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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re CAPSTONE TURBINE CORPORATION SECURITIES LITIGATION	Lead Case No.: 2:15-CV-08914-DMG-RAOx **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION** Date: November 15, 2019 Time: 10:00 a.m. Crtm: 8C Judge: Hon. Dolly M. Gee

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs Randall and Elizabeth Kay (collectively "Lead Plaintiffs"), and named plaintiffs David Kinney and John Perez (collectively "Named Plaintiffs" and together with Lead Plaintiffs, "Plaintiffs") respectfully submit this memorandum in support of their motion for final approval of the Settlement of the above-captioned action (the "Action") for $5,550,000 in cash (plus interest earned) and for approval of the Plan of Allocation.[1] The terms of the Settlement are set forth in the Stipulation (Dkt. No. 118-1), which was preliminarily approved by the Court on May 17, 2019 (the "Preliminary Approval Order"). Dkt. No. 122.

Plaintiffs also respectfully submit this memorandum in further support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (Dkt. No. 126 the "Fee and Expense Application").[2] This memorandum updates the Court on the status of the notice program and the Settlement Class's reaction thereto, including the fact that there has not been a single objection to the Settlement, Plan of Allocation, or request for attorneys' fees and reimbursement of Litigation Expenses.

I. PRELIMINARY STATEMENT

After more than three years of litigation, Plaintiffs, through their counsel, obtained a $5,550,000 all-cash, non-reversionary settlement for the benefit of the

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[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation of Settlement dated April 12, 2019 (Dkt. No. 118-1) (the "Stipulation") or the previously filed Declaration of Casey E. Sadler in Support of (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed by Plaintiffs (the "Sadler Declaration" or "Sadler Decl.") (Dkt. No. 127). Citations herein to "¶ __" and "Ex. __" refer, respectively, to paragraphs in, and exhibits to, the Sadler Declaration.

[2] Pursuant to the Court's Preliminary Approval Order, the Fee and Expense Application was submitted to the Court on September 24, 2019 along with the Sadler Declaration in support thereof. Dkt. No. 126.

Settlement Class.[3] As described below and in the Sadler Declaration, the Settlement is an excellent result for the Settlement Class, providing a significant and certain recovery in a case that presented numerous hurdles and risks. In fact, the Settlement represents between 18.6% and 47.7% of the Settlement Class's maximum recoverable class-wide aggregate damages, which is an extremely favorable result when compared to the median recovery in securities class action settlements with similar aggregate damages.

Plaintiffs and Lead Counsel's substantial efforts and well-developed understanding of the strengths and weaknesses of the Action also support final approval. Their efforts, as detailed in the Sadler Declaration, included, among other things: (i) a comprehensive factual investigation aided by experienced accounting, loss causation and damages experts; (ii) rigorous analysis of Capstone's public filings and Defendants' public statements; (iii) review of news articles and analyst reports about the Company, the Russian market, sanctions related to the war in the Ukraine, and the international marketplace for Capstone's equipment; (iv) interviews of numerous former Capstone employees in connection with drafting the 91-page Consolidated Complaint and the 104-page Amended Complaint; (v) fully briefing Defendants' motions to dismiss the Consolidated and Amended Complaints, and successfully obtaining denial of Defendants' motion to dismiss the Amended Complaint in its entirety; (vi) further consultations with experts on accounting, loss causation and damages related issues; (vii) engaging in discovery, including negotiating a protective order, serving and responding to formal discovery prior to entry of a temporary stay to allow for mediation; (viii) reviewing and analyzing a substantial number of documents produced by Defendants in anticipation of mediation; and (ix) engaging in an

[3] The Sadler Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*, the factual and procedural history of the Action (¶¶ 9-51); the nature of the claims asserted (¶¶ 17-32); the risks of continued litigation (¶¶ 55-64); the negotiations leading to the Settlement (¶¶ 37-51); and the Plan of Allocation (¶¶ 73-77).

adversarial mediation process, which included drafting and analyzing two rounds of mediation statements and a full-day mediation under the auspices of a renowned mediator, the Honorable Layn Phillips (Ret.). ¶¶ 4, 14-46. In view of the foregoing, Plaintiffs and their counsel had a comprehensive understanding of the strengths and weaknesses of the case and had sufficient information to make an informed decision regarding the fairness of the Settlement before entering into it and presenting it to the Court.

Plaintiffs and Lead Counsel believe that the Settlement is in the best interests of the Settlement Class. Their belief is supported by, among other things, the certainty of an $5.55 million recovery today versus the significant risk of a smaller or even no recovery following years of additional litigation; an analysis of the facts adduced to date; past experience in litigating complex securities class actions; the serious disputes between the Parties concerning the merits and damages; and the favorable reaction of the Settlement Class. *See, e.g.*, ¶¶ 3, 5. Plaintiffs, therefore, respectfully submit that the Settlement is fair, reasonable and adequate.

