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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18 **WESTERN DIVISION**

19 STEAMFITTERS LOCAL 449 PENSION  
20 PLAN, Individually and on Behalf of All  
Others Similarly Situated,

21 Plaintiff,

22 vs.

23 MOLINA HEALTHCARE, INC., J.  
24 MARIO MOLINA, JOHN C. MOLINA,  
TERRY P. BAYER, and RICK HOPFER,

25 Defendants.  
26

Case No. 2:18-cv-03579 AB (JCx)

CLASS ACTION

**LEAD PLAINTIFF'S  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF ITS MOTION FOR  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
PLAN OF ALLOCATION**

Date: October 22, 2020

Time: 10:00 a.m.

Court: 7B (Hon. André Birotte Jr.)

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Lead Plaintiff Steamfitters Local 449 Pension Plan (“Steamfitters” or “Lead Plaintiff”), by its counsel Labaton Sucharow LLP (“Lead Counsel”), respectfully submits this memorandum of points and authorities in support of its motion, pursuant to Federal Rule of Civil Procedure 23(e), requesting: (i) final approval of the proposed Settlement of this class action (the “Action”); (ii) approval of the proposed plan of allocation for the proceeds of the Settlement (the “Plan of Allocation”); and (iii) final certification of the Settlement Class.<sup>1</sup>

**PRELIMINARY STATEMENT**

As detailed in the Settlement Agreement, previously filed with the Court (ECF No. 72), Lead Plaintiff and Molina Healthcare, Inc. (“Molina” or the “Company”), J. Mario Molina, John C. Molina, Terry P. Bayer, and Rick Hopfer (collectively, “Defendants”) have agreed to a settlement of the claims in this securities class action, and the release of all Released Claims, in exchange for a payment of \$7,500,000 in cash. This recovery is a favorable result for the Settlement Class and avoids the substantial risks and expenses of continued litigation, including the risk of recovering less than the Settlement Amount, or nothing at all.

The Settlement was reached only after Lead Plaintiff and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the claims brought pursuant to the Securities and Exchange Act of 1934. As discussed below and more fully described in the Declaration of Christine M. Fox in Support of (I) Lead Plaintiff’s 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

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<sup>1</sup> All capitalized terms used herein are defined in the Stipulation and Agreement of Settlement, dated May 5, 2020 (the “Settlement Agreement”) and have the same meanings as set forth therein. ECF No. 72.



1 Payment of Expenses (the “Fox Declaration” or “Fox Decl.”), filed herewith,<sup>2</sup> by  
2 the time the Settlement was agreed to, Lead Counsel had conducted a wide-  
3 ranging investigation, opposed Defendants’ motion to dismiss, briefed an appeal  
4 of the Court’s dismissal of the Complaint, reviewed documents produced pursuant  
5 to the mediation process, and consulted with economic and industry experts. *See*  
6 *generally* Fox Decl. at §III.

7 The Settlement is also the product of extensive arm’s-length negotiations  
8 between the Parties, which included an in-person mediation session under the  
9 auspices of a respected mediator, Michelle Yoshida, Esq. of Phillips ADR. While  
10 the Parties did not agree to resolve the Action at the mediation, they subsequently  
11 continued discussions and the Parties agreed, in principle, to a settlement, subject  
12 to the negotiation of a mutually acceptable long form stipulation of settlement.  
13 ¶¶37-40.

14 The Settlement is a favorable result in light of the risks of continued  
15 litigation. While Lead Plaintiff and Lead Counsel believe that the claims asserted  
16 against Defendants are strong, they recognize that there were substantial barriers  
17 to a greater recovery, especially in light of Lead Plaintiff’s appeal of the Court’s  
18 order granting Defendants’ motion to dismiss the Complaint (“MTD Order”)  
19 before the Ninth Circuit Court of Appeals (“Ninth Circuit”). Even if the Ninth  
20 Circuit had reversed the District Court’s dismissal, Lead Plaintiff faced years of  
21 continued litigation with no guarantee of success. In light of the recovery for the  
22 \_\_\_\_\_

23 <sup>2</sup> The Fox Declaration is an integral part of this submission and, for the sake of  
24 brevity in this memorandum, the Court is respectfully referred to it for a detailed  
25 description of, *inter alia*: the history of the Action; the nature of the claims  
26 asserted; the negotiations leading to the Settlement; and the risks and uncertainties  
27 of continued litigation, among other things. Citations to “¶” in this memorandum  
28 refer to paragraphs in the Fox Declaration.

29 All exhibits herein are annexed to the Fox Declaration. For clarity, citations to  
30 exhibits that themselves have attached exhibits will be referenced as “Ex. \_\_\_ -  
31 \_\_\_.” The first numerical reference is to the designation of the entire exhibit  
32 attached to the Fox Declaration and the second reference is to the exhibit  
33 designation within the exhibit itself.

1 Settlement Class and the risks of continued litigation, as discussed further below  
2 and in the Fox Declaration, Lead Plaintiff respectfully submits that the Settlement  
3 is fair, reasonable, and adequate, and warrants final approval by the Court. *See*  
4 Declaration on Behalf of Steamfitters Local 449 Pension Plan. Ex. 1 at 2.

