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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE PROGENITY, INC. SECURITIES LITIGATION

Case No. 3:20-cv-01683-RBM-AHG

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

Hon. Ruth Bermudez Montenegro

Hearing Date: February 23, 2026
Hearing Time: 10:00 a.m.
Location: 221 W. Broadway
Courtroom: 5B

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In accordance with Rule 23(e)(2) of the Federal Rules of Civil Procedure, Court-appointed lead plaintiffs Lin Shen, Lingjun Lin, and Fusheng Lin (collectively, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum in support of their motion for: (1) final approval of the proposed Settlement resolving the above-captioned action (the "Action"); and (2) approval of the proposed plan of allocation of the proceeds of the Settlement.[1]

I. PRELIMINARY STATEMENT

The Parties in the Action have reached a proposed Settlement that resolves all claims against Defendants in exchange for a non-reversionary cash payment of $1,000,000.[2] Lead Plaintiffs respectfully submit that this Settlement: (1) was secured through a process that evidences a lack of collusion amongst the Parties and supports a finding of procedural fairness; and (2) represents a favorable result for the Settlement Class, especially given the risks, costs, and delays of continued litigation. Under such circumstances, final approval is appropriate.

The Settlement was reached through a procedurally fair process. By the time the Settlement was reached, Lead Plaintiffs and their counsel were well informed about the strengths and weaknesses of the claims and Defendants' defenses. Prior to reaching the Settlement, Lead Counsel, *inter alia*:

- conducted a comprehensive investigation into Defendants' allegedly wrongful acts, which included, among other things: (i) reviewing and analyzing numerous sources of publicly available information about

[1] Unless otherwise defined herein, all capitalized terms are defined in the Stipulation and Agreement of Settlement dated May 7, 2025 (the "Stipulation"; ECF No. 91-3), or Declaration of Garth Spencer ("Spencer Declaration"), filed herewith. Citations to "¶ __" and "Ex. __" herein refer to paragraphs in, and Exhibits to, the Spencer Declaration unless otherwise specified.

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

Progenity; (ii) retaining and working with a private investigator who conducted an investigation that involved contacting and interviewing former Progenity employees; (iii) consulting with a damages and loss causation expert; (iv) consultations with an accounting expert; and (v) submitting freedom of information requests to multiple state and federal healthcare and law enforcement agencies for documents concerning Progenity's billing and collection practices;

- drafted the three amended complaints which incorporated the foregoing research and investigation efforts, including the comprehensive, factually detailed 126-page Third Amended Class Action Complaint for Violation of the Securities Act of 1933 (ECF No. 64, "Third Amended Complaint," "TAC," or "Complaint");
- researched and drafted opposition briefs to Defendants' three motions to dismiss Lead Plaintiffs' complaints;
- appealed the Court's dismissal of the TAC, which involved, among other things, researching and drafting Lead Plaintiffs' opening and reply appellate briefs;
- engaged in various settlement discussions with counsel for Defendants, including: (i) a status conference before Magistrate Judge Allison H. Goddard; (ii) a conference with Circuit Mediator Robert S. Kaiser; (iii) issuing a written settlement demand to Defendants; (iv) continuing to negotiate concerning a potential settlement; and (v) eventually reaching an agreement in principle to settle the Action for a payment of $1 million on a class-wide basis;
- prepared and negotiated with Defendants concerning the confidential term sheet that set out the preliminary terms of the Settlement;

- prepared the initial draft of, and engaged in substantial negotiations concerning the terms of, the original stipulation of settlement, and the original confidential supplemental agreement; and
- assessed the impact that Progenity's bankruptcy filing would have on the original proposed settlement, engaged in substantial further negotiations with the Remaining Defendants concerning a new settlement to supersede the Original Stipulation, and ultimately executed the new Stipulation on May 7, 2025 (ECF No. 91-3). ¶¶10, 16-32.

The $1,000,000 Settlement is, therefore, the result of arms-length negotiations, conducted by informed and experienced counsel.

The substantial risks that Lead Plaintiffs would face if the Action continued to be litigated also weigh in favor of settlement approval. When the Settlement was reached, the Court had dismissed Lead Plaintiffs' claims three times, most recently with prejudice, and Plaintiffs' appeal was pending. While Lead Counsel believe they had strong arguments on appeal, they also recognize that there was a substantial chance that the Ninth Circuit would affirm the Court's orders. Even if Lead Plaintiffs were to prevail on their appeal, they would still have to *prove* that the statements and omissions in Progenity's IPO Registration Statement were materially false and/or misleading, and would also have to overcome expected defenses, including negative causation (*i.e.*, that factors other than the allegedly misleading statements caused the Settlement Class's losses) and due diligence (*i.e.* that the Remaining Defendants reasonably investigated the statements at issue and did not believe they were misleading). Lead Counsel anticipates the Remaining Defendants would make strong arguments with respect to their defenses and challenging Lead Plaintiffs' proof, both in expected motion(s) for summary judgment and at trial. Given the substantial litigation risks, the Settlement is, substantively fair, reasonable and adequate.

