater than zero will be increased by 25%. Although the Exchange Act claims and the Securities Act claims in the Action generally relate to similar alleged misconduct, this approach to calculating Recognized Loss Amounts is intended to reflect the Court’s rulings on the motions to dismiss the Complaint, which dismissed the Exchange Act claims without prejudice.

54. ~~50.~~ The “90-day look back” provision of the “PSLRA is incorporated into the calculation of Recognized Loss Amounts. This limitation provides that the Recognized Loss Amount on Athira common stock purchased during the Class Period and held as of the close of the 90-day period subsequent to the Class Period (the “90-Day Lookback Period”) cannot exceed the difference between the purchase price paid for such stock and its average price during the 90-Day Lookback Period. The Recognized Loss Amount on Athira common stock purchased during the Class Period and sold during the 90-Day Lookback Period cannot exceed the

<sup>34</sup> Athira common stock purchased or otherwise acquired directly in the IPO, or in the open market during the period from September 17, 2020 through January 20, 2021, inclusive, shall be considered a purchase pursuant or traceable to the IPO materials.

<sup>45</sup> Athira common stock purchased or otherwise acquired directly in the SPO, or in the open market during the period from January 21, 2021 through February 10, 2021, inclusive, at a price of \$22.50 per share (excluding commissions and other charges), shall be considered a purchase pursuant or traceable to the SPO materials.

difference between the purchase price paid for such stock and its rolling average price during the portion of the 90-Day Lookback Period elapsed as of the date of sale.

55. ~~51.~~ In the calculations below, all purchase and sale prices shall exclude any fees, taxes and commissions. If a Recognized Loss Amount is calculated to be a negative number, that Recognized Loss Amount shall be set to zero. Any transactions in Athira common stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

#### **CALCULATION OF RECOGNIZED LOSS AMOUNTS UNDER THE EXCHANGE ACT**

56. ~~52.~~ Based on the provisions set forth in this Plan, a “Recognized Loss Amount” shall be calculated for each purchase or acquisition of Athira common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided.

- I. For each share purchased or otherwise acquired during the Class Period that was sold prior to the close of the U.S. financial markets on June 17, 2021, the Recognized Loss Amount is \$0.00 per share.
- II. For each share purchased or otherwise acquired during the Class Period that was subsequently sold during the period from June 18, 2021 through September 15, 2021, inclusive (*i.e.*, sold during the 90-Day Lookback Period), the Recognized Loss Amount is *the least of*:
  - a. \$7.14 per share; or
  - b. the purchase price *minus* the sale price; or
  - c. the purchase price *minus* the “90-Day Lookback Value” on the date of sale as appears in Table 2 below.
- III. For each share purchased or otherwise acquired during the Class Period and still held as of the close of trading on September 15, 2021, the Recognized Loss Amount is *the lesser of*:
  - a. \$7.14 per share; or
  - b. the purchase price *minus* the average closing price for Athira common stock during the 90-Day Lookback Period, which is \$10.33 per share.
- IV. For each share purchased or otherwise acquired on or after June 18, 2021, the Recognized Loss Amount is \$0.00 per share.

<b>Table 2</b>					
<b>Sale/ Disposition</b>	<b>90-Day Lookback</b>	<b>Sale/ Disposition</b>	<b>90-Day Lookback</b>	<b>Sale/ Disposition</b>	<b>90-Day Lookback</b>

Date	Value	Date	Value	Date	Value
6/18/2021	\$11.15	7/20/2021	\$10.51	8/18/2021	\$10.25
6/21/2021	\$10.95	7/21/2021	\$10.52	8/19/2021	\$10.23
6/22/2021	\$10.75	7/22/2021	\$10.52	8/20/2021	\$10.22
6/23/2021	\$10.71	7/23/2021	\$10.51	8/23/2021	\$10.22
6/24/2021	\$10.77	7/26/2021	\$10.49	8/24/2021	\$10.22
6/25/2021	\$10.78	7/27/2021	\$10.47	8/25/2021	\$10.22
6/28/2021	\$10.76	7/28/2021	\$10.46	8/26/2021	\$10.22
6/29/2021	\$10.72	7/29/2021	\$10.44	8/27/2021	\$10.23
6/30/2021	\$10.66	7/30/2021	\$10.41	8/30/2021	\$10.24
7/1/2021	\$10.66	8/2/2021	\$10.39	8/31/2021	\$10.25
7/2/2021	\$10.65	8/3/2021	\$10.38	9/1/2021	\$10.26
7/6/2021	\$10.68	8/4/2021	\$10.37	9/2/2021	\$10.27
7/7/2021	\$10.67	8/5/2021	\$10.38	9/3/2021	\$10.28
7/8/2021	\$10.66	8/6/2021	\$10.36	9/7/2021	\$10.29
7/9/2021	\$10.68	8/9/2021	\$10.36	9/8/2021	\$10.30
7/12/2021	\$10.67	8/10/2021	\$10.35	9/9/2021	\$10.31
7/13/2021	\$10.67	8/11/2021	\$10.34	9/10/2021	\$10.33
7/14/2021	\$10.63	8/12/2021	\$10.33	9/13/2021	\$10.33
7/15/2021	\$10.60	8/13/2021	\$10.32	9/14/2021	\$10.33
7/16/2021	\$10.54	8/16/2021	\$10.29	9/15/2021	\$10.33
7/19/2021	\$10.51	8/17/2021	\$10.27	N/A	N/A

### ADDITIONAL PROVISIONS

57. ~~53.~~ The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in paragraph ~~64~~65 below) is \$10.00 or greater.

58. ~~54.~~ **FIFO Matching:** If a Settlement Class Member has more than one purchase/acquisition or sale of Athira common stock, all purchases/acquisitions and sales shall be matched on a First In, First Out (“FIFO”) basis. Under FIFO, Class Period sales will be matched against Class Period purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

59. ~~55.~~ **Calculation of Claimant’s “Recognized Claim”:** A Claimant’s “Recognized Claim” under the Plan of Allocation shall be the sum of his, her, or its Recognized Loss Amounts for all shares of the Athira common stock.

60. ~~56.~~ **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of Athira common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of Athira common stock during the Class Period shall not be deemed a purchase, acquisition, or sale of Athira common stock for the calculation of an Authorized Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of any Athira common stock unless (i) the donor or decedent purchased or otherwise acquired such Athira common stock during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect

to such Athira common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

61. ~~57.~~ **Short Sales:** The date of covering a “short sale” is deemed to be the date of purchase or acquisition of the Athira common stock. The date of a “short sale” is deemed to be the date of sale of Athira common stock. Under the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in Athira common stock, the earliest Class Period purchases or acquisitions shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

62. ~~58.~~ **Option Contracts:** Option contracts are not securities eligible to participate in the Settlement. With respect to Athira common stock purchased through the exercise of an option, the purchase date of the Athira common stock shall be the exercise date of the option and the purchase price of the Athira common stock shall be the closing price of Athira common stock on date of exercise. Any Recognized Loss Amount arising from purchases of Athira common stock acquired during the Class Period through the exercise of an option on Athira common stock shall be computed as provided for other purchases of Athira common stock in the Plan of Allocation.

63. ~~59.~~ **Market Gains and Losses:** To the extent a Claimant had a market gain with respect to his, her, or its overall transactions in Athira common stock during the Class Period, the value of the Claimant’s Recognized Claim shall be zero. To the extent that a Claimant suffered an overall market loss with respect to his, her, or its overall transactions in Athira common stock during the Class Period, but that market loss was less than the total Recognized Claim calculated above, then the Claimant’s Recognized Claim shall be limited to the amount of the actual market loss.

64. ~~60.~~ For purposes of determining whether a Claimant had a market gain with respect to his, her, or its overall transactions in Athira common stock during the Class Period or suffered a market loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount<sup>56</sup> and (ii) the sum of the Total Sales Proceeds<sup>67</sup> and the Holding Value.<sup>78</sup> If the Claimant’s Total Purchase Amount *minus* the sum of the Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant’s market loss on such securities; if the number is a negative number or zero, that number will be the Claimant’s market gain on such securities.

<sup>56</sup> The “Total Purchase Amount” is the total amount the Claimant paid (excluding commissions and other charges) for all Athira common stock purchased or acquired during the Class Period.

<sup>67</sup> “Total Sales Proceeds” is the total amount received (excluding commissions and other charges) for sales of Athira common stock during the Class Period.

<sup>78</sup> The Claims Administrator shall ascribe a “Holding Value” to shares of Athira common stock purchased or acquired during the Class Period and still held as of the close of trading on June 17, 2021, which shall be \$11.15 per share (*i.e.*, the closing price of Athira common stock on the Corrective Disclosure Date). The total calculated holding values for all Athira common stock shall be the Claimant’s “Total Holding Value.”

65. ~~61.~~ **Determination of Distribution Amount:** The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a “Distribution Amount” will be calculated for each Authorized Claimant, which shall be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution Amount calculates to less than \$10.00, it will not be included in the calculation and no distribution will be made to such Authorized Claimant. Any Distribution Amounts of less than \$10.00 will be included in the pool distributed to those Settlement Class Members whose Distribution Amounts are \$10.00 or greater.

66. ~~62.~~ After the initial distribution of the Net Settlement Fund, the Claims Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund at least nine (9) months after the initial distribution, if Co-Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator shall conduct a re-distribution of the funds remaining, after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, and Taxes to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 in such additional re-distributions may occur thereafter if Co-Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, and Taxes would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to the Public Justice Foundation, or such other non-sectarian, not-for-profit organization(s) approved by the Court.

67. ~~63.~~ Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Claimants. No person shall have any claim against Lead Plaintiffs, Plaintiffs’ Counsel, Lead Plaintiffs’ consulting damages expert, Defendants, Defendants’ Counsel, or any of the other Releasees, or the Claims Administrator or other agent designated by Co-Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiffs, Defendants and their respective counsel, and all other Defendants’ Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of Taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

68. ~~64.~~ Plaintiffs’ Counsel have not received any payment for their services in pursuing claims in the Action on behalf of the Settlement Class, nor have Plaintiffs’ Counsel been paid for their Litigation Expenses.<sup>89</sup> In connection with final approval of the Settlement, Co-Lead Plaintiffs’ Counsel are Labaton Sucharow LLP, Glancy Prongay & Murray LLP, Rossi Vucinovich, P.C., and the Schall Law Firm. [Co-Lead Counsel may also allocate a portion of](#)

Counsel will apply to the Court for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in an amount not to exceed 33⅓% of the Settlement Fund. At the same time, Co-Lead Counsel also intend to apply for payment of Litigation Expenses in an amount not to exceed \$125,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs related to their representation of the Settlement Class in an aggregate amount not to exceed \$30,000. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. ~~Settlement Class Members are not personally liable for any such fees or expenses.~~

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?  
HOW DO I EXCLUDE MYSELF?**

69. ~~65.~~ Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written request for exclusion from the Settlement Class, addressed to *Athira Pharma Securities Litigation*, EXCLUSIONS, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063. The exclusion request must be **received no later than \_\_\_\_\_, 2023**. You will not be able to exclude yourself from the Settlement Class after that date.

70. ~~66.~~ Each request for exclusion must: (a) state the name, address and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion from the Settlement Class in *Athira Pharma Securities Litigation*, Case No. 2:21-cv-00861-TSZ"; (c) state the number of shares of Athira common stock that the person or entity requesting exclusion purchased/acquired and sold during the Class Period (*i.e.*, from September 17, 2020 through June 17, 2021, inclusive), as well as the dates and prices of each such purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

71. ~~67.~~ If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have a pending lawsuit, arbitration, or other proceeding, or later file one, relating to any Released Plaintiffs' Claim against any of the Released Defendants' Parties.

72. ~~68.~~ If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment from the Net Settlement Fund so do not file a Claim Form.

Vucinovich, P.C., and the Schall Law Firm. [Co-Lead Counsel may also allocate a portion of awarded attorneys' fees to Longman Law, PC, which appeared at the beginning of the case on behalf of proposed lead plaintiffs Timothy and Tai Slyne.](#)



73. ~~69.~~ Athira has the right to terminate the Settlement if valid requests for exclusion are received from members of the Settlement Class that exceed an amount agreed to by Lead Plaintiffs and Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? HOW DO I OBJECT?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

74. ~~70.~~ **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any objection made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

75. ~~71.~~ The Settlement Hearing will be held on \_\_\_\_\_, 2023 at \_\_:\_\_.m., before the Honorable Thomas S. Zilly at the United States District Court for the Western District of Washington, United States Courthouse, Courtroom 15206, 700 Stewart Street, Seattle, WA 98101. The Court reserves the right to approve the Settlement, the Plan of Allocation, Co-Lead Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses and/or any other matter related to the Settlement at or after the Settlement Hearing ~~without further individual notice to the members of the Settlement Class.~~

76. ~~72.~~ Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation and/or Co-Lead Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses. Objections must be in writing. You must filemail any written objection, together with copies of all other papers supporting the objection, ~~with the Clerk's Office at the United States District Court for the Western District of Washington at the address set forth below on or before \_\_\_\_\_, 2023. You must also serve the papers onto~~ Co-Lead Counsel and ~~on~~ Defendants' Counsel at the addresses set forth below so that the papers are *received on or before* \_\_\_\_\_, 2023.

<u>Clerk's Office</u>	<u>Co-Lead Counsel</u>	<u>Defendants' Counsel</u>
<del>United States District Court for the Western District of Washington</del> <del>is</del> <del>Clerk of the Court</del> <del>United States Courthouse</del> <del>700 Stewart</del>	<p><b>Glancy Prongay &amp; Murray LLP</b> Casey E. Sadler, Esq. 1925 Century Park East Suite 2100 Los Angeles, CA 90067</p> <p style="text-align: center;">-and-</p> <p><b>Labaton Sucharow LLP</b> Michael P. Canty, Esq. 140 Broadway New York, New York 10005</p>	<p><b>Wilson Sonsini Goodrich &amp; Rosati, P.C.</b> Gregory L. Watts, Esq. 701 Fifth Avenue Suite 5100 Seattle, WA 98104-7036</p> <p style="text-align: center;">-and-</p> <p><b>Perkins Coie LLP</b> Sean C. Knowles, Esq. 1201 Third Avenue Suite 4900 Seattle, WA 98101-3099</p> <p style="text-align: center;">-and-</p>



Street  
Suite 2310  
Seattle,  
WA 98101

**DLA Piper LLP (US)**  
Anthony Todaro, Esq.  
701 Fifth Avenue, Suite 6900  
Seattle, WA 98104-7029

77. ~~73.~~ Any objection: (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, the specific reasons for each objection, including whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Athira common stock that the objecting Settlement Class Member purchased/acquired and sold during the Class Period (*i.e.*, from September 17, 2020 through June 17, 2021, inclusive), as well as the dates and prices of each such purchase/acquisition and sale. You may not object to the Settlement, the Plan of Allocation or Co-Lead Counsel's motion for attorneys' fees and payment of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

78. ~~74. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation or Co-Lead Counsel's motion for an award of attorneys' fees and payment of Litigation Expenses, in addition to submitting a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Co-Lead Counsel and Defendants' Counsel at the addresses above so that it is **received on or before** \_\_\_\_\_, 2023.~~ Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection ~~or notice of appearance~~ the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

79. ~~75.~~ You may ~~file~~ submit a written objection without appearing at the Settlement Hearing. ~~You may not, however, appear at the Settlement Hearing unless you first file and serve a written objection and notice of appearance in accordance with the procedures described above, unless the Court orders otherwise.~~

80. ~~76.~~ You are not required to hire an attorney to represent you in connection with objecting or appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Co-Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ ~~72~~76 above so that the notice is **received on or** \_\_\_\_\_, 2023.

81. ~~77.~~ The Settlement Hearing may be adjourned by the Court, or held remotely, without further individual notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Co-Lead Counsel.

