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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

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13 **In re QUALITY SYSTEMS, INC.**
14 **SECURITIES LITIGATION**
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} **Case No.: SACV 13-01818-CJC(JPRx)**
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} **ORDER GRANTING PRELIMINARY**
} **APPROVAL OF CLASS ACTION**
} **SETTLEMENT AND LIFTING STAY**

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19 **I. INTRODUCTION**
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21 This is a securities class action brought on behalf of all persons who purchased or
22 otherwise acquired Quality Systems, Inc. (“QSI”) securities between May 26, 2011, and
23 July 25, 2012, (collectively, “Plaintiffs”) against Defendant QSI and QSI officers Steven
24 T. Plochocki, Paul A. Holt, and Sheldon Razin. The operative Amended Complaint
25 alleges violations of § 10(b) and § 20(a) of the 1934 Securities Exchange Act and Rule
26 10b-5 based on purportedly false and misleading statements related to QSI’s current and
27 projected sales and financial performance. (Dkt. 26 [Amended Complaint, hereinafter
28 “AC”].) It also alleges insider trading violations under § 10(b) of the Exchange Act and

1 Rule 10b-5 against Defendant Plochocki. The parties have reached a settlement, and
 2 Lead Plaintiffs Arkansas Teacher Retirement System (“ATRS”) and City of Miami Fire
 3 Fighters’ and Police Officers’ Retirement Trust (“Miami”) (together “Lead Plaintiffs”)
 4 move for an order (1) conditionally certifying the class for settlement purposes pursuant
 5 to Federal Rule of Civil Procedure 23(b)(3); (2) preliminarily approving the settlement;
 6 (3) appointing A.B. Data, Ltd. (“A.B. Data”) as claims administrator; (4) approving the
 7 proposed class notice procedures; and (5) setting a final fairness hearing date. (Dkt. 95
 8 [Motion, hereinafter “Mot.”].) Defendants have not opposed. For the following reason,
 9 Lead Plaintiffs’ motion is GRANTED.¹

11 II. BACKGROUND

13 According to the AC, between 2011 and 2012, a period when QSI was
 14 experiencing a slowdown in its greenfield sales and a decline in its sales pipeline,
 15 Defendants misrepresented the strength of QSI’s sales figures, sales prospects, greenfield
 16 sales, and pipeline figures, and issued highly favorable earnings per share (EPS) guidance
 17 for fiscal years 2012 (“FY2012”) and 2013 (“FY2013”). (AC ¶¶ 44–108.) Plaintiffs
 18 generally alleged that QSI’s statements were fraudulent because they were issued
 19 contemporaneously while QSI’s new bookings and sales pipeline were declining. (*Id.* ¶¶
 20 46, 48–56.) Each of the fraudulent statements allegedly was material to investors, and
 21 the Individual Defendants possessed the requisite scienter because they were aware of
 22 QSI’s flagging financial performance as of late 2011. (*Id.* ¶¶ 62, 78, 99, 102.) Plaintiffs
 23 further alleged that Defendant Plochocki’s sale of 87% of his QSI stock during the Class
 24 Period and letters from the SEC seeking clarification of QSI’s EPS projections were
 25 indicators of scienter. (*Id.* ¶¶ 134–144.) On July 26, 2012, QSI issued a press release
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27 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
 28 for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
 for August 13, 2018, at 1:30 p.m. is hereby vacated and off calendar.

1 declining to affirm the FY2013 guidance, given that record revenues for the first quarter
2 had come in at just 18% and there was a decline in EPS and net income from the previous
3 year's quarter. (*Id.* ¶ 110.) As a result of QSI's press release and "revelations" regarding
4 its financial condition, QSI's stock price plummeted from \$23.63 per share to \$15.95 per
5 share, a 33% price drop. (*Id.* ¶ 166.)

