

1 Robert V. Prongay (SBN 270796)
 2 Casey E. Sadler (SBN 274241)
3 GLANCY PRONGAY & MURRAY LLP
 4 1925 Century Park East, Suite 2100
 Los Angeles, California 90067
 Telephone: (310) 201-9150
 5 Facsimile: (310) 201-9160
 Email: rprongay@glancylaw.com
 6 Email: csadler@glancylaw.com

7
 8 *Counsel for Lead Plaintiff Michael G.*
Quinn and Lead Counsel for the Class
 9

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JEFFREY N. SCHNEIDER,
 13 Individually and On Behalf of All
 14 Others Similarly Situated,

15 Plaintiff,

16 v.

17 CHAMPIGNON BRANDS INC.,
 18 GARETH BIRDSALL, and
 19 MATTHEW FISH,

20 Defendants.
 21

Case No. 2:21-cv-03120-JVS-KES

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 LEAD PLAINTIFF’S UNOPPOSED
 MOTION FOR FINAL APPROVAL
 OF CLASS ACTION SETTLEMENT**

Date: February 27, 2023
 Time: 1:30 p.m.
 Crtm: 10C
 Judge: James V. Selna

22
 23
 24
 25
 26
 27
 28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. PRELIMINARY STATEMENT 1

II. STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e) AND HANLON 3

III. ARGUMENT 5

 A. The Settlement Is Fair, Reasonable, And Adequate In Light Of Rule 23(e)(2) And The Remaining *Hanlon* Factors 5

 1. Lead Plaintiff And Lead Counsel Adequately Represented The Settlement Class..... 5

 2. The Settlement Is The Result Of Arm’s-Length Negotiations..... 6

 3. The Relief Provided For The Settlement Class Is Adequate..... 7

 (a) The Cost, Risk, And Delay Of Trial And Appeal 8

 (b) The Settlement Amount..... 11

 4. Other Factors Established By Rule 23(e)(2)(C) Support Final Approval 11

 5. All Settlement Class Members Are Treated Equitably 13

 6. The Positive Reaction Of The Settlement Class Supports Settlement Approval 14

 7. The Remaining Ninth Circuit Factors Are Satisfied 14

 B. The Plan Of Allocation Is Fair And Reasonable 16

 C. The Settlement Class Should Be Finally Certified 18

 D. The Notice Program Satisfies Rule 23 And Due Process 18

 E. Lead Counsel’s Requested Fee Award And Reimbursement Of Litigation Expenses Should Be Finally Approved 19

IV. CONCLUSION 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Garner v. State Farm Mut. Auto. Ins. Co.,
2010 WL 1687832 (N.D. Cal. Apr. 22, 2010)..... 3

Glickenhous & Co. v. Household Int’l, Inc.,
787 F.3d 408 (7th Cir. 2015) 10

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998) 1, 5, 7, 8

Hefler v. Wells Fargo & Co.,
2018 WL 6619983 (N.D. Cal. Dec. 18, 2018) 4, 11

Ikuseghan v. Multicare Health Sys.,
2016 WL 3976569 (W.D. Wash. July 25, 2016)..... 7

In re Amgen Inc. Sec. Litig.,
2016 WL 10571773 (C.D. Cal. Oct. 25, 2016) 16

In re AOL Time Warner, Inc.,
2006 WL 903236 (S.D.N.Y. Apr. 6, 2006) 8

In re Apple Computer Sec. Litig.,
1991 WL 238298 (N.D. Cal. Sept. 6, 1991)..... 10

In re Extreme Networks, Inc. Sec. Litig.,
2019 WL 3290770 (N.D. Cal. July 22, 2019) 5

In re Heritage Bond Litig.,
2005 WL 1594403 (C.D. Cal. June 10, 2005)..... 18

In re LinkedIn User Privacy Litig.,
309 F.R.D. 573 (N.D. Cal. 2015) 8

In re Marsh & McLennan Co., Inc. Sec. Litig.,
2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009)..... 9

1 *In re Omnivision Techs., Inc.*,
 2 559 F. Supp. 2d 1036 (N.D. Cal. 2008).....9, 14, 16

3 *In re Syncor ERISA Litig.*,
 4 516 F.3d 1095 (9th Cir. 2008)3

5 *In re Vivendi Universal, S.A., Sec. Litig.*,
 6 2012 WL 362028 (S.D.N.Y. Feb. 6, 2012)8

7 *In re Wireless Facilities, Inc. Sec. Litig. II*,
 8 253 F.R.D. 607 (S.D. Cal. 2008) 10

9 *In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*,
 10 2016 WL 6248426 (N.D. Cal. Oct. 25, 2016) 14

11 *Int’l Bhd. Of Elec. Workers Local 697 Pension Fund v. Int’l Game Tech., Inc.*,
 12 2012 WL 5199742 (D. Nev. Oct. 19, 2012) 11

13 *Knapp v. Art.com, Inc.*,
 14 283 F. Supp. 3d 823 (N.D. Cal. 2017).....8

15 *Maley v. Del Global Tech. Corp.*,
 16 186 F. Supp. 2d 358 (S.D.N.Y. 2002) 16

17 *Mild v. PPG Indus., Inc.*,
 18 2019 WL 3345714 (C.D. Cal. July 25, 2019)5, 6

19 *Perks v. Activehours, Inc.*,
 20 2021 WL 1146038 (N.D. Cal. Mar. 25, 2021)5

21 *Robbins v. Koger Props., Inc.*,
 22 116 F.3d 1441 (11th Cir. 1997) 10

23 *Rodriguez v. W. Publ’g Corp.*,
 24 563 F.3d 948 (9th Cir. 2009) 7

25 *Schueneman v. Arena Pharmaceuticals, Inc.*,
 26 2020 WL 3129566 (S.D. Cal. June 12, 2020) 16, 17