82. ~~78.~~ **Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the**

**proposed Plan of Allocation or Co-Lead Counsel’s motion for an award of attorneys’ fees and payment of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

**WHAT IF I BOUGHT SHARES ON SOMEONE ELSE’S BEHALF?**

83. ~~79.~~ If you purchased or otherwise acquired Athira publicly traded common stock from September 17, 2020 through June 17, 2021, inclusive, including in the IPO and the SPO, for the beneficial interest of persons or entities other than yourself as a nominee, you must within SEVEN (7) CALENDAR DAYS of receipt of this Notice either: (a) request from the Claims Administrator sufficient copies of the Notice and Claim Form (the “Notice Packet”) to forward to all such beneficial owners and within SEVEN (7) CALENDAR DAYS of receipt of those Notice Packets forward them to all such beneficial owners; or (b) send a list of the names and addresses of all such beneficial owners to the Claims Administrator at *Athira Pharma Securities Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063, in which event the Claims Administrator shall promptly mail the Notice Packet to such beneficial owners. Nominees shall also provide email addresses for all such beneficial owners to the Claims Administrator, to the extent they are available. If you choose to follow procedure (a), ~~the Court has directed that,~~ upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed.

84. ~~80.~~ Upon full and timely compliance with these directions, nominees may seek reimbursement of their reasonable expenses actually incurred, not to exceed \$0.05 plus postage at the current pre-sort rate used by the Claims Administrator per Notice Packet mailed; or \$0.05 per name, address, and email address (to the extent available) provided to the Claims Administrator, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. **YOU ARE NOT AUTHORIZED TO PRINT THE NOTICE PACKET YOURSELF. NOTICE PACKETS MAY ONLY BE PRINTED BY THE COURT-APPOINTED CLAIMS ADMINISTRATOR.**

~~**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**~~

85. ~~81.~~ This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the ~~papers on file~~ Stipulation and Complaint filed in the Action, ~~including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Western District of Washington, United States Courthouse, 700 Stewart Street, Suite \_\_\_\_\_ 2310 Seattle, WA 98101. Additionally, copies of the Stipulation~~ and any related orders entered by the Court, which will be posted on the website maintained by the Claims Administrator, [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

86. ~~82.~~ Questions about this Notice or the Settlement should be directed to Co-Lead Counsel using the contact information provided in ¶¶ ~~6~~ 7 and 76, above. All inquiries concerning the Claim Form should be directed to:

*Athira Pharma Securities Litigation*  
c/o Strategic Claims Services

P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063  
866-274-4004  
[www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com)

**DO NOT CALL OR WRITE THE COURT, THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2023

By Order of the Court  
United States District Court  
Western District of Washington

Document comparison by Workshare Compare on Friday, June 30, 2023  
8:45:26 PM

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Document 2 ID	iManage://labaton-mobility.imatege.work/ACTIVE/3358521/4
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Rendering set	Standard

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Padding cell	

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Moved to	0
Style changes	0
Format changes	0

Total changes	299
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## **Exhibit 2**

# **Clean version of the Summary Notice**

Exhibit 3

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ and 21-  
cv-00864-TSZ)

**[REVISED] SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND  
PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING;  
AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND PAYMENT OF LITIGATION EXPENSES**

**TO: All persons and entities who or which purchased or otherwise acquired Athira Pharma, Inc. ("Athira") publicly traded common stock: (a) during the period from September 17, 2020 through June 17, 2021, inclusive; (b) pursuant and/or traceable to the registration statement and prospectus issued in connection with Athira's September 2020 initial public offering; and/or (c) pursuant and/or traceable to the registration statement and prospectus issued in connection with Athira's January 2021 secondary public offering, and were damaged thereby (the "Settlement Class"):**

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED  
BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**



YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure that the above-captioned litigation (the “Action”) has been certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses (the “Notice”).

YOU ARE ALSO NOTIFIED that Lead Plaintiffs in the Action have reached a proposed settlement of the Action for \$10,000,000 in cash (the “Settlement”), which, if approved, will resolve all claims in the Action and related claims.

A hearing will be held on \_\_\_\_\_, 2023 at \_\_:\_\_ .m., before the Honorable Thomas S. Zilly at the United States District Court for the Western District of Washington, United States Courthouse, Courtroom 15206, 700 Stewart Street, Seattle, WA 98101, to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated April 27, 2023 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Co-Lead Counsel’s application for an award of attorneys’ fees and payment of expenses should be approved.

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** If you have not yet received the Notice and Proof of Claim Form (“Claim Form”), you may obtain copies of these documents by contacting the Claims Administrator at *Athira Pharma Securities Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063, 1-866-274-4004. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form to the Claims Administrator *postmarked* no later than \_\_\_\_\_, 2023, if sent by mail, or *submitted online* using the Settlement website no later than \_\_\_\_\_, 2023. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion to the Claims Administrator such that it is **received no later than** \_\_\_\_\_, **2023**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel’s motion for attorneys’ fees and payment of expenses, must be delivered to Co-Lead Counsel and Defendants’ Counsel such that they are **received no later than** \_\_\_\_\_, **2023**, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk's office, Athira, Defendants, or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Co-Lead Counsel or the Claims Administrator.**

Inquiries, other than requests for the Notice and Claim Form, should be made to Co-Lead Counsel:

<b>GLANCY PRONGAY &amp; MURRAY LLP</b> Casey E. Sadler, Esq. 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 Telephone: (888) 773-9224 Email: settlements@glancylaw.com	<b>LABATON SUCHAROW LLP</b> Michael P. Canty, Esq. 140 Broadway New York, New York 10005 Telephone: (888) 219-6877 Email: settlementquestions@labaton.com
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Requests for the Notice and Claim Form should be made to:

*Athira Pharma Securities Litigation*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063  
1-866-274-4004  
[www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com)

By Order of the Court

## **Exhibit 2**

# **Redline version of the Summary Notice**

Exhibit 3

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ and  
21-cv-00864-TSZ)

**[REVISED] SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND  
PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING;  
AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND PAYMENT OF LITIGATION EXPENSES**

**TO: All persons and entities who or which purchased or otherwise acquired Athira Pharma, Inc. ("Athira") publicly traded common stock: (a) during the period from September 17, 2020 through June 17, 2021, inclusive; (b) pursuant and/or traceable to the registration statement and prospectus issued in connection with Athira's September 2020 initial public offering; and/or (c) pursuant and/or traceable to the registration statement and prospectus issued in connection with Athira's January 2021 secondary public offering, and were damaged thereby (the "Settlement Class"):**

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED  
BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure ~~and an Order of the United States District Court for the Western District of Washington~~, that the above-captioned litigation (the “Action”) has been certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses (the “Notice”).

YOU ARE ALSO NOTIFIED that Lead Plaintiffs in the Action have reached a proposed settlement of the Action for \$10,000,000 in cash (the “Settlement”), which, if approved, will resolve all claims in the Action and related claims.

A hearing will be held on \_\_\_\_\_, 2023 at \_\_: \_\_ .m., before the Honorable Thomas S. Zilly at the United States District Court for the Western District of Washington, United States Courthouse, Courtroom 15206, 700 Stewart Street, Seattle, WA 98101, to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated April 27, 2023 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Co-Lead Counsel’s application for an award of attorneys’ fees and payment of expenses should be approved.

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** If you have not yet received the Notice and Proof of Claim Form (“Claim Form”), you may obtain copies of these documents by contacting the Claims Administrator at *Athira Pharma Securities Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson Street, Suite 205, Media, PA 19063, 1-866-274-4004. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com).

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form to the Claims Administrator *postmarked* no later than \_\_\_\_\_, 2023, if sent by mail, or *submitted online* using the Settlement website no later than \_\_\_\_\_, 2023. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion to the Claims Administrator such that it is **received no later than \_\_\_\_\_, 2023**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Co-Lead Counsel’s motion for attorneys’ fees and payment of expenses, must be ~~filed with the Court and~~

delivered to Co-Lead Counsel and Defendants' Counsel such that they are *received* no later than \_\_\_\_\_, 2023, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk's office, Athira, Defendants, or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Co-Lead Counsel or the Claims Administrator.**

Inquiries, other than requests for the Notice and Claim Form, should be made to Co-Lead Counsel:

<b>GLANCY PRONGAY &amp; MURRAY LLP</b> Casey E. Sadler, Esq. 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 Telephone: (888) 773-9224 Email: <a href="mailto:settlements@glancylaw.com">settlements@glancylaw.com</a>	<b>LABATON SUCHAROW LLP</b> Michael P. Canty, Esq. 140 Broadway New York, New York 10005 Telephone: (888) 219-6877 Email: <a href="mailto:settlementquestions@labaton.com">settlementquestions@labaton.com</a>
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Requests for the Notice and Claim Form should be made to:

*Athira Pharma Securities Litigation*  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063  
1-866-274-4004  
[www.AthiraSecuritiesSettlement.com](http://www.AthiraSecuritiesSettlement.com)

By Order of the Court

Document comparison by Workshare Compare on Friday, June 30, 2023  
8:58:19 PM

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Document 2 ID	iManage://labaton-mobility.imatech.com/Active/3359513/4
Description	#3359513v4<labaton-mobility.imatech.com> - Athira - REVISED Ex. A-3 Summary Notice
Rendering set	Standard

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Total changes	3
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## **Exhibit 3**

# **Clean version of the Preliminary Approval Order**

**Exhibit A**

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ and  
21-cv-00864-TSZ)

**[PROPOSED REVISED] ORDER PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *Nacif, et al., v. Athira Pharma, Inc., et al.*, Case No.: 2:21-cv-00861-TSZ (the “Action”);

WHEREAS, (a) Court-appointed lead plaintiffs Antonio Bachaalani Nacif and Wies Rafi (collectively, “Lead Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); (b) Athira Pharma, Inc. (“Athira” or the “Company”); (c) Dr. Leen Kawas Glenna Milesen, Dr. Tadataka Yamada, Joseph Edelman, James A. Johnson, and John M. Fluke, Jr. (the “Individual Defendants”); and (d) Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company, Inc., and JMP Securities LLC (the “Underwriter Defendants,” together with Athira and the Individual Defendants, “Defendants” and, together with Lead Plaintiffs, the “Parties”) have determined to settle all claims asserted against Defendants in this Action and related claims with prejudice on the terms

1 and conditions set forth in the Stipulation and Agreement of Settlement dated April 27, 2023 (the  
2 “Stipulation”) subject to approval of this Court (the “Settlement”);

3 WHEREAS, Lead Plaintiffs have made an application, pursuant to Rule 23 of the Federal  
4 Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with  
5 the Stipulation, certifying the Settlement Class for purposes of the Settlement only, and allowing  
6 notice to Settlement Class Members as more fully described herein;

7 WHEREAS, the Court has read and considered: (a) Lead Plaintiffs’ motion for preliminary  
8 approval of the Settlement, and the papers filed and arguments made in connection therewith; and  
9 (b) the Stipulation and the exhibits attached thereto; and

10 WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall  
11 have the same meanings as they have in the Stipulation;

12 NOW THEREFORE, IT IS HEREBY ORDERED:

13 1. **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3) of  
14 the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the  
15 proposed Settlement, a Settlement Class consisting of all persons and entities who or which  
16 purchased or otherwise acquired Athira publicly traded common stock: (a) during the period from  
17 September 17, 2020 through June 17, 2021, inclusive (the “Class Period”); (b) pursuant and/or  
18 traceable to the registration statement and prospectus issued in connection with the Company’s  
19 September 2020 initial public offering; and/or (c) pursuant and/or traceable to the registration  
20 statement and prospectus issued in connection with the Company’s January 2021 secondary public  
21 offering, and were damaged thereby. Excluded from the Settlement Class are: (a) Defendants; (b)  
22 any person who served as a partner, control person, executive officer and/or director of Athira or  
23 the Underwriter Defendants during the Class Period, and members of their Immediate Family; (c)  
24 present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Athira  
25 and the Underwriter Defendants; (d) any entity in which the Defendants have or had a controlling  
26 interest; (e) any trust of which an Individual Defendant is the settlor or which is for the benefit of  
27 an Individual Defendant and/or member(s) of their Immediate Family; (f) liability insurance carriers  
28 for Athira or the Individual Defendants; and (g) the legal representatives, heirs, successors, and

1 assigns of any person or entity excluded under provisions (a) through (f) hereof. Notwithstanding  
2 any provision to the contrary, (a) any Investment Vehicle shall not be excluded from the Settlement  
3 Class; and (b) “affiliates” are persons or entities that directly, or indirectly through one or more  
4 intermediaries, control, are controlled by or are under common control with one of the Defendants,  
5 including Athira’s employee retirement and/or benefit plan(s). Also excluded from the Settlement  
6 Class are any persons and entities who or which submit a valid request for exclusion from the  
7 Settlement Class that is accepted by the Court.

8       2.       **Class Findings** – Solely for purposes of the proposed Settlement of this Action, the  
9 Court finds that each element required for certification of the Settlement Class pursuant to Rule 23  
10 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are  
11 so numerous that their joinder in the Action would be impracticable; (b) there are questions of law  
12 and fact common to the Settlement Class which predominate over any individual questions; (c) the  
13 claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead  
14 Plaintiffs and Co-Lead Counsel have and will fairly and adequately represent and protect the  
15 interests of the Settlement Class; and (e) a class action is superior to other available methods for the  
16 fair and efficient adjudication of the Action.

17       3.       The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules  
18 of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs Antonio Bachaalani  
19 Nacif and Wies Rafi are adequate class representatives and certifies them as Class Representatives  
20 for the Settlement Class. The Court also appoints Co-Lead Counsel Glancy Prongay & Murray,  
21 LLP and Labaton Sucharow LLP as Class Counsel for the Settlement Class, pursuant to Rule 23(g)  
22 of the Federal Rules of Civil Procedure.

23       4.       **Preliminary Approval of the Settlement** – The Court hereby preliminarily  
24 approves the Settlement, as embodied in the Stipulation, and finds that the Court will likely be able  
25 to approve the proposed Settlement as fair, reasonable, and adequate under Federal Rule of Civil  
26 Procedure 23(e)(2), subject to further consideration at the Settlement Hearing to be conducted, as  
27 described below.

28

1           5.       **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement  
2 Hearing”) on \_\_\_\_\_, 2023 at \_\_:\_\_ .m. in Courtroom 15206 of the United States  
3 Courthouse, 700 Stewart Street, Seattle, WA 98101, for the following purposes: (a) to determine  
4 whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair,  
5 reasonable and adequate to the Settlement Class, and should be approved by the Court; (b) to  
6 determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation  
7 should be entered dismissing the Action with prejudice against Defendants; (c) to determine whether  
8 the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should  
9 be approved; (d) to determine whether the motion by Co-Lead Counsel for an award of attorneys’  
10 fees and payment of Litigation Expenses should be approved; and (e) to consider any other matters  
11 that may properly be brought before the Court in connection with the Settlement. Notice of the  
12 Settlement and the Settlement Hearing shall be given to Settlement Class Members as set forth in  
13 paragraph 7 of this Order.

14           6.       The Court may adjourn the Settlement Hearing without further individual notice to  
15 the Settlement Class, and may approve the proposed Settlement with such modifications as the  
16 Parties may agree to, if appropriate, without further individual notice to the Settlement Class. Any  
17 changes to the scheduling of the Settlement Hearing or modifications to the Settlement shall be  
18 posted on the website for the Settlement.

19           7.       **Retention of Claims Administrator and Manner of Giving Notice** – Co-Lead  
20 Counsel are hereby authorized to retain Strategic Claims Services (the “Claims Administrator”) to  
21 supervise and administer the notice procedure in connection with the proposed Settlement as well  
22 as the processing of Claims as more fully set forth below. Notice of the Settlement and the  
23 Settlement Hearing shall be given by Co-Lead Counsel as follows:

24                   (a)       within five (5) business days of the date of entry of this Order, Athira shall  
25 provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the  
26 Settlement Fund, Co-Lead Counsel, Lead Plaintiffs, the Settlement Class or the Claims  
27 Administrator) lists of purchasers of record of Athira publicly traded common stock during the Class  
28

1 Period, including in the IPO and SPO, to the extent such lists are reasonably available from Athira’s  
2 stock transfer agent;

3 (b) not later than ten (10) business days after the date of entry of this Order (the  
4 “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Claim Form,  
5 substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the “Notice Packet”), to  
6 be mailed by first-class mail to potential Settlement Class Members at the addresses set forth in the  
7 records provided by Athira or in the records which Athira caused to be provided, or who otherwise  
8 may be identified through further reasonable effort;

9 (c) contemporaneously with the mailing of the Notice Packet, the Claims  
10 Administrator shall cause copies of the Notice and the Claim Form to be posted on a website to be  
11 developed for the Settlement, from which copies of the Notice and Claim Form can be downloaded;

12 (d) not later than ten (10) business days after the Notice Date, the Claims  
13 Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit  
14 3, to be published once in *Investor’s Business Daily* and to be transmitted once over the *PR*  
15 *NewsWire*; and

16 (e) not later than seven (7) calendar days prior to the Settlement Hearing, Co-  
17 Lead Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit or  
18 declaration, of such mailing and publication.