As discussed in greater detail below, Lead Plaintiffs and their counsel believe that the proposed Settlement meets the standards for final approval and is in the best

interests of the Settlement Class. Consequently, Lead Plaintiffs respectfully request that the Court grant the Settlement final approval.

Lead Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation was developed in conjunction with Lead Plaintiffs' consulting damages expert and distributes the proceeds of the Net Settlement Fund fairly and equitably to Settlement Class Members. Accordingly, it too should be approved.

II. HISTORY OF THE LITIGATION

For the sake of brevity, the Court is respectfully referred to the Spencer Declaration for a more fulsome discussion of, *inter alia*: the Action's history; the nature of the claims asserted; the work performed by Lead Plaintiffs and Lead Counsel in prosecuting the Action; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and the terms of the Plan of Allocation.

III. STANDARDS GOVERNING FINAL APPROVAL

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

Rule 23(e)(2)—which governs final approval—requires courts to consider the

[3] Unless otherwise indicated, all emphasis is added and citations and quotations omitted.

following questions in determining whether a proposed settlement is fair, reasonable, and adequate:

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

Factors (A) and (B) "identify matters . . . described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while factors (C) and (D) "focus on . . . a substantive review of the terms of the proposed settlement" (*i.e.*, "[t]he relief that the settlement is expected to provide to class members"). FED. R. CIV. P. 23(e) Advisory Committee Notes to 2018 Amendments, 324 F.R.D. 904, at 919.

These factors are not exclusive, nor intended to displace any factor previously adopted by the courts. *See id.* The Ninth Circuit's traditional factors used to evaluate class action settlements (certain of which overlap with Rule 23(e)(2)) are, therefore, still relevant:

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

[4] "Because no government entities are participants in this case, this factor is neutral." *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *4 (C.D. Cal. Oct. 25, 2016).

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Wong v. Arlo Techs., Inc.,* 2021 WL 1531171, at *6 (N.D. Cal. Mar. 25, 2021) (recognizing Rule 23(e)'s considerations "overlap with certain *Hanlon* factors").

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

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE IN LIGHT OF THE RULE 23(e)(2) FACTORS AND THE REMAINING *HANLON* FACTORS

A. Lead Plaintiffs and Lead Counsel Adequately Represented The Settlement Class

FED. R. CIV. P. 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented 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.

Here, Lead Plaintiffs and Lead Counsel adequately represented the Settlement Class both during the litigation of this Action and its settlement. Lead Plaintiffs' claims are typical of and coextensive with the claims of the Settlement Class, and they have no antagonistic interests; rather, Lead Plaintiffs' interest in obtaining the largest possible recovery in this Action is aligned with those of the other Settlement Class Members. *See Mild v. PPG Indus., Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019) ("Because Plaintiff's claims are typical of and coextensive with the claims of the Settlement Class, his interest in obtaining the largest possible recovery is aligned with the interests of the rest of the Settlement Class members."). Additionally, Lead Plaintiffs worked with Lead Counsel throughout the pendency of this Action to achieve the best possible result for themselves and the Settlement Class. *See* Exs. 6-

8 (Lead Plaintiffs' declarations).

Lead Plaintiffs also retained counsel who are highly experienced in securities litigation, and who have a long and successful track record of representing investors in such cases. Lead Counsel have successfully prosecuted securities class actions in federal and state courts throughout the country. *See* Ex. 4 (GPM firm résumé). And, here, Lead Counsel vigorously prosecuted the Settlement Class's claims throughout the litigation by, *inter alia*: conducting an extensive investigation of the claims through a detailed review of publicly available documents about Progenity, as well as retaining an investigator to interview former Progenity employees; consulting with damages and accounting experts; drafting three detailed amended complaints; researching and briefing three motions to dismiss; appealing the dismissal of their claims; engaging in substantial settlement negotiations; and obtaining a $1 million Settlement for the benefit of the Settlement Class. *See* ¶¶10, 16-32; *see also PPG*, 2019 WL 3345714, at *3 (finding adequacy and noting that Lead Counsel [GPM] "are highly experienced in securities litigation and have vigorously prosecuted the Settlement Class's claims").

B. The Settlement Is The Result Of Arm's-Length Negotiations

Rule 23(e)(2)(B) requires procedural fairness: that "the proposal was negotiated at arm's length."[5] Courts in the Ninth Circuit "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution" in approving a class action settlement. *Rodriguez*, 563 F.3d at 965. Here, the Parties, all of whom are represented by experienced counsel who zealously advanced their clients' respective interests, engaged in arm's-length negotiations over several months, culminating in an agreement to settle the Action for $1 million. ¶¶10(l)-(r).

