UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV15-03080 JAK (JEMx)	Date	September 30, 2016
Title	Nickolas Van Wingerden et al. v. Cadiz, Inc., et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE PLAINTIFFS' MOTION FOR PRELIMINARY CLASS ACTION SETTLEMENT APPROVAL (DKT. 71)**

I. Introduction

On April 24, 2015, Nickolas Van Wingerden[1] and Brian Kovar ("Lead Plaintiffs") brought this action (the "Action") on behalf of a putative class of purchasers of Cadiz securities ("Class Members") against Cadiz Inc., Scott S. Slater, Timothy J. Shaheen, and Keith Brackpool ("Defendants"). Dkt. 1. The claims arise from alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Dkt. 46 ¶¶ 119-36. Specifically, the Second Amended Complaint ("SAC") alleges that "Defendants knowingly and/or recklessly issued false and misleading statements regarding the company's Cadiz Valley Water Conservation, Recovery and Storage Project (the 'Project') and failed to disclose material information regarding communications between Defendants and the U.S. Department of Interior's Bureau of Land Management relating to the Project." Dkt. 72 at 3; Dkt. 46 ¶¶ 119-36.

On December 2, 2015, Defendants brought a Motion to Dismiss the SAC. Dkt. 54. Plaintiffs opposed this motion and submitted a related Motion to Strike certain exhibits included in the declaration accompanying the Motion to Dismiss. Dkt. 55-57. Defendants opposed the Motion to Strike. Dkt. 59. The Court held a hearing on both motions and took the matters under submission. Dkt. 63, 65.

On April 26, 2016, while those matters were still pending, the parties engaged in a full-day mediation session with David Geronemus, a private mediator. Dkt. 72 at 2. Although the parties did not reach a settlement that day, they "continued to negotiate over the ensuing days and Geronemus continued his efforts to help the [p]arties reach a settlement." *Id.* Ultimately, the parties reached a settlement (the "Settlement") when Geronemus made a proposal to the parties on April 29, 2016, which they accepted. *Id.*

On May 6, 2016, the parties filed a notice of settlement ("Settlement Agreement"). Dkt. 68. On June 16, 2016, Plaintiffs filed a Motion for Preliminary Approval of the Settlement Agreement ("Motion"). Dkt.

[1] Wingerden is also referred to as "Windgerden."

71-73. The Court considered the matters raised with respect to the Motion, concluded that, pursuant to Fed. R. Civ. P. 78 and Local Rule 7-15, the matters could be decided without oral argument, and took the Motion under submission. Dkt. 75. Thereafter, on July 11, 2016, the Court requested supplemental briefing and an excel spreadsheet summarizing the attorney's fees sought by Plaintiffs pursuant to Exhibit H of the Court's Standing Orders. Dkt. 76. On July 14, 2016, Plaintiffs filed supplemental briefing with respect to the requested additional information. Dkt. 77.

For the reasons set forth in this Order, the Motion is **GRANTED**; provided, however, a ruling on the proposed service fees to the named plaintiffs is **DEFERRED** until the presentation of a motion for final approval.

II. Terms of the Proposed Settlement

A. General Definitions in the Settlement Agreement

"Settlement Class" means:

> [A]ll Persons (including, without limitation, their beneficiaries) who purchased the common stock of Cadiz between March 11, 2014 and October 9, 2015, inclusive, ("Class Period") and did not sell all of such common stock prior to April 21, 2015. Excluded from the Settlement Class are (i) persons who suffered no compensable losses, *e.g.*, those who bought Cadiz common stock during the Class Period but sold prior to any alleged corrective disclosure; (ii) Opt-Outs; and (iii) Defendants and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such.

Dkt. 73 Ex. 1 ¶ 1.28. There are thousands of Class Members in the Settlement Class. Dkt. 72 at 15-16.

"Authorized Claimant" means any Settlement Class Member "who is a Claimant and whose claim for recovery has been allowed pursuant to the terms of this Stipulation, the exhibits hereto, and any order of the Court." Dkt. 73 Ex. 1 ¶ 1.3.

"Claimant" means any Settlement Class Member who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe." *Id.* ¶ 1.4.

"Claims Administrator" means "Strategic Claims Services, which shall administer the Settlement." *Id.* ¶ 1.6.

"Plaintiffs' Counsel" means The Rosen Law Firm, P.A. ("Rosen Law Firm") and Glancy Prongay & Murray LLP ("Glancy Law Firm"). *Id.* ¶ 1.19.

B. Release of Claims

The Settlement Agreement applies to:

> any and all Claims, including Unknown Claims, that have been, could have been, or in the future can or might be asserted in any federal, state or foreign court, tribunal, forum or proceeding by on or [sic] behalf of any of the Releasing Parties against any one or more of the Released Parties, whether any such Released Parties were named, served with process, or appeared in the Action, which directly or indirectly arise out of or relate to (i) the subject matter of the Action or any of the claims asserted in the Action, (ii) the purchase or sale of Cadiz common stock by any of the Releasing Parties during the Class Period, and/or (iii) any claims in connection with, based upon, arising out of, or relating to the Settlement (but excluding any claims to enforce the terms of the Settlement).

Id. ¶ 1.23.

C. Settlement Payments

Defendant agrees to pay Authorized Claimants $3 million plus interest, *id.* ¶¶ 1.27, 2.1, which will be transferred to an escrow account within 10 business days of the Preliminary Approval Order (the "Order"). *Id.* ¶ 2.1. The funds placed in the escrow account and the interest earned on those funds are referred to as the Settlement Fund. *Id.* The Settlement Fund includes any amount attributable to: (1) taxes and tax expenses; (2) administrative costs; (3) attorney's fees and expenses; and (4) service awards to Lead Plaintiffs. *Id.* ¶ 7.2. The Net Settlement Fund is the amount actually payable to the Authorized Claimants after subtracting these expenses. *Id.* The Net Settlement Fund is to be allocated to the Authorized Claimants pursuant to the Recognized Claim formula set forth below, assuming that there are sufficient funds in the Net Settlement Fund to make these payments:

(A) For shares purchased between March 11, 2014 and April 20, 2015, inclusive, and sold prior to April 21, 2015, the Recognized Claim will be zero.

