

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

	X	
CHESTER COUNTY EMPLOYEES	:	Index No. 655272/2019
RETIREMENT FUND, Individually and on	:	
Behalf of All Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	The Honorable Robert R. Reed
	:	
vs.	:	Part 43
	:	
ALNYLAM PHARMACEUTICALS, INC.,	:	Motion Sequence No. 005
JOHN M. MARAGANORE, MICHAEL P.	:	
MASON, DENNIS A. AUSIELLO,	:	SUPPLEMENTAL AFFIRMATION OF
MICHAEL W. BONNEY, JOHN K.	:	MICHAEL G. CAPECI IN FURTHER
CLARKE, MARSHA H. FANUCCI, STEVEN	:	SUPPORT OF: (1) PLAINTIFF’S MOTION
M. PAUL, DAVID E.I. PYOTT, PAUL R.	:	FOR FINAL APPROVAL OF THE
SCHIMMEL, AMY W. SCHULMAN,	:	SETTLEMENT AND APPROVAL OF THE
PHILLIP A. SHARP, KEVIN P. STARR,	:	PLAN OF ALLOCATION; AND (2)
GOLDMAN SACHS & CO. LLC, J.P.	:	PLAINTIFF’S COUNSEL’S MOTION FOR
MORGAN SECURITIES LLC, BARCLAYS	:	AN AWARD OF ATTORNEYS’ FEES AND
CAPITAL INC., CREDIT SUISSE	:	EXPENSES AND AWARD TO PLAINTIFF
SECURITIES (USA) LLC, PIPER JAFFRAY	:	
& CO., JMP SECURITIES LLC, NEEDHAM	:	
& COMPANY, LLC, CHARDAN CAPITAL	:	
MARKETS, LLC and B. RILEY FBR, INC.	:	
n/k/a B. RILEY SECURITIES, INC.,	:	
	:	
Defendants.	:	
	X	

I, Michael G. Capeci, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under penalties of perjury:

1. I am a member of the Bar of the State of New York and am a partner with the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”), counsel for plaintiff Chester County Employees Retirement Fund (“Plaintiff” or “CCERF”) in the above-captioned action (the “Action”).

2. I submit this supplemental affirmation in further support of: (i) Plaintiff’s Motion for Final Approval of the Settlement and Approval of the Plan of Allocation; and (ii) Plaintiff’s Counsel’s Motion for an Award of Attorneys’ Fees and Expenses and Award to Plaintiff. Unless otherwise indicated, I have personal knowledge of the matters set forth herein based on my extensive participation in the prosecution and settlement of the claims asserted in the Action and my supervision of those working at my direction. If called upon by the Court, I could and would competently testify that the following facts are true and correct.

3. Attached as Exhibit A is a true and correct copy of the proposed Judgment and Order Granting Final Approval of Class Action Settlement.

DATED: April 5, 2022

/s/ Michael G. Capeci  
MICHAEL G. CAPECI

**PRINTING SPECIFICATIONS STATEMENT**

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing affirmation was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman  
Point Size: 12  
Line Spacing: Double

2. The total number of words in the affirmation, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 203 words.

DATED: April 5, 2022

*/s/ Michael G. Capeci*  
\_\_\_\_\_  
MICHAEL G. CAPECI

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& DOWD LLP  
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# **EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

	X	
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CHESTER COUNTY EMPLOYEES	:	Index No. 655272/2019
RETIREMENT FUND, Individually and on	:	
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ALNYLAM PHARMACEUTICALS, INC.,	:	Motion Sequence No. 005
JOHN M. MARAGANORE, MICHAEL P.	:	
MASON, DENNIS A. AUSIELLO,	:	JUDGMENT AND ORDER GRANTING
MICHAEL W. BONNEY, JOHN K.	:	FINAL APPROVAL OF CLASS ACTION
CLARKE, MARSHA H. FANUCCI, STEVEN	:	SETTLEMENT
M. PAUL, DAVID E.I. PYOTT, PAUL R.	:	
SCHIMMEL, AMY W. SCHULMAN,	:	
PHILLIP A. SHARP, KEVIN P. STARR,	:	
GOLDMAN SACHS & CO. LLC, J.P.	:	
MORGAN SECURITIES LLC, BARCLAYS	:	
CAPITAL INC., CREDIT SUISSE	:	
SECURITIES (USA) LLC, PIPER JAFFRAY	:	
& CO., JMP SECURITIES LLC, NEEDHAM	:	
& COMPANY, LLC, CHARDAN CAPITAL	:	
MARKETS, LLC and B. RILEY FBR, INC.	:	
n/k/a B. RILEY SECURITIES, INC.,	:	
	:	
Defendants.	:	
	X	

WHEREAS, the Court is advised that the Parties,<sup>1</sup> through their counsel, have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle this Action upon the terms and conditions set forth in the Stipulation of Settlement dated November 3, 2021 (the “Stipulation” or “Settlement”); and