19 8. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and  
20 content, the Notice, the Claim Form, and the Summary Notice, attached hereto as Exhibits 1, 2, and  
21 3, respectively, and (b) finds that the mailing and distribution of the Notice and Claim Form and the  
22 publication of the Summary Notice in the manner and form set forth in paragraph 7 of this Order (i)  
23 is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably  
24 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the  
25 Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder),  
26 of Co-Lead Counsel’s motion for an award of attorneys’ fees and payment of Litigation Expenses,  
27 of their right to object to the Settlement, the Plan of Allocation and/or Co-Lead Counsel’s motion  
28 for attorneys’ fees and payment of Litigation Expenses, of their right to exclude themselves from



1 the Settlement Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due,  
2 adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed  
3 Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure,  
4 the United States Constitution (including the Due Process Clause), the Private Securities Litigation  
5 Reform Act of 1995, Public Law No. 104-67, 109 Stat. 737 (codified as amended in scattered  
6 sections of 15 U.S.C.), and all other applicable law and rules. The date and time of the Settlement  
7 Hearing shall be included in the Notice and Summary Notice before they are mailed and published,  
8 respectively.

9           9.       **Nominee Procedures** – Brokers and other nominees who purchased or otherwise  
10 acquired Athira publicly traded common stock during the Class Period, including in the IPO and the  
11 SPO, for the benefit of another person or entity shall, within seven (7) calendar days of receipt of  
12 the Notice either: (a) request from the Claims Administrator sufficient copies of the Notice Packet  
13 to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice  
14 Packets forward them to all such beneficial owners; or (b) send a list of the names and addresses of  
15 all such beneficial owners to the Claims Administrator, in which event the Claims Administrator  
16 shall promptly mail the Notice Packet to such beneficial owners. Nominees shall also provide email  
17 addresses for all such beneficial owners to the Claims Administrator, to the extent they are available.  
18 Nominees that choose to follow procedure (a) shall also send a statement to the Claims  
19 Administrator confirming that the mailing was made as directed. Upon full and timely compliance  
20 with this Order, nominees may seek reimbursement of their reasonable expenses actually incurred,  
21 not to exceed \$0.05 plus postage at the current pre-sort rate used by the Claims Administrator per  
22 Notice Packet mailed; \$0.05 per name, address, and email address (to the extent available) provided  
23 to the Claims Administrator, by providing the Claims Administrator with proper documentation  
24 supporting the expenses for which reimbursement is sought. Such properly documented expenses  
25 incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement  
26 Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to  
27 review by the Court. Nominees are not authorized to print the Notice Packet themselves for mailing.  
28 Notice Packets may only be printed by the Claims Administrator.

1           10.     **Participation in the Settlement** – Settlement Class Members who wish to  
2 participate in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund  
3 must complete and submit a Claim Form in accordance with the instructions contained therein.  
4 Unless the Court orders otherwise, all Claim Forms must be postmarked no later than seven (7)  
5 calendar days before the Settlement Hearing. Notwithstanding the foregoing, Co-Lead Counsel  
6 may, at their discretion, accept for processing late Claims provided such acceptance does not delay  
7 the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Claim, a person  
8 or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her  
9 or its Claim and the subject matter of the Settlement.

10           11.     Each Claim Form submitted must satisfy the following conditions: (a) it must be  
11 properly completed, signed and submitted in a timely manner in accordance with the provisions of  
12 the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the  
13 transactions and holdings reported therein, in the form of broker confirmation slips, broker account  
14 statements, an authorized statement from the broker containing the transactional and holding  
15 information found in a broker confirmation slip or account statement, or such other documentation  
16 as is deemed adequate by Co-Lead Counsel or the Claims Administrator; (c) if the person executing  
17 the Claim Form is acting in a representative capacity, a certification of his, her or its current authority  
18 to act on behalf of the Claimant must be included in the Claim Form to the satisfaction of Co-Lead  
19 Counsel or the Claims Administrator; and (d) the Claim Form must be complete and contain no  
20 material deletions or modifications of any of the printed matter contained therein and must be signed  
21 under penalty of perjury.

22           12.     Paragraphs 24(c)-(e) of the Stipulation are hereby modified as follows: all references  
23 to “review by the Court” are stricken. Co-Lead Counsel, in consultation with the Claims  
24 Administrator, shall review any disputed claims upon request by claimants.

25           13.     Any Settlement Class Member that does not timely and validly submit a Claim Form  
26 or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her  
27 or its right to share in the Net Settlement Fund; (b) shall be forever barred from participating in any  
28 distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement

1 and all proceedings, determinations, orders and judgments in the Action relating thereto, including,  
2 without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided  
3 for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from  
4 commencing, maintaining or prosecuting any of the Released Plaintiffs' Claims against each and all  
5 of the Defendants and other Released Defendants' Parties, as more fully described in the Stipulation  
6 and Notice. Notwithstanding the foregoing, late Claim Forms may be accepted for processing as  
7 set forth in paragraph 10 above.

8       14.     **Exclusion From the Settlement Class** – Any member of the Settlement Class who  
9 wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in  
10 writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any  
11 such request for exclusion from the Settlement Class must be mailed or delivered such that it is  
12 received no later than twenty-one (21) calendar days prior to the Settlement Hearing, to: *Athira*  
13 *Pharma Securities Litigation*, EXCLUSIONS, c/o Strategic Claims Services, P.O. Box 230, 600 N.  
14 Jackson Street, Suite 205, Media, PA 19063, and (b) each request for exclusion must (i) state the  
15 name, address, and telephone number of the person or entity requesting exclusion, and in the case  
16 of entities, the name and telephone number of the appropriate contact person; (ii) state that such  
17 person or entity “requests exclusion from the Settlement Class in the *Athira Pharma Securities*  
18 *Litigation*, Case No. 2:21-cv-00861-TSZ”; (iii) state the number of shares of Athira common stock  
19 that the person or entity requesting exclusion purchased/acquired and sold during the Class Period,  
20 as well as the dates and prices of each such purchase/acquisition and sale; and (iv) be signed by the  
21 person or entity requesting exclusion or an authorized representative. A request for exclusion shall  
22 not be effective unless it provides all the required information and is received within the time stated  
23 above, or is otherwise accepted by the Court.

24       15.     Any person or entity who or which timely and validly requests exclusion in  
25 compliance with the terms stated in this Order and is excluded from the Settlement Class shall not  
26 be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or  
27 judgments in the Action and shall not receive any payment out of the Net Settlement Fund.

28



1  
2 Glancy Prongay & Murray LLP  
3 Casey E. Sadler, Esq.  
4 1925 Century Park East, Suite 2100  
5 Los Angeles, CA 90067

Wilson Sonsini Goodrich & Rosati, P.C.  
Gregory L. Watts, Esq.  
701 Fifth Avenue, Suite 5100  
Seattle, WA 98104-7036

6 -and-

-and-

7 Labaton Sucharow LLP  
8 Michael P. Canty, Esq.  
9 140 Broadway  
10 New York, New York 10005

Perkins Coie LLP  
Sean C. Knowles, Esq.  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099

11 -and-

DLA Piper LLP (US)  
Anthony Todaro, Esq.  
701 Fifth Avenue, Suite 6900  
Seattle, WA 98104-7029

12 19. Any objections, filings and other submissions by the objecting Settlement Class  
13 Member: (a) must state the name, address, and telephone number of the person or entity objecting  
14 and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's  
15 objection or objections, and the specific reasons for each objection, including whether it applies  
16 only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class,  
17 and any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's  
18 attention; and (c) must include documents sufficient to prove membership in the Settlement Class,  
19 including the number of shares of Athira common stock that the objecting Settlement Class Member  
20 purchased/acquired and sold during the Class Period, as well as the dates and prices of each such  
21 purchase/acquisition and sale. Objectors who desire to present evidence at the Settlement Hearing  
22 in support of their objection must include in their written objection the identity of any witnesses  
23 they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

24 20. Any Settlement Class Member who or which does not make his, her or its objection  
25 in the manner provided herein shall be deemed to have waived his, her or its right to object to any  
26 aspect of the proposed Settlement, the proposed Plan of Allocation, and Co-Lead Counsel's motion  
27 for an award of attorneys' fees and payment of Litigation Expenses and shall be forever barred and  
28 foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan of  
Allocation or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard

1 concerning the Settlement, the Plan of Allocation or the requested attorneys' fees and Litigation  
2 Expenses in this or any other proceeding.

3       21.     **Stay and Temporary Injunction** – Until otherwise ordered by the Court, the Court  
4 stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms  
5 and conditions of the Stipulation. Pending final determination of whether the Settlement should be  
6 approved, the Court bars and enjoins Lead Plaintiffs, and all other members of the Settlement Class,  
7 from commencing or prosecuting any and all of the Released Plaintiffs' Claims against each and all  
8 of the Defendants and other Released Defendants' Parties.

9       22.     **Settlement Administration Fees and Expenses** – All reasonable costs incurred in  
10 identifying Settlement Class Members and notifying them of the Settlement, as well as in  
11 administering the Settlement, shall be paid as set forth in the Stipulation without further order of the  
12 Court.

13       23.     **Settlement Fund** – The contents of the Settlement Fund held by Citibank N.A.  
14 (Private Bank), as Escrow Agent, shall be deemed and considered to be *in custodia legis* of the  
15 Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be  
16 distributed pursuant to the Stipulation and/or further order(s) of the Court.

17       24.     **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax returns and  
18 any other tax reporting forms for or in respect to the Settlement Fund, to pay from the Settlement  
19 Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations  
20 with respect to Taxes and any reporting or filings in respect thereof without further order of the  
21 Court and in a manner consistent with the provisions of the Stipulation.

22       25.     **Termination of Settlement** – If the Settlement is terminated as provided in the  
23 Stipulation, the Settlement is not approved, or the Effective Date of the Settlement otherwise fails  
24 to occur, this Order shall be vacated, rendered null and void and be of no further force and effect,  
25 except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the  
26 rights of Lead Plaintiffs, the other Settlement Class Members and Defendants, and the Parties shall  
27 revert to their respective positions in the Action as of February 28, 2023, as provided in the  
28 Stipulation.

1           26.     **Use of this Order** – Neither this Order, the Term Sheet, the Stipulation (whether or  
2 not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or  
3 any other plan of allocation that may be approved by the Court), the negotiations leading to the  
4 execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in  
5 connection with the Term Sheet, the Stipulation and/or approval of the Settlement (including any  
6 arguments proffered in connection therewith): (a) shall be offered against Defendants or any of the  
7 other Released Defendants’ Parties as evidence of, or construed as, or deemed to be evidence of any  
8 presumption, concession, or admission by any of the Defendants or other Released Defendants’  
9 Parties with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim  
10 that was or could have been asserted or the deficiency of any defense that has been or could have  
11 been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other  
12 wrongdoing of any kind of any of the Defendants or other Released Defendants’ Parties or in any  
13 way referred to for any other reason as against any of the Defendants or other Released Defendants’  
14 Parties, in any civil, criminal or administrative action or other proceeding; (b) shall be offered  
15 against Lead Plaintiffs or any of the other Released Plaintiffs’ Parties, as evidence of, or construed  
16 as, or deemed to be evidence of any presumption, concession or admission by any of the Lead  
17 Plaintiffs or other Released Plaintiffs’ Parties that any of their claims are without merit, that any of  
18 the Defendants or the other Released Defendants’ Parties had meritorious defenses, or that damages  
19 recoverable under the Complaint would not have exceeded the Settlement Amount or with respect  
20 to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other  
21 reason as against Lead Plaintiffs and any of the Released Plaintiffs’ Parties, in any civil, criminal or  
22 administrative action or other proceeding; or (c) shall be construed against any of the Releasees as  
23 an admission, concession, or presumption that the consideration to be given under the Settlement  
24 represents the amount which could be or would have been recovered after trial; *provided, however,*  
25 that if the Stipulation is approved by the Court, the Parties and the Releasees and their respective  
26 counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to  
27 enforce the terms of the Settlement.

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27. **Supporting Papers** – Co-Lead Counsel shall file and serve the opening papers in support of approval of the proposed Settlement, the Plan of Allocation, and Co-Lead Counsel’s motion for an award of attorneys’ fees and payment of Litigation Expenses no later than thirty-five (35) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

28. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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The Honorable Thomas S. Zilly  
United States District Judge

## **Exhibit 3**

# **Redline version of the Preliminary Approval Order**

**Exhibit A**

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ and  
21-cv-00864-TSZ)

**[PROPOSED REVISED] ORDER PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *Nacif, et al., v. Athira Pharma, Inc., et al.*, Case No.: 2:21-cv-00861-TSZ (the “Action”);

WHEREAS, (a) Court-appointed lead plaintiffs Antonio Bachaalani Nacif and Wies Rafi (collectively, “Lead Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); (b) Athira Pharma, Inc. (“Athira” or the “Company”); (c) Dr. Leen Kawas Glenna Mileson, Dr. Tadataka Yamada, Joseph Edelman, James A. Johnson, and John M. Fluke, Jr. (the “Individual Defendants”); and (d) Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company, Inc., and JMP Securities LLC (the “Underwriter Defendants,” together with Athira and the Individual Defendants, “Defendants” and, together with Lead Plaintiffs, the “Parties”) have determined to settle all claims asserted against Defendants in this Action and related claims with

1 prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement  
2 dated April 27, 2023 (the “Stipulation”) subject to approval of this Court (the “Settlement”);

3 WHEREAS, Lead Plaintiffs have made an application, pursuant to Rule 23 of the Federal  
4 Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with  
5 the Stipulation, certifying the Settlement Class for purposes of the Settlement only, and allowing  
6 notice to Settlement Class Members as more fully described herein;

7 WHEREAS, the Court has read and considered: (a) Lead Plaintiffs’ motion for preliminary  
8 approval of the Settlement, and the papers filed and arguments made in connection therewith; and  
9 (b) the Stipulation and the exhibits attached thereto; and

10 WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall  
11 have the same meanings as they have in the Stipulation;

12 NOW THEREFORE, IT IS HEREBY ORDERED:

13 1. **Class Certification for Settlement Purposes** – Pursuant to Rule 23(a) and (b)(3)  
14 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the  
15 proposed Settlement, a Settlement Class consisting of all persons and entities who or which  
16 purchased or otherwise acquired Athira publicly traded common stock: (a) during the period from  
17 September 17, 2020 through June 17, 2021, inclusive (the “Class Period”); (b) pursuant and/or  
18 traceable to the registration statement and prospectus issued in connection with the Company’s  
19 September 2020 initial public offering; and/or (c) pursuant and/or traceable to the registration  
20 statement and prospectus issued in connection with the Company’s January 2021 secondary public  
21 offering, and were damaged thereby. Excluded from the Settlement Class are: (a) Defendants; (b)  
22 any person who served as a partner, control person, executive officer and/or director of Athira or  
23 the Underwriter Defendants during the Class Period, and members of their Immediate Family; (c)  
24 present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Athira  
25 and the Underwriter Defendants; (d) any entity in which the Defendants have or had a controlling  
26 interest; (e) any trust of which an Individual Defendant is the settlor or which is for the benefit of  
27 an Individual Defendant and/or member(s) of their Immediate Family; (f) liability insurance

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1 carriers for Athira or the Individual Defendants; and (g) the legal representatives, heirs,  
2 successors, and assigns of any person or entity excluded under provisions (a) through (f) hereof.  
3 Notwithstanding any provision to the contrary, (a) any Investment Vehicle shall not be excluded  
4 from the Settlement Class; and (b) “affiliates” are persons or entities that directly, or indirectly  
5 through one or more intermediaries, control, are controlled by or are under common control with  
6 one of the Defendants, including Athira’s employee retirement and/or benefit plan(s). Also  
7 excluded from the Settlement Class are any persons and entities who or which submit a valid  
8 request for exclusion from the Settlement Class that is accepted by the Court.