Plaintiffs also move for final approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation was developed in conjunction with Plaintiffs' damages expert and is designed to fairly and equitably distribute the proceeds of the Settlement to Settlement Class Members. ¶¶ 74-76. Prior to the Court preliminarily approving the Plan of Allocation on May 17, 2019, Plaintiffs provided, at the Court's request, substantial detail regarding the development of the Plan of Allocation, including the declaration of Michael A. Marek from Financial Markets Analysis, LLC (Plaintiffs' damages expert). Dkt. No. 120-1 (the "Marek Declaration" or "Marek Decl."). Mr. Marek explained that the Plan of Allocation, which was based on a loss causation analysis and event study that determined the appropriate artificial inflation per share, was developed to equitably distribute the Settlement Fund to Settlement Class Members. *See* Marek Decl. ¶¶ 4-13. Nothing has changed to alter the

propriety of the Court's decision to preliminarily approve the proposed Plan of Allocation, thus Plaintiffs respectfully submit that it too should be finally approved.

Moreover, the reaction of the Settlement Class confirms that the Settlement is an excellent result and that the Plan of Allocation should be approved. Following an extensive notice program, including mailing 36,954 Postcard Notices to potential Settlement Class Members notifying the Settlement Class of the October 15, 2019 deadline to file an objection or request exclusion, not a single objection has been filed, and only four requests for exclusion have been received.[4] The Settlement Class's positive reaction provides strong evidence of the fairness and reasonableness of the proposed Settlement and Plan of Allocation.

Additionally, Lead Counsel submitted their Fee and Expense Application on September 24, 2019. Dkt. Nos. 125-126. The Fee and Expense Application requested that Lead Counsel be awarded 26.2% of the $5,550,000 Settlement Fund, which equates to $1,454,500, plus interest earned at the same rate as the Settlement Fund, and reimbursement of $78,084.47 in litigation expenses that Lead Counsel reasonably and necessarily incurred in prosecuting and resolving the Action. Moreover, Lead Counsel requested that the Plaintiffs be awarded $31,000 in costs incurred by Plaintiffs, directly related to their representation of the Settlement Class, as authorized by the Private Securities Litigation Reform Act of 1995 ("PSLRA").

After filing the Fee and Expense Application, Lead Counsel directed the Claims Administrator to make the Fee and Expenses Application, including all related declarations and exhibits, available to all Settlement Class Members on the Settlement

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[4] *See also* Declaration of Casey E. Sadler in Further Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Sadler Reply Decl."), Ex. 1 (Supplemental Declaration of Brian Manigault Regarding: (A) Mailing of Postcard Notice; (B) Report on Requests for Exclusion and Objections Received to Date; and (C) the Claims Administration Process ("Supp. Manigault Decl.")) at ¶¶ 7, 11-12.

Website, which was promptly done.[5] No Settlement Class Member has objected to any part of the Fee and Expense Application, which strongly supports that it should be granted in its entirety.

II. STANDARDS GOVERNING APPROVAL OF CLASS ACTION SETTLEMENTS

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise or settlement of class action claims and states that a class action settlement should be approved if the court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In the Ninth Circuit and throughout the country, "there is a strong judicial policy that favors settlements particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). Moreover, courts should defer to "the private consensual decision of the parties to settle" and advance the "overriding public interest in settling and quieting litigation." *Franklin v. Kaypro*, 884 F.2d 1222, 1229 (9th Cir. 1989) (quoting *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976), and *Rodriquez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

Class actions lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of litigation. Settlement of such complex cases greatly contributes to the conservation of scarce judicial resources. *See, e.g.*, *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Avoiding such unnecessary and unwarranted expenditure of resources and time would benefit all Parties and the Court.").[6]

According to the recently amended Rule 23(e)(2), which governs final approval, the four specific factors to consider when determining whether a proposed settlement is

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[5] *See* Supp. Manigault Decl., ¶ 8.

[6] Unless otherwise indicated, all emphasis is added and all internal citations and quotations are omitted.

fair, reasonable, and adequate are:

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

Fed. R. Civ. P. 23(e)(2).

These factors do not "displace" any previously adopted factors, but "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." FED. R. CIV. P. 23(e) advisory committee's notes to 2018 amendment, 324 F.R.D. 904, 918. "Accordingly, the Court [should] appl[y] the framework set forth in Rule 23, while continuing to draw guidance from the Ninth Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Company*, 2018 WL 6619983, at *4 (N.D. Cal. 2018).

Prior to the Rule 23(e)(2) amendment, courts in the Ninth Circuit considered the following "*Hanlon* factors:"

> (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998); *Churchill Village L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

As explained below and in the Sadler Declaration, application of each of the four factors specified in Rule 23(e)(2), and the relevant, non-duplicative *Hanlon* factors, demonstrates that the Settlement merits final approval.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Plaintiffs and Lead Counsel Adequately Represented the Settlement Class

The Court should consider whether the "class representative[] and class counsel have adequately represented the class" when determining whether to approve a class action settlement. Fed. R. Civ. P. 23(e)(2)(A). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