27 *Stewart v. Applied Materials, Inc.*,
 28 2017 WL 3670711 (N.D. Cal. Aug. 25, 2017) 15

1 *Trief v. Dun & Bradstreet Corp.*,
2 840 F. Supp. 277 (S.D.N.Y. 1993) 10

3 *Vinh Nguyen v. Radiant Pharm. Corp.*,
4 2014 WL 1802293 (C.D. Cal. May 6, 2014)..... 13

5 *Wong v. Arlo Technologies, Inc.*,
6 2021 WL 1531171 (N.D. Cal. Apr. 19, 2021).....4, 5

7 *Wong v. Arlo Techs., Inc.*,
8 2021 WL 1146042 (N.D. Cal. Mar. 24, 2021) 7, 8

9 STATUTES

10 15 U.S.C. § 78u-4 1

11 RULES

12 Fed. R. Civ. P. 23.....*passim*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff
4 Michael G. Quinn (“Lead Plaintiff”) submits this memorandum in support of his
5 motion for final approval of the Settlement of the above-captioned action (the
6 “Action”) for \$1,000,000 in cash (the “Settlement Amount”), for approval of the Plan
7 of Allocation, and for final approval of the award of attorneys’ fees and
8 reimbursement of litigation expenses. The terms of the Settlement are set forth in the
9 Stipulation (ECF No. 65-1), which was preliminarily approved by the Court on
10 November 1 and 4, 2022. *See* ECF No. 87 (“Preliminary Approval Findings”), 88
11 (“Preliminary Approval Order”).

12 The \$1 million Settlement is procedurally fair, as it is the product of arm’s-
13 length negotiations, including numerous written responses on the merits and
14 counteroffers by the Parties, as well as various telephonic discussions regarding the
15 specifics of the case, only after Lead Plaintiff had an opportunity to review and
16 analyze Defendants’ arguments in support of dismissal as well as performing legal
17 research to prepare his counterarguments. The Settlement is also substantively fair,
18 reasonable, and adequate, as demonstrated by application of Rule 23 of the Federal
19 Rules of Civil Procedure and the Ninth Circuit “*Hanlon* factors” for assessing class
20 action settlements. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998).

21 Prior to reaching the Settlement, Lead Counsel developed a thorough
22 understanding of both the strengths and the weaknesses underlying the claims in this
23 Action, and meaningfully assessed the risks of establishing liability and damages,
24 including the risk of surviving a motion to dismiss, or prevailing on appeal, under the
25 heightened pleading standard and automatic stay of discovery imposed by the Private
26 Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4, (the “PSLRA”).
27 Indeed, before agreeing to the Settlement, Lead Counsel, among other things:
28 (i) conducted a comprehensive investigation into the claims asserted against

1 Defendants, which was assisted by experts in the areas of accounting and damages
2 and loss causation; (ii) drafted the detailed 51-page complaint (the “Complaint”);
3 (iii) researched in preparation for Lead Plaintiff’s opposition to Defendants’ motion
4 to dismiss; (iv) engaged in arm’s-length settlement negotiations with counsel for
5 Defendants, which included numerous written responses on the merits and
6 counteroffers by the Parties, as well as various telephonic discussions regarding the
7 specifics of the case; and (v) obtained a \$1 million Settlement for the benefit of the
8 Settlement Class. The Parties then negotiated and executed the Stipulation. Based
9 on this substantial work and Lead Counsel’s experience, Lead Plaintiff and Lead
10 Counsel believe that the Settlement—which eliminates the significant costs and risks
11 of continuing litigation and instead provides a fair and immediate cash recovery—is
12 in the best interests of the Settlement Class.

13 While the deadline to file an objection has not yet passed, the reaction of the
14 Settlement Class also supports final approval. Over 37,481 potential Settlement Class
15 Members and their nominees were notified by either the Postcard Notice or an email
16 with a link to the Notice and Claim Form and, to date, no objections or requests for
17 exclusion have been received or entered on the docket. *See* Declaration of Margery
18 Craig Concerning: (A) Mailing of the Postcard Notice; (B) Publication of the
19 Summary Notice; and (C) Report on Requests for Exclusion and Objections (“Craig
20 Declaration”) submitted herewith.

21 Additionally, the Plan of Allocation was developed by Lead Counsel in
22 consultation with Lead Plaintiff’s damages expert and reflects an assessment of the
23 damages that Lead Plaintiff contends could have been recovered under the theories of
24 liability and damages asserted in the Action. The Plan of Allocation ties each
25 participating Settlement Class Member’s recovery to when the securities were
26 acquired and sold, and is a fair and reasonable method for distributing the Net
27 Settlement Fund. The Plan of Allocation thus warrants approval.

28 And finally, Lead Counsel respectfully requests the Court grant final approval

1 of an award of attorneys' fees in the amount of 25% of the Settlement Fund, or
2 \$250,000, plus interest earned at the same rate as the Settlement Fund. Lead Counsel
3 also seeks final approval of the reimbursement of (i) \$23,953.30 in litigation expenses
4 incurred by Lead Counsel in prosecuting and resolving the Action, and (ii) \$1,000 in
5 costs incurred by the Court-appointed Lead Plaintiff, directly related to his
6 representation of the Settlement Class, as authorized by the PSLRA.