9       2.       **Class Findings** – Solely for purposes of the proposed Settlement of this Action, the  
10 Court finds that each element required for certification of the Settlement Class pursuant to Rule 23  
11 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are  
12 so numerous that their joinder in the Action would be impracticable; (b) there are questions of law  
13 and fact common to the Settlement Class which predominate over any individual questions; (c) the  
14 claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead  
15 Plaintiffs and Co-Lead Counsel have and will fairly and adequately represent and protect the  
16 interests of the Settlement Class; and (e) a class action is superior to other available methods for  
17 the fair and efficient adjudication of the Action.

18       3.       The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules  
19 of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs Antonio  
20 Bachaalani Nacif and Wies Rafi are adequate class representatives and certifies them as Class  
21 Representatives for the Settlement Class. The Court also appoints Co-Lead Counsel Glancy  
22 Prongay & Murray, LLP and Labaton Sucharow LLP as Class Counsel for the Settlement Class,  
23 pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

24       4.       **Preliminary Approval of the Settlement** – The Court hereby preliminarily  
25 approves the Settlement, as embodied in the Stipulation, and finds that the Court will likely be  
26 able to approve the proposed Settlement as fair, reasonable, and adequate under Federal Rule of  
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1 Civil Procedure 23(e)(2), subject to further consideration at the Settlement Hearing to be  
2 conducted, as described below.

3       5.       **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement  
4 Hearing”) on \_\_\_\_\_, 2023 at \_\_:\_\_ .m. in Courtroom 15206 of the United States  
5 Courthouse, 700 Stewart Street, Seattle, WA 98101, for the following purposes: (a) to determine  
6 whether the proposed Settlement on the terms and conditions provided for in the Stipulation is  
7 fair, reasonable and adequate to the Settlement Class, and should be approved by the Court; (b) to  
8 determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation  
9 should be entered dismissing the Action with prejudice against Defendants; (c) to determine  
10 whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable  
11 and should be approved; (d) to determine whether the motion by Co-Lead Counsel for an award of  
12 attorneys’ fees and payment of Litigation Expenses should be approved; and (e) to consider any  
13 other matters that may properly be brought before the Court in connection with the Settlement.  
14 Notice of the Settlement and the Settlement Hearing shall be given to Settlement Class Members  
15 as set forth in paragraph 7 of this Order.

16       6.       The Court may adjourn the Settlement Hearing without further individual notice to  
17 the Settlement Class, and may approve the proposed Settlement with such modifications as the  
18 Parties may agree to, if appropriate, without further individual notice to the Settlement Class. Any  
19 changes to the scheduling of the Settlement Hearing or modifications to the Settlement shall be  
20 posted on the website for the Settlement.

21       7.       **Retention of Claims Administrator and Manner of Giving Notice** – Co-Lead  
22 Counsel are hereby authorized to retain Strategic Claims Services (the “Claims Administrator”) to  
23 supervise and administer the notice procedure in connection with the proposed Settlement as well  
24 as the processing of Claims as more fully set forth below. Notice of the Settlement and the  
25 Settlement Hearing shall be given by Co-Lead Counsel as follows:

26               (a)       within five (5) business days of the date of entry of this Order, Athira shall  
27 provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the  
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1 Settlement Fund, Co-Lead Counsel, Lead Plaintiffs, the Settlement Class or the Claims  
2 Administrator) lists of purchasers of record of Athira publicly traded common stock during the  
3 Class Period, including in the IPO and SPO, to the extent such lists are reasonably available from  
4 Athira's stock transfer agent;

5 (b) not later than ten (10) business days after the date of entry of this Order (the  
6 "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Claim Form,  
7 substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the "Notice Packet"),  
8 to be mailed by first-class mail to potential Settlement Class Members at the addresses set forth in  
9 the records provided by Athira or in the records which Athira caused to be provided, or who  
10 otherwise may be identified through further reasonable effort;

11 (c) contemporaneously with the mailing of the Notice Packet, the Claims  
12 Administrator shall cause copies of the Notice and the Claim Form to be posted on a website to be  
13 developed for the Settlement, from which copies of the Notice and Claim Form can be  
14 downloaded;

15 (d) not later than ten (10) business days after the Notice Date, the Claims  
16 Administrator shall cause the Summary Notice, substantially in the form attached hereto as  
17 Exhibit 3, to be published once in *Investor's Business Daily* and to be transmitted once over the  
18 *PR Newswire*; and

19 (e) not later than seven (7) calendar days prior to the Settlement Hearing,  
20 Co-Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or  
21 declaration, of such mailing and publication.

22 8. **Approval of Form and Content of Notice** – The Court (a) approves, as to form  
23 and content, the Notice, the Claim Form, and the Summary Notice, attached hereto as Exhibits 1,  
24 2, and 3, respectively, and (b) finds that the mailing and distribution of the Notice and Claim Form  
25 and the publication of the Summary Notice in the manner and form set forth in paragraph 7 of this  
26 Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is  
27 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the  
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1 pendency of the Action, of the effect of the proposed Settlement (including the Releases to be  
2 provided thereunder), of Co-Lead Counsel's motion for an award of attorneys' fees and payment  
3 of Litigation Expenses, of their right to object to the Settlement, the Plan of Allocation and/or  
4 Co-Lead Counsel's motion for attorneys' fees and payment of Litigation Expenses, of their right to  
5 exclude themselves from the Settlement Class, and of their right to appear at the Settlement  
6 Hearing; (iii) constitutes due, adequate and sufficient notice to all persons and entities entitled to  
7 receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the  
8 Federal Rules of Civil Procedure, the United States Constitution (including the Due Process  
9 Clause), the Private Securities Litigation Reform Act of 1995, Public Law No. 104-67, 109 Stat.  
10 737 (codified as amended in scattered sections of 15 U.S.C.), and all other applicable law and  
11 rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary  
12 Notice before they are mailed and published, respectively.

13       9.       **Nominee Procedures** – Brokers and other nominees who purchased or otherwise  
14 acquired Athira publicly traded common stock during the Class Period, including in the IPO and  
15 the SPO, for the benefit of another person or entity shall, within seven (7) calendar days of receipt  
16 of the Notice either: (a) request from the Claims Administrator sufficient copies of the Notice  
17 Packet to forward to all such beneficial owners and within seven (7) calendar days of receipt of  
18 those Notice Packets forward them to all such beneficial owners; or (b) send a list of the names  
19 and addresses of all such beneficial owners to the Claims Administrator, in which event the  
20 Claims Administrator shall promptly mail the Notice Packet to such beneficial owners. Nominees  
21 shall also provide email addresses for all such beneficial owners to the Claims Administrator, to  
22 the extent they are available. Nominees that choose to follow procedure (a) shall also send a  
23 statement to the Claims Administrator confirming that the mailing was made as directed. Upon  
24 full and timely compliance with this Order, nominees may seek reimbursement of their reasonable  
25 expenses actually incurred, not to exceed \$0.05 plus postage at the current pre-sort rate used by the  
26 Claims Administrator per Notice Packet mailed; \$0.05 per name, address, and email address (to  
27 the extent available) provided to the Claims Administrator, by providing the Claims Administrator  
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1 with proper documentation supporting the expenses for which reimbursement is sought. Such  
2 properly documented expenses incurred by nominees in compliance with the terms of this Order  
3 shall be paid from the Settlement Fund, with any disputes as to the reasonableness or  
4 documentation of expenses incurred subject to review by the Court. Nominees are not authorized  
5 to print the Notice Packet themselves for mailing. Notice Packets may only be printed by the  
6 Claims Administrator.

7       10.     **Participation in the Settlement** – Settlement Class Members who wish to  
8 participate in the Settlement and to be eligible to receive a distribution from the Net Settlement  
9 Fund must complete and submit a Claim Form in accordance with the instructions contained  
10 therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than  
11 seven (7) calendar days before the Settlement Hearing. Notwithstanding the foregoing, Co-Lead  
12 Counsel may, at their discretion, accept for processing late Claims provided such acceptance does  
13 not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a  
14 Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with  
15 respect to his, her or its Claim and the subject matter of the Settlement.

16       11.     Each Claim Form submitted must satisfy the following conditions: (a) it must be  
17 properly completed, signed and submitted in a timely manner in accordance with the provisions of  
18 the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for  
19 the transactions and holdings reported therein, in the form of broker confirmation slips, broker  
20 account statements, an authorized statement from the broker containing the transactional and  
21 holding information found in a broker confirmation slip or account statement, or such other  
22 documentation as is deemed adequate by Co-Lead Counsel or the Claims Administrator; (c) if the  
23 person executing the Claim Form is acting in a representative capacity, a certification of his, her or  
24 its current authority to act on behalf of the Claimant must be included in the Claim Form to the  
25 satisfaction of Co-Lead Counsel or the Claims Administrator; and (d) the Claim Form must be  
26 complete and contain no material deletions or modifications of any of the printed matter contained  
27 therein and must be signed under penalty of perjury.

28

1           12.    Paragraphs 24(c)-(e) of the Stipulation are hereby modified as follows: all references  
2 to “review by the Court” are stricken. Co-Lead Counsel, in consultation with the Claims  
3 Administrator, shall review any disputed claims upon request by claimants.

4           13.    ~~12.~~ Any Settlement Class Member that does not timely and validly submit a Claim  
5 Form or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived  
6 his, her or its right to share in the Net Settlement Fund; (b) shall be forever barred from  
7 participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation  
8 and the Settlement and all proceedings, determinations, orders and judgments in the Action  
9 relating thereto, including, without limitation, the Judgment or Alternate Judgment, if applicable,  
10 and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class;  
11 and (d) will be barred from commencing, maintaining or prosecuting any of the Released  
12 Plaintiffs’ Claims against each and all of the Defendants and other Released Defendants’ Parties,  
13 as more fully described in the Stipulation and Notice. Notwithstanding the foregoing, late Claim  
14 Forms may be accepted for processing as set forth in paragraph 10 above.

15           14.    ~~13.~~ **Exclusion From the Settlement Class** – Any member of the Settlement Class  
16 who wishes to exclude himself, herself or itself from the Settlement Class must request exclusion  
17 in writing within the time and in the manner set forth in the Notice, which shall provide that: (a)  
18 any such request for exclusion from the Settlement Class must be mailed or delivered such that it  
19 is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, to: *Athira*  
20 *Pharma Securities Litigation*, EXCLUSIONS, c/o Strategic Claims Services, P.O. Box 230, 600  
21 N. Jackson Street, Suite 205, Media, PA 19063, and (b) each request for exclusion must (i) state  
22 the name, address, and telephone number of the person or entity requesting exclusion, and in the  
23 case of entities, the name and telephone number of the appropriate contact person; (ii) state that  
24 such person or entity “requests exclusion from the Settlement Class in the *Athira Pharma*  
25 *Securities Litigation*, Case No. 2:21-cv-00861-TSZ”; (iii) state the number of shares of Athira  
26 common stock that the person or entity requesting exclusion purchased/acquired and sold during  
27 the Class Period, as well as the dates and prices of each such purchase/acquisition and sale; and  
28

1 (iv) be signed by the person or entity requesting exclusion or an authorized representative. A  
2 request for exclusion shall not be effective unless it provides all the required information and is  
3 received within the time stated above, or is otherwise accepted by the Court.

4 15. ~~14.~~—Any person or entity who or which timely and validly requests exclusion in  
5 compliance with the terms stated in this Order and is excluded from the Settlement Class shall not  
6 be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or  
7 judgments in the Action and shall not receive any payment out of the Net Settlement Fund.

8 16. ~~15.~~—Any Settlement Class Member who or which does not timely and validly  
9 request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be  
10 deemed to have waived his, her or its right to be excluded from the Settlement Class; (b) shall be  
11 forever barred from requesting exclusion from the Settlement Class in this or any other  
12 proceeding; (c) shall be bound by the provisions of the Stipulation and Settlement and all  
13 proceedings, determinations, orders and judgments in the Action, including, but not limited to, the  
14 Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether  
15 favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing,  
16 maintaining or prosecuting any of the Released Plaintiffs' Claims against any of the Defendants or  
17 other Released Defendants' Parties, as more fully described in the Stipulation and Notice.

18 17. ~~16.~~ **Appearance and Objections at Settlement Hearing** – Any Settlement Class  
19 Member who does not request exclusion from the Settlement Class may enter an appearance in the  
20 Action, at his, her or its own expense, individually or through counsel of his, her or its own choice,  
21 by filing with the Clerk of Court and delivering a notice of appearance to both Co-Lead Counsel  
22 and Defendants' Counsel, at the addresses set forth in paragraph ~~17~~18 below, ~~such that it is~~  
23 ~~received no later than twenty one (21) calendar days prior to the Settlement Hearing, or as the~~  
24 ~~Court may otherwise direct.~~ Any Settlement Class Member who does not enter an appearance will  
25 be represented by Co-Lead Counsel.

26 18. ~~17.~~—Any Settlement Class Member who does not request exclusion from the  
27 Settlement Class may ~~file~~submit a written objection to the proposed Settlement, the proposed Plan

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1 of Allocation, and/or Co-Lead Counsel’s motion for an award of attorneys’ fees and payment of  
2 Litigation Expenses and appear and show cause, if he, she or it has any cause, why the proposed  
3 Settlement, the proposed Plan of Allocation and/or Co-Lead Counsel’s motion for attorneys’ fees  
4 and payment of Litigation Expenses should not be approved; *provided, however*, that no  
5 Settlement Class Member shall be ~~heard or~~ entitled to contest the approval of the terms and  
6 conditions of the proposed Settlement, the proposed Plan of Allocation and/or the motion for  
7 attorneys’ fees and payment of Litigation Expenses unless that person or entity has ~~filed a written~~  
8 ~~objection with the Court and~~ served copies of such objection on Co-Lead Counsel and  
9 Defendants’ Counsel at the addresses set forth below such that they are received no later than  
10 twenty-one (21) calendar days prior to the Settlement Hearing.

11 **Co-Lead Counsel**

12 Glancy Prongay & Murray LLP  
13 Casey E. Sadler, Esq.  
14 1925 Century Park East, Suite 2100  
15 Los Angeles, CA 90067

16 -and-

17 Labaton Sucharow LLP  
18 Michael P. Canty, Esq.  
19 140 Broadway  
20 New York, New York 10005

11 **Defendants’ Counsel**

12 Wilson Sonsini Goodrich & Rosati, P.C.  
13 Gregory L. Watts, Esq.  
14 701 Fifth Avenue, Suite 5100  
15 Seattle, WA 98104-7036

16 -and-

17 Perkins Coie LLP  
18 Sean C. Knowles, Esq.  
19 1201 Third Avenue, Suite 4900  
20 Seattle, WA 98101-3099

21 -and-

22 DLA Piper LLP (US)  
23 Anthony Todaro, Esq.  
24 701 Fifth Avenue, Suite 6900  
25 Seattle, WA 98104-7029

26 19. ~~18.~~—Any objections, filings and other submissions by the objecting Settlement  
27 Class Member: (a) must state the name, address, and telephone number of the person or entity  
28 objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class  
Member’s objection or objections, and the specific reasons for each objection, including whether  
it applies only to the objector, to a specific subset of the Settlement Class, or to the entire  
Settlement Class, and any legal and evidentiary support the Settlement Class Member wishes to  
bring to the Court’s attention; and (c) must include documents sufficient to prove membership in

1 the Settlement Class, including the number of shares of Athira common stock that the objecting  
2 Settlement Class Member purchased/acquired and sold during the Class Period, as well as the  
3 dates and prices of each such purchase/acquisition and sale. Objectors who ~~enter an appearance~~  
4 ~~and~~ desire to present evidence at the Settlement Hearing in support of their objection must include  
5 in their written objection ~~or notice of appearance~~ the identity of any witnesses they may call to  
6 testify and any exhibits they intend to introduce into evidence at the hearing.