5 Additionally, Lead Plaintiff requests that the Court approve the proposed  
6 Plan of Allocation, which was set forth in the Notice sent to Settlement Class  
7 Members. The Plan of Allocation, which was developed by Lead Counsel in  
8 consultation with Lead Plaintiff's consulting damages expert, provides a  
9 reasonable and equitable method for allocating the Net Settlement Fund among  
10 Settlement Class Members who submit valid claims. The Plan of Allocation is  
11 fair and reasonable, and should likewise be approved.

#### 12 **PRELIMINARY APPROVAL AND THE NOTICE PROGRAM**

13 On June 18, 2020, the Court entered an order preliminarily approving the  
14 Settlement and approving the proposed forms and methods of providing notice to  
15 the Settlement Class (the "Preliminary Approval Order", ECF No. 86). Pursuant  
16 to and in compliance with the Preliminary Approval Order, through records  
17 maintained by Molina's transfer agent and information provided by brokerage  
18 firms and other nominees, beginning on July 6, 2020, the Court-appointed Claims  
19 Administrator Angeion Group ("Angeion"), caused, among other things, the  
20 Notice and Claim Form (together, the "Notice Packet") to be mailed by first-class  
21 mail to potential Settlement Class Members. *See* Declaration of Charlie Ferrara  
22 Regarding: (A) Mailing of Notice; (B) Publication of Summary Notice; and (C)  
23 Report on Requests for Exclusions and Objections, dated September 15, 2020.  
24 Ex. 2 at ¶¶4-8. A total of 65,800 Notice Packets have been mailed as of  
25 September 11, 2020. *Id.* at ¶8. On July 20, 2020, the Summary Notice was  
26 published in *Investor's Business Daily* and was disseminated over the internet  
27 using *PR Newswire*. *Id.* at ¶9 and Exhibits B and C attached thereto. The Notice  
28 and Claim Form were also posted, for review and easy downloading, on the

1 website established by Angeion for purposes of this Settlement, as well as  
2 Labaton Sucharow's website. *Id.* at ¶10.

3 The Notice described, *inter alia*, the claims asserted in the Action, the  
4 contentions of the Parties, the course of the litigation, the terms of the Settlement,  
5 the maximum amounts that would be sought in attorneys' fees and expenses, the  
6 Plan of Allocation, the right to object to the Settlement, and the right to seek to be  
7 excluded from the Settlement Class. *See generally* Ex. 2-A. The Notice also gave  
8 the deadlines for objecting, seeking exclusion, submitting claims, and advised  
9 potential Settlement Class Members of the scheduled Settlement Hearing before  
10 this Court. *Id.* To date, the Settlement Class's reaction to the proposed  
11 Settlement has been positive. While the deadline (October 1, 2020) for requesting  
12 exclusion or objecting to the Settlement has not yet passed, to date there have  
13 been no requests for exclusion, no objections to the proposed Settlement, and no  
14 objections to the Plan of Allocation.<sup>3</sup>

## 15 ARGUMENT

### 16 I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND 17 ADEQUATE AND SHOULD BE APPROVED

#### 18 A. Standards for Final Approval of the Settlement

19 The Ninth Circuit has recognized that there is a "strong judicial policy that  
20 favors settlements, particularly where complex class action litigation is  
21 concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).<sup>4</sup> It  
22 is well established in the Ninth Circuit that "voluntary conciliation and settlement  
23 are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv.*  
24 *Comm'r*, 688 F.2d 615, 625 (9th Cir. 1982). Settlements of complex cases, such  
25 as this one, greatly contribute to the efficient utilization of scarce judicial

---

26 <sup>3</sup> Should any objections or requests for exclusion be received, Lead Plaintiff  
27 will address them in its reply papers, which are due to be filed with the Court on  
28 October 15, 2020.

<sup>4</sup> All internal quotations and citations are omitted unless otherwise stated.

1 resources and achieve the speedy resolution of claims. *See, e.g., Garner v. State*  
2 *Farm Mut. Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at \*10  
3 (N.D. Cal. Apr. 22, 2010) (“Settlement avoids the complexity, delay, risk and  
4 expense of continuing with the litigation and will produce a prompt, certain and  
5 substantial recovery for the Plaintiff class.”).

6 Federal Rule of Civil Procedure 23(e) requires court approval of any class  
7 action settlement. The standard for determining whether to grant final approval to  
8 a class action settlement is whether the proposed settlement is “fair, reasonable,  
9 and adequate.” Fed. R. Civ. P. 23(e)(2). Under the Federal Rules, a court reviews  
10 a settlement using four main factors. *Id.*<sup>5</sup> They are whether:

11 (A) class representatives and counsel have adequately  
12 represented the class;

13 (B) the proposal was negotiated at arm’s length;

14 (C) the relief provided for the class is adequate, taking into  
15 account:

16 (i) the costs, risks, and delay of trial and appeal;

17 (ii) the effectiveness of any proposed method of  
18 distributing relief, including the method of processing class-  
19 member claims;

20 (iii) the terms of any proposed award of attorney’s fees,  
21 including timing of payment; and

22 (iv) an agreement required to be identified under Rule  
23 23(e)(3); and  
24

25  
26 <sup>5</sup> Fed. R. Civ. P. 23(e)(2) is intended to “direct[] the parties to present the  
27 settlement to the court in terms of a shorter list of core concerns, by focusing on  
28 the primary procedural considerations and substantive qualities that should always  
matter to the decision whether to approve the proposal.” Fed. R. Civ. P. 23  
Committee Notes on Rules – 2018 Amendment at Subdivision (e)(2).