Here, Plaintiffs and Lead Counsel have adequately represented the Settlement Class both during the litigation of this Action and its settlement. Plaintiffs' claims are typical of and coextensive with the claims of the Settlement Class, and they have no antagonistic interests; rather, Plaintiffs' interest in obtaining the largest possible recovery in this Action is aligned with the other Settlement Class Members. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members"). Additionally, Plaintiffs were highly involved in each phase of the litigation and worked with Lead Counsel throughout the pendency of the Action. For example, each Plaintiff: (i) communicated regularly with Lead Counsel to discuss progress of the litigation as well as strategy; (ii) reviewed all significant pleadings filed in the Action; (iii) collected documents in response to Defendants' discovery requests, including Lead Plaintiff Randall Kay collecting and producing hundreds of pages of documents that included emails with Capstone executives and officers; (iv) was consulted by Lead Counsel

throughout the mediation and settlement negotiations, with Lead Plaintiffs Randall and Elizabeth attending the mediation session in person; and (v) evaluated and approved the proposed Settlement. *See* Ex. 5 ("Randall Kay Decl."), ¶ 5; Ex. 6 ("Elizabeth Kay Decl."), ¶ 4; Ex. 7 ("Kinney Decl."), ¶ 5; Ex. 8 ("Perez Decl."), ¶ 5. Additionally, both Lead Plaintiffs travelled to, attended and actively participated in the full-day mediation. Randall Kay Decl., ¶ 5; Elizabeth Kay Decl., ¶ 4. Moreover, Lead Plaintiff Randall Kay, in addition to the duties listed above, also attended the lead plaintiff hearing, and following his attendance at the mediation session, communicated directly with the mediator, Judge Phillips, to achieve the best possible result for the Settlement Class. Randall Kay Decl., ¶ 5.

Plaintiffs also retained counsel who are highly experienced in securities litigation, and who have a long and successful track record of representing investors in such cases. Lead Counsel, Glancy Prongay & Murray LLP ("GPM"), has successfully prosecuted securities class actions and complex litigation in federal and state courts throughout the country. *See* Ex. 4 (GPM firm resume). Moreover, in this case, Lead Counsel vigorously prosecuted the claims throughout the litigation by, among other things, conducting an extensive investigation of the claims; drafting the 91-page Consolidated Complaint and the 104-page Amended Complaint; fully briefing Defendants' motion to dismiss the Consolidated and Amended Complaints, and successfully obtaining denial of Defendants' motion to dismiss the Amended Complaint in its entirety; engaging in fact discovery process, including negotiating a protective order, serving and responding to formal discovery prior to entry of a temporary stay to allow for mediation; exchanging informal pre-mediation discovery; reviewing and analyzing documents produced by Defendants in pre-mediation discovery; drafting two substantial mediation statements with exhibits; participating in a full-day mediation session; negotiating the terms of the Settlement with defense counsel; and successfully moving the Court for preliminary approval of the Settlement and overseeing the notice process thereof. ¶ 4.

Accordingly, as the Court previously found in conditionally certifying the Settlement Class and appointing Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel, both Plaintiffs and Lead Counsel have adequately represented the Settlement Class. Preliminary Approval Order at ¶ 3. This factor supports final approval of the Settlement.

B. The Settlement Was Reached After Substantial Litigation and Arm's-Length Negotiations Between Experienced Counsel Conducted Under the Auspices of a Well-Respected Mediator

The Court must also consider whether the settlement was "negotiated at arm's length" in weighing approval of a class-action settlement. Fed. R. Civ. P. 23(e)(2)(B). Circumstances related to this "procedural" fairness determination of a settlement traditionally include (i) understanding of the strength [and weakness] of the plaintiff's case[7] based on factors like "the extent of discovery completed and the stage of the proceedings";[8] (ii) the "experience and views of counsel";[9] and (iii) the absence of any indicia of collusion.[10] Each of these factors supports approval of the Settlement.

The Ninth Circuit, as well as courts in this District, "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution" in approving a class action settlement. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *see also Eiesen v. Porsche Cars N. Am., Inc.*, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement when record established that "all counsel had ample information and opportunity to assess the strengths and weaknesses of their claims and defenses"). Courts also recognize that "[s]ettlements reached with the help of a mediator are likely non-collusive." *Feyko v. aAD Partners LP*, 2014 WL 12572678, at *7 (C.D. Cal. Mar. 7, 2014).

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[7] *Hanlon*, 150 F.3d at 1026 (first factor).

[8] *See id.* (fifth factor).

[9] *See id.* (sixth factor).

[10] *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

Here, the Settlement merits a presumption of fairness because it is the product of extensive arm's-length negotiations facilitated by a well-respected mediator, Judge Phillips, who has significant experience mediating securities class actions and other complex litigation. *See id.* at *3; *see also* ¶¶ 37-45; *Atlas v. Accredited Home Lenders Holding Co.*, 2009 WL 3698393, at *3 (S.D. Cal. Nov. 4, 2009) (approving settlement and describing the settlement negotiations as fair because "they were closely supervised by the Honorable Layn Phillips (Ret.) and conducted at arm's length by experienced and competent counsel."). In fact, the Settlement was not reached at the mediation itself. The Parties accepted a mediator's proposal weeks after the mediation. This demonstrates the Settlement was the product of a non-collusive, arm's-length process.