(B) For shares purchased during the Class Period and sold during the period April 21, 2015 to October 8, 2015, inclusive, the Recognized Claim per share will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table A below) less the inflation per share upon sale (as set forth in Inflation Table A below); or (2) the purchase price per share minus the sales price per share.

(C) For shares purchased during the Class Period and sold during the period October 9, 2015 to January 6, 2016, inclusive, the Recognized Claim will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table A below); or (2) the difference between the purchase price per share and the average closing stock price as of date of sale provided in Table B below.

(D) For shares purchased during the Class Period and retained as of the close of trading on January 6, 2016, the Recognized Claim will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table A below); or (2) the

purchase price per share minus $3.77 per share.[2]
Dkt. 73 Ex. A-1 at 7-8.

Plaintiffs included the following tables in the briefing in support of the Motion. Table A shows the inflation per share upon purchase and Table B the purchase price per share and the average closing stock price as of the date of sale. *Id.* at 7-10.

TABLE A

Purchase or Sale Date Range	Artificial Inflation
March 11, 2014 to April 20, 2015, inclusive	$5.61 per share
April 21, 2015 to October 4, 2015, inclusive	$4.89 per share
October 5, 2015	$1.90 per share
October 6, 2015	$1.49 per share
October 7, 2015	$1.00 per share
October 8, 2015	$.58 per share
October 9, 2015	$.00 per share

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[2] Plaintiffs refer to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, which provides:

> [I]n any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated.

Dkt. 73 Ex. A-1 at 8 n.2 (quoting Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4). "$3.77 per share was the mean (average) daily closing trading price of Cadiz common stock during the 90-day period beginning on October 9, 2015 and ending on January 6, 2016." *Id.*

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TABLE B

Date of Sale	Closing Price	Average Closing Price	Date	Closing Price	Average Closing Price
10/9/2015	$3.01	$3.01	11/20/2015	$3.20	$3.30
10/12/2015	$2.87	$2.94	11/23/2015	$3.20	$3.30
10/13/2015	$2.92	$2.93	11/24/2015	$3.50	$3.31
10/14/2015	$3.23	$3.01	11/25/2015	$3.65	$3.32
10/15/2015	$3.23	$3.05	11/27/2015	$3.61	$3.32
10/16/2015	$3.47	$3.12	11/30/2015	$3.73	$3.34
10/19/2015	$3.78	$3.22	12/1/2015	$3.79	$3.35
10/20/2015	$3.56	$3.26	12/2/2015	$4.02	$3.37
10/21/2015	$3.46	$3.28	12/3/2015	$4.25	$3.39
10/22/2015	$3.94	$3.35	12/4/2015	$4.25	$3.41
10/23/2015	$3.60	$3.37	12/7/2015	$4.14	$3.43
10/26/2015	$3.54	$3.38	12/8/2015	$4.11	$3.44
10/27/2015	$3.33	$3.38	12/9/2015	$4.09	$3.46
10/28/2015	$3.35	$3.38	12/10/2015	$4.30	$3.48
10/29/2015	$3.30	$3.37	12/11/2015	$4.20	$3.49
10/30/2015	$3.42	$3.38	12/14/2015	$4.43	$3.51
11/2/2015	$3.52	$3.38	12/15/2015	$4.20	$3.53
11/3/2015	$3.54	$3.39	12/16/2015	$4.21	$3.54
11/4/2015	$3.59	$3.40	12/17/2015	$4.04	$3.55
11/5/2015	$3.48	$3.41	12/18/2015	$3.82	$3.56
11/6/2015	$3.32	$3.40	12/21/2015	$3.82	$3.56
11/9/2015	$3.07	$3.39	12/22/2015	$3.85	$3.57
11/10/2015	$3.05	$3.37	12/23/2015	$4.19	$3.58
11/11/2015	$3.18	$3.37	12/24/2015	$4.24	$3.59
11/12/2015	$2.98	$3.35	12/28/2015	$4.21	$3.60
11/13/2015	$3.06	$3.34	12/29/2015	$4.17	$3.61
11/16/2015	$3.03	$3.33	12/30/2015	$5.30	$3.64
11/17/2015	$3.09	$3.32	12/31/2015	$5.26	$3.67
11/18/2015	$3.16	$3.31	1/4/2016	$5.76	$3.71
11/20/2015	$3.20	$3.31	1/5/2016	$5.69	$3.74
11/23/2015	$3.20	$3.31	1/6/2016	$5.66	$3.77
11/19/2015	$3.13	$3.31			

Id. at 8-10.

If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Claim bears to the total Recognized Claims of all Authorized Claimants (*i.e.*, "*pro rata* share").

Id. at 7. "No distribution will be made on a claim where the potential distribution amount is less than ten dollars ($10.00) in cash." *Id.*

"The Settlement represents an average recovery of $0.17 per share" before fees and expenses are deducted for the "17.7 million shares outstanding during the Class Period" or an average recovery of $0.12 per share after such fees and expenses are deducted *Id.* at 1-2.

D. Notice

Within 14 days of receipt of the Order, Defendant is required to provide Lead Counsel or the Claims Administrator "transfer records in electronic searchable form, such as Excel, containing the names and addresses of Persons who purchased or otherwise acquired Cadiz common stock during the Class Period." Dkt. 73 Ex. 1 ¶ 5.2.