7 For these reasons, as well as those set forth below, Lead Plaintiff respectfully
8 requests that the Court grant final approval of the Settlement and Plan of Allocation
9 and grant final approval of Lead Counsel's request for an award of attorneys' fees in
10 the amount of 25% and reimbursement of Litigation Expenses in the amount of
11 \$24,953.30, which includes \$1,000 to Lead Plaintiff for reasonable costs and
12 expenses.

13 **II. STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e) AND** 14 **HANLON**

15 Federal Rule of Civil Procedure 23(e) requires judicial approval for any
16 compromise or settlement of class action claims and states that a class action
17 settlement should be approved if the court finds it "fair, reasonable, and adequate."
18 Fed. R. Civ. P. 23(e)(2). In the Ninth Circuit and throughout the country, "there is a
19 strong judicial policy that favors settlements particularly where complex class action
20 litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
21 2008). Class actions readily lend themselves to compromise because of the
22 difficulties of proof, the uncertainties of the outcome, and the typical length of
23 litigation. The settlement of complex cases also contributes to the conservation of
24 scarce judicial resources. *See, e.g., Garner v. State Farm Mut. Auto. Ins. Co.*, 2010
25 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Avoiding such unnecessary and
26 unwarranted expenditure of resources and time would benefit all Parties and the
27 Court.").

28

1 Rule 23(e)(2)—which governs final approval—requires courts to consider
2 several factors in determining whether a proposed settlement is fair, reasonable, and
3 adequate, including whether:

4 (A) the class representatives and class counsel have adequately
5 represented the class;

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

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

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

9 (ii) the effectiveness of any proposed method of distributing
10 relief to the class, including the method of processing
11 class-member claims;

12 (iii) the terms of any proposed award of attorneys’ fees,
13 including timing of payment; and

14 (iv) any agreement required to be identified under Rule
15 23(e)(3); and

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

17 FED. R. CIV. P. 23(e)(2).

18 These factors do not “displace” any previously adopted factors, but “focus the
19 court and the lawyers on the core concerns of procedure and substance that should
20 guide the decision whether to approve the proposal.” FED. R. CIV. P. 23(e) advisory
21 committee notes to 2018 amendment, 324 F.R.D. 904, 918. “Accordingly, the Court
22 [should] appl[y] the framework set forth in Rule 23, while continuing to draw
23 guidance from the Ninth Circuit’s factors and relevant precedent.” *Hefler v. Wells*
24 *Fargo & Co.*, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018).

25 “In the Ninth Circuit, courts traditionally use a multi-factor balancing test to
26 analyze whether a given settlement is fair, adequate and reasonable.” *Wong v. Arlo*
27 *Technologies, Inc.*, 2021 WL 1531171, at *5 (N.D. Cal. Apr. 19, 2021). “That test
28 includes the following factors:

[1] the strength of plaintiff’s case; [2] the risk, expense, complexity, and
likely duration of further litigation; [3] the risk of maintaining class
action status throughout the trial; [4] the amount offered in settlement;
[5] the extent of discovery completed, and the stage of the proceedings;

1 [6] the experience and views of counsel; [7] the presence of a
2 governmental participant; and [8] the reaction of the class members to
the proposed settlement.”

3 *Id.* (quoting *Hanlon*, 150 F.3d at 1026); *see also In re Extreme Networks, Inc. Sec.*
4 *Litig.*, 2019 WL 3290770, at *6 (N.D. Cal. July 22, 2019) (evaluating settlement based
5 on factors set forth in Fed. R. Civ. P. 23(e)(2) and *Hanlon*); *Perks v. Activehours, Inc.*,
6 2021 WL 1146038, at *4 (N.D. Cal. Mar. 25, 2021) (same).

7 As explained below, application of each of the four factors specified in Rule
8 23(e)(2) and the relevant, non-duplicative *Hanlon* factors demonstrates that the
9 Settlement warrants Court approval.

10 **III. ARGUMENT**

11 **A. The Settlement Is Fair, Reasonable, And Adequate In Light Of** 12 **Rule 23(e)(2) And The Remaining *Hanlon* Factors**

13 **1. Lead Plaintiff And Lead Counsel Adequately Represented** 14 **The Settlement Class**

15 Fed. R. Civ. P. 23(e)(2)(A) requires the Court to consider whether the “class
16 representative[] and class counsel have adequately represented the class.”
17 “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs
18 and their counsel have any conflicts of interest with other class members and (2) will
19 the named plaintiffs and their counsel prosecute the action vigorously on behalf of the
20 class?” *Hanlon*, 150 F.3d at 1020.

21 Here, Lead Plaintiff and Lead Counsel adequately represented the Settlement
22 Class during both the litigation of this Action and its settlement. Lead Plaintiff’s
23 claims are typical of and coextensive with the claims of the Settlement Class, and he
24 has no antagonistic interests; rather, Lead Plaintiff’s interest in obtaining the largest
25 possible recovery in this Action is aligned with the other Settlement Class Members.
26 *Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019)
27 (“Because Plaintiff’s claims are typical of and coextensive with the claims of the
28

1 Settlement Class, his interest in obtaining the largest possible recovery is aligned with
2 the interests of the rest of the Settlement Class members.”).