[5] Rule 23(e)(2)(A)-(B) overlaps with certain *Hanlon* factors, "such as the non-collusive nature of negotiations, the extent of discovery completed, and the stage of proceedings." *Arlo*, 2021 WL 1531171, at *6 (citing *Hanlon*, 150 F.3d at 1026).

The arm's-length nature of the extensive settlement negotiations supports the conclusion that the Settlement is fair and was achieved free of collusion. *See Scott v. ZST Digital Networks, Inc.*, 2013 WL 12123989, at *6 (C.D. Cal. Mar. 27, 2013) ("There can be little doubt that the negotiations in this case, which were conducted at arm's-length by counsel over the span of several months, were serious, informed and noncollusive. The parties were represented by experienced counsel who bargained in an adversarial manner…."); *In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at *4 (S.D. Cal. Oct. 30, 2020) ("Counsel possessed sufficient information to make an informed decision about the settlement . . . The Settlement was also the product of arm's length negotiations through back-and-forth communications and bargaining of terms.").

C. The Settlement Is An Excellent Result For The Settlement Class In Light Of The Benefits Of The Settlement And The Risks Of Continued Litigation

The Court must also consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" along with other relevant factors. FED. R. CIV. P. 23(e)(2)(C).[6] As discussed below, these factors support the Settlement's approval.

The Strength of Lead Plaintiffs' Case and Risk of Continued Litigation: In assessing whether the proposed Settlement is fair, reasonable, and adequate, the Court "must balance the risks of continued litigation, including the strengths and weaknesses of plaintiff's case, against the benefits afforded to class members, including the immediacy and certainty of a recovery." *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017).

[6] Rule 23(e)(2)(C)(i) essentially incorporates three of the traditional *Hanlon* factors: the strength of plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; and the risks of maintaining class action status throughout the trial. *Arlo*, 2021 WL 1531171, at *8 (citing *Hanlon*, 150 F.3d at 1026).

The substantial risks to Lead Plaintiffs' case are readily apparent from the Court's three orders dismissing their complaints. *See* ECF Nos. 48, 63, 70; *see also In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1003 (D. Minn. 2005) ("The court needs to look no further than its own order dismissing the shareholder [] litigation to assess the risks involved."). While Lead Plaintiffs were appealing dismissal, Defendants' appellate brief raised substantial arguments, including, *inter alia*, that: (i) Lead Plaintiffs' claims sounded in fraud and were subject to heightened pleading requirements of Rule 9(b); (ii) Lead Plaintiffs failed to plead an actionable misleading statement or omission relating to Progenity's billing practices; (iii) Progenity's billing practices were immaterial; (iv) Lead Plaintiffs failed to adequately plead Progenity's alleged illegal marketing practices; and (v) Lead Plaintiffs failed to plead any misstatement or omission relating to the alleged illegal marketing practices. *See* Ninth Circuit Case No. 23-55716, Dkt. Entry 20 (Jan. 16, 2024). While Lead Counsel believed that their arguments on appeal were strong, they recognized that there was a substantial risk that the Ninth Circuit would agree with Defendants, and with the decisions of this Court dismissing the case. Indeed, in 2024 the Ninth Circuit reversed in only 13.8% of private civil appeals.[7]

Even if Lead Plaintiffs prevailed on appeal, they would still have to *prove* that the statements and omissions in Progenity's IPO Registration Statement were materially misleading. *See* 15 U.S.C. § 77k(a). Defendants successfully argued in their motions to dismiss, and would undoubtedly continue to argue, that they made no material misrepresentations or omissions concerning *any* of Lead Plaintiffs' theories of liability. For example, Defendants forcefully argued, and would likely continue to maintain at summary judgment and trial, that: (i) "Progenity had no obligation to disclose the overbilling of some government payors until the existence and amount of

[7] *See* Statistical Tables for the Federal Judiciary - December 2024 (https://www.uscourts.gov/data-news/reports/statistical-reports/statistical-tables-federal-judiciary/statistical-tables-federal-judiciary-december-2024).

the overbilling became known"; (ii) "the Offering Materials themselves . . . make clear that the Company's testing volumes and other financial metrics were declining and might not recover"; and (iii) "Plaintiffs plead no facts demonstrating how an alleged shift in the Company's marketing strategy created any false or misleading statement in the Offering Materials—which say nothing about historical marking practices." *See* ECF No. 52-1 (Defendants' motion to dismiss the SAC) at 1-2. Although Lead Plaintiffs believe they have strong arguments in response, Defendants' arguments nevertheless posed significant risks to establishing liability had the litigation continued. Moreover, there was no assurance that the documents and testimony that would be obtained in discovery would support Lead Plaintiffs' theory, presenting further risk to Lead Plaintiffs' ability to *prove* that Defendants violated the Securities Act.