The Claims Administrator will mail the Notice of Pendency and Proposed Settlement of Class Action ("Notice") and the Proof of Claim and Release ("Proof of Claim") to all Class Members who, with reasonable effort, can be identified within 28 days of the Order by first class mail, postage prepaid. Dkt. 73 Ex. A ¶ 10. The Claims Administrator shall also provide notice of the Settlement to "nominee owners such as brokerage firms and other persons or entities who purchased Cadiz common stock during the Class Period." *Id.* ¶ 13. The nominee purchasers are to forward the Notice and Proof of Claim to their beneficial owners or to provide the contact information of the beneficial owners to the Claims Administrator, who will then send them the Notice and Proof of Claim. *Id.*

Within ten days of entry of this Order, the Claims Administrator shall publish the Summary Notice of Pendency and Proposed Settlement of Class Action ("Summary Notice") once electronically on *GlobeNeswire* and once in print in *Investor's Business Daily*. *Id.* ¶ 15. The Summary Notice explains how Class Members who did not receive the Notice can receive it and briefly describes the nature of the Settlement. Dkt. 73 Ex. A-2 at 1-2.

The Claims Administrator will determine the amount of the Net Settlement Fund payable to each Authorized Claimant based upon the Authorized Claimant's Recognized Claim. Dkt. 73 Ex. A-1 at 6.

E. Responses to Class Notice

To qualify to recover from the Net Settlement Fund, Class Members must respond to the Notice with a Proof of Claim within 75 days from the date of the Order. Dkt. 73 Ex. A ¶ 17. Proof of Claims are "deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first-class mail) provided such Proof of Claim is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement Fund." *Id.* If the Proof of Claim is submitted in any other manner, it shall be "deemed to have been submitted when it was actually received" by the Claims Administrator. *Id.* If a class member submits a deficient Proof of Claim, the Claims Administrator will send a deficiency or rejection letter and provide the class member at least 7 days to cure the deficiency "if it . . . appear[s] that such deficiency may be cured." *Id.*

A Class Member who wishes to opt out of the Settlement Class must make that request. "A Class Member wishing to make such request shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is postmarked no later than thirty (30) calendar days prior to the Final Settlement Hearing." *Id.* ¶ 19. The Court will only consider objections served and received at least 20 days prior to the Final Settlement Hearing. *Id.* ¶ 21.

All Class Members will be deemed to have received notice of the Settlement after the Notice is mailed and the Summary Notice is published. "No Class Member will be relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Class Member failed to receive actual or adequate notice." *Id.* ¶ 16.

F. Service Awards, Attorney's Fees and Litigation Costs

The Settlement Agreement provides that Plaintiffs' Counsel will file a motion seeking an award of attorney's fees in an amount not to exceed the greater of 25% of the Settlement Fund or $750,000, and costs not to exceed $100,000. Dkt. 73 Ex. A-1 at 1-2. Plaintiffs' Counsel stated that prior to filing their supplemental briefing in connection with the matters addressed in this Order, they had worked 869.02 hours on this case. They also stated that they expect to work an additional 75 hours assuming there is preliminary approval. Dkt. 77 at 1-2. Plaintiffs' Counsel presented an approximate lodestar calculation based on their hourly rates and the hours worked as $438,435.75. *Id.* Prior to filing their supplemental briefing, Plaintiffs' Counsel advanced $40,398.10 in unreimbursed expenses. They expect to incur an additional $2500 in such costs. *Id.* at 2-4. Plaintiffs' Counsel also intends to ask the Court to award Lead Plaintiffs, who collectively expended 20 hours on this matter, no more than $5000 total "for reimbursement of reasonable costs and expenses (including lost wages) directly relating to their representation of the Class." Dkt. 73 Ex. A-1 at 1-2; Dkt. 77 at 4.

III. Analysis

A. Class Certification

1. Legal Standard

The first step in a preliminary approval process is to determine whether a class can be certified. "[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis because certification is conditional: 'Conditional certification is not a means whereby the District Court can avoid deciding whether, at that time, the requirements of the Rule have been substantially met." *Arabian v. Sony Elecs., Inc*., 2007 WL 627977, at *2 n.3 (S.D. Cal. Feb. 22, 2007) (quoting *In re Hotel Tel. Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). "When, as here, the parties have entered into a settlement agreement before the district court certifies the class, reviewing courts must pay undiluted, even heightened, attention to class certification requirements." *Staton v. Boeing Co*., 327 F.3d 938, 952 (9th Cir. 2003) (internal quotation marks and citation omitted).

"The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes et al.*, 564 U.S. 338, 348 (2011) (internal

quotation marks and citation omitted). Under Fed. R. Civ. P. 23, a class "may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982); *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks and citation omitted). That "rigorous analysis" will "frequently" include "some overlap with the merits of the plaintiff's underlying claim." *Dukes*, 564 U.S. at 351. "Sometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim, and sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question." *Falcon*, 457 U.S. at 160.

The first step in establishing the propriety of class certification requires a showing that the proposed class meets each of the prerequisites of Rule 23(a). *Hanon*, 976 F.2d at 508. These are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a)(1)-(4). Further, "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350 (emphasis in original).

The adequacy requirement is met if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). A court must answer two questions in considering this issue: "(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 v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). There are no "fixed standards by which 'vigor' can be assayed[.]" *Id.* at 1021.

Upon determining that all four of these prerequisites have been met, the next issue is whether the proposed class meets the standards of Fed. R. Civ. P. 23(b). *See, e.g.*, *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Plaintiffs seek certification under Rule 23(b)(3). Dkt. 72 at 17-18. It requires that "questions of law or fact common to class members predominate over any questions affecting only individual members" and that class resolution is "superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

That the parties have reached a settlement is relevant to the class certification determination:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 619, 620 (internal citation omitted). "In the context of a request for settlement-only class certification, the protection of absentee class members takes on heightened importance." *Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir. 2016) (citing

Amchem, 521 U.S. at 620).

2. Application

a) Rule 23(a) Factors

(1) Numerosity

Fed. R. Civ. P. 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." "[I]mpracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (internal quotation marks omitted). Courts typically find this requirement to be satisfied where the proposed class contains at least 40 members. *In re China Intelligent Lighting & Elecs., Inc. Sec. Litig.*, 2013 WL 5789237, at *3 (C.D. Cal. Oct. 25, 2013) (citing cases).