3 Lead Plaintiff also retained counsel who are highly experienced in securities
4 litigation, and who have a long and successful track record of representing investors
5 in such cases. Lead Counsel, Glancy Prongay & Murray LLP, have successfully
6 prosecuted securities class actions and complex litigation in federal and state courts
7 throughout the country for over 26 years. *See* ECF No. 17-4 (GPM firm resume).
8 Lead Counsel vigorously prosecuted the Settlement Class’s claims throughout the
9 litigation, by conducting an extensive investigation, which included, among other
10 things: (1) reviewing and analyzing (a) the Company’s filings with Canadian
11 regulatory agencies, including the British Columbia Securities Commission, and the
12 U.S. Securities and Exchange Commission (“SEC”), (b) public reports, blog posts,
13 research reports prepared by securities and financial analysts, and news articles
14 concerning the Company, and (c) other publicly available material related to the
15 Company; (2) drafting a detailed complaint based on the foregoing investigation;
16 (3) researching in preparation for Lead Plaintiff’s opposition to Defendants’ motion
17 to dismiss; and (4) obtaining a \$1 million Settlement for the benefit of the Settlement
18 Class. *See* Preliminary Approval Findings at 20 (“Given...the investigation that Lead
19 Counsel provided evidence of conducting, the Court finds that Plaintiff had sufficient
20 information to make an informed decision”); *see also* PPG, 2019 WL 3345714, at *3
21 (finding adequacy and noting Lead Counsel [GPM] “are highly experienced in
22 securities litigation and have vigorously prosecuted the Settlement Class’s
23 claims[.]”).

24 **2. The Settlement Is The Result Of Arm’s-Length Negotiations**

25 Rule 23(e)(2)(B) requires procedural fairness: that “the proposal was
26 negotiated at arm’s length.” FED. R. CIV. P. 23(e)(2)(B).¹ The Ninth Circuit, as well

27 _____
28 ¹ Rule 23(e)(2)(A)-(B)’s considerations overlap with certain *Hanlon* factors, “such as
(footnote continued)

1 as courts in this District, “put a good deal of stock in the product of an arms-length,
2 non-collusive, negotiated resolution” in approving a class action settlement.
3 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Here, the Parties
4 began exploring the possibility of resolving this Action only after Lead Plaintiff had
5 an opportunity to review and analyze Defendants’ arguments in support of dismissal
6 as well as performing legal research to prepare his counterarguments. Armed with
7 this knowledge, Lead Plaintiff served a confidential settlement demand on
8 Defendants. Following numerous written responses on the merits and counteroffers
9 by the Parties, as well as various telephonic discussions regarding the specifics of the
10 case, the Parties were ultimately able to agree to the general contours of the
11 Settlement.

12 The arm’s-length nature of the extensive settlement negotiations between
13 capable counsel with substantial experience in securities class actions support the
14 conclusion that the Settlement is fair and was achieved free of collusion. *See*
15 Preliminary Approval Findings at 20 (“The Court finds that the Settlement has been
16 negotiated at arm’s length.”); *Ikuseghan v. Multicare Health Sys.*, 2016 WL 3976569,
17 at *3 (W.D. Wash. July 25, 2016) (“This Court begins its analysis with a presumption
18 that a class settlement is fair and should be approved if it is the product of arm’s-
19 length negotiations conducted by capable counsel with extensive experience in
20 complex class action litigation.”).

21 3. The Relief Provided For The Settlement Class Is Adequate

22 Under Rule 23(e)(2)(C), when evaluating the fairness, reasonableness, and
23 adequacy of a settlement, the Court must also consider whether “the relief provided
24
25

26 _____
27 the non-collusive nature of negotiations, the extent of discovery completed, and the
28 stage of proceedings.” *Wong v. Arlo Techs., Inc.*, 2021 WL 1146042, at *6 (N.D. Cal.
Mar. 24, 2021) (citing *Hanlon*, 150 F.3d at 1026).

1 for the class is adequate, taking into account . . . the costs, risks, and delay of trial and
 2 appeal” along with other relevant factors. FED. R. CIV. P. 23(e)(2)(C).²

3 **(a) The Cost, Risk, And Delay Of Trial And Appeal**

4 In assessing whether the proposed Settlement is fair, reasonable, and adequate,
 5 the Court “must balance the risks of continued litigation, including the strengths and
 6 weaknesses of plaintiff’s case, against the benefits afforded to class members,
 7 including the immediacy and certainty of recovery.” *Knapp v. Art.com, Inc.*, 283 F.
 8 Supp. 3d 823, 831 (N.D. Cal. 2017). “Generally, unless the settlement is clearly
 9 inadequate, its acceptance and approval are preferable to lengthy and expensive
 10 litigation with uncertain results.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573,
 11 587 (N.D. Cal. 2015). Securities fraud cases are inherently complex and tend to take
 12 an exceptionally long time to litigate, in part because they often involve significant
 13 post-trial motions and appeals. *See, e.g., In re Vivendi Universal, S.A., Sec. Litig.*,
 14 2012 WL 362028, at *1 (S.D.N.Y. Feb. 6, 2012) (noting two years after jury verdict
 15 in plaintiffs’ favor and ten years after the case was filed, shareholders had still
 16 received no recovery). Given the “notorious complexity” of securities class actions,
 17 settlement is often appropriate because it “circumvents the difficulty and uncertainty
 18 inherent in long, costly trials.” *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *8
 19 (S.D.N.Y. Apr. 6, 2006).