Moreover, the Parties and their counsel were knowledgeable about the strengths and weaknesses of this case before reaching an agreement to settle. Among other things, Lead Counsel: (i) conducted a detailed, substantive investigation into the allegations of the case; (ii) performed extensive legal research in briefing Defendants' motions to dismiss the Consolidated and Amended Complaints; (iii) consulted with accounting, loss causation and damages experts; (iv) reviewed and analyzed: (a) Defendants' answer to the Amended Complaint, (b) a substantial number of documents produced by Defendants in pre-mediation discovery, and (c) Defendants' initial discovery responses; (v) exchanged detailed mediation statements and exhibits addressing the merits of the Action as well as detailed rebuttal mediation statements and exhibits; (vi) participated in a full-day mediation session before Judge Phillips; and (vii) over the course of several weeks following the unsuccessful mediation session, continued discussions with the mediator and Defendants, which culminated in a mediator's proposal that the Parties ultimately accepted. ¶¶ 14-46. Under these circumstances, Lead Counsel's conclusion that the Settlement is fair and reasonable and in the best interests of the Settlement Class supports its approval. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) ("The recommendation of

experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement.").

In addition, Plaintiffs, who have a substantial financial interest, more than $700,000 in the case of the Lead Plaintiffs, in the outcome of the case and actively supervised the litigation, support the Settlement. *See* ¶ 64; Randall Kay Decl., ¶ 6; Elizabeth Kay Decl., ¶ 5; Kinney Decl., ¶ 6; Perez Decl., ¶ 6; *see also In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *5 (N.D. Cal. Nov. 26, 2007) (noting Congress's intent to encourage a Lead Plaintiff's involvement when passing PSLRA and stating that "the role taken by the lead plaintiff in the settlement process supports settlement because lead plaintiff was intimately involved in the settlement negotiations").

Finally, the Settlement has none of the indicia of collusion identified by the Ninth Circuit. *See Bluetooth Headset*, 654 F.3d at 947 ("subtle signs" of collusion include a "disproportionate distribution of the settlement" between the class and class counsel, "a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds," or an agreement for "fees not awarded to revert to defendants rather than be added to the class fund"). In short, the Settlement here was reached after arm's-length negotiations by capable counsel and was not a product of fraud, overreaching, or collusion among the Parties.

C. The Settlement Relief Provided to the Settlement Class is Adequate in Light of the Costs and Risks of Further Litigation and Other Relevant Factors

Under Rule 23(e)(2)(C), when evaluating the fairness, reasonableness, and adequacy of a settlement, the Court must also consider whether "the relief provided for the class is adequate, taking into account … the costs, risks, and delay of trial and appeal" along with other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This factor essentially incorporates four of the tradition *Hanlon* factors: (1) the strength of Lead Plaintiff's case; (2) the risk, expense, complexity, and likely duration of further

litigation; (3) the risk of maintaining class-action status throughout the trial; and (4) the amount offered in the settlement. *See Hanlon*, 150 F.3d at 1026. As demonstrated below, each of these factors supports approval of the Settlement.

1. The Strength of Plaintiffs' Case and the Significant Risks of Continued Litigation

In assessing whether the proposed Settlement is fair, reasonable, and adequate, the Court "must balance against the continuing risk of litigation, including the strengths and weaknesses of plaintiff's case, against the benefits afforded to class members, including the immediacy and certainty of a recovery." *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017). While Lead Counsel believe that Plaintiffs' claims are meritorious, they also recognize that they faced substantial obstacles to proving liability and establishing loss causation and damages. Plaintiffs and Lead Counsel would have to prove that Defendants' statements and omissions were false and misleading, that Defendants knew or were reckless in not knowing that their statements and omissions were false and misleading at the time made, and that those statements and omissions were corrected and caused recoverable damages for the Settlement Class. Plaintiffs anticipated that Defendants would present strong arguments challenging Plaintiffs' pleading and proof on all of those elements in their expected motion for summary judgment and/or at trial.

Establishing Liability: Plaintiffs faced numerous hurdles to establishing liability. *See In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *8 (S.D.N.Y. Dec. 19, 2014) ("Securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet."). Defendants forcefully argued in their motions to dismiss, and undoubtedly would continue to argue at summary judgment and trial, that the alleged misstatements were not actionable because the Company had reasonable bases for its accounting treatments, which its accountants signed off on. ¶ 56. Defendants would also continue to argue that the backlog figures were in fact accurate because its customers had not yet cancelled the orders at issue and that those

orders still could have been fulfilled. *Id.* Establishing liability was further complicated by the fact that the underlying dispute centers around the application of accounting principles, including whether revenue recognition for certain transactions was appropriate, the proper timing for write-downs and whether certain "orders" should have been removed from the backlog, which are all subjective determinations. *See In re Medicis Pharm. Corp. Sec. Litig.*, 2010 WL 3154863, *5 (D. Ariz. Aug. 9, 2010) ("A plaintiff [] cannot merely point at a GAAP principle and contend that a correct interpretation was simple or obvious. At the very least, the plaintiff must present facts demonstrating that the defendant was aware of the relevant GAAP principle and that this defendant knew how that princip[le] was being interpreted. The plaintiff must then plead facts explaining how the defendant's incorrect interpretation was so unreasonable or obviously wrong that it should give rise to an inference of deliberate wrongdoing").