1 (D) the proposal treats class members equitably relative to  
2 each other.

3 These standards largely overlap with the pre-amendment factors considered within  
4 the Ninth Circuit: (1) the strength of the plaintiffs' case; (2) the risk, expense,  
5 complexity, and likely duration of further litigation; (3) the risk of maintaining  
6 class action status throughout the trial; (4) the amount offered in settlement; (5)  
7 the extent of discovery completed and the stage of the proceedings; (6) the  
8 experience and views of counsel; (7) the presence of a governmental participant;  
9 and (8) the reaction of the class members of the proposed settlement. *See*  
10 *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004).  
11 *Accord, Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012); *Hanlon v.*  
12 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also In re Volkswagen*  
13 *"Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672  
14 CRB (JSC), 2019 WL 2077847, at \*1 (N.D. Cal. May 10, 2019) (approving  
15 settlement after considering both the "Rule 23(e)(2) factors, which became  
16 effective on December 1, 2018, and the factors identified in" Ninth Circuit case  
17 law). "[T]o the extent possible the Court would apply the factors listed in Rule  
18 23(e)(2) through the lens of the Ninth Circuit's factors and existing relevant  
19 precedent." *Jiangchen v. Rentech, Inc.*, No. CV 17-1490-GW(FFMX), 2019 WL  
20 5173771, at \*4 (C.D. Cal. Oct. 10, 2019).

21 For the reasons discussed herein and in the Fox Declaration, the proposed  
22 Settlement meets the criteria for final approval.

23 **B. Lead Plaintiff and Lead Counsel Have Adequately Represented**  
24 **the Class and the Settlement was Negotiated at Arm's-Length**

25 In determining whether to approve a class action settlement, the Court  
26 should consider "whether the class representatives and class counsel have  
27 adequately represented the class" (Fed. R. Civ. P. 23(e)(2)(A)) and "whether the  
28 proposal was negotiated at arm's length (Fed. R. Civ. P. 23(2)(B)). "These

1 considerations overlap with certain Hanlon factors, such as the non-collusive  
2 nature of negotiations, the extent of discovery completed, and the stage of  
3 proceedings.” *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF,  
4 2019 WL 3290770, at \*7 (N.D. Cal. July 22, 2019) (citing *Hanlon*, 150 F.3d at  
5 1026).

6 **1. Lead Plaintiff and Lead Counsel Have Adequately**  
7 **Represented the Settlement Class**

8 Lead Plaintiff Steamfitters is a sophisticated institutional investor and has  
9 substantial experience with securities class actions. Lead Plaintiff has been  
10 involved throughout the litigation and supports approval of the Settlement. *See*  
11 *Ex. 1.*

12 Throughout the Action, Lead Plaintiff also benefited from the advice of  
13 knowledgeable counsel well-versed in shareholder class action litigation and  
14 securities fraud cases. Labaton Sucharow LLP is among the most experienced  
15 and skilled firms in the securities litigation field, and has a long and successful  
16 track record in such cases. *See Ex. 3-C.* Lead Counsel has served as lead counsel  
17 in a number of high profile and influential cases. *Id.*

18 Lead Counsel has vigorously litigated the Action since its inception. Lead  
19 Counsel, among other things: (i) conducted a thorough investigation that included  
20 the review of publicly available information, as well as non-public information  
21 regarding the Company provided to Lead Counsel by former employees of  
22 Molina, and interviews with more than 40 potential witnesses; (ii) prepared and  
23 filed a detailed Amended Class Action Complaint (the “Complaint”);  
24 (iii) researched and drafted an opposition to Defendants’ motion to dismiss;  
25 (iv) briefed an appeal before the Ninth Circuit after the Court granted  
26 Defendants’ motion to dismiss the Complaint; (v) reviewed several thousand  
27 pages of core documents produced by Defendants in advance of the mediation;  
28 and (vi) worked closely with experts knowledgeable about damages and causation

1 issues and healthcare industry information technology (IT) systems. *See generally*  
2 Fox Decl. at §§III-V.