20 The risks of continued litigation here were considerable, perhaps
 21 insurmountable. The most immediate risk is that Lead Plaintiff might not advance
 22 past the pleading stage thereby eliminating any benefit potentially available to the
 23 Settlement Class. Although Lead Plaintiff believes the Complaint was adequate to
 24

25 ² Rule 23(e)(2)(C)(i) essentially incorporates three of the traditional *Hanlon* factors:
 26 the strength of plaintiff’s case (first factor); the risk, expense, complexity, and likely
 27 duration of further litigation (second factor) and; the risks of maintaining class action
 28 status through the trial (third factor). *Arlo*, 2021 WL 1146042, at *8 (citing *Hanlon*,
 150 F.3d at 1026).

1 survive Defendants’ motion to dismiss, Defendants raised plausible arguments in
2 favor of dismissing Lead Plaintiff’s claims, including that a pending lawsuit in British
3 Columbia, Canada was the more appropriate forum for the claims to be heard and that
4 Defendants did not have a duty to disclose the fact that the transactions at issue
5 involved a related party. If the Court agreed with Defendants’ arguments, any
6 potential recovery would be lost.

7 Even if Lead Plaintiff did prevail at the motion to dismiss stage, he would then
8 need to move for class certification, which Defendants would likely oppose.
9 Although Lead Plaintiff believes certifying a class here is meritorious, Defendants’
10 likely opposition makes class certification not a foregone conclusion. Had Lead
11 Plaintiff failed to obtain class certification, the benefit to the Settlement Class would
12 have been eliminated. Moreover, even assuming class certification was achieved, the
13 Court could have revisited certification at any time—presenting a continuous risk that
14 this case, or particular claims, might not be maintained on a class-wide basis through
15 trial. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal.
16 2008) (even if a class is certified, “there is no guarantee the certification would survive
17 through trial, as Defendants might have sought decertification or modification of the
18 class”). Thus, the risks of obtaining and maintaining class certification support
19 approval of the Settlement in this case. *See In re Marsh & McLennan Co., Inc. Sec.*
20 *Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) (“the uncertainty
21 surrounding class certification supports approval of the Settlement”).

22 Furthermore, even if Lead Plaintiff prevailed at the class certification stage, he
23 would still have to *prove* his claims. This would be no small task and Lead Plaintiff
24 and Lead Counsel recognize the significant risk, time, and expense involved in
25 prosecuting Lead Plaintiff’s claims against Defendants through completion of fact and
26 expert discovery – discovery that would have mainly occurred outside of the United
27 States – summary judgment, trial, and subsequent appeals, as well as the inherent
28 difficulties and delays complex litigation like this entails. Defendants’ expected

1 motions for summary judgment would have to be successfully briefed and argued,
2 and trials are innately expensive, risky, and uncertain. *See, e.g., In re Wireless*
3 *Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 612 (S.D. Cal. 2008) (preliminarily
4 approving settlement where “[l]iability remains uncertain” as “it appears to the Court
5 that plaintiffs have a viable claim regarding the alleged securities fraud and
6 Defendants have a viable defense against such claims”).

7 In addition, any judgment favorable to the Settlement Class would be the
8 subject of post-trial motions and appeal, which could prolong the case for years with
9 the ultimate outcome uncertain. Any recovery that shareholders may ultimately see
10 is diminished by the escalating costs accumulated in the process. *See, e.g.,*
11 *Glickenhau & Co. v. Household Int’l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015)
12 (reversing and remanding jury verdict of \$2.46 billion after 13 years of litigation on
13 loss causation grounds and error in jury instruction).³

14 In sum, even if Lead Plaintiff were to prevail after trial and appeals, there is no
15 guarantee that he would have obtained a judgment greater than the \$1 million
16 Settlement. There was, as in any complex securities action, a very significant risk
17 that continued litigation might yield a smaller recovery—or indeed no recovery at
18 all—several years in the future. *See Trief v. Dun & Bradstreet Corp.*, 840 F. Supp.
19 277, 282 (S.D.N.Y. 1993) (“It is beyond cavil that continued litigation in this multi-
20 district securities class action would be complex, lengthy, and expensive, with no
21 guarantee of recovery by the class members.”). By contrast, the Settlement provides
22 a favorable, immediately-realizable recovery and eliminates all of the risk, delay, and
23 expense of continued litigation. *See Preliminary Approval Findings at 22* (finding this
24 factor weighs in favor of approval).

25
26 ³ *See also Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997)
27 (reversing jury verdict of \$81 million for plaintiffs); *In re Apple Computer Sec. Litig.*,
28 1991 WL 238298 at *1 (N.D. Cal. Sept. 6, 1991) (overturning jury verdict for
plaintiffs after extended trial).

1 distributing relief to the class, including the method of processing class-member
2 claims,” “the terms of any proposed award of attorneys’ fees, including timing of
3 payment,” and “any agreement required to be identified under Rule 23(e)(2).” FED.
4 R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors support the Settlement’s approval
5 or is neutral and thus do not suggest any basis for concluding the Settlement is
6 inadequate.