Defendants would have almost certainly moved for summary judgment on the element of scienter. Proving scienter in a securities case is often the most difficult element of proof and one which is rarely supported by direct evidence or an admission. *See, e.g., Hayes v. MagnaChip Semiconductor Corp.*, 2016 WL 6902856, at *5 (N.D. Cal. Nov. 21, 2016); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426 (S.D.N.Y. 2001). Here, while Plaintiffs believe that the evidence would have established Defendants' scienter, Defendants insisted that their Settlement Class Period statements concerning revenue and accounts receivable were made in good faith, in particular because Defendants had a reasonable belief that BPC would ultimately pay for products as it had always done in the past. ¶ 57. Additionally, Defendants have always contended that the backlog was accurate as it did not contain any cancelled orders. *Id.*

Loss Causation and Damages: Plaintiffs also faced substantial challenges in proving that the revelation of the truth about Defendants' alleged false and misleading statements and omissions caused declines in the price of Capstone's common stock and establishing class-wide damages. Defendants would have most certainly argued that

two of the four alleged corrective disclosures were not truly corrective events because the disclosures were not related to the alleged fraud, and that Plaintiffs' loss causation and damages models were flawed because they failed to disaggregate the amount of stock price decline attributable to the alleged fraud from the other non-fraudulent events. ¶ 58. If any of these forgoing arguments was accepted by the Court or a jury, then the Settlement Class's class-wide damages would have been greatly reduced. *Id.*

Additionally, pursuant to *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), Plaintiffs' would have the burden to prove loss causation and damages. This would require Plaintiffs to proffer expert testimony as to: (a) what the "true value" of Capstone's common stock would have been if there had been no alleged material misstatements or omissions; (b) the amount by which Capstone's shares were inflated by the alleged material misstatement and omissions; and (c) the amount of artificial inflation removed by the purported corrective disclosures. ¶ 59. Defendants almost certainly would have presented their own damages expert(s) to present conflicting conclusions and theories as to the reasons for Capstone's share price declines on the alleged disclosure dates, requiring a jury to decide the "battle of the experts." *Id.* Courts have recognized that such a "battle of experts" is a significant litigation risk, and weighs in favor of approving a settlement. *Amgen*, 2016 WL 10571773, at *3.

Lead Counsel know from personal experience that despite the most vigorous and competent of efforts, success in complex contingent litigation is never guaranteed. *See, e.g., In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal. Dec. 17, 2018) (GPM served as Co-Lead Counsel in a case where, after more than five years of litigation, a plethora of foreign discovery, the expenditure of many millions of dollars in attorney time and hard costs, as well as a multi-week trial, the jury returned a verdict in favor of defendants alleged to have conspired to fix the prices of Korean ramen noodles).

Finally, even if the Court certified the class as proposed by Plaintiffs and they prevailed on liability and the Settlement Class was awarded damages, Defendants likely

would appeal the verdict and award. The appeals process could span several years. During this time on potential appeals, the Settlement Class would receive no distribution of any damage award. ¶ 62. In addition, an appeal of any judgment would carry the risk of reversal, in which case the Settlement Class would receive no recovery even after having prevailed on their remaining claim at trial. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).

2. The Risk of Maintaining Class Action Status Throughout Trial

At the time the Settlement was reached, Plaintiffs had not yet moved for class certification. Although Plaintiffs believe such a motion would have been meritorious, there is no guarantee that the Court would have agreed or, even if it did, that the Ninth Circuit would have denied a Rule 23(f) motion for interlocutory review and overturned the decision. Furthermore, Rule 23 provides that a class certification order may be altered or amended any time before a decision on the merits. Thus, as in any class action suit, there was a risk that even if the class was certified, it would be modified or decertified prior to a decision on the merits. *See Chambers v. Whirlpool Corp.*, 2016 WL 5922456, *6 (C.D. Cal. 2016) ("Because plaintiffs had not yet filed a motion for class certification, there was a risk that the class would not be certified."). Consequently, this factor favors approving the Settlement.

3. The Amount Obtained in the Settlement Supports Approval

The $5,550,000 cash Settlement constitutes a meaningful percentage of the maximum possible recovery for the Settlement Class, especially taking into account the uncertainty, risks, and costs associated with any attempt to obtain a greater amount. "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). Moreover, a settlement is "not to be judged against a hypothetical or speculative measure of what *might* have been

achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

Here, as this Court preliminarily determined in its Preliminary Approval Order, the Settlement Amount—$5.55 million in cash—is within the range of reasonableness under the circumstances so as to warrant approval of the Settlement. Preliminary Approval Order at ¶ 4. Plaintiffs' damages expert estimates that if Plaintiffs had fully prevailed in each of their claims at both summary judgment and after a jury trial, and if the Court and jury accepted Plaintiffs' damages theory, including proof of loss causation as to each of the stock price drop dates alleged in this case—*i.e.*, Plaintiffs' ***best case scenario***, the total ***maximum*** damages would be $29.8 million. Thus, the $5.55 million Settlement Amount represents approximately 18.6% of the total ***maximum*** damages ***potentially*** available in this Action. ¶ 52. Moreover, as discussed *supra* in Section III.C.1, Plaintiffs and Lead Counsel were extremely cognizant of the risk that the Court could accept Defendants' likely loss causation arguments, which would substantially diminish the maximum recoverable damages available to the Settlement Class to approximately $11.7 million. ¶ 53. Under this scenario, the $5.5 million recovery equates to 47.7% of the ***maximum*** recoverable damages. *Id.*