7 20. ~~19.~~—Any Settlement Class Member who or which does not make his, her or its  
8 objection in the manner provided herein shall be deemed to have waived his, her or its right to  
9 object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and Co-Lead  
10 Counsel’s motion for an award of attorneys’ fees and payment of Litigation Expenses and shall be  
11 forever barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the  
12 Settlement, the Plan of Allocation or the requested attorneys’ fees and Litigation Expenses, or  
13 from otherwise being heard concerning the Settlement, the Plan of Allocation or the requested  
14 attorneys’ fees and Litigation Expenses in this or any other proceeding.

15 21. ~~20.~~—**Stay and Temporary Injunction** – Until otherwise ordered by the Court, the  
16 Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce  
17 the terms and conditions of the Stipulation. Pending final determination of whether the Settlement  
18 should be approved, the Court bars and enjoins Lead Plaintiffs, and all other members of the  
19 Settlement Class, from commencing or prosecuting any and all of the Released Plaintiffs’ Claims  
20 against each and all of the Defendants and other Released Defendants’ Parties.

21 22. ~~21.~~—**Settlement Administration Fees and Expenses** – All reasonable costs  
22 incurred in identifying Settlement Class Members and notifying them of the Settlement, as well as  
23 in administering the Settlement, shall be paid as set forth in the Stipulation without further order  
24 of the Court.

25 23. ~~22.~~—**Settlement Fund** – The contents of the Settlement Fund held by Citibank N.A.  
26 (Private Bank), as Escrow Agent, shall be deemed and considered to be *in custodia legis* of the  
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1 Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be  
2 distributed pursuant to the Stipulation and/or further order(s) of the Court.

3 24. ~~23.~~ **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax  
4 returns and any other tax reporting forms for or in respect to the Settlement Fund, to pay from the  
5 Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform  
6 all obligations with respect to Taxes and any reporting or filings in respect thereof without further  
7 order of the Court and in a manner consistent with the provisions of the Stipulation.

8 25. ~~24.~~ **Termination of Settlement** – If the Settlement is terminated as provided in the  
9 Stipulation, the Settlement is not approved, or the Effective Date of the Settlement otherwise fails  
10 to occur, this Order shall be vacated, rendered null and void and be of no further force and effect,  
11 except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the  
12 rights of Lead Plaintiffs, the other Settlement Class Members and Defendants, and the Parties  
13 shall revert to their respective positions in the Action as of February 28, 2023, as provided in the  
14 Stipulation.

15 26. ~~25.~~ **Use of this Order** – Neither this Order, the Term Sheet, the Stipulation  
16 (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained  
17 therein (or any other plan of allocation that may be approved by the Court), the negotiations  
18 leading to the execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant  
19 to or in connection with the Term Sheet, the Stipulation and/or approval of the Settlement  
20 (including any arguments proffered in connection therewith): (a) shall be offered against  
21 Defendants or any of the other Released Defendants’ Parties as evidence of, or construed as, or  
22 deemed to be evidence of any presumption, concession, or admission by any of the Defendants or  
23 other Released Defendants’ Parties with respect to the truth of any fact alleged by Lead Plaintiffs  
24 or the validity of any claim that was or could have been asserted or the deficiency of any defense  
25 that has been or could have been asserted in this Action or in any other litigation, or of any  
26 liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants or other  
27 Released Defendants’ Parties or in any way referred to for any other reason as against any of the  
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1 Defendants or other Released Defendants’ Parties, in any civil, criminal or administrative action or  
2 other proceeding; (b) shall be offered against Lead Plaintiffs or any of the other Released  
3 Plaintiffs’ Parties, as evidence of, or construed as, or deemed to be evidence of any presumption,  
4 concession or admission by any of the Lead Plaintiffs or other Released Plaintiffs’ Parties that any  
5 of their claims are without merit, that any of the Defendants or the other Released Defendants’  
6 Parties had meritorious defenses, or that damages recoverable under the Complaint would not  
7 have exceeded the Settlement Amount or with respect to any liability, negligence, fault or  
8 wrongdoing of any kind, or in any way referred to for any other reason as against Lead Plaintiffs  
9 and any of the Released Plaintiffs’ Parties, in any civil, criminal or administrative action or other  
10 proceeding; or (c) shall be construed against any of the Releasees as an admission, concession, or  
11 presumption that the consideration to be given under the Settlement represents the amount which  
12 could be or would have been recovered after trial; *provided, however*, that if the Stipulation is  
13 approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to  
14 effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the  
15 Settlement.

16 27. ~~26.~~ **Supporting Papers** – Co-Lead Counsel shall file and serve the opening papers  
17 in support of approval of the proposed Settlement, the Plan of Allocation, and Co-Lead Counsel’s  
18 motion for an award of attorneys’ fees and payment of Litigation Expenses no later than thirty-five  
19 (35) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and  
20 served no later than seven (7) calendar days prior to the Settlement Hearing.

21 28. ~~27.~~ The Court retains jurisdiction to consider all further applications arising out of  
22 or connected with the proposed Settlement.

23 SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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The Honorable Thomas S. Zilly  
United States District Judge

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Document 2 ID	iManage://labaton-mobility.imatege.work/Active/3359514/4
Description	#3359514v4<labaton-mobility.imatege.work> - Athira - REVISED Proposed Preliminary Approval Order
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Deletions	23
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# **Exhibit 4**

THE HONORABLE THOMAS S. ZILLY

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and WIES  
RAFI, individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ

**DECLARATION OF PAUL  
MULHOLLAND ON BEHALF OF  
STRATEGIC CLAIMS SERVICES IN  
SUPPORT OF LEAD PLAINTIFFS'  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND IN RESPONSE TO  
QUESTIONS POSED BY THE MINUTE  
ORDER DATED MAY 31, 2023**

1 I, Paul Mulholland, declare and state as follows, pursuant to 28 U.S.C. § 1746:

2 1. I have personal knowledge of the facts set forth herein and, if called on to testify, I  
3 could and would do so to the best of my ability.

4 2. I am the President of Strategic Claims Services (“SCS”), a nationally recognized class  
5 action administration firm.<sup>1</sup> I have thirty (30) years of experience specializing in litigation support  
6 services, and twenty-three (23) years of experience focusing in the area of the administration of  
7 securities class action settlements. I have also testified as an expert witness in securities and other  
8 class action matters. Attached as Exhibit A is my curriculum vitae and background information about  
9 SCS.

10 3. SCS was retained by Co-Lead Counsel, subject to Court approval, to provide notice  
11 and claims administration services in connection with the proposed Settlement of the above-captioned  
12 action (“Action”). SCS has successfully administered over five hundred and twenty-five (525) class  
13 action settlements since it was established in April 1999. SCS specializes in administering securities  
14 class action settlements and has distributed over \$3 billion in settlement funds. SCS is considered  
15 one of the leading claims administrators in the United States. More information about SCS is  
16 available on our website at [www.strategicclaims.net](http://www.strategicclaims.net).

17 4. At the request of Co-Lead Counsel, I am providing this declaration in support of Lead  
18 Plaintiffs’ Motion for Preliminary Approval of Proposed Class Action Settlement (ECF No. 118), and  
19 in response to questions posed by the Minute Order dated May 31, 2023 (“Minute Order”, ECF No.  
20 119).

21 **A. An “Opt In” Approach Is the Only Feasible Way to**  
22 **Quantify Recoveries and Prevent Fraud**

23 5. As discussed below, I am not aware of a single securities class action involving open  
24 market purchases of publicly traded securities in which there was no claims process, nor do I think  
25 such an approach is viable or fair to class members.

26  
27  
28 <sup>1</sup> All capitalized terms not otherwise defined in this declaration have the same meanings as in the Stipulation and Agreement of Settlement, dated April 27, 2023 (the “Stipulation”, ECF No. 118-2), previously filed with the Court.



1           6. I have been informed that the proposed Settlement Class here consists of “all persons  
2 and entities who or which purchased or otherwise acquired Athira Pharma, Inc. (“Athira”) publicly  
3 traded common stock: (a) during the period from September 17, 2020 through June 17, 2021,  
4 inclusive; (b) pursuant and/or traceable to the registration statement and prospectus issued in  
5 connection with the Company’s September 2020 initial public offering; and/or (c) pursuant and/or  
6 traceable to the registration statement and prospectus issued in connection with the Company’s  
7 January 2021 secondary public offering, and were damaged thereby.”<sup>2</sup> ECF No. 118-2, ¶1(ss).

8           7. In order to fairly and reasonably distribute the Net Settlement Fund to members of the  
9 Settlement Class that have suffered losses, two fundamental matters must be determined (1)  
10 Settlement Class Members must be identified and (2) their trading during the Class Period (and the  
11 PSLRA’s 90-day look back) must be analyzed under a Court-approved “Plan of Allocation” for the  
12 distribution of the Net Settlement Fund to determine whether losses have been suffered and to  
13 quantify the losses.

14                   **1. Identification of Absent Class Members**

15           8. In securities class actions involving open-market purchases of publicly traded  
16 securities, there are multiple sources of the identities of absent class members. There is no single  
17 source and, given the structure of the financial markets, it is not the case that an issuing company,  
18 like Athira, knows the identities of each of its investors. The two primary sources are: (i) an issuer’s  
19 transfer agent and (ii) brokerage firms, banks, “back-office” custodians, and other third-parties, which  
20

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21           <sup>2</sup> Excluded from the Settlement Class are: (a) Defendants; (b) any Person who served as a partner,  
22 control person, executive officer and/or director of Athira or the Underwriter Defendants during the  
23 Class Period, and members of their Immediate Family; (c) present and former parents, subsidiaries,  
24 assigns, successors, affiliates, and predecessors of Athira and the Underwriter Defendants; (d) any  
25 entity in which the Defendants have or had a controlling interest; (e) any trust of which an Individual  
26 Defendant is the settlor or which is for the benefit of an Individual Defendant and/or member(s) of  
27 their Immediate Family; (f) liability insurance carriers for Athira or the Individual Defendants; and  
28 (g) the legal representatives, heirs, successors, and assigns of any person or entity excluded under  
provisions (a) through (f) hereof. Notwithstanding any provision to the contrary, (a) any Investment  
Vehicle shall not be excluded from the Settlement Class; and (b) “affiliates” are persons or entities  
that directly, or indirectly through one or more intermediaries, control, are controlled by or are under  
common control with one of the Defendants, including Athira’s employee retirement and/or benefit  
plan(s). Also excluded from the Settlement Class are any persons and entities who or which submit  
a valid request for exclusion from the Settlement Class that is accepted by the Court. ECF No. 118-  
2, ¶1(ss).

1 collectively are referred to as “nominees” in the class action administration industry (“Nominee(s)”).  
2 Where a case involves a public offering, such as this one, the underwriters of the offering would also  
3 know the nominees that purchased shares to sell to their clients and investors who were directly issued  
4 share certificates.

5 9. In this case, Settlement Class Members may be identified from records kept by  
6 Athira’s transfer agent, Computershare. In general, however, a transfer agent will only have the  
7 contact information for a small number of investors that held their securities in their own names as  
8 “record holders.” These investors typically make up a very small percentage of a class. Indeed, in  
9 SCS’s experience, class members who hold their securities in their own names, and are therefore  
10 known to the transfer agent, make up less than 1% of an identified class in a typical securities  
11 settlement.

12 10. Such records have been provided to Co-Lead Counsel as part of the Settlement. *See*  
13 *Stipulation*, ¶19. I have reviewed the records and they identify 43 unique record holders, the majority  
14 of which are Nominees that likely hold shares on behalf of clients. The records provide names,  
15 addresses, and some email addresses. They do not provide any trading information, so it is not known  
16 whether these record holders are actually members of the Settlement Class. Under the proposed notice  
17 procedures, each one of these record holders will be mailed a copy of the Notice and Proof of Claim  
18 Form (collectively, “Notice Package”). *Id.*

19 11. With respect to the public offerings at issue in this Action, my understanding is that  
20 the large majority (approximately 97%) of the shares were issued to institutions, including brokerage  
21 and other nominee firms, with approximately 3% of the shares being issued directly to non-  
22 institutional retail purchasers.<sup>3</sup>

23 12. The vast majority of potential Settlement Class Members will have purchased, held  
24 and/or sold their Athira common stock through a Nominee. The Nominees are the record owners and  
25 these class members are the “beneficial owners” whose Athira shares are held in “street name”; *i.e.*,  
26 the shares were purchased and held by one of the Nominees on behalf of the beneficial owner.

27  
28 <sup>3</sup> Source information was provided by counsel for Defendants and will be included in a  
declaration submitted herewith.

1           13.     In order to obtain the contact information for investors at the beneficial level, SCS, or  
2 such other claims administration firm chosen by the Court, will use a procedure, standard within the  
3 industry and all securities class actions, designed to obtain beneficial owner contact information from  
4 the Nominees that hold the Athira shares as record holders. More specifically, if chosen to serve as  
5 the administrator, SCS will utilize its propriety list of approximately 2,300 Nominees, which we have  
6 developed over time administering cases like this one. This list includes the largest and most common  
7 broker firms, banks, and other institutions connected with publicly traded securities and is contained  
8 in a database SCS created and maintains. In SCS's experience, the institutions included in this  
9 database represent a significant majority of the beneficial owners in most securities settlements  
10 involving publicly traded companies.

11           14.     SCS, as the Court-appointed administrator, will mail (and email to the extent we have  
12 emails) the Notice Packet and an explanatory cover letter to each identified Nominee. The cover  
13 letter will notify the Nominees of the proposed Settlement, the definition of the Settlement Class, and  
14 their obligation, as set forth in the proposed Preliminary Approval Order, to either (a) provide the  
15 names and addresses of their clients who may be Settlement Class Members to SCS so that SCS may  
16 mail them a Notice Packet or (b) request copies of the Notice Packet from SCS and provide them  
17 directly to their clients. Nominees will also be directed to provide email addresses, to the extent they  
18 are available.

19           15.     In the twenty-three (23) years that SCS has been notifying potential class members of  
20 actions involving publicly traded securities, SCS has found that the vast majority of potential class  
21 members are reached through their Nominees, rather than directly.

22           16.     SCS will also send the Depository Trust Company ("DTC") the Notice Packet for the  
23 DTC to publish on its Legal Notice System ("LENS"). LENS provides DTC participants, which are  
24 a wide variety of brokerage firms, financial institutions, trust companies, clearing corporations, and  
25 others interested in legal proceedings involving securities, the ability to search and download legal  
26 notices, as well as receive e-mail alerts based on particular notices or particular CUSIPs once a legal  
27 notice is posted. Thus, Nominees and investors will also be notified of the Settlement through  
28 publication on LENS.

1           17.     Additionally, the Court-appointed administrator will create a website for posting  
2 downloadable copies of the Notice Packet, and other information about the Settlement. As provided  
3 in the Preliminary Approval Order, the administrator will also cause the proposed Summary Notice  
4 to be published in *Investor's Business Daily* and to be transmitted across the internet using the *PR*  
5 *Newswire*.

6           18.     In response to the outreach efforts outlined above, which are the “gold standard” in  
7 securities class actions of this type, names and addresses of potential Settlement Class Members will  
8 be provided to SCS and “bulk requests” for Notice Packets will be made to SCS by Nominees that  
9 want to mail directly to their clients. SCS will promptly respond to all such requests in order to widely  
10 disseminate the Notice Packet.

11                   **2.     Identification of Settlement Class Members’ Trading Information**

12           19.     In securities class action cases involving publicly traded securities, and in this case,  
13 the only viable way to determine each class member’s *pro rata* share of the recovery is to know how  
14 many shares of Athira common stock each Settlement Class Member purchased, the date they  
15 purchased and sold the stock (if sold), the price of each purchase and sale, and the shares held at the  
16 end of the relevant time periods. This information is needed in order to determine whether an investor  
17 even is a member of the Settlement Class, whether the share purchased was damaged (for instance,  
18 shares purchased at an allegedly inflated price and sold at an allegedly inflated price are not damaged),  
19 the amount of the alleged damage, and the class member’s *pro rata* share of the Settlement given the  
20 amount of other class members’ losses. This information can only be ascertained through a detailed  
21 review of comprehensive trading records.

22           20.     Based on my experience administering securities Settlements like this one, and my  
23 knowledge of the industry, in my opinion, there is no source other than a class member (and third-  
24 parties that have contracted with class members to file claims on their behalf)<sup>4</sup> that can viably provide  
25 the needed information. General Nominees either cannot provide the information (because they do  
26

27  
28           <sup>4</sup> The majority of claims will be submitted by Nominees that have agreements with their clients  
to submit claims in class actions, “third-party” filers that also have agreements with clients to file  
claims, and institutions that file their own claims.