6
7 This action was originally filed in November 19, 2013. (Dkt. 1.) ATRS and
8 Miami were appointed Lead Plaintiffs on February 4, 2014, (Dkt. 22), and by stipulation,
9 the AC was filed on April 7, 2014. On June 20, 2014, Defendants moved to dismiss the
10 AC, (Dkt. 29), and after full briefing and hearing on the motion, the Court granted
11 Defendants' motion to dismiss with prejudice, (Dkt. 39). Thereafter, Lead Plaintiffs filed
12 a motion for reconsideration of the Court's order granting Defendants' motion to dismiss,
13 (Dkt. 40), which the Court denied, (Dkt. 46). Plaintiff's appealed the Court's decision to
14 the Ninth Circuit, and on July 28, 2017, the Ninth Circuit issued its opinion, reversing
15 and remanding the case back to this Court. *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d
16 1130 (9th Cir. 2017). On November 16, 2017, the Court issued a Scheduling Order and
17 an Order Regarding Settlement Procedures, Pre-trial Conference and Trial. (Dkts. 64,
18 65.)

19
20 Following remand, the parties participated in discovery, including initial
21 disclosures pursuant to Federal Rule of Civil Procedure 26(f), and served requests for
22 production of documents, interrogatories, requests for admissions, subpoenas *duces*
23 *tecum* on various non-parties, and a notice of deposition of Defendant QSI. (Mot. at 5.)
24 On May 9, 2018, the parties participated in a full-day, in-person mediation before
25 Gregory P. Lindstrom, Esq., of Phillips ADR. (*Id.* at 5–6.) By the time of settlement,
26 document discovery was ongoing, and Lead Plaintiffs had obtained more than 350,000
27 pages of documents produced by Defendants and non-parties. Although the parties were
28 unable to resolve the matter during the formal mediation session, following the mediation

the parties continued negotiations under Mr. Lindstrom’s direction and supervision. The parties ultimately accepted the mediator’s “double-blind” recommendation.² The parties reached a settlement in principle to settle all claims asserted in the action for \$19 million. On May 18, 2018, pursuant to the parties’ joint stipulation, the Court stayed all proceedings pending submission of this motion for preliminary approval of the settlement. (Dkt. 91.) When the settlement was reached, Defendants’ petition for a writ of certiorari to the Supreme Court was pending, and on June 8, 2018, the parties requested the Supreme Court defer action on the pending petition until its next scheduled conference on September 24, 2018, in light of the parties’ settlement. (Mot. at 6.)

III. ANALYSIS

A. Class Certification Requirements

Pursuant to Federal Rule of Civil Procedure 23, Lead Plaintiffs seek provisional certification of a class for settlement purposes only. The proposed class is defined as

All persons or entities who purchased or otherwise acquired QSI common stock during the period from May 26, 2011 through July 25, 2012, inclusive (“Class Period”), and were damaged thereby. Excluded from the Class are: (a) Defendants; (b) immediate family members of the individual Defendants (as defined in 17 C.F.R. §229.404 Instructions (1)(a)(iii) and (1)(b)(ii)); (c) present or former executive officers or directors of QSI and their immediate family members (as defined in 17 C.F.R. §229.404 Instructions (1)(a)(iii) and (1)(b)(ii)); (d) any firm or entity in which any Defendant has or had a controlling interest during the Class Period; (e) any affiliates, parents, or subsidiaries of QSI; (f) all QSI plans that are covered by ERISA; and (g) the

² The double-blind bid system compares the range of settlement amounts of each litigant in a series of rounds, and is a neutral third party to the process. If the settlement offers between the parties coincide, neutral third party advises each party that a settlement has been reached. Here, the mediator recommended a settlement amount of \$19 million and both parties accepted. (Mot. at 9–10.)

1 legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-
 2 interest, or assigns of any excluded Person, in their respective capacity as
 3 such. Also excluded from the Class are those Persons who exclude
 4 themselves by submitting a request for exclusion that is accepted by the
 Court.