Even assuming Lead Plaintiffs prevailed on their appeal and overcame the above risks to successfully prove *prima facie* violations of the Securities Act, Lead Plaintiffs would have confronted considerable challenges in rebutting Defendants' anticipated negative causation defense. *See* 15 U.S.C. § 77k(e); ¶¶46-50. As Defendants repeatedly argued in their motion to dismiss briefing, much of Progenity's "stock price decline occurred *before* any of the disclosures that Plaintiffs claim corrected the alleged misstatements in Progenity's Offering Materials." ECF No. 52-1 at 5; ECF No. 40-1 at 6 (similar); ECF No. 67-1 at 4 (similar). Defendants thus implicitly argued that the decline in Progenity's stock price was not caused by depreciation in value resulting from disclosure of the allegedly concealed facts, signaling the negative causation defense they would have asserted at summary judgment and/or trial. To rebut that defense, Lead Plaintiffs would have to proffer substantial evidence, including expert testimony, and there is no guarantee that a finder of fact would agree with Lead Plaintiffs' expert as opposed to the well qualified expert(s) Defendants were likely to present. Had any of Defendants' negative

causation defense or damages arguments been accepted at summary judgment or trial, they could have dramatically limited—if not eliminated—any potential recovery.

Lead Counsel also expect that the Remaining Defendants would have presented a due diligence defense. *See* 15 U.S.C. §§ 77k(b)(3); ¶¶51-55. Lead Counsel expects that if this case proceeded to discovery, the Remaining Defendants would have produced substantial evidence of their investigation into the subjects of the alleged misrepresentations and omissions. Lead Plaintiffs likely would have needed to present further expert testimony about practices in the IPO process to attempt to prove that the Remaining Defendants' investigation was not reasonable under the circumstances. In addition, Lead Counsel expects that the Remaining Defendants would have testified that they believed the challenged statements were true and did not omit material facts. For instance, Defendants previously argued that some of the challenged statements were opinions, and that Lead Plaintiffs failed to plead that they "did not honestly hold the stated belief." ECF No. 52-1 at 14. Lead Plaintiffs thus would have had to present indirect evidence to try to prove that the Remaining Defendants subjectively did not believe the challenged statements to be accurate, which would have been difficult at best, especially in the face of competing direct testimony from the Remaining Defendants as to their state of mind at the time of the IPO.

In sum, Lead Counsel anticipates the Remaining Defendants would present strong arguments supporting their defenses and challenging Lead Plaintiffs' proof, both in expected motion(s) for summary judgment and at trial. Finally, even if Lead Plaintiffs prevailed on liability and the Settlement Class was awarded damages, the Remaining Defendants likely would appeal the verdict and award. The appeals process would have likely spanned several years, including an appeal to the Ninth Circuit, and, potentially, an *en banc* review from the Ninth Circuit or a writ of certiorari to the Supreme Court, or both. During this time on potential appeals, the Settlement Class would receive no distribution of any damage award. In addition, an appeal of any judgment would carry the risk of reversal, in which case the Settlement

Class would receive no recovery.[8] Thus, Lead Plaintiffs and Lead Counsel recognize that the risks of continued litigation were considerable.

Risks of Maintaining Class Action Status: While Lead Counsel are confident that the Settlement Class meets the requirements for certification (*see* ECF No. 91, Preliminary Approval Motion, § IV.B), the class had not yet been certified at the time of settlement. There was, therefore, a risk that Defendants could defeat class certification. And even if the Court certified the class, there would have remained a risk that the class could be decertified later in the proceedings. *See, e.g.*, *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class.").

Lead Counsel expects the Remaining Defendants would challenge class certification if the case reached that stage. ¶¶56-58. For example, Defendants may have challenged Lead Plaintiffs' adequacy as class representatives, raised challenges as to class member standing based on the requirement that purchased shares be traceable to the Registration Statement, or argued that their negative causation defense shows damages could not be calculated on a class-wide basis. While Lead Plaintiffs would vigorously dispute any such arguments, "[t]he risks attendant to certifying a class and defending any decertification motion supports approval of the settlement." *Lea v. TAL Educ. Grp.*, 2021 WL 5578665, at *10 (S.D.N.Y. Nov. 30, 2021); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019) ("Although the risk of maintaining a class through trial is present in [every] class action . . . this factor [nevertheless] weighs in favor of settlement where it is likely

[8] *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) ($81 million jury verdict for plaintiffs reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1235 (10th Cir. 1996) (overturning securities class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion).

that defendants would oppose class certification if the case were to be litigated.").