1 not have client authorization to provide such information), or they will not provide it given the  
2 administrative burden and significant costs involved. Furthermore, even if general Nominees did  
3 provide the data to a claims administrator, to the extent a Settlement Class Member traded through  
4 multiple accounts at more than one brokerage house or moved accounts among multiple Nominees—  
5 which is not an uncommon occurrence—it would be virtually impossible for the administrator, not to  
6 mention enormously inefficient and costly, to match the trading data records from a variety of sources  
7 to each Settlement Class Member.

8         21. There are several critical distinctions between securities class actions like this one—  
9 which to my knowledge uniformly employ an “opt in” approach to claims (*i.e.*, an investor must file  
10 a Claim Form to recover from the settlement)—and those cases that do not have a claims process or  
11 only have a minimal claims process. For instance, in defined scope securities cases challenging a  
12 merger or some mutual fund cases, or wage and hour class actions, where class members receive a  
13 *pro rata* share of the settlement proceeds unless they elect not to, the defendants are able to identify  
14 the universe of class members, as well as the harm/damages each one has suffered. That is simply  
15 not the case in an action such as this one where millions of shares of stock were beneficially held by  
16 hundreds or thousands of different third parties, and the shares were traded throughout the Class  
17 Period on different days, at different times and at different prices. Additionally, this is not a consumer  
18 class action where reasonable assumptions can be made about the losses of class members such that  
19 the settlement proceeds can be fairly and reasonably allocated based on minimal responses by the  
20 class.

21         22. I have also discussed with Co-Lead Counsel the possibility of having Settlement Class  
22 Members with smaller claims (*i.e.*, below a certain dollar amount) submit a proof of claim detailing  
23 their trading, but no trading records, under penalty of perjury. In my opinion, this would be an  
24 invitation for fraud and cause an overpayment to ineligible claimants to the detriment of eligible  
25 claimants. The requirement of trading records, as well as trading information, acts as a barrier to  
26 fraudulent conduct because it is extremely difficult to falsify trading records and claims  
27 administration firms such as SCS have significant procedures in place to identify and weed out  
28 fraudulent claims. For instance, SCS performs a check of claims in every case against our list of



1 fraudulent claimants, which we have accumulated over 23 years. This list has been created through  
2 SCS' contact with the FBI, as well as confirmations obtained through brokerage firms and internet  
3 research.

4 23. In sum, I am not aware of a single securities class action settlement involving open  
5 market, publicly traded securities that did not have a robust claims process, nor do I think an approach  
6 without a claims process is viable, fair, or reasonable under the circumstances of this case.

7 **B. Mechanisms in Place to Assist Claimants**

8 24. As set forth in the proposed Preliminary Approval Order, if appointed, SCS will  
9 employ a well-established protocol for the processing of claims in a securities class action. SCS's  
10 experienced staff will also be available to answer class member questions and to provide assistance  
11 with the claims process via a toll-free telephone number, an email address, and a contact form on the  
12 dedicated Settlement Website.

13 25. The proposed claims process provides for claimants to submit, either by mail, email,  
14 or online using a claim portal on the Settlement Website, the Court-approved Claim Form.

15 26. For a small investor with only a few purchases, they would simply need to provide  
16 their first brokerage statement showing the initial purchase, a trading confirmation for any additional  
17 purchase(s), and a brokerage statement showing holdings on January 20, 2021 and September 15,  
18 2021. Copies of such documents are generally available from brokerage account websites.

19 27. Based on the trade information provided by claimants, the administrator will determine  
20 each claimant's eligibility to receive a recovery, and calculate their respective "Recognized Claim"  
21 based on the Court-approved Plan of Allocation. *See* Stipulation at ¶ 20. Claimants will be notified  
22 of any defects or conditions of ineligibility and be given the chance to rectify any deficiencies and  
23 contest rejection. *Id.* at ¶24(d)-(e). If the Court prefers that SCS, as the Court-appointed  
24 administrator, determine any claim disputes in conjunction with Co-Lead Counsel, SCS can do so.

25 28. A significant amount of the time spent on an administration relates to communicating  
26 with class members and claimants. SCS regularly receives claims that are not thoroughly completed  
27 and some may only provide documentation and a signature. To the extent feasible, SCS allows such  
28

1 claims or works with claimants to cure their claims to the extent needed so that as many eligible  
2 claimants as possible can recover from a settlement.

3 **C. Size of the Settlement Class**

4 29. Because the vast majority of class members in a securities class action like this are  
5 only known to the Nominees that held securities on their behalf and the absent class members, it is  
6 not possible to quantify the size of the proposed Settlement Class here with precision. However,  
7 through our experience in other securities settlements and within this industry, I am confident that the  
8 vast majority of class members here held through Nominees and I can provide the following estimates.

9 30. The transfer records provided to SCS indicated there were 43 record holders during  
10 the Class Period. Athira issued 13.8 million IPO shares and 4.6 million SPO shares. Athira had  
11 reported trading volume of approximately 64.9 million shares in the secondary market during the  
12 Class Period. As noted on Exhibit B, attached hereto, large institutions owned approximately 66% to  
13 70%<sup>5</sup> of Athira's outstanding shares during the Class Period. (Some of these institutions are Nominees  
14 that would hold shares on behalf of retail investors.)

15 31. Based on this analysis, I estimate there are approximately 30,000 class members and  
16 likely more than 45,000.

17 **D. Claims Administration Costs**

18 32. It is my understanding, based on discussions with Co-Lead Counsel, that SCS was  
19 selected to serve as the Claims Administrator, subject to Court approval, following a competitive  
20 bidding process involving three (3) experienced claims administration firms. More specifically, each  
21 firm was asked to respond to a request for proposal that set forth certain parameters (*i.e.*, estimated  
22 number of Notice Packages to be mailed (50,000) and claims received (15,000)). It is my  
23 understanding that SCS was the lowest bidder.

24 33. The cost of an administration is driven by two main factors: (i) the number of Notice  
25 Packets printed and mailed and the associated broker research costs and (ii) the number of claims  
26

27  
28 <sup>5</sup> The source of institutional holding is Forms 13Fs filed quarterly with the U.S. Securities and  
Exchange Commission by institutional investment managers owning Athira shares during the Class  
Period. Form 13-Fs are filed by investors with total investments of more than \$100 million.



1 processed. Administrators are generally compensated for their time and effort, and also their expenses  
2 (the largest of which are for printing, postage, and broker costs).

3 34. Assuming the assumptions in the request for proposal hold through the notification  
4 and administration process, SCS anticipates that its fees will total approximately \$77,000 and that its  
5 expenses will range from \$92,000 to \$100,000. The total costs will, however, depend on the number  
6 of Notice Packets disseminated and claims received, and will not be known until the end of the  
7 administration process.

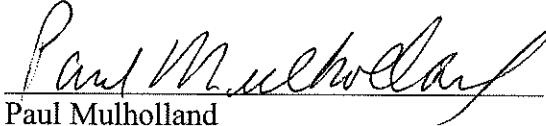
8 **E. “Nominal Amounts”**

9 35. In my experience, a minimum payment threshold is a common feature of allocation  
10 plans in securities class action settlements and most plans assign a *de minimis* of \$10.00. A minimum  
11 payment threshold benefits the class as a whole by eliminating payments to claimants for whom the  
12 cost of printing and mailing checks, and related follow up, would be disproportionate to the value of  
13 the claim. On average, it costs approximately \$3.25 per issued settlement check.

14 36. Moreover, SCS has found that the majority of eligible claimants who receive checks  
15 for less than \$10.00 do not cash those checks. If the threshold amount were reduced to \$5.00,  
16 additional claimants would receive a check, but the rate at which such checks would be negotiated  
17 would, in SCS’s experience, be lower than the cashing rate for higher value checks. SCS reports that  
18 typically 5% to 10% of eligible claims fall below a \$10.00 *de minimis*.

19 I declare under penalty of perjury under the laws of the United States of America that the  
20 foregoing is true and correct.

21 Executed this 30<sup>th</sup> day of June, 2023, in Media, Pennsylvania.

22  
23  
24   
25 Paul Mulholland

## **Exhibit A**

## EXHIBIT A

### **PAUL MULHOLLAND** **(CURRICULUM VITAE)**

Mr. Mulholland is the President and founder of Strategic Claims Services (SCS) in April of 1999. SCS is a litigation support firm specializing in the administration of class action cases. SCS has administered over 525 class action settlements involving the distribution of over \$3 billion in settlement/judgment funds, and the management of more than 3.5 million claims with mailings of notices to over 33 million potential class members. For more information on SCS visit its website at [www.strategicclaims.net](http://www.strategicclaims.net).

From 1992 to 1999, Mr. Mulholland was Senior Vice President of Valley Forge Administrative Services, Inc. Mr. Mulholland was responsible for overseeing all aspects preparation of damage/expert reports in class action matters and for claims processing and administration of class action settlements. He also was responsible for areas of federal and state income taxes for settlement funds and for compliance with all treasury regulations.

From 1986 to 1992, Mr. Mulholland was Chief Financial Officer of Terramics Property Company, a Philadelphia-based regional commercial real estate company with a \$150 million real estate portfolio. He was responsible for asset management, financial reporting, budgets, bank and investor liaison, debt restructurings, refinancings, contract negotiations, tax matters, treasury functions and cash management.

From 1984 to 1986, Mr. Mulholland was Chief Financial Officer of American Health Systems, Inc., a \$40 million (revenue) nursing home management company, and was responsible for financial reporting, taxation, budgeting, cash management, cost containment, risk management and regulatory reporting.

From 1980 to 1984, Mr. Mulholland was employed at Coopers & Lybrand. He planned and directed audit engagements in a variety of industries, including preparation of financial statements, SEC reporting, and evaluation of internal accounting systems and supervision of staff accountants.

Mr. Mulholland holds a BS in Accounting from Wheeling University and is a Certified Public Accountant (inactive). He was an adjunct professor of accounting and finance at Neumann University and currently serves on its business advisory board.

**EXHIBIT A**  
**PAUL MULHOLLAND**  
**EXPERT TESTIMONY AND DEPOSITIONS**

**Expert Testimony:**

Celia L. Hale., et al., v. Wal-Mart Stores, Inc Jackson County, Missouri Case No. 01-CV-218710 (Division 1)	June 2008
Jitendra V. Singh v. vCustomer Corporation, et al. Eastern District of Pennsylvania Civil Action No. 03-4439	June 2004
Barter v. Southmoore Golf Associates (Common Pleas of Northhampton County (No. 199-C-1815)	March 21, 2000 and March 22, 2000
Pearl and Hoffman v. Geriatric & Medical Center, Inc (Eastern District of Pennsylvania (No.92-CV-5113 and No.93-CV-2129)	March 1995

**Depositions:**

Fosamax Products Liability Litigation No. 1:06-MD-1789 (JFK) (MDL No. 1789) USDC for the Southern District of New York	June 14, 2007
Aredia and Zometa Products Liability Litigation No. 3:06-MD-1760 (MDL No. 1760) USDC for the Middle District of Tennessee at Nashville	May 31, 2007
Jitendra V. Singh v. vCustomer Corporation, et al. Eastern District of Pennsylvania	

Civil Action No. 03-4439

June 2004

In Re: Curative Health Services, Inc. Securities Litigation  
(Master File No. CV99-2074) United States District Court  
Eastern District of New York

February 2002

Pearl and Hoffman v. Geriatric & Medical Center, Inc (Eastern  
District of Pennsylvania (No.92-CV-5113 and No.93-CV-2129)

January 1995

**Mediation Presentation:**

Alibaba Group Holding Limited Securities Litigation  
Civil Action 1:15-md-02361 (CN)  
USDC Southern District of New York  
Mediation Presentation to Honorable Layne R Phillips

March 2019

**EXHIBIT A**

**SUMMARY**

**SCS Experience and Qualifications**

SCS has been in business since 1999. SCS has administered over 600 class action cases over the last 23 years including over 400 security cases including several settlements with the SEC. SCS has handled over \$3 billion in settlement funds. SCS is considered one of the leading notice and claims administrator in the United States and has never had a claim filed against us in any manner. Please visit our website at [www.strategicclaims.net](http://www.strategicclaims.net).

**Quality Assurance**

SCS has never had a claim filed against it. This is the result of our strong quality control procedures. For example, our database will insert the high and low trading prices and reported trading volume (adjusted for market maker trading or specialist trading) for each day in the class period and verify the information in the claims are within these parameters. Additional quality

assurance steps include but are not limited to review of any unusual trading on claims; large claims using a P.O. Box as an address; large transactions by non-institutions claimants; review of suspicious documentation by claimants; follow-up phone calls to brokers to authenticate non-institutional purchasers; as well as various random sampling of claims for additional quality assurance review. SCS operates similar to large public accounting firm where a staff member, supervisor, manager and an executive all are involved in reviewing claims. Our quality control department will then perform statistical sampling and other procedures in reviewing claims before signing off. Besides setting up the database to detect inconsistencies, our fraud prevention procedures consists of several steps including a sampling of claims to verify the supporting documentation is authentic (i.e. contact brokers); performing a sampling of skip tracing to make sure that social security numbers and names are a proper match as well as other procedures. In addition to our list of fraudulent claimants from other cases, we communicate with the FBI for any updated list of fraudulent claimants from previous cases.

SCS has a variety of security measures in place to ensure all personal information is kept safe and secure. These measures include, but are not limited to, SSL encryption of all data submitted through our website; internal monitoring of all computer usage by employees; live antivirus scanning of all files received/sent along with weekly updates and scanning of all servers and computers on our network; password protected and restricted access for employees working with personal data; use of a monitored and secure VPN for remote access; daily, weekly and monthly backups to secure offsite storage; and 24/7 notifications to immediately address any irregularities.