7 **Rule 23 (e)(2)(C)(ii):** The method for processing Settlement Class Members’
8 claims and distributing relief to eligible claimants includes well-established, effective
9 procedures for processing claims and efficiently distributing the Net Settlement Fund.
10 Here, Strategic Claims Services (“SCS”), the Court-approved Claims Administrator,
11 will process claims under the guidance of Lead Counsel, allow Claimants an
12 opportunity to cure any Claim deficiencies or request the Court to review a denial of
13 their Claim(s), and, lastly, mail or wire Authorized Claimants their *pro rata* share of
14 the Net Settlement Fund (per the Plan of Allocation), after Court approval. Claims
15 processing, like the method proposed here, is standard in securities class action
16 settlements. It has been long found to be effective, as well as necessary, insofar as
17 neither Lead Plaintiff nor Defendants possess the individual investor trading data
18 required for a claims-free process to distribute the Net Settlement Fund.⁴

19 **Rule 23(e)(2)(C)(iii):** As detailed in Lead Counsel’s motion for a preliminary
20 award of attorneys’ fees and reimbursement of litigation expenses and the
21 accompanying memorandum in support thereof (ECF Nos. 80-82), Lead Counsel is
22 applying for a percentage of the common fund fee award in an amount of 25% to
23 compensate them for the services rendered on behalf of the Settlement Class. A
24 proposed attorneys’ fee of 25% of the Settlement Fund (which, by definition, includes
25

26 ⁴ This is not a claims-made settlement. If the Settlement is approved, Defendants will
27 not have any right to the return of a portion of the Settlement based on the number or
28 value of the Claims submitted. *See* Stipulation ¶14.

1 interest earned on the Settlement Amount) is reasonable in light of the work
2 performed and the results obtained. On November 1, 2022, in preliminarily approving
3 Lead Counsel’s requested 25% fee award, the Court noted that (i) the requested fee
4 was “consistent with the 25% benchmark used by courts in this circuit;” (ii) the
5 Settlement was achieved “in light of substantial risks of prolonged litigation,
6 including potential difficulty in proving loss causation, liability, and damages;” and
7 (iii) “Lead Counsel has a long-record of successfully prosecuting securities litigation
8 cases, and took this case on a contingent fee.” *See* Preliminary Approval Findings at
9 23-24.

10 **Rule 23(e)(2)(C)(iv)**: The Parties have entered into a confidential agreement
11 that establishes certain conditions under which Defendants may terminate the
12 Settlement if Class Members who collectively have damages equating to a certain
13 dollar amount under the Plan of Allocation request exclusion (or “opt out”) from the
14 Settlement. On August 31, 2022, in accordance with the Court’s August 15, 2022
15 order, Lead Plaintiff submitted this confidential agreement *in camera* for the Court’s
16 review. ECF No. 73. In granting preliminary approval, the Court found the
17 confidential agreement in this case to be reasonable. Preliminary Approval Findings
18 at 25.

19 **5. All Settlement Class Members Are Treated Equitably**

20 Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class
21 members equitably relative to one another. The Settlement easily satisfies this
22 standard. Under the proposed Plan of Allocation, each Authorized Claimant will
23 receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an
24 Authorized Claimant’s *pro rata* share shall be the Authorized Claimant’s Recognized
25 Claim divided by the total of Recognized Claims of all Authorized Claimants,
26 multiplied by the total amount in the Net Settlement Fund. *Vinh Nguyen v. Radiant*
27 *Pharm. Corp.*, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) (“A settlement in a
28 securities class action case can be reasonable if it ‘fairly treats class members by

1 awarding a pro rata share to every Authorized Claimant, but also sensibly makes
 2 interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of
 3 class members’ individual claims and the timing of purchases of the securities at
 4 issue.”). Moreover, this Court has already concluded that there is “no indication that
 5 the distribution and allocation methods that Plaintiff proposes will result in
 6 inequitable treatment of class members.” Preliminary Approval Findings at 25.

7 **6. The Positive Reaction Of The Settlement Class Supports** 8 **Settlement Approval**

9 The eighth *Hanlon* factor—the reaction of the Class—overlaps with Rules
 10 23(e)(4), on the opportunity for exclusion, and 23(e)(5), on the opportunity to object.
 11 As required by Rules 23(e)(4) & (5), the Settlement affords Settlement Class
 12 Members the opportunity to request exclusion from, or object to, the Settlement. *See*
 13 Craig Decl., Ex. B (Notice) at p. 3. More than 37,481 potential Settlement Class
 14 Members were notified by an email containing a link to the Notice and Claim Form
 15 or by Postcard Notice and the Summary Notice was published over the *Globe*
 16 *Newswire*. *Id.* ¶¶9-10. To date, no requests for exclusion have been received, and no
 17 objections have been filed with the Court. *Id.* ¶¶13-14.⁵ The Settlement Class’s
 18 overwhelmingly positive reaction strongly supports final approval of the Settlement.
 19 *Omnivision*, 559 F. Supp. 2d at 1043 (“the absence of a large number of objections to
 20 a proposed class action settlement raises a strong presumption that the terms of a
 21 proposed class action settlement are favorable to class members.”).

22 **7. The Remaining Ninth Circuit Factors Are Satisfied**

23 **The Extent of Discovery Completed and the Stage of the Proceeding:** In

24 considering a class action settlement, courts look for indications that the parties
 25 carefully investigated the claims before reaching a resolution. *E.g., In re: Volkswagen*

26
 27 ⁵ The deadline to request exclusion from, or to object to any aspect of, the Settlement
 28 is February 6, 2023; if any exclusions or objections are received after the date of this
 filing, they will be addressed on reply.

1 “*Clean Diesel*” Mktg., Sales Practices, & Prod. Liab. Litig., 2016 WL 6248426, at
2 *13-*14 (N.D. Cal. Oct. 25, 2016). (formal discovery is “not a necessary ticket to the
3 bargaining table where the parties have sufficient information to make an informed
4 decision about settlement”).