Risks Concerning Collectability: Even if Lead Plaintiffs established class certification, liability, and damages, through trial and appeals, there would still be substantial risk that they would not be able to collect the full amount of a judgment. ¶¶62-67. Progenity declared bankruptcy and liquidated through the Chapter 7 bankruptcy process. As such, not only are Lead Plaintiffs' claims against Progenity extinguished, even if they were not Progenity has no assets from which Lead Plaintiffs could potentially collect. ¶63; *see also In re Diamond Foods, Inc., Sec. Litig.*, 2014 WL 106826, at *2 (N.D. Cal. Jan. 10, 2014) ("It is not unreasonable for counsel and the class representative to prefer the bird in hand, given concerns about Diamond's strained financial state and its ability to pay a judgment following further litigation.") (cleaned up); *In re Critical Path, Inc.*, 2002 WL 32627559, at *7 (N.D. Cal. June 18, 2002) ("Through protracted litigation, the settlement class could conceivably extract more, but at a plausible risk of getting nothing . . . watching Critical Path fall into bankruptcy; and, most certainly, drying up the available insurance.").

When initially undertaking this litigation Lead Counsel had no knowledge of whether Defendants had Directors & Officers insurance coverage that might fund a settlement or judgment. While Lead Counsel understand that Defendants do have some D&O insurance, they do not know its terms or amount(s), and such policies are typically limited in amount, reduced by litigation expenses, and potentially subject to competing claims from other litigation or governmental enforcement actions.

It is also entirely possible that none of the Individual Defendants would have been able to satisfy a judgment in the full amount of Lead Counsel's estimate of $20.9 million in damages. While Lead Counsel expect that the Underwriter Defendants would have sufficient assets to fund a judgment, some or all of them could escape liability based on the above-described due diligence defense, and Section 11 expressly limits an underwriter's liability to "the total price at which the securities underwritten by him and distributed to the public were offered to the public," subject to certain

exceptions. *See* ¶66; 15 U.S.C. § 77k(e).

For the foregoing reasons, even if Lead Plaintiffs overcame the substantial obstacles to prevail on the merits, there can be no assurance that they would be able to recover the full amount of a judgment several years in the future.

D. Rule 23(e)(2)(C)(ii)-(iv)

Under Rule 23(e)(2)(C), courts also must consider whether the relief provided for the class is adequate. Each of the Rule 23(e)(2)(C) factors weigh in support of the Settlement.

Rule 23 (e)(2)(C)(ii): "The method for processing Settlement Class Members' claims and distributing relief to eligible claimants is well-established and effective." *In re Stable Road Acquisition Corp.*, 2024 WL 3643393, at *7 (C.D. Cal. Apr. 23, 2024). Here, SCS, the Court-appointed Claims Administrator, will process claims under the guidance of Lead Counsel, allow Claimants an opportunity to cure any Claim deficiencies or request the Court to review a denial of their claims, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court approval. "Claims processing, like the method proposed here, is standard in securities class action settlements. It has been long found to be effective, as well as necessary, insofar as neither Lead Plaintiff nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund." *Id.* (approving nearly identical distribution process and granting final approval); *see also Becker v. Bank of New York Mellon Trust Co., N.A.*, 2018 WL 6727820, at *7 (E.D. Pa. Dec. 21, 2018) (holding that "[t]he requirement that class members submit documentation to substantiate their holdings of the bonds as of the record date will facilitate the filing of legitimate claims, yet is not overly demanding given the range of permissible documentation.").

Rule 23(e)(2)(C)(iii): The Postcard Notice and Notice stated that Lead Counsel would apply for a percentage of the common fund fee award in an amount not to exceed 33⅓% to compensate them for the services rendered on behalf of the

Settlement Class. Lead Counsel is, however, only seeking an attorneys' fee of 25% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount). A proposed attorneys' fee of 25% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount) is reasonable in light of the work performed and the results obtained. It is also consistent with awards in similar cases. *See, e.g.*, *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (approving fee equal to 33% percent of a $12 million settlement fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming award of one-third of $1.725 million settlement); *see also* ECF No. 122, Fee Memorandum, § III.B.5. (percentage of the fund analysis). More importantly, approval of the Fee and Expense Application is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to the Fee and Expense Application. *See* Stipulation ¶16.

Rule 23(e)(2)(C)(iv): The Parties have executed a confidential agreement that establishes certain conditions under which the Remaining Defendants may terminate the Settlement if Settlement Class Members totaling a certain percentage of purchases of Progenity common stock request exclusion (or "opt out") from the Settlement. *Id.* ¶35. "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement." *Christine Asia Co.*, 2019 WL 5257534, at *1; *see also Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *7 (C.D. Cal. Oct. 10, 2019) ("[t]his type of agreement is common in securities fraud actions").