Plaintiffs estimate that the Class has thousands of members. Dkt. 72 at 15-16. Plaintiffs made this determination by referring to "Caidz's quarterly report for the period ended [sic] June 30, 2015 filed on Form 10-Q with the SEC on August 6, 2015," which shows that "Cadiz had over 17.8 million shares of common stock outstanding as of August 4, 2015." *Id.* Plaintiffs also note that the "Class Members are located in numerous jurisdictions throughout the United States," *id.* at 16, which supports class certification. *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 608 (N.D. Cal. 2004), *amended in part*, No. C 02-5849 PJH, 2012 WL 3070863 (N.D. Cal. July 26, 2012) ("[T]he fact that a class is geographically dispersed, and that class members are difficult to identify, supports class certification."). For the foregoing reasons, the numerosity requirement is met.

(2) Commonality

Fed. R. Civ. P. 23(a)(2) provides that a class may be certified only if "there are questions of law or fact common to the class." Commonality requires a showing that "the class members have suffered the same injury" and "does not mean merely that they have all suffered a violation of the same provision of law." *Dukes*, 564 U.S. at 349-50 (internal quotation marks and citation omitted). The class claims must "depend upon a common contention" that is one that is "of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule." *Hanlon*, 150 F.3d at 1019. In assessing commonality, "even a single common question will do." *Dukes*, 564 U.S. at 359 (internal quotations marks, alterations, and citation omitted).

The SAC seeks relief based on common claims of alleged violations of Sections 10(b) and 20(a). Dkt. 46 ¶¶ 119-36. Plaintiffs argue persuasively that their allegations raise numerous common questions, including:

whether the provisions of the Exchange Act were violated by Defendants' acts as

> alleged in the Complaint; whether documents, including press releases, and public statements issued by Defendants to the investing public misrepresented material facts about the Company and its business; and whether the revelation of the truth about Defendants' alleged misrepresentations to the investing public resulted in a decline in the price of Cadiz common stock.

Dkt. 72 at 16; *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975) ("The overwhelming weight of authority holds that repeated misrepresentations of the sort alleged here satisfy the 'common question' requirement. Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable. . . ."); *Vinh Nguyen v. Radient Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) ("Plaintiffs correctly contend that their allegations raise common questions of law and fact that include: (1) whether Defendants violated the Securities and Exchange Act; (2) whether Defendants made statements to the investing public during the Class Period that misrepresented and/or omitted material facts about Radient; (3) whether misstatements and omissions were made with the required scienter; and (4) whether members of the Class sustained damages and the measure of those damages.").

For these reasons, the commonality requirement is satisfied.

(3) Typicality

Fed. R. Civ. P. 23(a)(3) requires that "the claims or defenses of the representative parties" be "typical of the claims or defenses of the class." This requirement is met if the "representative claims are 'typical,'" *i.e.*, "if they are reasonably co-extensive with those of absent class members[.]" *Hanlon*, 150 F.3d at 1020. Representative claims "need not be substantially identical." *Id.* Lead Plaintiffs argue that their claims are typical of those of the other Class Members for the following reasons:

> Like the other Settlement Class Members, Lead Plaintiffs purchased Cadiz securities during the Settlement Class Period, at a time when Defendants made the alleged misrepresentations. Lead Plaintiffs allege that Defendants' misrepresentations resulted in artificial inflation of the price of the Cadiz common stock that Lead Plaintiffs purchased and that, upon the revelation of the alleged misrepresentations, the value of the common stock purchased by Lead Plaintiffs declined. The other members of the Settlement Class were affected in the same ways.

Dkt. 72 at 16-17.

The typicality requirement is met.

(4) Adequacy of Lead Plaintiffs and Counsel

Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the

interests of the class." "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. "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011).

Service awards to class representatives do not, by themselves, create an impermissible conflict between class members and their representatives. However, they can undermine the adequacy of the class representatives and class counsel. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). Service awards can do so where the "settlement provide[s] for disproportionately large payments to class representatives" or where the service awards cause the class representatives to have different interests than the class members. *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163-64 (9th Cir. 2013) (citing *Staton,* 327 F.3d at 975-78; *Rodriguez v. W. Pub. Corp.* ("*Rodriguez I*"), 563 F.3d 948, 957-60 (9th Cir.2009); *Rodriguez v. Disner* ("*Rodriguez II*"), 688 F.3d 645, 651, 656-57 (9th Cir.2012)).

Lead Plaintiffs contend that they have retained experienced counsel, prosecuted the litigation, negotiated with Defendants, and obtained a favorable settlement. Dkt. 72 at 17. However, Lead Plaintiffs do not expressly address that the award each seeks would compensate each of them at the rate of $250 per hour for the 20 hours they have spent working on matters associated with this action. Dkt. 73 Ex. A-1 at 1-2. Although supplemental briefing was to have been filed addressing the amount of the proposed award and its justification (Dkt. 76), only the number of hours worked has been submitted. Dkt. 77. The proposed $5000 award does not provide a basis for denial of preliminary approval. However, in connection with any request for final approval, the matter will be revisited by the Court. Evidence must be submitted at that time to justify the proposed award. A failure to do so will result in a denial of all or part of the proposed award, with the funds reapplied under the terms of the Settlement Agreement.

Subject to the limitations set forth above, Plaintiffs have sufficiently established adequacy of representation for the purpose of preliminary approval.

(5) Predominance

Before certifying a class under Fed. R. Civ. P. 23(b)(3), a court must find that "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Windsor*, 521 U.S. at 623. This inquiry "begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011).

As discussed above, there are numerous common questions pertaining to the underlying elements of the Rule 10 and 20 violations. They include scienter, misrepresentations and causation. These questions predominate over those affecting only individual members of the Class. The issue "whether documents . . . issued by Defendants to the investing public misrepresented material facts about the Company and its business; . . . whether the revelation of the truth about Defendants' alleged misrepresentations to the

investing public resulted in a decline in the price of Cadiz common stock," and whether Defendants ultimately violated the Exchange Act, Dkt. 72 at 16, are common to all Class Members.