In comparison, the median recovery in securities class actions in 2018 was approximately 2.6% of estimated damages, and the median recovery in securities class actions from 1996 through 2018 was 8.4% of estimated damages ranging between $20-$49 million. *See* Ex. 2 (Stefan Boettrich and Svetlana Starykh, Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review (NERA Jan. 29, 2019)) at p. 36, Fig. 28 and p. 35, Fig. 27; *see also In re LJ Int'l Inc. Sec. Litig.*, 2009 WL 10669955, at *4 (C.D. Cal. Oct. 19, 2009) (approving securities fraud class action settlement where recovery was 4.5% of maximum damages). The 18.6% - 47.7% recovery in the Action is well above these median recoveries in similar cases.

When viewed in this context and in light of these substantial risks, the recovery is an extremely favorable result for the Settlement Class.

4. The Complexity, Expense, and Likely Duration of Litigation

The expense, complexity, and likely duration of continued litigation are also key considerations in evaluating the reasonableness of a settlement. *See, e.g., Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (finding "the cost, complexity and time of fully litigating the case" a factor in concluding settlement was fair). "Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015). Securities-fraud cases are inherently complex and frequently take an exceptionally long time to litigate, in part because they often involve significant post-trial motions and appeals. *See, e.g., In re Vivendi Universal, S.A., Sec. Litig.*, 2012 WL 362028, at *1 (S.D.N.Y. Feb. 6, 2012) (noting that, two years after jury verdict in plaintiffs' favor and ten years after the case was filed, shareholders had still received no recovery). Given the "notorious complexity" of securities class actions, settlement is often appropriate because it "circumvents the difficulty and uncertainty inherent in long, costly trials." *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *see also Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *5 (S.D. Cal. Dec. 6, 2018) (similar).

Here, continuing litigation through fact and expert discovery, class certification, summary judgment, trial, and appeals would been very expensive and would have delayed the Settlement Class Members' recovery, if any, for upwards of several years.[11] *See Destefano v. Zynga, Inc.*, 2016 WL 537946, at *10 (N.D. Cal. Feb. 11, 2016) (noting same); *Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at *11 (C.D. Cal. Apr. 29, 2014) (similar). Regardless of the certainty or uncertainty of the ultimate

[11] Though only a few securities class actions have gone to trial, the time between verdict and final judgment has been up to seven years. *See e.g., Vivendi Universal, S.A. Sec. Litig.*, Case No. 02-cv-5571 (RJH/HBP), Verdict Form, ECF No. 998 (S.D.N.Y. Feb. 2, 2010) (jury verdict issued on Jan. 29, 2010) & Final Judgment Approving Class Action Settlement of All Remaining Claims, ECF No. 1317 (S.D.N.Y. May 9, 2017).

outcome, there is no question that further litigation against Defendants would likely have been expensive, complex, and protracted. *See*, *e.g.*, *Nobles v. MBNA Corp.*, 2009 WL 1854965, at *2 (N.D. Cal. June 29, 2009) (finding a proposed settlement proper "given the inherent difficulty of prevailing in class action litigation"); *Heritage Bond*, 2005 WL 1594403, at *6 (class actions have a well-deserved reputation as being the most complex).

The present value of a certain recovery now, as opposed to the mere ***chance*** for a greater one years later, supports approval of this Settlement that eliminates the expense and delay of continued litigation and the risk that the Settlement Class could receive little or no recovery. Consequently, this factor supports approval of the Settlement.

5. Other Factors Established by Rule 23(e)(2)(C) Support Final Approval

Under Rule 23(e)(2)(C), courts also must consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," "the terms of any proposed award of attorneys' fees, including timing of payment,"[12] and "any agreement required to be identified under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors supports the Settlement's approval or is neutral, thus they do not suggest any basis for concluding the Settlement is inadequate.

The method for processing Settlement Class Members' claims and distributing relief to eligible claimants includes well-established, effective procedures for processing claims submitted by potential Settlement Class Members and efficiently distributing the Net Settlement Fund. As detailed in the Manigault Declaration, Angeion Group ("Angeion"), the Court-approved Claims Administrator, will process claims under the guidance of Lead Counsel, allow claimants an opportunity to cure any

[12] Plaintiffs discuss this factor at Section VII, *infra*.

deficiencies in their claims or request the Court to review a denial of their claims, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court-approval.[13] *See* Sadler Decl., Ex. 1 ("Manigault Decl.") at ¶ 12. Consistent with the Court's preliminary approval of this proposed claims processing, this method is standard in securities class action settlements as it has been long found to be effective, as well as necessary insofar as neither Plaintiffs nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund. *See New York State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 233-34, 245 (E.D. Mich. 2016) (approving settlement with a nearly identical distribution process).