E. The Settlement Treats All Class Members Equitably Relative To Each Other

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. The Settlement easily satisfies this standard. Under the proposed Plan of Allocation, each Authorized Claimant—including Lead Plaintiffs—will receive his, her, or its *pro rata* share of the Net Settlement Fund. *See* Craig Decl., Ex. D (Notice) at ¶¶57-75. Specifically, an

Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.* at ¶72. Courts have repeatedly approved similar plans. *Stable Road*, 2024 WL 3643393, at *8 (substantially similar plan of allocation treats class members equitably); *TAL Educ. Grp.*, 2021 WL 5578665, at *11 (finding, with respect to a similar plan of allocation, "class members are treated equitably relative to each other" and "[t]his methodology is appropriate and consistent with many other securities class action settlements' plans of allocation.").

F. The Remaining *Hanlon* Factors Are Neutral Or Weigh In Favor Of Final Approval

Hanlon also outlined several factors that are not coextensive with Rule 23(e)(2)'s factors. These factors also support final approval.

The Amount Offered in Settlement: "To evaluate the adequacy of the settlement amount, courts primarily consider plaintiffs' expected recovery against the value of the settlement offer." *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *9 (N.D. Cal. Sept. 4, 2018). "This determination requires evaluating the relative strengths and weaknesses of the plaintiffs' case; it may be reasonable to settle a weak claim for relatively little, while it is not reasonable to settle a strong claim for the same amount." *Vikram v. First Student Mgmt., LLC*, 2019 WL 1084169, at *3 (N.D. Cal. March 7, 2019); *see also Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *12 (S.D.N.Y. Mar. 24, 2014) (settlement amount must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case"). Courts must also consider the "serious risk[] that even if Plaintiffs were successful in all aspects of their claims they may be unable to collect a judgment." *Gudimetla v. Ambow Educ. Holding*, 2015 WL 12752443, at *5 (C.D. Cal. Mar. 16, 2015).

Here, the $1 million recovery represents 4.8% of estimated maximum damages

of approximately $20.9 million (based on Section 11's statutory damages formula and Progenity's stock price on the date this suit was initiated). ¶69; ECF No. 94-3 at ¶13. This *maximum* damages figure represents Lead Plaintiffs' *best-case scenario*—assuming that: (i) Lead Plaintiffs prevailed on their appeal; (ii) the Court certified the class; (iii) Lead Plaintiffs survived summary judgment and convinced a jury that liability was proven; and (iv) the trier of fact accepted Lead Plaintiffs' damages theory. This recovery is consistent with the median percentage recovery for securities class action cases of a similar magnitude. *See* Ex. 2, Excerpts of Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review* (NERA Jan. 22, 2025) ("NERA Report") at p. 26 (Fig. 23) (median settlement recovery was 5.2% for securities class actions with NERA-Defined Investor Losses of $20-$49 million that were settled during January 2015-December 2024). And, of course, less than a complete victory on any aspect of the above assumptions would decrease recoverable damages or eliminate them altogether.

In the light of the risks of continued litigation, first and foremost the Court's dismissal of all of Lead Plaintiffs' claims and the uncertainty of the outcome of Lead Plaintiffs' pending appeal, the percentage of recovery is reasonable. Indeed, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery [does] not per se render the settlement inadequate or unfair." *Officers for Justice v. Civ. Serv. Comm'n. of City and Cty. of S.F.*, 688 F.2d 615, 628 (N.D. Cal. 1982); *see also In re LJ Int'l, Inc. Sec. Litig.*, 2009 WL 10669955, at *4 (C.D. Cal. Oct. 19, 2009) (approving securities class action settlement where $2 million recovery was 4.5% of $44 million maximum possible recovery).

The Stage of the Proceedings and Extent of Discovery Completed: The fact that, due to the PSLRA's stay of discovery during the pendency of a motion to dismiss a securities class action (*see* 15 U.S.C. § 77z–1(b)(1)), formal discovery had not yet begun, does not weigh against preliminary approval. *See e.g.*, *In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 2016 WL 6248426, at

*13-*14 (N.D. Cal. Oct. 25, 2016) (formal discovery is "not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement"). Lead Counsel conducted an extensive investigation including consulting with experts, contacting former Progenity employees through an investigator, analyzing numerous publicly available documents, and obtaining additional documents through freedom of information requests. ¶¶18-24. Moreover, Lead Plaintiffs engaged in substantial briefing on three motions to dismiss, and the appeal of the Court's dismissal of the Action. Therefore, Lead Plaintiffs and Lead Counsel had a thorough understanding of the strengths and significant risks of this Action. *See Vaccaro v. New Source Energy Partners L.P.*, 2017 WL 6398636, at *5 (S.D.N.Y. Dec. 14, 2017) ("Although the action did not proceed to formal discovery, Lead Plaintiffs (i) reviewed vast amounts of publicly available information, (ii) conducted interviews of numerous individuals, and (iii) consulted experts on the . . . industry. The Court finds that Lead Plaintiffs were well-informed to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.").