5 (the “Class”). (Dkt. 95-2 [“Settlement Agreement”] at 6.) When a plaintiff seeks
 6 conditional class certification for purposes of settlement, the Court must ensure that the
 7 requirements of Rule 23 are met as if the case were going to be fully litigated. *Amchem*
 8 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Staton v. Boeing Co.*, 327 F.3d 938,
 9 952–53 (9th Cir. 2003). Rule 23 contains two sets of requirements for certification of a
 10 class. First, under Rule 23(a), all proposed classes must have sufficient numerosity,
 11 commonality, typicality, and adequacy. Second, the party seeking certification must
 12 show that the action falls within one of the three “types” of classes described in the
 13 subsections of Rule 23(b). In this case, Lead Plaintiffs seek certification pursuant to Rule
 14 23(b)(3). The Court concludes that Lead Plaintiffs have presented sufficient evidence to
 15 show that the proposed class satisfies the requirements of Rule 23(a) and Rule 23(b)(3).
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17 **1. Rule 23(a) Requirements**

18 **i. Numerosity**

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 20
 21 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is
 22 impracticable.” “No exact numerical cut-off is required; rather, the specific facts of each
 23 case must be considered.” *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D.
 24 Cal. 2009) (citing *General Tel. Co. of Northwest, Inc. v. E.E. O. C.*, 446 U.S. 318, 330
 25 (1980)). “As a general matter, courts have found that numerosity is satisfied when class
 26 size exceeds 40 members.” *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311
 27 F.R.D. 590, 602–03 (C.D. Cal. 2015); see *Tait v. BSH Home Appliances Corp.*, 289
 28 F.R.D. 466, 473–74 (C.D. Cal. 2012). Here, QSI had between 57 million and 59 million

1 shares outstanding that were trading on the NASDAQ Stock Exchange during the Class
2 Period. (Mot. at 16–17.) More than 375 institutional investors reported holdings in QSI
3 stock during that time, and it is essentially certain that thousands of individuals purchased
4 and traded the stock. The numerosity requirement is therefore easily satisfied. *See In re*
5 *Cooper*, 254 F.R.D. at 634 (finding the numerosity requirement met in a securities class
6 action when 36 million shares were outstanding during the relevant time period).

7 8 **ii. Commonality**

9
10 Rule 23(a)(2) requires that “there are questions of law or fact common to the
11 class.” “Commonality requires the plaintiff to demonstrate that the class members ‘have
12 suffered the same injury,’ [which] does not mean merely that they have all suffered a
13 violation of the same provision of law.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,
14 2551 (2011). The claims must depend upon a common contention that “is capable of
15 classwide resolution—which means that determination of its truth or falsity will resolve
16 an issue that is central to the validity of each one of the claims in one stroke.” *Id.* Even a
17 single common question satisfies the commonality requirement. *Id.* at 2556. The Court
18 finds that Lead Plaintiffs have alleged a number of common questions of law and fact,
19 including (1) whether Defendants’ alleged misrepresentations and omissions violated the
20 securities laws; (2) whether those misrepresentations and omissions were materially false
21 and misleading; (3) whether Defendants acted with the requisite mental state when
22 making those statements; (4) whether the individual Defendants controlled QSI and its
23 violations of the securities laws; (5) whether the price of QSI’s stock was artificially
24 inflated during the Class Period as a result of Defendants’ alleged misrepresentations and
25 omissions; (6) whether Defendants’ misrepresentations and omissions caused the Class
26 Members to suffer a compensable loss; and (7) whether the Class members have
27 sustained damages, and the proper measure of damages. The answers to these common
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1 questions necessarily resolve all Class Members' claims in one stroke, so the
2 commonality requirement is met.

3 4 **iii. Typicality**

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6 Rule 23(a)(3) requires that the "claims or defenses of the representative parties are
7 typical of the claims or defenses of the class." Representative claims are "typical" if they
8 are "reasonably coextensive with those of the absent class members; they need not be
9 substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).
10 Here, Lead Plaintiffs' claims are identical to those of other Class Members, who all
11 suffered from the same course of conduct—QSI's allegedly misleading statements and
12 omissions, and the subsequent inflation of the price of its stock. The typicality
13 requirement is therefore satisfied.