Additionally, in accordance with Rule 23(e)(2)(C)(iv), the Parties entered into a confidential agreement which establishes certain conditions under which Defendants may terminate the Settlement if Settlement Class Members, who collectively purchased a specific number of shares of Capstone common stock, request exclusion (or "opt out") from the Settlement. At the Court's request, Plaintiffs' submitted the confidential agreement under seal for the Court's review. Dkt. No. 123. This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement. *See, e.g., In re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at *5 (N.D. Cal. Aug. 25, 2016) (observing that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest," and granting final approval of class action settlement); *Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (approving settlement with similar confidential agreement).

[13] This is not a claims-made settlement. If the Settlement is approved, Defendants will not have any right to the return of a portion of the Settlement based on the number or value of the claims submitted. *See* Stipulation ¶ 17.

D. The Settlement Treats Class Members Equitably

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. Fed. R. Civ. P. 23(e)(2)(D). Under the proposed Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶ 74. Plaintiffs will receive the same level of *pro rata* recovery, based on each Recognized Claim as calculated by the Plan of Allocation, as all other similarly situated Settlement Class Members.

E. The Settlement Class's Positive Reaction Supports Settlement Approval

Though not included in Rule 23(e)(2), the reaction of the Settlement Class is also a significant factor in assessing its fairness and adequacy. *Hanlon*, 150 F.3d at 1026. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to class members." *In re Omnivision Techs. Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008).

Here, in accordance with the Court's Preliminary Approval Order, on June 17, 2019, Angieon, under the supervision of Lead Counsel, began mailing Postcard Notices to potential Settlement Class Members and nominees. *See* Manigault Decl. ¶ 5. As of October 23, 2019, Angieon has disseminated a total of 36,954 Postcard Notices to potential Settlement Class Members and nominees. *See* Supp. Manigault Decl. ¶ 7. In addition, the Summary Notice was published both in the national edition of *Investor's Business Daily* and transmitted over *PR Newswire* on June 24, 2019 (*see* Manigault Decl. ¶ 11), and the Notice, Claim Form, Stipulation, Preliminary Approval Order, Fee and Expense Application, and Sadler Declaration, among other documents, were posted on the settlement website specifically created for the Settlement . *See* Manigault Decl.,

¶ 12; Supp. Manigault Decl., ¶ 8. The Postcard Notice, Notice, and Summary Notice informed Settlement Class Members of the October 15, 2019 deadline to submit an objection to the Settlement, Plan of Allocation or fee and expense application, or request exclusion from the Settlement Class. The website also lists the exclusion, objection, and claim filing deadlines, as well as the date and time of the Court's Settlement Hearing. Moreover, the Notice informed Settlement Class Members that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed $140,000, which could include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. *See* Ex. 1-E (Notice ¶ 5)).

On September 24, 2019, twenty-one (21) days prior the objection deadline, Lead Counsel filed their Fee and Expense Application supported by the declarations of Plaintiffs, Lead Counsel, and the Claims Administrator. Dkt. Nos. 125-127. Lead Counsel's Fee and Expense Application provided the bases for Lead Counsel's request for an award of attorneys' fees in the amount of 26.2% of the Settlement Fund as well as awards in accordance with the PSLRA for costs and expenses incurred by Lead Plaintiffs Randall and Elizabeth Kay ($22,500 and $3,500 respectively), and Named Plaintiffs David Kinney and John Perez ($2,500 each), related to their representation of the Settlement Class. *Id.* Pursuant to the Court's request, immediately following the filing, Lead Counsel caused Angeion to post the Fee and Expense Application along with all supporting declarations and exhibits on the settlement website. Supp. Manigault Decl., ¶ 8.

Following this extensive notice program, ***no*** Settlement Class Member has objected to the Settlement, the Plan of Allocation, or Lead Counsel's Fee and Expense Application. Moreover, only four requests for exclusion has been received. *See* Suppl. Manigault Decl., at ¶¶ 11-12.

Plaintiffs and Lead Counsel respectfully submit that the exceptionally positive response from the Settlement Class confirms the fairness, adequacy, and reasonableness of the Settlement. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (where 45 out of the 90,000 class members objected and only 500 requested exclusion, the reaction of the class weighed in favor of settlement approval); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *10-11 (N.D. Cal. Apr. 1, 2011) (finding the receipt of only 33 requests for exclusion and 16 objections relative to 62,594 notices "strongly supports approval of the settlement"); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members").

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

In the Preliminary Approval Order, the Court preliminarily approved the Plan of Allocation. Plaintiffs now request final approval of the Plan of Allocation. A plan of allocation in a class action "is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *Omnivision*, 559 F. Supp. 2d at 1045. "It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits." *Id.* An allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *See Heritage Bond*, 2005 WL 1594403, at *11.

The Plan of Allocation, as detailed in ¶¶ 73-75 of the Sadler Declaration, ¶¶ 4-13 of the Marek Declaration, and set forth in the Notice (Ex. 1-E (Notice ¶¶ 53-71)), is based on the generally accepted concept that the losses of shareholders are reflected in the difference between estimated artificial inflation per share present on the date of purchase and estimated artificial inflation per share present following a corrective

disclosure or date of sale. Specifically, the Plan of Allocation reflects, and is based on, Plaintiffs' allegation that the price of Capstone common stock was artificially inflated during the Settlement Class Period due to Defendants' alleged materially false and misleading statements and omissions. The Plan of Allocation is based on the premise that decreases in Capstone's stock price following the alleged corrective disclosures that occurred on August 7, 2014, June 15, 2015, October 1, 2015, and November 5, 2015 may be used to measure the alleged artificial inflation in the price of Capstone common stock prior to these disclosures. *See* Marek Decl., ¶ 5; Notice ¶ 56. Specifically, Mr. Marek used his loss causation analysis and event study to determine the appropriate artificial inflation per share. *See* Marek Decl., ¶¶ 4-13. An individual Claimant's recovery under the Plan of Allocation will depend on a number of factors, including how many shares of Capstone common stock the Claimant purchased, acquired, or sold during the Settlement Class Period, when that Claimant bought, acquired, or sold the shares, and the number of valid claims filed by other Claimants.