The Experience and Views of Counsel: Courts also give weight to the opinion of experienced and informed counsel supporting the settlement. *Stewart v. Applied Materials, Inc.*, 2017 WL 3670711, at *6 (N.D. Cal. Aug. 25, 2017). This is because "Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *13 (N.D. Cal. Feb. 11, 2016) (cleaned up). Lead Counsel has extensive experience in securities litigation and has obtained a thorough understanding of the merits and risks of the Action. "Under such circumstances, Lead Counsel's conclusion that the Settlement is fair and reasonable and in the best interests of the Settlement Class [] supports the Settlement's approval." *See Stable Road*, 2024 WL 3643393, at *9.

It is also important to note that Lead Plaintiffs support the Settlement. *See* Exs. 6-8 (Lead Plaintiff Declarations), ¶¶3-8. Lead Plaintiffs' support for the Settlement

should be afforded "special weight" because a plaintiff "ha[s] a better understanding of the case than most members of the class." *Nat'l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *see also In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *5 (N.D. Cal. Nov. 26, 2007) (noting Congress' intent to foster involvement of lead plaintiff when passing PSLRA and stating that "the role taken by the lead plaintiff in the settlement process, supports settlement because lead plaintiff was intimately involved in the settlement negotiations.").

Finally, Defendants have been vigorously represented by experienced litigators from Gibson, Dunn & Crutcher LLP and O'Melveny & Myers LLP throughout the Action and settlement negotiations. ¶116. Because the Settlement is the product of informed arm's-length negotiations among experienced counsel, preliminary approval is warranted. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) ("The recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement.").

Class Member Reaction: The deadline for claims, objections, and exclusion requests is February 3, 2026. Late claims, objections and exclusion requests may continue to be received, and there has not been sufficient time for the Claims Administrator to process and evaluate all claims submitted to date. As such, Lead Plaintiffs will more fully discuss this factor, and any exclusions and objections, in their reply brief due February 17, 2026.

The Claims Administrator has disseminated notice to 13,609 potential Settlement Class Members. *See* Declaration of Margery Craig ("Craig Decl."), filed herewith, at ¶12. Important Settlement-related filings, including the Notice, Claim Form, Stipulation, and Preliminary Approval Order, were placed on the Settlement Website. *See* Craig Decl., at ¶17. To date, 73 claims have been received. *Id.* at ¶20. No exclusion requests or objections have been received. *See id.* at ¶¶18-19.

That no objections or requests for exclusion have been received demonstrates the Settlement Class's overwhelmingly positive reaction to the Settlement and

supports final approval. *See Faraday Future Intelligent Elec. Inc.*, 2024 WL 1245341, at *7-10 (C.D. Cal. Mar. 18, 2024) (approving settlement where there was one objection and four exclusion requests, noting "[t]he absence of objections to the Settlement by almost all class members strongly supports approval."); *Omnivision*, 559 F. Supp. 2d at 1043 (approving settlement where there were three objections out of approximately 57,000 class members).

* * *

For all the forgoing reasons, the Court should grant final approval to the Settlement.

V. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

Lead Plaintiffs also request final approval of the Plan of Allocation. A plan of allocation in a class action "is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable, and adequate." *Omnivision*, 559 F. Supp. 2d at 1045. "To meet this standard, a plan of allocation recommended by experienced and competent class counsel need only have a reasonable and rational basis." *Stable Road*, 2024 WL 3643393, at *10; *see also In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *13 (S.D.N.Y. Dec. 23, 2009) ("In determining whether a plan of allocation is fair, courts look largely to the opinion of counsel.").

The proposed Plan of Allocation, developed by one of Lead Plaintiffs' damages consultants working in conjunction with Lead Counsel, is based on a theory of damages consistent with Section 11 of the Securities Act, including its statutory damages formula and Defendants' potential negative causation defenses.[9] More specifically, The Plan of Allocation is based on the premise that the decreases in the

[9] The Plan of Allocation is set forth in the Notice that is posted on, and downloadable from, the Settlement Website. Craig Decl., Ex. D (Notice), at ¶¶57-75.

prices of Progenity common stock that followed the alleged corrective disclosures that occurred on August 14, 2020; September 10, 2020; October 29, 2020; October 30, 2020; November 2, 2020; November 10, 2020; November 19, 2020; November 20, 2020; November 23, 2020; June 2, 2021; and June 3, 2021 (the "Corrective Disclosure Dates"), may be used to measure the alleged artificial inflation in the price of Progenity common stock prior to these disclosures. Craig Decl., Ex. D (Notice), at ¶61.