3       Accordingly, prior to, and over the course of the litigation, Lead Counsel  
4 explored the strengths and weaknesses of the claims and defenses and developed a  
5 deep understanding of the merits of the claims. Lead Plaintiff and Lead Counsel  
6 had a firm understanding of the likelihood of success and the potential for  
7 recovery at trial at the time the Settlement was entered into. *See, e.g., Eisen v.*  
8 *Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at  
9 \*4 (C.D. Cal. Jan. 30, 2014) (approving settlement where record established that  
10 “all counsel had ample information and opportunity to assess the strengths and  
11 weaknesses of their claims and defenses”); *Redwen v. Sino Clean Energy, Inc.*,  
12 No. 11-3936, 2013 WL 12303367, at \*7 (C.D. Cal. July 9, 2013) (settlement  
13 approved when, as here, “the parties have spent a significant amount of time  
14 considering the issues and facts in this case and are in a position to determine  
15 whether settlement is a viable alternative”); *Destefano v. Zynga Inc.*, No. 12-  
16 04007-JSC, 2016 WL 537946, at \*12 (N.D. Cal. Feb. 11, 2016) (noting that the  
17 extent of discovery completed and stage of proceedings supports final approval of  
18 settlement where plaintiffs engaged in a pre-filing investigation, opposed  
19 defendants’ motions to dismiss and a motion for reconsideration, worked with  
20 consultants, propounded and responded to some discovery, and prepared and  
21 participated in mediation session).

22       After this process, Lead Counsel and Lead Plaintiff concluded that the  
23 proposed Settlement was fair and reasonable. As the Ninth Circuit observed in  
24 *Rodriguez v. West Publishing Corporation*, Lead Counsel’s informed opinion  
25 supports approval as “[t]his circuit has long deferred to the private consensual  
26 decision of the parties” and their counsel in settling an action. *Rodriguez*, 563  
27 F.3d 948, 965 (9th Cir. 2009); *see also Nat’l Rural Telecomm. Coop. v. DirectTV,*  
28 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“[g]reat weight’ is accorded to the

1 recommendation of counsel, who are most closely acquainted with the facts of the  
2 underlying litigation.”); *In re NVIDIA Corp. Derivative Litig.*, No. 06-cv-06110-  
3 SBA (JCS), 2008 WL 5382544, at \*4 (N.D. Cal. Dec. 22, 2008) (“[S]ignificant  
4 weight should be attributed to counsel’s belief that settlement is in the best interest  
5 of those affected by the settlement.”). Accordingly, it respectfully submitted that  
6 Lead Plaintiff and Lead Counsel have adequately represented the Settlement  
7 Class.

## 8                   **2. The Settlement Was Negotiated at Arm’s-Length**

9           Courts have long recognized that there is an initial presumption that a  
10 proposed settlement is fair and reasonable when it is the product of arms-length  
11 negotiations. *See Roberti v. OSI Sys., Inc.*, No. CV1309174MWFMRW, 2015  
12 WL 8329916, at \*3 (C.D. Cal. Dec. 8, 2015) (“The arms-length nature of the  
13 negotiation resulting in the proposed Settlement supports final approval.”); *In re*  
14 *Netflix Privacy Litig.*, No. 5:11cv-00379, 2013 WL 1120801, at \*4 (N.D. Cal.  
15 Mar. 18, 2013) (“Courts have afforded a presumption of fairness and  
16 reasonableness of a settlement agreement where that agreement was the product of  
17 non-collusive, arms’ length negotiations conducted by capable and experienced  
18 counsel”); *cf Jiangchen*, 2019 WL 5173771 at \*6 (finding that the settlement was  
19 the product of “serious, informed, non-collusive negotiations performed at arms-  
20 length” where it involved a mediator and vigorousness litigation).

21           Here, Lead Plaintiff and Lead Counsel agreed to settle after rigorous  
22 litigation efforts and through a mediation process overseen by a highly regarded  
23 and experienced mediator, Michelle Yoshida, Esq. of Phillips ADR. ¶¶37-40.  
24 The mediation, held Corona in del Mar, California on February 27, 2020, involved  
25 an extended effort to settle the claims and was preceded by the exchange of  
26 mediation statements and Molina’s production to Lead Plaintiff of thousands of  
27 pages of nonpublic documents concerning the allegations of the Complaint. *Id.*  
28 While these discussions narrowed the differences between Lead Plaintiff and



1 Defendants, the Parties did not reach a settlement on that day. *Id.* Thereafter, on  
2 March 5, 2020, following continued arm’s-length negotiations facilitated and  
3 supervised by Ms. Yoshida, the Parties reached an agreement-in-principle to settle  
4 the Action. *Id.* It is respectfully submitted that this factor supports approval of  
5 the Settlement.

6 **C. The Relief Provided by the Settlement Is Adequate in Light of**  
7 **Risks of Further Litigation**

8 In determining whether a class-action settlement is “fair, reasonable, and  
9 adequate,” the Court must also consider whether “the relief provided for the class  
10 is adequate, taking into account . . . the costs, risks, and delay of trial and appeal,”  
11 as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This factor under  
12 Rule 23(e)(2)(C) essentially encompasses four of the seven factors of the  
13 traditional 9th Circuit analysis: (1) the amount offered in settlement; (2) the risk,  
14 expense, complexity, and likely duration of further litigation; (3) the risk of  
15 maintaining class-action status throughout the trial; and (4) the strength of  
16 plaintiffs’ case. *See Hanlon*, 150 F.3d at 1026.