WHEREAS, on December 3, 2021, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice, which preliminarily approved the Settlement, and approved the form and manner of notice to the Settlement Class of the Settlement, and said notice has been made, and the Fairness Hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings herein, and it appearing to the Court upon examination that the Settlement set forth in the Stipulation is fair, reasonable and adequate, and upon a Fairness Hearing having been held after notice to the Settlement Class of the Settlement to determine if the Settlement is fair, reasonable, and adequate and whether the Judgment should be entered in this Action;

**THE COURT HEREBY FINDS AND CONCLUDES THAT:**

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Action and over all of the Parties and all Settlement Class Members for purposes of the Settlement.

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<sup>1</sup> As used herein, the term “Parties” means Plaintiff Chester County Employees Retirement Fund (“Plaintiff”), on behalf of itself and the Settlement Class (as defined below), and Defendants Alnylam Pharmaceuticals, Inc. (“Alnylam” or the “Company”), John M. Maraganore, Michael P. Mason, Dennis A. Ausiello, Michael W. Bonney, John K. Clarke, Marsha H. Fanucci, Steven M. Paul, David E.I. Pyott, Paul R. Schimmel, Amy W. Schulman, Phillip A. Sharp, Kevin P. Starr, Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Barclays Capital Inc., Credit Suisse Securities (USA) LLC, Needham & Company, LLC, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), JMP Securities LLC, Chardan Capital Markets, LLC, and B. Riley FBR, Inc. n/k/a B. Riley Securities, Inc. (collectively, “Defendants”), by their respective counsel.

C. The form, content, and method of dissemination of notice given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort.

D. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of §904 of the New York Civil Practice Law and Rules (“CPLR”), due process, and all other applicable laws and rules, and it is further determined that all members of the Settlement Class (defined below) are bound by this Judgment.

E. The Court finds, pursuant to CPLR §§901 and 902, as follows, that:

- (i) the Settlement Class is so numerous that joinder of all members is impracticable;
- (ii) there are questions of law and fact common to the Settlement Class;
- (iii) the claims of Plaintiff are typical of the claims of the Settlement Class;
- (iv) Plaintiff and Plaintiff’s Counsel have fairly and adequately protected the interests of the Settlement Class;
- (v) the requirements of CPLR §904 have been satisfied;
- (vi) the requirements of the Supreme Court of New York – Commercial Division Rules and due process have been satisfied in connection with the Notice;
- (vii) the Action is hereby finally certified (in connection with Settlement only) as a class action pursuant to CPLR §§901 and 902, on behalf of a class (the “Settlement Class”) consisting of all persons who purchased or otherwise acquired Alnylam common stock pursuant or traceable to the Company’s Registration Statement issued in connection with Alnylam’s November 14, 2017 secondary public offering. For purposes of the Settlement only, the Settlement

Class includes persons who purchased or otherwise acquired Alnylam common stock between November 14, 2017 and September 12, 2019, inclusive. Excluded from the Settlement Class are Defendants and their immediate families; the officers, directors and affiliates of Defendants during the Settlement Class Period and members of their immediate families; the legal representatives, heirs, successors, or assigns of any of the foregoing; and any entity in which any Defendant has or had a controlling interest. For avoidance of doubt, Investment Vehicles<sup>2</sup> are not excluded from the Settlement Class solely because they are, or are managed by, affiliates or subsidiaries of a Defendant. However, to the extent that any Defendant or any entity that might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Settlement Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class. Also excluded from the Settlement Class are those Persons who would otherwise be Settlement Class Members but who timely and validly exclude themselves therefrom. Attached hereto as Exhibit 1 is a list of the persons and entities who requested exclusion from the Settlement Class and are hereby excluded from the Settlement Class; and

(viii) Plaintiff is hereby certified as the Settlement Class Representative, and Plaintiff's Counsel is certified as Settlement Class Counsel.

F. The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.

(i) The Settlement was negotiated at arm's length by Plaintiff on behalf of the Settlement Class and by Defendants, all of whom were represented by highly experienced and

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<sup>2</sup> "Investment Vehicle" means any investment company, separately managed account or pooled investment fund, including, but not limited to: (i) mutual fund families, exchange-traded funds, fund of funds and hedge funds in which Defendants, or any of them, have, has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor, but in which any Defendant alone or together with its, his or her respective affiliates is not a majority owner or does not hold a majority beneficial interest; and (ii) employee benefit plans.



skilled counsel. The case settled only after, among other things: (a) a mediation conducted by an experienced mediator who was familiar with this Action; (b) the exchange between Plaintiff and Defendants of detailed mediation statements before the mediation which highlighted the factual and legal issues in dispute; (c) Plaintiff's Counsel's extensive investigation, which included, among other things, a review of Alnylam's press releases, U.S. Securities and Exchange Commission filings, analyst reports, media reports, and other publicly disclosed reports and information about the Defendants; (d) the drafting and submission of detailed complaints; (e) motion practice directed to the complaint; and (f) completion of certain discovery. Accordingly, both the Plaintiff and Defendants were well-positioned to evaluate the settlement value of this Action. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the Settlement had not been achieved, both Plaintiff and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiff's or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

G. Plaintiff and Plaintiff's Counsel have fairly and adequately represented the interest of the Settlement Class Members in connection with the Settlement.