## **Exhibit B**



**EXHIBIT B**

<b>Ticker:</b>	<b>ATHA</b>				
<b>Security Name:</b>	<b>Athira Pharma Inc</b>				
<b>Institution Name</b>	<b>Institution Type</b>	<b>Quarter Ending 9/30/2020</b>	<b>Quarter Ending 12/31/2020</b>	<b>Quarter Ending 3/31/2021</b>	<b>Quarter Ending 6/30/2021</b>
Bank Of New York Mellon Corporation	Bank (13f)		39,971	35,678	83,270
Bank of America Corporation	Bank (13f)	14,817	107,429	10,713	16,749
Bank of Montreal/Can/	Bank (13f)		22,011	20,452	20,391
Deutsche Bank Aktiengesellschaft	Bank (13f)		9,014	8,561	23,031
HSBC Holdings Plc	Bank (13f)		6,852	0	0
JP Morgan Chase & Company	Bank (13f)		31,305	12,228	12,391
Laird Norton Trust Company, LLC	Bank (13f)				10,000
Northern Trust Corporation	Bank (13f)		145,307	152,585	100,785
Royal Bank of Canada	Bank (13f)	27,500	77,747	131,995	154,739
Wells Fargo & Company	Bank (13f)		9,428	9,106	4,578
Acuta Capital Partners LLC	Other (13f)	362,500	393,000	400,000	427,060
Advisor Group Holdings, Inc.	Other (13f)	100	14,380	15,180	130,994
Alliancebernstein LP	Other (13f)				54,800
AlphaCentric Advisors LLC	Other (13f)			20,538	20,538
Alyeska Investment Group, LP	Other (13f)	288,275	100,000	0	0
American International Group, Inc.	Other (13f)		7,469	8,089	18,072
Ameritas Investment Partners, Inc.	Other (13f)		1,076	1,076	2,529
Avidity Partners Management, LP	Other (13f)	1,026,342	1,043,873	1,677,845	0
Baker Brothers Advisors, LLC	Other (13f)	882,352	806,367	806,367	806,367
Berman Capital Advisors, LLC	Other (13f)			59	0
Blackrock Inc.	Other (13f)	73,984	871,136	990,449	1,993,048
Bristlecone Advisors, LLC	Other (13f)				761,563
Caas Capital Management LP	Other (13f)	50,000	50,000	0	0
Captrust Financial Advisors	Other (13f)		1	0	0
Charles Schwab Investment Management, Inc.	Other (13f)		83,750	111,268	151,986
Charter Oak Capital Management, LLC	Other (13f)		500	500	500
Citadel Advisors LLC	Other (13f)	1,078,015	1,161,158	1,263,070	1,196,706
Citigroup Inc.	Other (13f)		2,401	1,025	65,763
Clarius Group, LLC	Other (13f)			32,825	32,825
Clear Creek Financial Management, LLC	Other (13f)				15,000
Creative Planning	Other (13f)		10,745	13,255	0
Cubist Systematic Strategies, LLC	Other (13f)			3,034	14,007
Cutler Group LP	Other (13f)				2,007
DAFNA Capital Management, LLC	Other (13f)		16,531	91,531	160,983
Deerfield Management Company, L.P. (Series C)	Other (13f)	450,000	0	0	0
EMC Capital Management	Other (13f)				21,696
Eagle Bay Advisors LLC	Other (13f)				100
ExodusPoint Capital Management, LP	Other (13f)	66,944	7,697	0	10,700
FMR, LLC	Other (13f)	559,400	0	0	1
Franklin Resources, Inc.	Other (13f)	411,764	411,784	1,885,901	2,080,050
Freestone Capital Holdings, LLC	Other (13f)	295	295	0	0
Geode Capital Management, LLC	Other (13f)		219,853	248,561	410,290
Goldman Sachs Group Inc	Other (13f)	179,933	0	60,088	58,574
HRT Financial LP	Other (13f)	16,913	0	0	0
Healthcor Management LP	Other (13f)	217,500	0	0	0
HighVista Strategies LLC	Other (13f)		32,062	32,062	0
Highmark Wealth Management LLC	Other (13f)	600	0	0	0

Hudson Bay Capital Management LP	Other (13f)				150,000
IEQ Capital, LLC	Other (13f)				49,922
Janus Henderson Group PLC	Other (13f)	1,003,198	955,660	875,639	0
Kayne Anderson Capital Advisors, L.P.	Other (13f)	190,216	190,216	190,216	119,930
Legal & General Group PLC	Other (13f)	98	1,361	1,361	2,570
Lindbrook Capital, LLC	Other (13f)	15,575	27,027	24,927	40,139
Logos Global Management LP	Other (13f)	1,020,812	947,873	1,010,812	1,410,812
MIRABELLA FINANCIAL SERVICES LLP	Other (13f)	12,356	0	0	0
Macquarie Group Limited	Other (13f)	5,000	0	0	0
Marshall Wace North America L.P.	Other (13f)	38,384	0	0	0
Maven Securities Limited	Other (13f)	12,500	0	0	56,272
Millennium Management LLC	Other (13f)	225,492	102,846	510,395	51,843
Monashee Investment Management LLC	Other (13f)	100,000	0	0	0
Morgan Stanley	Other (13f)	1,200	17,215	22,445	276,538
Nisa Investment Advisors, L.L.C.	Other (13f)		5,109	5,109	5,109
Northwestern Mutual Wealth Management Company	Other (13f)		2,941	2,941	2,941
Nuveen Asset Management, LLC	Other (13f)		37,221	47,999	114,135
Old Well Partners, LLC	Other (13f)		7,700	0	0
PDT Partners, LLC	Other (13f)				21,400
Parian Global Management LP	Other (13f)				55,000
Pathstone Family Office, LLC	Other (13f)	84,699	81,883	499,416	661,612
Pentwater Capital Management LP	Other (13f)	20,000	20,000	120,000	120,000
Perceptive Advisors LLC	Other (13f)	3,114,805	3,114,805	3,425,916	3,425,916
Pfm Health Sciences, LP	Other (13f)	392,489	470,227	470,227	678,247
Pinz Capital Management, LP	Other (13f)	49,700	0	0	0
Point72 Asia (Hong Kong) Ltd	Other (13f)	10,683	0	0	3,422
Point72 Asset Management, L.P.	Other (13f)			443,200	199,000
Price (T. Rowe) Associates Inc	Other (13f)	882,000	681,560	672,962	445,655
Qube Research & Technologies Ltd	Other (13f)				13,644
RTW Investments LP	Other (13f)	2,668,913	2,685,779	2,652,553	1,906,557
Rhumblin Advisors	Other (13f)		10,598	11,766	40,260
Rock Springs Capital Management, LP	Other (13f)	1,102,702	860,902	788,202	748,202
Rothschild Investment Corporation	Other (13f)				21,850
S SQUARED TECHNOLOGY CORP.	Other (13f)			181,220	0
Saturna Capital Corporation	Other (13f)				16,850
Schonfeld Strategic Advisors LLC	Other (13f)	12,270	0	0	0
SignatureFD, LLC	Other (13f)		1,500	1,500	2,500
SilverArc Capital Management, LLC	Other (13f)				117,980
Simplex Trading, LLC	Other (13f)				29,174
Snow Capital Management LP	Other (13f)				30,000
Sofinnova Investments, Inc.	Other (13f)	509,168	509,168	509,168	0
Sonora Investment Management, LLC	Other (13f)				100
Sphera Funds Management Ltd.	Other (13f)	112,000	53,900	0	0
Spire Wealth Management	Other (13f)			850	0
Squarepoint Ops LLC	Other (13f)	38,231	20,000	0	0
State Street Corporation	Other (13f)		196,855	212,351	433,318
State of Wyoming	Other (13f)				68
Steward Partners Investment Advisory, LLC	Other (13f)			235	0
Stifel Financial Corporation	Other (13f)		25,381	0	0
Susquehanna International Group, LLP	Other (13f)				163,965
TD Asset Management, Inc	Other (13f)	49,505	44,828	44,828	0

Telemetry Investments, L.L.C.	Other (13f)				17,000
Ten Capital Wealth Advisors, LLC	Other (13f)				1,293
Tower Research Capital LLC (TRC)	Other (13f)		407	1,107	2,704
Tsfg, LLC	Other (13f)		100	100	100
Tudor Investment Corporation	Other (13f)	94,003	0	0	0
Two Sigma Advisers, LP	Other (13f)		57,400	51,700	35,500
Two Sigma Investments, LP	Other (13f)				78,800
UBS Group AG	Other (13f)	24,969	163,852	700	1,260
VR Adviser, LLC	Other (13f)	1,521,623	1,691,623	1,691,623	1,485,005
Vanguard Group, Inc. (The)	Other (13f)	100,000	646,165	779,468	1,367,599
Viking Global Investors, L.P.	Other (13f)	2,120,653	2,120,653	2,120,653	0
Virtu Financial LLC	Other (13f)				32,662
Virtus ETF Advisers LLC	Other (13f)				11,530
Vivo Capital, LLC	Other (13f)	300,000	0	0	0
Voya Investment Management LLC	Other (13f)				12,372
Walleye Capital LLC	Other (13f)				46,421
Walleye Trading LLC	Other (13f)				26,746
Wasatch Advisors LP	Other (13f)			808,215	1,222,784
WealthShield Partners, LLC	Other (13f)			18	0
Wellington Management Group, LLP	Other (13f)	25,206	0	0	0
Woodline Partners LP	Other (13f)	72,516	0	0	0
Zimmer Partners, LP	Other (13f)	20,000	0	0	0
<b>Total 13f institutional filings</b>		<b><u>21,658,200</u></b>	<b><u>21,435,897</u></b>	<b><u>26,223,863</u></b>	<b><u>24,618,800</u></b>
<b>Shares Outstanding (SEC Forms 10Qs and 10k)</b>		<b><u>31,087,395</u></b>	<b><u>32,485,784</u></b>	<b><u>37,150,311</u></b>	<b><u>37,251,711</u></b>
<b>Percentage Owned by Institutions</b>		<b><u>70%</u></b>	<b><u>66%</u></b>	<b><u>71%</u></b>	<b><u>66%</u></b>

# **Exhibit 5**

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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and  
WIES RAFI, Individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.

Defendants.

CASE NO.: 2:21-cv-00861-TSZ  
(Consolidated with 21-cv-00862-TSZ  
and 21-cv-00864-TSZ)

**DECLARATION OF BRYAN KING**

1 I, Bryan King, declare as follows:

2 1. I am an attorney and member of the law firm of Wilson Sonsini Goodrich & Rosati,  
3 P.C., outside counsel for Athira Pharma, Inc. (“Athira” or the “Company”). I have personal  
4 knowledge of the facts set forth herein and, if called as a witness, I would testify competently  
5 thereto.

6 2. Both I and my law firm represented the Company in connection with its initial  
7 public offering (“IPO”) in September 2020 and its secondary public offering (“SPO”) in January  
8 2021, and I am aware of the final IPO and SPO allocations.

9 IPO Allocation

10 3. In the September 2020 IPO, Athira sold a total of 13,397,712 shares of common  
11 stock to underwriters Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company,  
12 Incorporated, and JMP Securities LLC in a firm commitment underwriting. Pursuant to the terms  
13 of the underwriting agreement among Athira and the underwriters, the underwriters were entitled  
14 to purchase up to 13,800,000 shares of common stock in the IPO. At the pricing of the IPO, the  
15 underwriters allocated all of the 13,800,000 shares of common stock to their customers.<sup>1</sup>

16 4. Of the 13,800,000 shares of Athira common stock allocated in the IPO, 13,391,000  
17 (97%) were allocated to 168 institutions and 409,000 (3%) were allocated directly to retail  
18 investors and participants in a directed share program (“DSP Participants”). If the pro rata  
19 allocation (97%/3%) between institutions and retail investors/DSP Participants is applied to the  
20 13,397,712 shares of common stock sold by Athira in the IPO, the implied allocation of shares  
21 sold is 13,000,635 shares of common stock to institutions and 397,077 shares of common stock to  
22 retail investors/DSP Participants.

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25 <sup>1</sup> The IPO was for 12 million shares, but also included an overallotment option or “greenshoe”  
26 for the underwriters to purchase up to an additional 1.8 million shares at the IPO price for a total  
27 of 13.8 million shares. The difference between the 13.8 million total allotment and the  
approximately 13.4 million sold by Athira to the underwriters reflects an unused portion of the  
overallotment option.

1           5.       While I do not have personal knowledge as to the number of investor customers for  
2 whom these 168 institutions purchased/were allocated Athira common stock in the IPO, it is  
3 reasonable to assume that at least some of these institutional investors resold some of their  
4 allocated shares, including to their own customers and individual investors.

5           SPO Allocation

6           6.       In the January 2021 SPO, Athira sold a total of 4,600,000 shares of common stock  
7 to underwriters Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company,  
8 Incorporated, and JMP Securities LLC in a firm commitment underwriting. Pursuant to the terms  
9 of the underwriting agreement among Athira and the underwriters, the underwriters were entitled  
10 to purchase up to 4,600,000 shares of common stock in the IPO. At the pricing of the SPO, the  
11 underwriters allocated all of the 4,600,000 shares of common stock to their customers.

12           7.       Of the 4,600,000 shares of Athira common stock sold/allocated in the SPO,  
13 4,475,000 (97%) were sold/allocated to 100 institutions and 125,000 (3%) were sold/allocated  
14 directly to retail investors.

15           8.       While I do not have personal knowledge as to the number of investor customers for  
16 whom these 100 institutions purchased/were allocated Athira common stock in the SPO, it is  
17 reasonable to assume that at least some of these institutional investors resold some of their  
18 allocated shares, including to their own customers and individual investors.

19           Beneficial Ownership

20           9.       Based upon information obtained from the Company's shareholder proxy  
21 management and vote processing firm, Athira had 5,331 non-objecting beneficial accounts<sup>2</sup> as of  
22 March 29, 2021, approximately three months before the end of the class period.

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25 \_\_\_\_\_  
26           <sup>2</sup> A non-objecting beneficial owner ("NOBO") is a beneficial owner of a company who gives  
27 permission to a financial intermediary to release their name and address to the companies or issuers  
in which they have bought securities.



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

Executed this 29th day of June, 2023 at Seattle, Washington.

DocuSigned by:  
  
071774CF288E447...  
Bryan King

# **Exhibit 6**

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THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTONIO BACHAALANI NACIF and WIES  
RAFI, individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

ATHIRA PHARMA, INC., et al.,

Defendants.

CASE NO.: 2:21-cv-00861-TSZ

**DECLARATION OF F. PAUL BLAND,  
JR. OF PUBLIC JUSTICE  
FOUNDATION**

1 I, F. Paul Bland, Jr., declare as follows:

2 1. I am Executive Director of the Public Justice Foundation (“Public Justice”). I have  
3 personal knowledge of the matters stated herein and, if called upon, I could and would competently  
4 testify thereto.

5 2. Public Justice is a nationwide, non-sectarian, not-for-profit 501(c)(3) organization  
6 that was founded in January 1982. Through policy education initiatives and litigation, Public Justice  
7 seeks to advance the rights of, among many others, consumers, investors, workers, and students,  
8 and to provide and improve access to the legal system.

9  
10 **Efforts on Behalf of Investors**

11 3. Leveraging *cy pres* and other resources, Public Justice has been proud to advocate  
12 for investors who have been allegedly deceived by materially false and misleading statements about  
13 a stock issuer.

14 4. For instance, in recent years, Public Justice has identified various efforts to block  
15 cases alleging violations of federal and state securities laws for investors through such devices as  
16 “loser pays rules” and bans on class actions in initial public offerings and corporate bylaws. We  
17 have been active in advocating for the ability of shareholders to pursue their claims, and not to be  
18 barred or deterred from doing so.

19 5. Along with the Consumer Federation of America and other allies, Public Justice is a  
20 leader in the Secure Our Savings coalition, a collection of more than 40 organizations (including  
21 consumer advocacy organizations, unions, religious groups, and investor advocacy groups), that are  
22 speaking out strongly on behalf of investors and against forced arbitration of shareholder claims.  
23 For particular pieces of advocacy, we also often enlist powerful allies such as the American Legion.  
24 The coalition has served as a resource for reporters, policy makers and the public. The coalition has  
25 also engaged in advocacy, such as sending letters to the S.E.C. and Members of Congress speaking  
26 out against terms that would bar or deter investors from pursuing claims under the federal and state  
27  
28

1 securities laws. Several of these letters led to both the S.E.C. announcing some changes in policy,  
2 and to several members of Congress contacting the S.E.C. to urge it to do more to protect private  
3 lawsuits enforcing the securities laws.

4           6.       Public Justice also provides valuable information to investors, consumers, and others  
5 through publications, information clearinghouses, and participation in educational seminars. We  
6 have invested in our communications capacity to produce high-quality coverage and built strong  
7 relationships with key media contacts.

8           7.       As proposals to limit cases brought by investors under the federal and states securities  
9 laws have gained prominence in recent years, Public Justice attorneys have presented at educational  
10 programs for both investors and attorneys who represent them. Over the past several years, I have  
11 personally appeared at more than two dozen continuing legal education programs, including  
12 programs of the Institute for Law and Economic Policy, a public policy research and educational  
13 foundation whose mission is to preserve, study and enhance investor and consumer access to the  
14 civil justice system. I have also appeared at several programs of the National Association of  
15 Shareholder and Consumer Attorneys (NASCAT) to address threats to securities lawsuits. In  
16 addition, Public Justice attorneys have spoken to, written for, and appeared at several events and  
17 programs for audiences of institutional investors about threats to private enforcement of the  
18 securities laws.

19           8.       In addition, Public Justice staff have been honored to write articles addressing threats  
20 to cases under the federal and state securities laws (*e.g.*, “When is a Contract Not a Contract? Snow  
21 Shoveling, Unilateral Amendment, and Delaware’s ATP Decision,” by Paul Bland and Karla  
22 Gilbride, Spring 2015). Somewhat differently, we have also published blog posts (such as  
23 <http://www.publicjustice.net/schwab-prefers-no-regulation/> and [http://www.publicjustice.net/  
24 contentbrief-argues-finra-not-preempted-brokerage-firms-cannot-ban-class-actions/](http://www.publicjustice.net/contentbrief-argues-finra-not-preempted-brokerage-firms-cannot-ban-class-actions/)). We have  
25  
26  
27  
28

1 also co-authored articles with people such as John Chiang, the former State Treasurer of California  
2 (e.g., “SEC must not silence voice of Wells Fargo investors,” *San Francisco Chronicle*, April 22,  
3 2018).