17 Here, the \$7.5 million Settlement Amount presents a favorable recovery for  
18 the Settlement Class. As noted in the Fox Declaration, Lead Plaintiff’s damages  
19 expert has estimated that if liability were established with respect to all of the  
20 claims, including in connection with the three alleged corrective disclosures, the  
21 most reasonable estimate of aggregate damages likely recoverable at trial was  
22 \$177.5 million to \$220.8 million, taking into account the exclusion of gains on  
23 pre-Class Period purchases and the “parsing out” or disaggregation of the impact  
24 of non-fraud related information from the alleged stock price declines in reaction  
25 to certain of the corrective disclosures. (Without disaggregation, damages  
26 excluding pre-Class Period gains are approximately \$257 million.). ¶66.  
27 Accordingly, the Settlement recovers between 3% and 4.2% of aggregate damages  
28 likely recoverable at trial. *Id.*

1 Courts regularly approve settlements that recover a similar percentage of  
2 damages. *See, e.g., IBEW v. Int’l Game Tech.*, No. No. 3:09–cv–00419–MMD–  
3 WGC, 2012 WL 5199742, at \*3 (D. Nev. Oct. 19, 2012) (approving \$12.5 million  
4 settlement representing “about 3.5% of the maximum damages that Plaintiffs  
5 believe[d] could be recovered at trial” and finding it “within the median recovery  
6 in securities class actions settled in the last few years”); *Schuler v. Medicines Co.*,  
7 2016 WL 3457218, at \*8 (D.N.J. June 24, 2016) (approving \$4,250,000 settlement  
8 that reflected approximately 4.0% of estimated recoverable damages and noting  
9 percentage “falls squarely within the range of previous settlement approvals”).

10 Notably, although Lead Plaintiff believes that the case against Defendants is  
11 strong, that confidence must be tempered by the fact that the Settlement is certain  
12 and that every case involves significant risk of no recovery, particularly in a  
13 complex case such as this one, which was dismissed with prejudice by the Court.

#### 14 **1. Risks of Prevailing on the Appeal**

15 After the Court dismissed this case in December 2018 in response to  
16 Defendants’ motion to dismiss the Complaint, Lead Plaintiff appealed the decision  
17 to the Ninth Circuit. The appeal was fully briefed. Although the Parties agreed to  
18 settle the Action before the Ninth Circuit heard oral argument, had the Action not  
19 settled, the Ninth Circuit could certainly have affirmed the decision of the District  
20 Court. As discussed in the Fox Declaration, Lead Plaintiff faced the significant  
21 risk that the Ninth Circuit would agree with the reasoning in the MTD Order and  
22 affirm the decision dismissing the Action. ¶54.

23 Even if the case was successfully restored as result of the appeal,  
24 Defendants would have continued to challenge (i) the material falsity of each  
25 alleged misstatement and omission alleged in the Complaint; and (ii) whether  
26 Defendants acted with the requisite scienter. ¶¶56-63.

1                   **2. Risks in Proving Falsity**

2           Even if the Ninth Circuit had reversed the MTD Order and remanded the  
3 case, Defendants would likely continue to press challenges to Lead Plaintiff’s  
4 ability to establish falsity, both at the summary judgment stage and at trial.  
5 Defendants would continue to argue that the alleged false statements regarding the  
6 “scalability” of Molina’s infrastructure were protected under the Private Securities  
7 Litigation Reform Act’s (“PSLRA’s”) safe harbor. ¶57. Molina would also likely  
8 continue to assert that statements about the Company’s ability to increase the scale  
9 of its IT infrastructure were more akin to forward-looking projections than  
10 statements of current fact. *Id.* Defendants would likely point to disclosures in  
11 Molina’s public filings and argue that the Company sufficiently warned about the  
12 risks and uncertainties associated with both its expansion into the ACA  
13 Marketplaces and its IT systems’ ability to keep pace with growth. ¶58.  
14 Defendants would undoubtedly maintain that they had adequately warned the  
15 market about these future risks, and the risks simply materialized later in time,  
16 which Defendants could not have predicted. *Id.*

17                   **3. Risks in Proving Scienter**

18           Assuming that Lead Plaintiff prevailed in its appeal, Lead Plaintiff would  
19 still need to prove that Defendants made the alleged false statements with the  
20 intent to mislead investors or with deliberate recklessness. As courts have  
21 recognized, defendant’s state of mind in a securities case “is the most difficult  
22 element of proof and one that is rarely supported by direct evidence.” *See In re*  
23 *Amgen Inc. Sec. Litig.*, No. 07cv-2536, 2016 WL 10571773, at \*3 (C.D. Cal. Oct.  
24 25, 2016); *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172  
25 (S.D. Cal. 2007) (noting that scienter is a “complex and difficult [element] to  
26 establish at trial”). In this regard, Defendants would have continued to attack the  
27 information provided by the five confidential witnesses, and other witnesses and  
28

1 evidence obtained by Lead Plaintiff. Defendants would likely argue that Lead  
2 Plaintiff could not establish that the Molina brothers' knew of the alleged fraud,  
3 despite the fact that they made a majority of the allegedly false statements.  
4 Further, Defendants would likely continue to argue that Lead Plaintiff could only  
5 show that Defendants had access to information, rather than what they knew at the  
6 time they made the allegedly false statements. ¶61. Moreover, with respect to the  
7 alleged core operations doctrine, Defendants would likely seek to narrow Lead  
8 Plaintiff's theory of the case and assert that there is no reason why the leaders of  
9 the Company would know about the relative "minutiae" of QNXT. ¶62.