5 Here, Lead Counsel conducted an extensive investigation of the claims asserted
6 in this Action (*see* Sec III.A.1., *supra*, detailing Lead Counsel’s investigation),
7 including consultation with experts in the fields of loss causation, damages, and
8 accounting. Additionally, in drafting the Complaint and preparing an opposition to
9 Defendants’ motion to dismiss, Lead Counsel further engaged in extensive legal
10 research, which helped to further evaluate and sharpen the understanding of the
11 strengths and weaknesses of the claims asserted in this Action.

12 This material amount of information enabled Lead Counsel to make an
13 informed assessment of the strengths and weaknesses of this Action to make a
14 determination on behalf of the Settlement Class about whether to settle. The Parties’
15 settlement negotiations, as explained above, further informed Lead Counsel about the
16 strengths and weaknesses of the potential class’s claims in this Action and
17 Defendants’ defenses to those claims. As a result, the Parties and their counsel have
18 sufficient basis to make informed decisions about the relative merits and weakness of
19 this Action and the fairness of the Settlement.

20 **The Experience and Views of Counsel:** Courts also give weight to the opinion
21 of experienced and informed counsel supporting the settlement. *See, e.g., Stewart v.*
22 *Applied Materials, Inc.*, 2017 WL 3670711, at *6 (N.D. Cal. Aug. 25, 2017). Here,
23 Lead Counsel has extensive experience in securities litigation and has obtained a
24 thorough understanding of the merits and risks of the Action. Lead Counsel’s belief
25 in the fairness and reasonableness of this Settlement supports final approval.
26 Defendants have been vigorously represented by Katten Muchin Rosenman LLP
27 throughout the Action and settlement negotiations. Defendants’ counsel is equally
28 well-informed regarding the case, and their representation of Defendants was just as

1 rigorous as Lead Counsel’s representation of the Settlement Class. Because the
2 Settlement is the product of serious, informed, and non-collusive negotiations among
3 experienced counsel, final approval is warranted.

4 **The Presence Of A Governmental Participant** “Because no government
5 entities are participants in this case, this factor is neutral.” *In re Amgen Inc. Sec.*
6 *Litig.*, 2016 WL 10571773, at *4 (C.D. Cal. Oct. 25, 2016).

7 * * *

8 As discussed in detail above, each of the Rule 23(e)(2) and *Hanlon* factors
9 either supports a finding that the Settlement is fair, reasonable, and adequate, or is
10 neutral. Final approval is, therefore, appropriate.

11 **B. The Plan Of Allocation Is Fair And Reasonable**

12 Lead Plaintiff also requests final approval of the Plan of Allocation. A plan of
13 allocation in a class action “is governed by the same standards of review applicable
14 to approval of the settlement as a whole: the plan must be fair, reasonable, and
15 adequate.” *Omnivision*, 559 F. Supp. 2d at 1045. The allocation formula used in a
16 plan of allocation “need only have a reasonable, rational basis, particularly if
17 recommended by experienced and competent counsel.” *Maley v. Del Global Tech.*
18 *Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002). “A plan which fairly treats class
19 members by awarding a *pro rata* share to every Authorized Claimant, even as it
20 sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and
21 weaknesses of class members’ individual claims and the timing of purchases of the
22 securities at issue should be approved as fair and reasonable.” *Schueneman v. Arena*
23 *Pharmaceuticals, Inc.*, 2020 WL 3129566, at *7 (S.D. Cal. June 12, 2020).

24 The Plan of Allocation, is set forth in the Notice attached to the Craig
25 Declaration at sub-exhibit B (Notice at ¶¶10-14), is based on an out-of-pocket theory
26 of damages consistent with Section 10(b) of the Exchange Act, and reflects an
27 assessment of the damages that Lead Plaintiff contends could have been recovered
28 under the theories of liability asserted in the Action. More specifically, the Plan of

1 Allocation reflects, and is based on, Lead Plaintiff's allegation that the price of Braxia
2 common stock was artificially inflated during the Settlement Class Period due to
3 Defendants' alleged materially false and misleading statements and omissions. The
4 Plan of Allocation is based on the premise that the decreases in the price of Braxia
5 common stock that followed the alleged corrective disclosures that occurred on June
6 22, 2020 and on February 17, 2021, may be used to measure the alleged artificial
7 inflation in the price of Intersect common stock prior to these disclosures. Craig
8 Decl., Ex. B (Notice) at ¶51. An individual Claimant's recovery under the Plan of
9 Allocation will depend on a number of factors, including how many shares of Intersect
10 common stock the Claimant purchased, acquired, or sold during the Settlement Class
11 Period, when that Claimant bought, acquired, or sold the shares, and the number of
12 valid claims filed by other Claimants. *Id.* at ¶62.

13 Under the proposed Plan of Allocation, each Authorized Claimant will receive
14 his, her, or its *pro rata* share of the Net Settlement Fund, subject to a \$10 minimum
15 distribution. Specifically, an Authorized Claimant's *pro rata* share shall be the
16 Authorized Claimant's Recognized Claim divided by the total of Recognized Claims
17 of all Authorized Claimants, multiplied by the total amount in the Net Settlement
18 Fund. Craig Decl., Ex. B (Notice) at ¶57.