The only questions relating solely to individual members concern the amount of loss each suffered, and the amount each will recover under the Settlement. These individual questions do not predominate. Courts routinely have held that "[t]he amount of damages is invariably an individual question and does not defeat class action treatment." *Blackie,* 524 F.2d at 905; *accord Alba v. Papa John's USA, Inc.*, 2007 WL 953849, at *13 (C.D.Cal.2007) *(*quoting *Blackie*, 524 F.2d at 905) ("[I]t is well established that even where the amount of damages must be individually determined, that 'does not defeat class action treatment.'")*; Haley v. Medtronic, Inc.,* 169 F.R.D. 643, 651 (C.D.Cal.1996) ("As for the issue of damages, it seems clear that the fact that plaintiffs will be entitled to different damages does not mean that common questions do not predominate.")*.*

Plaintiffs have sufficiently established that the Settlement Class satisfies the predominance requirement.

(6) Superiority

The final requirement for class certification pursuant to Fed. R. Civ. P. 23(b)(3) is a showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Matters pertinent to this issue include "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

Here, the class action is superior to individual actions because the class members may otherwise not be incentivized to bring individual actions because of the amount of recovery they will receive. *Amchem Prods.*, 521 U.S. at 617 (internal quotation marks and citation omitted) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action . . . . A class action solves this problem . . . ."). Under the Settlement Agreement, calculating damages will be a straightforward arithmetic matter. Consequently, judicial economy will be served by class certification. The alternative would be a series of individualized trials for what would be small amounts of claimed damages. Further, there will be no difficulties in managing the class action because in requesting settlement, the parties are proposing "that there be no trial." *Id.* at 620.

3. Disposition

For the foregoing reasons, the Motion for provisional class certification is **GRANTED**.

B. Preliminary Settlement Approval

1. Legal Standard

Fed. R. Civ. P. 23(e) requires the use of a two-step process in considering whether to approve the

settlement of a class action. First, a preliminary determination must be made as to whether the proposed settlement "is fundamentally fair, adequate, and reasonable." *Acosta v. Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). At the preliminary stage, "the settlement need only be *potentially* fair." *Id.* In the second step of the process, which occurs after preliminary approval, notification to class members and the compilation of information as to any objections by class members, a separate determination is made as to whether final approval of the settlement should be granted. *Id.*

A court is to consider and evaluate several factors as part of its assessment of the appropriateness of a proposed settlement. The Ninth Circuit has identified the following non-exclusive factors that may be considered during both the preliminary and final approval processes:

1) the strength of the 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.

Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) (citation omitted).

Each of these factors does not necessarily apply to every class action settlement. Further, other factors may apply in evaluating a proposed settlement in a particular case. For example, courts often consider whether the settlement is the product of arm's length negotiations. *See Rodriguez I*, 563 F.3d at 965 ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.").

2. Application

a) Strength of the Case

Plaintiffs argue that although they and their counsel "fully believe in the merits of the Action, the very real risk remained that some or all of Plaintiffs' claims might not survive Defendants' motion to dismiss, likely opposition to class certification, or summary judgment attacks regarding, *inter alia*, falsity, scienter, loss causation, or damages." Dkt. 72 at 7-8. Further, in order to recover the maximum amount of damages, a jury, and perhaps the Court on an appropriate motion, would have to accept "*all* of the share price losses on each of the alleged drop dates – an issue that was hotly contested by the Defendants." *Id.* at 9. "Even if the Complaint survived Defendants' motion to dismiss and eventual motion for summary judgment, continued prosecution of the [A]ction would be complex, expensive, and lengthy, with a more favorable outcome highly uncertain." *Id.* at 8.

In light of the issues as to material false statements, scienter, loss causation, and damages, this factor favors preliminary approval.

b) Risk, Expense & Complexity

When the parties reached the Settlement, Defendant's Motion to Dismiss the FAC was still pending. As noted above, and as discussed by Plaintiffs, there was a "very real risk . . . that some or all of . . . Plaintiffs' claims might not survive [the] motion to dismiss." *Id.* at 7-8. The issues in the litigation are complex. Each side will save costs and time commitments through the Settlement. Each will also have the benefit of certainty as to the outcome. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) (Approving a class action settlement partially because "[t]he Court . . . recognize[d] that the issues of scienter and causation are complex and difficult to establish at trial.").

This factor favors preliminary approval.

c) Amount Offered in Settlement

The Settlement Agreement provides a total payment of $3 Million. Dkt. 72 at 8-9. Based on the calculations presented, the net amount available to the Class would be at least $2,145,000, less any taxes due on interest earned by the Settlement Fund and any approved expenses for class notice and claims administration. The net available recovery is approximately 71.5% of the total. Dkt. 73 Ex. A-1 at 5, 13-14. This is based on the following proposed payments from the $3 million: (1) $750,000 in attorney's fees; (2) $100,000 in litigation costs; and (3) a $5000 service award to Lead Plaintiffs. *Id.* at 13-14. Plaintiffs state that the net recovery will amount to an average of $0.17 per share before the deduction of these costs (Dkt. 72 at 17; Dkt. 73 Ex. A-1 at 1), or approximately $0.12 per share after their deduction. Dkt. 73 Ex. A-1 at 2.

According to Plaintiffs:

> [T]he recovery represents approximately 5.7% of the total maximum damages of $52.5 million that is potentially available in this Action under . . . Plaintiffs' best-case scenario, assuming that liability was ultimately proven and the Court and jury accepted Lead Plaintiff's [sic] damages theory, including proof of loss causation as to *all* of the share price losses on each of the alleged drop dates – an issue that was hotly contested by the Defendants.

Dkt. 72 at 9.