H. Plaintiff, all Settlement Class Members, and Defendants are hereby bound by the terms of the Settlement set forth in the Stipulation.

**IT IS HEREBY ORDERED THAT:**

1. The Settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

2. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

3. Upon the Effective Date of the Settlement, Plaintiff and all Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever waived, released, relinquished, compromised, settled, resolved, and discharged all Released Claims against the Released Parties, regardless of whether such Settlement Class Member executes and delivers a Proof of Claim.

4. Upon the Effective Date of the Settlement, each and every Settlement Class Member, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, will be permanently and forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting any or all of the Released Claims against the Released Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim.

5. Upon the Effective Date of the Settlement, each of the Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released and discharged Plaintiff, Plaintiff's Counsel, and each and all of the Settlement Class Members from each and every one of the Released Defendants' Claims.

6. All Settlement Class Members who have not objected to the Settlement in the manner provided in the Notice of Pendency and Proposed Settlement of Class Action ("Notice") are deemed to have waived any objections by appeal, collateral attack, or otherwise. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

7. All Settlement Class Members who have failed to properly submit requests for exclusion (requests to opt out) from the Settlement Class are bound by the terms and conditions of the Stipulation and this Judgment.

8. The requests for exclusion by the persons or entities identified in Exhibit 1 to this Judgment are accepted by the Court.

9. All other provisions of the Stipulation are incorporated into this Judgment as if fully rewritten herein.

10. Plaintiff and all Settlement Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against any of the Released Parties.

11. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) Shall be offered or received against Defendants as evidence of, or evidence in support of, a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; however, Defendants may refer to it to effectuate the liability protection granted them hereunder;

(b) Shall be construed as or received in evidence as an admission, concession, or presumption against Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable in this Action would have exceeded the Settlement Fund;

(c) Shall be construed as evidence of, or evidence supporting, any presumption, concession or admission by any Defendant of the truth of any allegations by Plaintiff or of any Settlement Class Member or the validity of any claim that has been or could have been asserted in the Action, or the deficiency of any defense that has or could have been asserted in the Action or in any other litigation or proceeding; and

(d) Shall be construed as evidence of, or evidence supporting, a presumption, concession or admission that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial or in any proceeding other than this Settlement.

(e) Notwithstanding the foregoing, Defendants, Plaintiff, Settlement Class Members and/or the Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. The Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Settlement Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Settlement Class Members to be heard with respect to the Plan of Allocation.

13. The Court hereby finds that the Plan of Allocation is fair and reasonable and the Claims Administrator is directed to administer the Settlement in accordance with the Stipulation.

14. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice sent to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Settlement Class Members, with due consideration having been given to administrative convenience and necessity.

15. Nothing in the Settlement restricts the ability of any Party to advocate in favor of or against the applicability of any offset to any claims asserted in any other action based on any amount paid to Authorized Claimants through the Settlement.

16. The Court hereby awards Plaintiff's Counsel attorneys' fees of one-third of the Settlement Amount, plus Plaintiff's Counsel's expenses in the amount of \$42,854.09, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Settlement Class.

17. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Plaintiff's Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

18. Plaintiff Chester County Employees Retirement Fund is awarded \$4,281.00. Such payment is appropriate considering its active participation as Plaintiff in this Action, as attested to by its affidavit submitted to the Court. Such payment is to be made from the Settlement Fund.

19. In the event that the Stipulation is terminated in accordance with its terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Action shall proceed as provided in the Stipulation.

20. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of 22 N.Y.C.C.R. §130-1 and all other similar statutes.

21. Without further order of the Court, the Parties may agree in writing to such amendments, modifications, and expansions of the Stipulation and reasonable extensions of time to carry out any of the provisions of the Stipulation, provided that such amendments, modifications, expansions, and extensions do not materially alter the rights of the Settlement Class Members or the Released Parties under the Stipulation.

22. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE ROBERT R. REED, J.S.C.

**EXHIBIT 1**

*Chester County Employees Retirement Fund v. Alnylam Pharmaceuticals, Inc., et al.,*  
Index No. 655272/2019

**INDIVIDUALS WHO HAVE  
REQUESTED EXCLUSION FROM THE SETTLEMENT CLASS**

1. David F. Shafer
2. Robert Deering