19 If any funds remain after an initial distribution to Authorized Claimants, as a
20 result of uncashed or returned checks or other reasons, subsequent distributions will
21 be conducted as long as they are cost effective. Craig Decl., Ex. B (Notice) at ¶63.
22 At such time as it is determined that the re-distribution of funds remaining in the Net
23 Settlement Fund is not cost-effective, the remaining balance shall be contributed to a
24 non-sectarian, not-for-profit organization, to be recommended by Lead Counsel and
25 approved by the Court. *Id.*

26 Lead Counsel believe that the Plan of Allocation will result in a fair and
27 equitable distribution of the Settlement proceeds among Settlement Class Members
28 who submit valid claims. *See Arena*, 2020 WL 3129566, at *7 (approving

1 substantially similar plan of allocation). Indeed, the Court has already found that
2 there is “no indication that the distribution and allocation methods that Plaintiffs
3 proposes will result in inequitable treatment of class members.” Preliminarily
4 Approval Findings at 25. The fair and reasonableness of the proposed Plan of
5 Allocation is further evidenced by the fact that, to date, no objections to the Plan of
6 Allocation have been filed on this Court’s docket. Accordingly, Lead Plaintiff
7 respectfully requests that the Court approve the proposed Plan of Allocation. *See In*
8 *re Heritage Bond Litig.*, 2005 WL 1594403, at *12 (C.D. Cal. June 10, 2005) (“In
9 light of the lack of objectors to the plan of allocation at issue, and the competence,
10 expertise, and zeal of counsel in bringing and defending this action, the Court finds
11 the plan of allocation as fair and adequate.”).

12 **C. The Settlement Class Should Be Finally Certified**

13 The Court’s November 4, 2022 Preliminary Approval Order certified the
14 Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3).
15 *See* ECF No. 88 at ¶¶1-3. There have been no changes to alter the propriety of class
16 certification for settlement purposes. Thus, for the reasons stated in Lead Plaintiff’s
17 Unopposed Motion for Preliminary Approval of Settlement (ECF No. 64 at 16-18),
18 Lead Plaintiff respectfully requests that the Court affirm its determinations in the
19 Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and
20 (b)(3).

21 **D. The Notice Program Satisfies Rule 23 And Due Process**

22 For any class certified under Rule 23(b)(3), due process and Rule 23 require
23 that class members be given “the best notice practicable under the circumstances,
24 including individual notice to all members who can be identified through reasonable
25 effort.” Fed. R. Civ. P. 23(c)(2)(B). This Court has already found that the proposed
26 notice program is adequate and sufficient (*see* Preliminary Approval Order, ECF No.
27 88 at ¶¶7-8), and Lead Counsel and SCS carried out the notice program as proposed.

28

1 See Craig Decl., ¶¶3-12. The Settlement Class has, therefore, received “the best
2 notice practicable under the circumstances.” FED. R. CIV. P. 23(c)(2)(B).

3 **E. Lead Counsel’s Requested Fee Award And Reimbursement Of**
4 **Litigation Expenses Should Be Finally Approved**

5 On September 14, 2022, the Court entered an Order requesting Lead Counsel
6 submit a formal motion for attorneys’ fees. ECF No. 74. In accordance with the
7 Court’s September 14, 2022 Order, Lead Counsel filed a motion for a preliminary
8 award of attorneys’ fees and reimbursement of litigation expenses on September 26,
9 2022. ECF Nos. 80-82. The Court preliminarily approved Lead Counsel’s award of
10 attorneys’ fees in the amount of 25% of the Settlement Fund and reimbursement of
11 expenses. See Preliminary Approval Findings at 23-24. There have been no changes
12 to alter the propriety of the Court’s preliminary finding. In fact, the propriety of the
13 fees and expense award is further supported by the fact that no Settlement Class
14 Member has objected to it, and that Lead Counsel has performed more work since the
15 fee motion was filed and as such, Lead Counsel’s lodestar multiplier is currently even
16 lower than that which the Court already deemed was reasonable. Preliminary
17 Approval Findings at 23-24 (1.37 “multiplier is reasonable”). Thus, for the reasons
18 stated in Lead Counsel’s Motion for a Preliminary Award of Attorneys’ Fees and
19 Reimbursement of Litigation Expenses (ECF Nos. 80-82), Lead Counsel respectfully
20 requests the Court affirm its determination that “Lead Counsel’s request for attorneys’
21 fees and litigation expenses is fair and reasonable.” ECF No. 87 at 24.

22 **IV. CONCLUSION**

23 For the foregoing reasons, Lead Plaintiff respectfully requests that the Court
24 grant the unopposed motion for final approval of the Settlement, approve the proposed
25 Plan of Allocation and finally approve Lead Counsel’s request for an award of
26 attorneys’ fees in the amount of 25% of the Settlement Fund, or \$250,000, and
27 reimbursement of Litigation Expenses in the amount of \$24,953.30, which includes
28 \$1,000 to Lead Plaintiff for reasonable costs and expenses.

1 DATED: January 20, 2023

GLANCY PRONGAY & MURRAY LLP

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: /s/ Casey E. Sadler
Robert V. Prongay
Casey E. Sadler
1925 Century Park East, Suite 2100
Los Angeles, California 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
csadler@glancylaw.com

*Counsel for Plaintiff Michael G. Quinn and
Lead Counsel for the Class*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned, say:

I am not a party to the above case and am over eighteen years old. On January 20, 2023, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court’s Service List.

I affirm under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 20, 2023, at Los Angeles, California.

/s/ Casey E. Sadler
Casey E. Sadler