4 **Public Justice Participation in Amicus Briefs in Securities Cases**

5  
6 9. Public Justice has also filed amicus briefs in support of investors in several key cases  
7 in recent years. Some illustrations of this work include:

8 A. *Erica P. John Fund, Inc. v. Halliburton Co.* (U.S. Supreme Court). Public Justice joined  
9 in an amicus brief arguing for the preservation of long-standing U.S. Supreme Court  
10 precedent supporting investors’ ability to argue for class action treatment of securities  
11 claims based upon a presumption that markets operate efficiently.

12  
13 B. *In the Matter of Department of Enforcement Complainant v. Charles Schwab & Co. Inc.*  
14 (FINRA National Adjudicatory Council, No. 2011029760201). Public Justice  
15 submitted, with AARP and the National Consumer Law Center, an *amici curiae* brief  
16 challenging Schwab’s position that the Federal Arbitration Act (FAA) preempts FINRA  
17 rules, and therefore allows brokerage houses to amend its investor contracts to ban class  
18 actions by shareholders bringing securities-related claims.

19  
20 C. *Amgen, Inc. v. Connecticut Retirement Plans and Trust Funds* (U.S. Supreme Court, No.  
21 11-1085). Public Justice submitted an *amici curiae* brief in support of investors who  
22 were allegedly defrauded by pharmaceutical giant Amgen, a leading manufacturer of  
23 drugs. The case involved a challenge to the district court certification for class action  
24 treatment of a securities action against Amgen alleging that the company knowingly or  
25 recklessly made materially misleading statements and omissions concerning two of  
26 Amgen’s flagship products; we refuted Amgen’s arguments that securities lawsuits  
27 unfairly target the pharmaceutical industry with frivolous litigation.  
28

1 D. *Roberts v. Triquint Semiconductor, Inc.* (Supreme Court of the State of Oregon, No.  
2 S062642). In this case, the defendant sought to force the adoption of a new forum  
3 selection by-law without the vote of the corporation's stockholders, effectively  
4 eliminating shareholders' ability to bring the defendant to court for any wrongdoing.  
5 Public Justice joined an *amici curiae* brief that argued, among other things, that such  
6 anti-investor by-law changes should not be permissible where individuals have not  
7 agreed to them.  
8

9 10. Public Justice has also filed a host of amicus briefs in federal and state appellate  
10 courts on other issues relating to the civil justice system in cases that did not involve securities  
11 claims.  
12

13 **Cy Pres Awards To Public Justice In Securities Related Cases**

14 11. Because of Public Justice's record of success and commitment to ensuring that *cy*  
15 *pres* awards are properly used, numerous courts have directed that the Public Justice Foundation be  
16 awarded *cy pres* funds. Since 2010, we have gratefully received the following *cy pres* designations  
17 originating from the following securities related cases:

- 18 A. *In re Qudian Inc. Securities Litigation*, No. 1:17-cv-09741-JMF (S.D.N.Y.);  
19 B. *In re Braskem S.A. Securities Litigation*, No. 1:15-cv-05132-PAE (S.D.N.Y.);  
20 C. *Noble v. Greenberg Traurig*, No. RC 11593201 (Cal. Super. Ct., Alameda County);  
21 D. *In re Mannkind Corp. Securities Litigation*, No. 2:11-cv-00929-GAF-SS (C.D. Cal.);  
22 E. *In re Iomega Securities Litigation*, No. 3:86-cv-00257 (D. Conn.);  
23 F. *In re Coastal Physicians Group Securities Litigation*, No. 1:95-cv-00306 (M.D.N.C.);  
24 G. *Leumi Gemel, Ltd. v. ECTel, Ltd., et al.*, No. 8:04-cv-03380-RWT (D. Md.);  
25 H. *Gross v. Medaphis Corp.*, No. 1:96-cv-02088-TWT (N.D. Ga.);  
26 I. *Hoffman vs. Avant! Corporation, et al*, No. 5:97-cv-20698 (N.D. Cal.);  
27 J. *In re Hovnanian Enterprises, Inc. Securities Litigation*, No. 2:08-cv-00999 (SDW)  
28 (MCA) (D.N.J.);

- 1 K. *Scheiner v. i2 Technologies, Inc., et al.*, No. 3:01-cv-00418-L (N.D. Tex.);  
2 L. *In re FLAG Telecom Holdings, Ltd. Securities Litigation*, No. 1:02-cv-03400-CM-PED  
3 (S.D.N.Y.);  
4 M. *Crotteau v. Addus Homecare Corporation, et al.*, No. 1:10-cv-01937, (N.D. Ill.);  
5 N. *Jiangchen v. Rentech Inc., et al.*, No. 17-cv-01490-GW-FFM (C.D. Cal.);  
6 O. *In re Rambus Securities Litigation*, Nos. 5:06-cv-04346-JF; C-07-1238-RMV (N.D.  
7 Cal.);  
8 P. *Bachow v. Swank Energy Income Advisers LP, et al.*, No. 3:09-cv-00262-K (N.D. Tex.);  
9 and  
10 Q. *Yaron v. Intersect ENT, Inc., et al.*, No. 4:19-cv-02647-JSW (N.D. Cal.).

11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct.

13 Executed this 29th day of June 2023.

14 

15  
16 \_F. Paul Bland, Jr.



# **Exhibit 7**



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Professional Corporation

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May 4, 2023

**Via Certified Mail**

Merrick B. Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Appropriate State & Territory Officials  
(Identified on Exhibit A attached hereto)

**Re: *Nacif, et al. v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00861-TSZ (W.D. Wash.) (“Nacif Action”),<sup>1</sup> consolidated with *Jawandha v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00862-TSZ (W.D. Wash.) (“Jawandha Action”) and *Slyne, et al. v. Athira Pharma, Inc., et al.*, Case No. 00864-TSZ (W.D. Wash.) (“Slyne Action”)**

To Whom It May Concern:

I write to you on behalf of defendants Athira Pharma, Inc. (“Athira”), Glenna Mileson, Dr. Tadataka Yamada, Joseph Edelman, James A. Johnson, John M. Fluke, Jr., Dr. Leen Kawas, Goldman Sachs & Co. LLC, Jefferies LLC, Stifel, Nicolaus & Company, Inc., and JMP Securities LLC (collectively, “Defendants”) regarding the above-referenced action to provide you with notice under the Class Action Fairness Act, 28 U.S.C. § 1715, *et seq.*, of a proposed class action settlement filed with the United States District Court for the Western District of Washington. A Stipulation and Agreement of Settlement was filed with the Court on April 28, 2023.

Pursuant to 28 U.S.C. § 1715, the following documents associated with the *Nacif* Action and Stipulation and Agreement of Settlement are included in PDF format on the enclosed CD:

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<sup>1</sup> The *Nacif* Action was originally filed under the caption *Wang, et al. v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00861-TSZ. Both the complaint and amended complaint were filed under the *Wang* caption. Following appointment of Lead Plaintiffs, ECF No. 60, and the Court’s order on Defendants’ motion to dismiss, the caption changed to *Nacif, et al. v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00861-TSZ to reflect Lead Plaintiffs, *see* ECF No. 89 n.1.

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1. As required by 28 U.S.C. § 1715(b)(1), the original complaints from the *Nacif* Action, *Jawandha* Action, and *Slyne* Action, and consolidated amended complaint filed in the *Nacif* Action;
2. As required by 28 U.S.C. § 1715(b)(2)-(6), copies of:
  - (a) Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval");
  - (b) Declaration of Thomas J. Hoffman, Jr. in Support of Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Hoffman Decl.");
  - (c) Stipulation and Agreement of Settlement, attached as Exhibit 1 to the Hoffman Decl. ("Stipulation");
  - (d) [Proposed] Order Preliminarily Approving Settlement and Providing for Notice ("Proposed Order"), attached as Exhibit A to the Stipulation;
  - (e) Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, attached as Exhibit A-1 to the Proposed Order;
  - (f) Proof of Claim Form, attached as Exhibit A-2 to the Proposed Order;
  - (g) Summary of Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, attached as Exhibit A-3 to the Proposed Order; and
  - (h) [Proposed] Judgment Approving Class Action Settlement, attached as Exhibit B to the Proposed Order.

As discussed in the Stipulation and Motion for Preliminary Approval, Defendants have entered into a Supplemental Agreement with Lead Plaintiffs that has not been filed with the Court, which provides that Athira shall have the option to terminate the proposed settlement if proposed class members representing a certain number of shares elect to be excluded from the proposed settlement class. *See* 28 U.S.C. § 1715(b)(5). It is typical for agreements of this nature to remain confidential so that a large investor, or group of investors, cannot intentionally try to leverage a better recovery for themselves by threatening to opt out, at the expense of the class.

No judicial opinion regarding the settlement or any other papers relating to the settlement have been issued at this time. Moreover, no hearings have been scheduled regarding this settlement. In order to determine when the Fairness Hearing has been scheduled, please check

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the website for the United States District Court for the Western District of Washington, which may be accessed at <https://www.wawd.uscourts.gov/attorneys/pacer>. All filings in this action are available on that website, under the consolidated case caption, *Nacif, et al. v. Athira Pharma, Inc., et al.*, Case No. 2:21-cv-00861-TSZ (W.D. Wash.). Any future hearings and filings will be posted on that website as well.

Given the nature of the claims in the action and the existence of members of the settlement class who are not record holders of shares they beneficially own, it is not feasible to ascertain the names of all members of the settlement class who reside in each state or the estimated proportionate share of the claims of such members to the settlement proceeds. *See* 28 U.S.C. § 1715(b)(7)(A). It is also not yet feasible to provide an estimate of the number of members of the settlement class residing in each state and the estimated proportionate share of the claims of such members to the entire settlement. *See* 28 U.S.C. § 1715(b)(7)(B). However, the settlement papers describe in detail the plan of allocation proposed by counsel of record for Lead Plaintiff, subject to Court approval.

Any correspondence concerning the proposed settlement should be sent to the Clerk of the Court, United States District Court for the Western District of Washington, 700 Stewart Street, Suite 2310, Seattle, WA 98101. Copies of any such correspondence should also be sent to the undersigned attention, as well as to Lead Plaintiffs' counsel and liaison counsel, contact information for whom is attached hereto as Exhibit B.

Sincerely,

/s/ Tyre L. Tindall

**WILSON SONSINI GOODRICH & ROSATI, P.C.**

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*Attorney for Defendants Athira Pharma, Inc.*

*Glenna Mileson, Dr. Tadataka Yamada, Joseph*

*Edelman, James A. Johnson, John M. Fluke, Jr.*

/s/ Sean C. Knowles

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*Attorney for Defendant Dr. Leen Kawas*

/s/ Anthony Todaro

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*Attorney for Defendants Goldman Sachs & Co.  
LLC, Jefferies LLC, Stifel, Nicolaus & Company,  
Inc., and JMP Securities LLC*

Enclosures

**EXHIBIT A**

Alabama Attorney General 501 Washington Avenue P.O. Box 300152 Montgomery, AL 36130-0152	Alaska Attorney General 1031 W. 4th Avenue, Suite 200 Anchorage, AK 99501-1994
American Samoa Attorney General American Samoa Government Executive Office Building Utulei, Territory of American Samoa Pago Pago, AS 96799	Arizona Attorney General 2005 N. Central Avenue Phoenix, AZ 85004-2926
Arkansas Attorney General 323 Center Street, Suite 200 Little Rock, AR 72201-2610	California Attorney General 1300 "I" Street, Suite 1740 Sacramento, CA 95814-2919
Colorado Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203	Connecticut Attorney General 165 Capitol Avenue Hartford, CT 06106
Delaware Attorney General Carvel State Office Building 820 N. French Street Wilmington, DE 19801	District of Columbia Attorney General 400 6th Street, NW Washington, DC 20001
Florida Attorney General The Capitol, PL 01 Tallahassee, FL 32399-1050	Georgia Attorney General 40 Capitol Square, SW Atlanta, GA 30334-1300
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Idaho Attorney General 700 W. Jefferson Street, Suite 210 P.O. Box 83720 Boise, ID 83720-0010	Illinois Attorney General James R. Thompson Ctr. 100 W. Randolph Street Chicago, IL 60601
Indiana Attorney General Indiana Government Center South 302 W. Washington Street, 5th Floor Indianapolis, IN 46204	Iowa Attorney General Hoover State Office Building 1305 E. Walnut Des Moines, IA 50319

Kansas Attorney General 120 SW 10th Avenue, 2nd Floor Topeka, KS 66612-1597	Kentucky Attorney General 700 Capitol Avenue Capitol Building, Suite 118 Frankfort, KY 40601
Louisiana Attorney General P.O. Box 94095 Baton Rouge, LA 70804-4095	Maine Attorney General 6 State House Station Augusta, ME 04333
Maryland Attorney General 200 St. Paul Place Baltimore, MD 21202-2202	Massachusetts Attorney General 1 Ashburton Place, 20th Floor Boston, MA 02108-1698
Michigan Attorney General 525 W. Ottawa Street P.O. Box 30212 Lansing, MI 48909-0212	Minnesota Attorney General Suite 102, State Capital 75 Dr. Martin Luther King, Jr. Blvd. Saint Paul, MN 55155
Mississippi Attorney General Department of Justice P.O. Box 220 Jackson, MS 39205	Missouri Attorney General Supreme Court Building 207 W. High Street Jefferson City, MO 65101
Montana Attorney General Justice Building 215 N. Sanders Street Helena, MT 59620-1401	Nebraska Attorney General State Capitol P.O. Box 98920 Lincoln, NE 68509-8920
Nevada Attorney General Old Supreme Court Building 100 N. Carson Street Carson City, NV 89701	New Hampshire Attorney General 33 Capitol Street Concord, NH 03301
New Jersey Attorney General Richard J. Hughes Justice Complex 25 Market Street P.O. Box 080 Trenton, NJ 08625	New Mexico Attorney General P.O. Drawer 1508 Santa Fe, NM 87504-1508
New York Attorney General Department of Law The Capitol, 2nd Floor Albany, NY 12224	North Carolina Attorney General Department of Justice P.O. Box 629 Raleigh, NC 27602-0629
North Dakota Attorney General State Capitol 600 E. Boulevard Avenue Bismarck, ND 58505-0040	Northern Mariana Islands Attorney General Administration Building P.O. Box 10007 Saipan, MP 96950-8907

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Virgin Islands Attorney General 34-38 Kronprindsens Gade GERS Building, 2nd Floor St. Thomas, VI 00802	Virginia Attorney General 202 N. Ninth Street Richmond, VA 23219
Washington Attorney General 1125 Washington Street SE P.O. Box 40100 Olympia, WA 98504-0100	West Virginia Attorney General State Capitol 1900 Kanawha Boulevard East Building 1, Room E-26 Charleston, WV 25305
Wisconsin Attorney General Department of Justice State Capitol, Room 114 East P.O. Box 7857 Madison, WI 53707-7857	Wyoming Attorney General State Capitol Building 109 State Capitol 200 W. 24th Street Cheyenne, WY 82002
The Honorable Gary Gensler, Chairman U.S. Securities & Exchange Commission 100 F. Street NE Washington, DC 20549	



**EXHIBIT B**

**Counsel of Record**

<p>Co-Lead Counsel for the Class</p>	<p>Michael P. Canty mcanty@labaton.com Thomas G. Hoffman, Jr. thoffman@labaton.com <b>LABATON SUCHAROW LLP</b> 140 Broadway New York, New York 10005 Phone: (212) 907-0700 Fax: (212) 818-0477</p> <p>Kara M. Wolke kwolke@glancylaw.com Casey E. Sadler csadler@glancylaw.com Natalie S. Pang npang@glancylaw.com <b>GLANCY PRONGAY &amp; MURRAY LLP</b> 1925 Century Park East, Suite 2100 Los Angeles, California 90067 Phone: (310) 201-9150 Fax: (310) 201-9160</p>
<p>Liaison Counsel for the Class</p>	<p>Benjamin T. G. Nivision bnivision@rvflegal.com <b>ROSSI VUCINOVICH, P.C.</b> 1000 Second Avenue, Suite 1420 Seattle, Washington 98104 Phone: (425) 646-8003 Fax: (425) 646-8004</p>