Plaintiffs and Lead Counsel believe that the proposed Plan of Allocation will result in a fair and equitable distribution of the Net Settlement Fund among Settlement Class Members attributable to the conduct alleged in the AC. ¶ 76. Moreover, no objections to the Plan of Allocation have been filed on this Court's docket. Supp. Manigault Decl., ¶ 12. The lack of objections from Settlement Class Members also supports approval of the Plan of Allocation. *See Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *4 (S.D. Cal. Dec. 6, 2018) (concluding that the proposed plan of allocation was fair and reasonable after it was described in detail in the notice and no class member objected); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 2019 WL 2077847, at *3 (N.D. Cal. May 10, 2019) (one objection and 16 opt outs was small and "supports that the settlement and plan of allocation are fair, reasonable, and adequate").

For these reasons, Plaintiffs respectfully request that the Court approve the proposed Plan of Allocation.

V. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

The Court's Preliminary Approval Order certified the Settlement Class for Settlement purposes only pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. Dkt. No. 122 at ¶¶ 1-3. Nothing has changed to alter the propriety of the Court's decision and, for all the reasons stated in Plaintiffs' preliminary approval brief (Dkt. No. 117), Plaintiffs respectfully request that the Court affirm its determinations certifying the Settlement Class.

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

For any class certified under Rule 23(b)(3), due process and Rule 23 require that class members be given "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). As detailed *supra* in Section III.E, the combination of a mailed postcard directing class to a more detailed online notice provided all the necessary information required by Rule 23(c)(2)(B) and satisfies the requirements of the PSLRA, 15 U.S.C. § 78u-4(a)(7). This Court has already found that the proposed notice program is adequate and sufficient. *See* Preliminary Approval Order at ¶¶ 7-8. Lead Counsel and Angeion carried out the notice program as proposed. In sum, the notice program detailed in ¶¶ 65-72 of the Sadler Declaration, the Manigault Declaration at ¶¶ 4-10, and the Supp. Manigault Declaration at ¶¶ 3-7, fairly apprised Settlement Class Members of their rights with respect to the Settlement, and is the best notice practicable under the circumstances.

VII. THE UNIVERSAL POSITIVE REACTION OF THE SETTLEMENT CLASS SUPPORTS THE FEE AND EXPENSE APPLICATION

As discussed in the previously submitted Fee and Expense Application, Lead Counsel is applying for a percentage of the common fund fee award to compensate them for the services they have rendered on behalf of the Settlement Class. The

proposed attorneys' fees of 26.2% of the Settlement Fund is reasonable in light of the work performed and the results obtained. Importantly, as the deadline to submit an objection has passed, not a single Settlement Class Member objected to the proposed attorneys' fees and reimbursement of Litigation Expenses, including the request that Plaintiffs be reimbursed for the costs incurred as a direct result of their representation of the Settlement Class (*see* Supp. Manigault Decl. ¶ 12). This universal support for the Fee and Expense Application, which was made available to all Settlement Class Members through the placement of the application, including all related filings, declaration and exhibits, on the Settlement Website, further supports a finding that the request is fair and reasonable. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) ("The reaction of the class may also be a determining factor in [] determining the fee award"); *Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *5 (C.D. Cal. Oct. 24, 2017) (finding that receipt of only two objections to fee request, after mailing 210,000 notices, was "remarkably small given the wide dissemination of notice," which justified the fee award of one-third of the settlement fund); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10, *21 (C.D. Cal. June 10, 2005) (lack of objections to fee request and only one opt-out for a settlement with notice being disseminated to thousands of potential class members supported an award of one-third of the settlement fund).

VIII. CONCLUSION

Based on the foregoing, and for the additional reasons set forth in the Fee and Expense Application, Plaintiffs and their counsel respectfully request that the Court: (1) approve the Settlement and Plan of Allocation as fair, reasonable, adequate, and in the best interest of the Settlement Class; (2) award attorneys' fees to Lead Counsel in the amount of 26.2% of the Settlement Fund, together with expenses in the amount of $78,084.47; and (3) grant awards in accordance with the PSLRA for costs and expenses incurred by Lead Plaintiffs Randall and Elizabeth Kay, and Named Plaintiffs David Kinney and John Perez, related to their representation of the Settlement Class.

DATED: October 25, 2019

GLANCY PRONGAY & MURRAY LLP

By: */s/ Casey E. Sadler*

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On October 25, 2019, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 25, 2019, at Los Angeles, California.

s/ Casey E. Sadler
Casey E. Sadler