#### 10 **4. Risks in Proving Loss Causation and Damages**

11 Another principal challenge in continuing the litigation is the difficulty of  
12 proving loss causation and damages, which would have been hotly contested by  
13 Defendants, particularly at class certification and summary judgment, and would  
14 continue to be challenged in *Daubert* motions, at trial, in post-trial proceedings  
15 and appeals. To succeed at trial "a plaintiff [must] prove that the defendant's  
16 misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's  
17 economic loss." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

18 Indeed, as discussed above, Lead Plaintiff's damages expert has estimated  
19 that if liability were established with respect to all of the claims, including for the  
20 three alleged corrective disclosures, the most reasonable estimate of aggregate  
21 damages recoverable at trial was \$177.5 million to \$220.8 million, taking into  
22 account the exclusion of pre-Class Period gains and disaggregation on certain of  
23 the corrective disclosures. Without disaggregation, damages (also excluding pre-  
24 Class Period gains) were estimated to be approximately \$257 million. ¶66.

25 Defendants would have continued to argue that the stock declines on all  
26 three corrective disclosure dates were not attributable to disclosures related to  
27 Molina's administrative infrastructure, but were rather the result of  
28 announcements about the Company's poor financial performance and strategic

1 information unconnected to problems with the Company’s IT infrastructure. ¶64.  
2 Defendants would assert that disaggregating information related to the alleged  
3 fraud from the price declines would necessarily show no damages resulting from  
4 Lead Plaintiff’s theory of the case. ¶65. If these arguments prevailed at class  
5 certification, summary judgment, or trial, the Settlement Class could have  
6 recovered significantly less or, indeed, nothing.

7       There was also substantial uncertainty surrounding Lead Plaintiff’s expert’s  
8 ability to isolate the proportion of the stock price declines on the disclosure dates  
9 attributable specifically to the alleged fraud. Lead Plaintiff was faced with the  
10 difficult task of separating out the impact of statements about the Company’s  
11 administrative infrastructure from purely financial disclosures on the dates at  
12 issue. *Id.* Because of these challenges, Lead Plaintiff’s proposed damages  
13 methodology would have come under sustained attack by Defendants, and issues  
14 relating to damages would likely have come down to an unpredictable and hotly  
15 disputed “battle of the experts.” As Courts have long recognized, the uncertainty  
16 as to which side’s expert’s view might be credited by the jury presents a  
17 substantial litigation risk in securities actions. *See, e.g., Nguyen v. Radiant*  
18 *Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at \*2  
19 (C.D. Cal. May 6, 2014) (approving settlement in securities case where “[p]roving  
20 and calculating damages required a complex analysis, requiring the jury to parse  
21 divergent positions of expert witnesses in a complex area of the law” and “[t]he  
22 outcome of that analysis is inherently difficult to predict and risky”); *In re Celera*  
23 *Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 WL 7351449, at \*6 (N.D. Cal.  
24 Nov. 20, 2015) (finding that risks related to the “battle of experts” weighed in  
25 favor of settlement approval).

26       Final approval is also supported by the complexity, expense, and likely  
27 duration of continued litigation. *See Torrasi v. Tucson Elec. Power Co.*, 8 F.3d  
28 1370, 1376 (9th Cir. 199) (“the cost, complexity and time of fully litigating the

1 case all suggest that this settlement was fair”). All the above-noted risks aside,  
2 fact and expert discovery would have been protracted. Defendants would likely  
3 have sought summary judgment with respect to several elements of Lead  
4 Plaintiff’s claims and there was no guarantee that the proposed class would prevail  
5 in Defendants’ continuous challenges and, even if they did, how the Court’s  
6 rulings would affect damages or how the case would be presented to a jury. A  
7 trial of Lead Plaintiff’s claims would inevitably be long and complex, and even a  
8 favorable verdict would undoubtedly spur a lengthy post-trial and appellate  
9 process. *See, e.g., Torrissi*, 8 F.3d at 1376 (“the cost, complexity and time of fully  
10 litigating the case all suggest that this settlement was fair”). “Generally, unless  
11 the settlement is clearly inadequate, its acceptance and approval are preferable to  
12 lengthy and expensive litigation with uncertain results.” *In re LinkedIn User*  
13 *Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015). The Settlement provides  
14 the Settlement Class with a prompt and substantial tangible recovery, without the  
15 considerable risk, expense, and delay of litigating to completion.