In order for a Settlement Class Member to have a Recognized Loss under the Plan of Allocation, their Progenity common stock must have been purchased or acquired pursuant and/or traceable to the Registration Statement and held at the opening of the U.S. financial markets on at least one of the alleged Corrective Disclosure Dates. *Id*. Progenity common stock purchased directly in the initial public offering from an underwriter or its agent, or in the open market during the period June 18, 2020 through December 2, 2020, both dates inclusive, is considered an acquisition pursuant or traceable to the Registration Statement. *Id.* at ¶59.[10]

An individual Claimant's recovery under the Plan of Allocation will depend on a number of factors, including when the Claimant purchased, acquired, or sold Progenity common stock, at what prices, in what amounts, as well as the number of valid claims filed by other Claimants. If a Claimant has an overall market gain with respect to his, her, or its overall transactions in Progenity common stock purchased or acquired pursuant and/or traceable to the Registration Statement, the Claimant's

[10] The SEC declared the Company's IPO registration statement effective on June 18, 2020, and declared the Company's registration statement for its secondary public offering of common stock effective after the close of trading on December 2, 2020. *See* ECF No. 94-3 at ¶¶8-10. "[W]hen a company has offered shares under more than one registration statement, aftermarket purchasers usually will not be able to trace their shares back to a particular offering." *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107–08 (9th Cir. 2013).

recovery under the Plan of Allocation will be zero. Craig Decl., Ex. D (Notice), at ¶70.

Calculations under the Plan of Allocation are not intended to be estimates of the amounts that Settlement Class Members might have been able to recover after a trial or estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. Instead, the calculations under the Plan of Allocation are a method to weigh the claims of Settlement Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund. *Id.* at ¶58.

In general, the Recognized Loss for Progenity common stock will be based on the estimated artificial inflation on the date of acquisition, and other factors including, depending on if or when such stock was sold, the estimated artificial inflation on the date of sale, the purchase price, the sale price, and/or $9.10. *Id.* at ¶63.[11] The sum of a Claimant's Recognized Loss Amounts is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims, subject to a $10 *de minimis* provision. Craig Decl., Ex. D (Notice), at ¶¶64, 72. More precisely, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶72.

For these reasons, Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund. *See, e.g.*, *In re China Intelligent Lighting & Elecs., Inc.*, 2015 WL 12765018, at *6 (C.D. Cal. Mar. 9, 2015) (approving a plan of allocation that "uses a Recognized Loss value calculated for each share—which depends on when that share was purchased and

[11] August 27, 2020 is the last trading date prior to the filing date of the first complaint stating a claim under the Securities Act for shares acquired pursuant or traceable to the Registration Statement. The closing price for Progenity common stock that day was $9.10. *Id.* at ¶63 n.6.

sold—and will distribute them on a *pro rata* basis according to each claimant's Recognized Loss."); *Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12303367, at *9 (C.D. Cal. July 9, 2013) (approving plan of allocation as "provid[ing] a reasonable basis for Class Members to recover their *pro rata* damages based upon the dates of their purchase and sale transactions as compared with the disclosure dates identified in the complaint.").

VI. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

In granting preliminary approval, the Court found Lead Plaintiffs and Lead Counsel to adequately represent the class, and conditionally certified the Settlement Class for purposes of settlement. *See* ECF No. 96 at 13-14, 30. Nothing has changed since preliminary approval that would undermine the Court's conclusions, and final class certification for settlement purposes remains appropriate. *See Stable Road*, 2024 WL 3643393, at *11 ("Since there have been no changes to alter the propriety of class certification for settlement purposes, the Court affirms its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3)."); *Fleming v. Impax Labs. Inc.*, 2022 WL 2789496, at *4 (N.D. Cal. July 15, 2022) (substantially similar); *see also* ECF No. 91 (Preliminary Approval Motion) at § IV.B.

VII. CONCLUSION

For the reasons stated in this memorandum and in the Spencer Declaration, Lead Plaintiffs respectfully requests that the Court grant the motion. Proposed Orders granting the requested relief will be submitted with Lead Counsel's reply papers after the deadlines for objecting to the motion or requesting exclusion have passed.

DATED: January 20, 2026

GLANCY PRONGAY & MURRAY LLP

By: *s/ Garth Spencer*

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PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case and am over eighteen years old. On January 20, 2026, 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 Southern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 20, 2026, at Wilmington, North Carolina.

s/ Garth Spencer
Garth Spencer