Plaintiffs argue that the gross amount of the Settlement is reasonable in light of "other securities class action settlements with similar total damage amounts." *Id.* In support of this position, Plaintiffs present excerpts from a National Economic Research Associates ("NERA") article showing that "the median ratio of settlements between 1996 and 2015 to investment losses was 4.5% for cases alleging investor losses of between $50 and $99 million" and that "the median ratio of settlements to investor losses in 2015 was 1.6%." *Id.* (citing Dkt. 73 Ex. 2). Other courts have looked at similar data to determine the reasonableness of settlements. *See In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 WL 9525643, at *12 (N.D. Cal. Mar. 31, 2010) (citing Laura E. Simmons & Ellen M. Ryan, *Securities Class Action Settlements, 2006 Review and Analysis* 6 (Cornerstone Research 2007); Stephanie Plancich, Brian Saxton & Svetlana Starykh, *Recent Trends in Shareholder Class Action: Filings Return to 2005 Levels as*

Subprime Cases Take Off; Average Settlements Hit New High 14 (NERA Economic Consulting 2007)); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *2 (N.D. Cal. Nov. 5, 2008) (same).

This factor weighs in favor of preliminary approval.

d) Extent of Discovery Completed and the Stage of the Proceedings

The parties entered the Settlement agreement more than one year after Plaintiffs filed their initial Complaint and after Defendants filed and Plaintiffs opposed a Motion to Dismiss the SAC. Dkt. 54-55, 58, 63. Plaintiffs and Plaintiffs' Counsel also "conducted a thorough investigation of the claims asserted in the Action." Dkt. 72 at 7. Furthermore,

> Plaintiffs' Counsel has, among other things, conducted a review of Cadiz's public filings with the SEC, press releases issued by the Company, media, analyst, and news reports about the Company, and other publicly available data, including trading data relating to the price and trading volume of Cadiz's publicly traded securities, as well as a review of regulatory documents obtained through Freedom of Information Act requests. In addition, Plaintiffs' Counsel retained damages consultants that provided advice and research on issues relevant to the litigation and settlement of the instant [A]ction. Plaintiffs' Counsel thus have carefully evaluated the merits of this case.

Id.

Based on the foregoing, this factor weighs in favor of preliminary approval of the Settlement.

e) Experience and Views of Counsel and Whether the Settlement is the Product of Arms-Length Negotiations

Plaintiffs argue that "counsel for both sides have extensive experience in securities class action litigation and are thoroughly familiar with the factual and legal issues involved." *Id.* Further, the Settlement "was reached only after meaningful arm's-length negotiations, which were facilitated by a respected mediator." *Id.*

In light of the foregoing, these factors weigh in favor of preliminary approval of the Settlement.

3. Disposition

A consideration of the foregoing factors demonstrate that the Settlement Agreement is sufficiently fair, reasonable and adequate to warrant preliminary approval.

C. Attorney's Fees

1. Legal Standard

Attorney's fees and costs "may be awarded in a certified class action where so authorized by law or the parties' agreement"; however, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *see also* Fed. R. Civ. P. 23(h). "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton*, 327 F.3d at 964.

A district court must "assure itself that the fees awarded in the agreement [are] not unreasonably high, so as to ensure that the class members' interests [are] not compromised in favor of those of class counsel" or class representatives. *Id.* Factors considered in examining the reasonableness of the fee include: (1) whether the results achieved were exceptional; (2) risks of litigation; (3) non-monetary benefits conferred by the litigation; (4) customary fees for similar cases; (5) the contingent nature of the fee and financial burden carried by counsel; and (6) the lawyers' "reasonable expectations, which are based on the circumstances of the case and the range of fee awards out of common funds of comparable size." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

In common fund cases, a district court has discretion to choose either "the percentage-of-fund or the lodestar method" to assess the reasonableness of requested attorney's fees. *Id.* at 1047. When the percentage-of-fund method is chosen, 25% of the total settlement amount is the "benchmark." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 273 (9th Cir. 1989). Any amount between 20-30% is within the "usual range." *Vizcaino*, 290 F.3d at 1047. That amount may be "adjusted upward or downward to account for any unusual circumstances involved in [the] case." *Paul*, 886 F.2d at 273. Although 25% is the "starting point," it may in some instances be a windfall, *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002), and for this reason, the selection of the benchmark or any other rate "must be supported by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048. If a court elects to employ a percentage-of-fund method, it may "cross-check" this amount by calculating the lodestar. *Id.* at 1050. "Thus, while the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award." *Id.*

"The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *In re Bluetooth Headset Products Liability Litigation,* 654 F.3d at 941. After the lodestar amount is determined, a trial court "may adjust the lodestar upward or downward using a 'multiplier' based on factors not subsumed in the initial calculation of the lodestar." *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir.2000). A court has discretion to "adjust the lodestar upward or downward using a multiplier that reflects a host of reasonableness factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Stetson v. Grissom*, 821 F.3d 1157, 1166-67 (9th Cir.

2016) (internal quotation marks and citation omitted).

2. Application

Plaintiffs' counsel seeks preliminary approval of an award of attorney's fees not to exceed $750,000 or 25% of the total settlement amount, reimbursement of no more than $100,000 in litigation expenses, and reimbursement for reasonable costs and expenses (including lost wages) to Lead Plaintiffs in an amount not to exceed $5000. Dkt. 73 Ex. A-1 at 1-2. The total of fees and costs is 28.5% of the total settlement amount.

a) Fees -- Percentage of the Fund Method

The proposed award of attorney's fees is no more than 25% of the total settlement amount. For the reasons stated above, this is in line with fee awards in common fund cases, which range typically between 20-30% of the total. *Vizcaino*, 290 F.3d at 1047; *Paul*, 886 F.2d at 273.

Plaintiffs argue that the amount is reasonable in this action because the matter was handled on a contingency basis and it is reasonable for counsel to expect compensation for their work from the amount paid in settlement. Dkt. 73 Ex. A-1 at 13. Plaintiffs discussed the complexity of the legal and factual issues presented, in connection with the general approval factors. This also affects an assessment of the reasonableness of the fee request. Dkt. 72 at 4-5, 7-8. Among other things, Plaintiffs pointed out that there was a "very real risk . . . that some or all of . . . Plaintiffs' claims might not survive Defendants' motion to dismiss, likely opposition to class certification, or summary judgment attacks regarding, *inter alia*, falsity, scienter, loss causation, or damages." *Id.* Plaintiffs also recognized the risks that would be presented by other potential motions in the action, including ones for summary judgment as "continued prosecution of the [A]ction would be complex, expensive, and lengthy, with a more favorable outcome highly uncertain." *Id.* at 8.