### 16 **5. The Effective Process for Distributing Relief**

17 The proceeds of the Settlement will be distributed with the assistance of an  
18 experienced claims administrator. The Claims Administrator will employ a well-  
19 established protocol for the processing of claims in a securities class action.  
20 Potential class members will submit, either by mail or online using the Settlement  
21 website, the Court-approved Claim Form. Based on the trade information  
22 provided by claimants, the Claims Administrator will determine each claimant’s  
23 eligibility to participate and calculate their respective “Recognized Claims” based  
24 on the Court-approved Plan of Allocation. Lead Plaintiff’s claims will be  
25 reviewed in the same manner. Claimants will be notified of any defects or  
26 conditions of ineligibility and be given the chance to contest rejection. Any claim  
27 disputes that cannot be resolved will be presented to the Court for a determination.  
28

1 After the Settlement reaches its Effective Date (Stipulation at ¶38) and the  
2 passing of all applicable deadlines, Authorized Claimants will be issued checks.  
3 After an initial distribution of the Net Settlement Fund, if there is any balance  
4 remaining (whether by reason of tax refunds, uncashed checks or otherwise) after  
5 at least six (6) months from the date of initial distribution of the Net Settlement  
6 Fund, the Claims Administrator will, if feasible and economical after payment of  
7 Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if  
8 any, redistribute the balance among Authorized Claimants who have cashed their  
9 checks in an equitable and economic fashion. Once it is no longer feasible or  
10 economical to make further distributions, any balance that still remains in the Net  
11 Settlement Fund after re-distribution(s) and after payment of outstanding Notice  
12 and Administration Expenses, Taxes, and attorneys' fees and expenses, if any,  
13 will be contributed to a non-sectarian, not-for-profit charitable organization  
14 serving the public interest designated by Lead Plaintiff and approved by the Court.  
15 *See* Stipulation at ¶26; Ex. 2-A at ¶80.

16 **6. The Anticipated Attorney's Fees and Expenses Are**  
17 **Reasonable**

18 As set forth in the accompanying motion, Lead Counsel is requesting  
19 attorneys' fees of 25% of the Settlement Fund and litigation expenses of  
20 \$108,880.71. A fee request of 25% is the "benchmark" within the Ninth Circuit  
21 and is consistent with numerous settlements approved in the Ninth Circuit. *See,*  
22 *e.g., Torrisi*, 8 F.3d at 1376-77 (reaffirming 25% benchmark); *Powers v. Eichen*,  
23 229 F.3d 1249, 1256 (9th Cir. 2000) (same); *see also Zynga*, 2016 WL 537946, at  
24 \* ("In common fund cases in the Ninth Circuit, the 'benchmark' percentage award  
25 is 25 percent of the recovery obtained, with 20 to 30 percent as the usual range.")  
26 (citing *Vizcaino*, 290 F.3d at 1047). The Settlement is not contingent upon any  
27 particular award to Lead Counsel, which is within the discretion of the Court.  
28

1                   **7. The Relief Provided in the Settlement Is Adequate Taking**  
2                   **Into Account all Agreements Related to the Settlement**

3                   The relief provided to the Settlement Class is also adequate under Rule  
4 23(e)(2)(C)(iv) given that all the agreements under Rule 23(e)(3) treat the  
5 Settlement Class fairly.

6                   Here, on May 5, 2020, the Parties formally memorialized the Settlement in  
7 the Settlement Agreement. Also as of May 5, 2020, they entered into a  
8 confidential Supplemental Agreement Regarding Requests for Exclusion  
9 (“Supplemental Agreement”). The Supplemental Agreement sets forth the  
10 conditions under which Defendants have the discretion to terminate the Settlement  
11 if requests for exclusion from the Settlement Class exceed a certain agreed-upon  
12 threshold. As is standard in securities settlements, the Supplemental Agreement  
13 has been kept confidential in order to avoid incentivizing the formation of a group  
14 of opt-outs for the sole purpose of leveraging a larger individual settlement.  
15 Pursuant to its terms, the Supplemental Agreement may be submitted to the Court  
16 *in camera* or under seal.

17                   The Settlement Agreement and Supplemental Agreement are the only  
18 agreements concerning the Settlement entered into by the Parties. The Settlement  
19 does not contain a reversion to Defendants, the Settlement is not “claims-made,”  
20 and the Settlement is not contingent on any particular fee award to Lead Counsel.  
21 All the agreements treat the Settlement Class fairly and support a finding that the  
22 relief provided by the Settlement is adequate.

23                   **D. Settlement Class Members Are Treated Equitably Relative to**  
24                   **One Another and the Proposed Plan of Allocation Should Be**  
25                   **Approved**

26                   The Plan of Allocation, drafted with the assistance of Lead Plaintiff’s  
27 damages expert, is a fair, reasonable, and adequate method for allocating the  
28 proceeds of the Settlement among eligible claimants and treats all Settlement  
Class Members equitably, as required by Rule 23(e)(2)(D). Each Authorized



1 Claimant, including Lead Plaintiff, will receive a distribution pursuant to the Plan,  
2 and Lead Plaintiff will be subject to the same formula for distribution of the  
3 Settlement as other class members. *See Ciuffitelli v. Deloitte & Touche LLP*, No.  
4 16CV00580, 2019 WL 1441634, at \*18 (D. Or. Mar. 19, 2019) (“[t]he Proposed  
5 Settlement does not provide preferential treatment to Plaintiffs or segments of the  
6 class” where “the proposed Plan of Allocation compensates all Class Members  
7 and Class Representatives equally in that they will receive a pro rata distribution  
8 based [sic] of the Settlement Fund based on their net losses”).

9 The standard for approval of a plan of allocation in a class action under  
10 Rule 23 of the Federal Rules of Civil Procedure is the same as the standard  
11 applicable to the settlement as a whole – the plan must be fair, reasonable, and  
12 adequate. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992);  
13 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008). An  
14 allocation formula need only have a reasonable basis, particularly if recommended  
15 by experienced class counsel. *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005  
16 WL 1594403, at \*11 (C.D. Cal. June 10, 2005). “[A] plan of allocation . . . fairly  
17 treats class members by awarding a pro rata share to every Authorized Claimant,  
18 even as it sensibly makes interclass distinctions based upon, inter alia, the relative  
19 strengths and weaknesses of class members’ individual claims and the timing of  
20 purchases of the securities at issue.” *Redwen*, 2013 WL 12303367, at \*8.

21 Here, Lead Plaintiff’s consulting damages expert prepared the Plan of  
22 Allocation after careful consideration of Lead Plaintiff’s theories of liability and  
23 damages under the Exchange Act. The Plan provides for distribution of the Net  
24 Settlement Fund among Authorized Claimants on a *pro rata* basis based on  
25 “Recognized Claim” formulas tied to liability and damages. These formulas  
26 consider the amount of alleged artificial inflation in the prices of Molina publicly  
27 traded common stock, as quantified by the consulting damages expert.

28

1 Individual claimants' recoveries will depend upon when during the Class  
2 Period they bought Molina publicly traded common stock and whether and when  
3 they sold their securities. Authorized Claimants will recover their proportional  
4 "pro rata" amount of the Net Settlement Fund based on their Recognized Loss,  
5 calculated under the Plan of Allocation using the transactional information  
6 provided by claimants in their claim forms. As a result, the Plan of Allocation  
7 will result in a fair distribution of the available proceeds among Settlement Class  
8 Members who submit valid claims. The Plan of Allocation was fully described in  
9 the Notice and, to date, there has been no objection to the proposed plan. *See Ex.*  
10 *2-A* at 12-16.

11 **E. Reaction of the Settlement Class to Date**

12 As described above, pursuant to this Court's Preliminary Approval Order,  
13 65,800 copies of the Notice and Claim Form were mailed to potential Settlement  
14 Class Members who could be identified with reasonable effort. *See Ex. 2* at ¶¶4-  
15 8. The Summary Notice was published in *Investor's Business Daily* and  
16 transmitted over the internet using *PRNewswire* on July 20, 2020. *Id.* at ¶9.  
17 Additionally, the Settlement Agreement, Notice, Claim Form, and Preliminary  
18 Approval Order were posted to the website dedicated to the Settlement (*id.* at  
19 ¶10), as well as Lead Counsel's website.

20 The Notice advised the Settlement Class of, among other things, the terms  
21 of the Settlement, the Plan of Allocation, and the maximum amount of Lead  
22 Counsel's request for an award of attorneys' fees and expenses, as well as the  
23 procedures and deadlines for filing objections and requesting exclusion from the  
24 Settlement Class. *See generally Ex. 2-A.*

25 The Ninth Circuit has held that notice must be "reasonably calculated,  
26 under all the circumstances, to apprise interested parties of the pendency of the  
27 action and afford them an opportunity to present their objections." *Mendoza v.*  
28 *Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351 (9th Cir. 1980). The Ninth Circuit

1 has also ruled that the objection deadline should fall after motions in support of  
2 approval and attorneys' fees and expenses have been filed. *See, e.g., In re*  
3 *Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010) (requiring that  
4 fee motion be made available to the class before the deadline for objecting to the  
5 fee). Lead Plaintiff respectfully submits that the notice program utilized here  
6 readily meets these standards.

7 While the objection/exclusion deadline – October 1, 2020 – has not yet  
8 passed, to date, no objections and no exclusion requests have been received. ¶51;  
9 Ex. 2 at ¶13. The reaction to date supports approval of the Settlement and the  
10 proposed Plan of Allocation. Lead Plaintiff will address objections and requests  
11 for exclusion, if any, in its reply submission.

12 **II. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT**  
13 **CLASS**

14 The Court previously granted preliminary certification to the Settlement  
15 Class under Rules 23(a) and (b)(3). *See* ECF No. 86 at 3-4. Because nothing has  
16 occurred since then to cast doubt on the propriety of class certification for  
17 settlement purposes, and no objections to certification have been received to date,  
18 the Court should grant final class certification.

19 **CONCLUSION**

20 For all the foregoing reasons, Lead Plaintiff respectfully requests that the  
21 Court: (i) grant final approval of the Settlement; (ii) finally certify the Settlement  
22 Class, for settlement purposes only; and (iii) approve the proposed Plan of  
23 Allocation as fair, reasonable, and adequate. Proposed orders will be submitted  
24 with Lead Plaintiff's reply submissions, after the deadlines for objecting and  
25 seeking exclusion have passed.

26 Dated: September 17, 2020

Respectfully submitted,

LABATON SUCHAROW LLP

By: /s/ Christine M. Fox

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2020, I authorized the electronic filing of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing by e-mail to all counsel registered to receive such notice.

/s/ Christine M. Fox  
Christine M. Fox