For these reasons, the first step in the analysis supports the reasonableness of the proposed fee award.

b) Fees -- Lodestar Method Cross-Check

In the supplemental briefing on attorney's fees and service awards, Plaintiffs' counsel stated that they had recorded $438,435.75 in time charges, excluding time spent on the supplemental briefing. Dkt. 77 at 2. Plaintiffs' counsel expects to perform approximately 75 additional hours of work "assuming preliminary approval is granted, in connection with, *inter alia*, administration of the [S]ettlement, communications with [C]lass [M]embers, preparing a motion for final approval of the [S]ettlement, attending a final approval hearing, and filing a motion for distribution," which "does not include hours that will be spent in preparing a fee and expense application." *Id.* at 1. Using the present rates, this means approximately $37,839 in

additional fees for the aforementioned 75 hours.[3] It is also reasonable to estimate that, Plaintiffs' counsel spent five hours on the supplemental briefing and will spend approximately five hours preparing its fee and expense application. Using these estimates, a reasonable overall estimate of the services provided under the Lodestar method is 954.02 hours, which results in $481,322.17 in fees. [4] The proposed fee award is approximately 1.56 times greater than this amount.

Plaintiffs provided charts from each law firm that show each billing attorney, his or her hourly rate, and the tasks and hours worked. Dkt. 77 at 2. The material portions of the charts are reproduced below:

(1) Requested Fees

(a) Rosen Law Firm

Professional (position)*	**Hourly Rate**	**Hours Worked**	**Lodestar**
Laurence M. Rosen (P)	$850	29.70	$25,245.00
Phillip Kim (P)	$675	58.16	$39,258.00
Jing Chen (A)	$525	1.70	$892.50
Yu Shi (A)	$500	0.25	$125.00
Kevin Chan (A)	$475	118.5	$56,287.50
Erica Stone (A)	$450	14.5	$6,525.00
Jing Jing Lin (PL)	$225	0.61	$137.25
Total		223.42	$128,470.25

* P= Partner, A= Associate, PL= Paralegal

(b) Glancy Law Firm

Professional (position)*	**Hourly Rate**	**Hours Worked**	**Lodestar**
Rob Prongay (P)	$695	76.3	$53,028.50
Kara Wolke (P)	$675	121.8	$82,215.00
Lesley Portnoy (A)	$600	28.8	$17,280.00
Elaine Chang (A)	$395	355.4	$140,383.00
Harry Kharadjian (PL)	$290	36.5	$10,585.00
Jack Ligman (RA)	$265	11.1	$2,941.50
Michaela Ligman (RA)	$225	15.7	$3,532.5
Total		645.6	$309,965.50

* P= Partner, A= Associate, PL= Paralegal, RA= Research Analyst

Id.

[3] This reflects an average of the hourly rates based on the 869.02 hours worked prior to the supplemental briefing and the $438,435.75 in attorney's fees incurred.
[4] This was based on the same analysis discussed in the preceding footnote.

The work associated with these time charges include: (1) pre-filing investigation and drafting the initial Complaint; (2) motion practice; (3) scheduling and attending discovery conferences, preparing a joint report, and attending the hearing; (4) investigating, researching, and drafting the First Amended Complaint; (5) investigating, researching, and drafting the SAC; (6) briefing the Motion to Dismiss and Motion to Strike and attending the related hearings; (7) negotiating a settlement and attending mediation; and (8) drafting settlement documents and the Motion.

(2) Hourly Rates

Plaintiffs' counsel offers very little evidence to support their hourly rates. It includes the following: (1) a declaration from Kara Wolke, stating that she is a partner at the Glancy firm (Dkt. 73); (2) the description of the position each attorney holds in his or her firm (Dkt. 77 at 2); and (3) a statement in the Motion that the firms have experience in this area of law (Dkt. 72 at 17).

Although the Court will require more information before assessing potential final approval of the Settlement, for the present analysis, and based on the Court's experience with hourly charges in this District, the hourly rates are reasonable for purposes of the Lodestar analysis.

(3) Hours Worked

Plaintiffs' counsel also submitted *in camera* spreadsheets that show time entries. They were presented in conformance with this Court's standing orders and pursuant to the Court's request for supplemental briefing. Although some of these entries raise facial issues, because such entries comprise a very small portion of the total hours worked, they are not material to the determination as to the reasonableness of the request for a fee award that is 25% of the amount of the Settlement. The following time entries raise facial issues:

- Elaine Chang states that she traveled to the courthouse for the Case Management Conference held on October 19, 2015. According to the corresponding Minute Order, Chang did not appear at that hearing. Dkt. 43.
- Kara Wolke states that she attended the Case Management Conference held on October 19, 2015. According to the corresponding Minute Order, Wolke did not appear at that hearing. Dkt. 43.
- On June 23, 2015, Harry Kharadjian reports 1.5 hours for waiting for an associate, Lesley Portnoy, to finish a document so that it could be finalized. This does not appear to be a proper time charge, i.e., time that one attorney spends waiting for another. If work is not performed, it does not appear that the time should be billed, particularly without a showing that there was no other work that could have been performed on this or another matter during the waiting period.

- Harry Kharadjian, on July 16, 2015, and twice on January 18, 2016, states that he is including overtime. There is no explanation as to why this time should be included.
- Rob Prognay states that he attended and observed the February 22, 2016 Motion to Dismiss hearing. According to the corresponding minute order, Prognay did not appear at that hearing. Dkt. 63. But, if he were present without entering an appearance, there is no facial justification to charge for these hours.

In total, the foregoing matters amount to approximately 20 hours. This is not an amount of time sufficiently material to affect the overall analysis of the reasonableness of the requested 25% fee award.

In light of the foregoing analysis, the multiplier of approximately 1.56 is reasonable to account for the risk Plaintiffs' Counsel assumed in working on a contingency basis as well as the complexity of the case. Therefore, for purposes of preliminary approval, the 25% benchmark is appropriate. *See*, e.g. *Vizcaino*, 290 F.3d at 1051 (approving a 3.65 multiplier on lodestar); *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d at 1010 (multiplier of 1.7); *In re Apollo Grp. Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2012 WL 1378677, at *1, 7 (D. Ariz. Apr. 20, 2012) (multiplier of 1.74 in class action settlement of claims that Defendants violated Section 10(b) of the Exchange Act and 10(b)(5) of the Securities and Exchange Commission); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) (stating that "[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation" and upholding a multiplier of 3.6).

b) Costs

Plaintiffs originally stated that they would seek reimbursement of no more than $100,000 in litigation expenses. Dkt. 73 Ex. A-1 at 13. In their supplemental briefing, Plaintiffs' Counsel stated that they incurred $40,398.10 in costs and expect to incur an additional $2,500 "for travel, transportation, lodging and meals associated with attending future hearings in this Action." Dkt. 77 at 3-4. Thus, Plaintiffs' Counsel expects to seek reimbursement of costs of $42,898.10. Plaintiffs provided charts from each law firm describing its litigation costs. They are produced below:

(1) Rosen Law Firm Unreimbursed Expenses From Inception to July 14, 2016

Expense Category	**Amount**
Expert and Investigator Fees	$1,612.50
Online Computer Legal Research and Hosting Fee	$268.20
Court filing, Court Reporter, Deposition and Transcript Fees:	$400.00
Mediation Fee	$3,387.50
Pro Hac Vice and Certificate of Good Standing Fees	$325.00
FedEx, Postage and Messenger Services	$91.71

Service of Process Fees	$742.35
Press releases and notice to class members	$1,761.70
Travel, Transportation, Hotels and Meals	$7,164.93
Photocopying, Scanning and Printing Documents	$370.50
TOTAL UNREIMBURSED EXPENSES (ROSEN)	**$16,124.39**
Anticipated Travel/Transportation/Hotels/Meals	$2,500.00
GRAND TOTAL EXPENSES (ROSEN)	**$18,624.39**

(2) Glancy Law Firm Unreimbursed Expenses From Inception to July 14, 2016

Expense Category	**Amount**
Experts (Damages)	$11,200.00
Investigator Fees	$1,612.50
Online Computer Legal Research	$3,320.73
Court filing, Court Reporter, Deposition and Transcript Fees:	$209.52
Mediation Fee	$3,492.75
Service of Process Fees	$80.78
Travel, Transportation, Hotels and Meals	$4,323.48
Telephone/Communications	$33.95
TOTAL UNREIMBURSED EXPENSES (GLANCY)	**$24,273.71**

The requested costs in the amount of $42,898.10 are appropriate and reasonable for purposes of preliminary approval.

c) Service Award

Lead Plaintiffs seek service awards whose combined total will not exceed $5000 for the 20 hours they collectively worked on this matter. Dkt. 73 Ex. A-1 at 1-2. Lead Plaintiffs are seeking "reimbursement of reasonable costs and expenses (including lost wages) directly relating to their representation of the Class." *Id.* As discussed above, Lead Plaintiffs have not identified the costs and expenses they have incurred or the amount of the wages that they claim to have lost or foregone due to their participation in this action. For these reasons, there is no basis to conclude that a payment of $250 per hour is appropriate. Therefore, as to this modest financial issue, a determination is deferred until any motion for final approval. At that time, detailed information to justify the requests shall be submitted. The Notice

shall state that this issue is deferred, and that any portion of the $5000 that is not approved shall be reallocated to the Net Settlement Fund for pro rata distribution to the class.

D. Proposed Notice Plan

Fed. R. Civ. P. 23(e) requires that a court "direct notice in a reasonable manner to all class members who would be bound by the proposal." The Court finds that the proposed Notice and Summary Notice satisfies the requirements of Fed. R. Civ. P. 23(e).

The proposed Notice explains the nature of the Action, the terms of the Settlement and how each Class member may object to, or participate in, the Settlement. The proposed Notice or Summary Notice will be distributed in three ways. First, the Notice will be mailed to all individuals identified by Defendants in their transfer records or who can be identified by the Claims Administrator with reasonable effort. Dkt. 73 Ex. A ¶¶ 10, 12. Second, the Notice will be distributed to "brokerage firms and other nominees who regularly act as nominees for beneficial purchasers of stock." Dkt. 72 at 10; Dkt. 73 Ex. A ¶ 13. Third, the Summary Notice will be published electronically once on *GlobeNewswire* and in print on a different day in the *Investor's Business Daily*. Dkt. 73 Ex. A ¶ 15. The proposed notice plan does not provide the Class Members additional time to opt-out, opt-in, or object if the Class Members did not receive notice through one of the three above methods. *Id.* ¶ 16.

The proposed Notice and the several methods of notifying the Class Members is sufficient given that the Summary Notice will also be published in two business-oriented publications that, according to Plaintiffs, are "well-known" and "widely circulated." Dkt. 72 at 10-11.

IV. Conclusion

The Motion is **GRANTED IN PART**. All matters other than the payment of the service fees are approved on a preliminary basis. In the interest of judicial, party and class efficiency, the issue of the service fees is most appropriately addressed on any motion for final approval of the Settlement Agreement.

The hearing on the motion for final approval of the class action settlement is set for February 6, 2017 at 8:30 a.m. Counsel shall confer and file a stipulation and proposed order by October 7, 2016, regarding the agreed upon date the motion will be filed and a proposed briefing schedule. The Court will be inclined to approve the stipulation so long as the briefing is complete by January 9, 2017.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer ak