14 15 **iv. Adequacy**

16
17 Rule 23(a)(4) requires that "the representative parties will fairly and adequately
18 protect the interests of the class." This factor requires (1) a lack of conflicts of interest
19 between the proposed class and the proposed representative plaintiff, and (2)
20 representation by qualified and competent counsel that will prosecute the action
21 vigorously on behalf of the class. *Staton*, 327 F.3d at 957. The concern in the context of
22 a class action settlement is to ensure that there is no collusion between the defendant,
23 class counsel, and class representatives to pursue their own interests at the expense of the
24 interests of the rest of the members of the class. *Id.* at 958 n.12.

25
26 Counsel for Lead Plaintiffs, Bernstein Litowitz and RGRD, are experienced in
27 litigating securities class actions and is familiar with the facts underlying this case. *See*
28 *Chung v. Tyson Foods, Inc.*, No. 5:16-CV-5340, 2017 WL 368506, at *5 (W.D. Ark. Jan.

25, 2017) (approving Bernstein Litowitz as lead counsel based on past recoveries of hundreds of millions of dollars in securities class actions); *Richman v. Goldman Sachs Grp., Inc.*, 274 F.R.D. 473, 479 (S.D.N.Y. 2011) (approving RGRD as lead counsel based on its substantial experience litigating complex securities actions). Counsel have vigorously prosecuted this action, and have managed almost five years of motion practice and discovery, leading to the current settlement. Every indication is that they have done so capably and adequately.

Additionally, there is no evidence that Lead Plaintiffs have any conflicts of interest with other Class Members or that Lead Plaintiffs have colluded with Defendants to produce a settlement. Lead Plaintiffs are pension funds and institutional investors who have monitored this litigation and become familiar with the facts and theories underlying the class claims. Moreover, the Court already made a preliminary finding of adequacy when it appointed ATRS and Miami to be Lead Plaintiffs. (*See* Dkt. 22.) The adequacy requirement is therefore met.

2. Rule 23(b) Requirements

In addition to the requirements of Rule 23(a), a proposed class must satisfy one of the three requirements under Rule 23(b). Here, Lead Plaintiffs seek certification pursuant to 23(b)(3), which allows certification if:

(3) the court finds that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

The predominance requirement overlaps with Rule 23(a)(2)'s commonality requirement, but is a more demanding inquiry. *Hanlon*, 150 F.3d at 1019. The “main concern in the predominance inquiry . . . [is] the balance between individual and common issues.” *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 959 (9th Cir. 2009). Here, the common issues predominate over any individual questions. Lead Plaintiffs have allegedly been harmed in precisely the same way every Class Member was harmed: by purchasing QSI shares that were overvalued on account of certain misrepresentations and omissions made by QSI. Indeed, the Supreme Court has observed that “[p]redominance is a test readily met in certain cases alleging consumer or securities fraud,” such as this one. *Amchem*, 521 U.S. at 625.

The Court also finds that proceeding as a class is superior to other methods of resolving the issues presented by this case. A class action may be superior “[w]here classwide litigation of common issues will reduce litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). It is also superior when “no realistic alternative” to a class action exists. *Id.* at 1234–35. “District courts have consistently recognized that the common liability issues involved in securities fraud cases are ideally suited for resolution by way of a class action.” *Cooper*, 254 F.R.D. at 641; *see also Freedman v. Louisiana-Pacific Corp.*, 922 F. Supp. 377, 400 (D. Or. 1996) (“[C]ourts have consistently embraced the class action device as a superior method of adjudicating federal securities fraud claims.”). Given the common issues

presented by all Class Members, adjudicating these claims on an individual basis for many thousands of potential Class Members is unrealistic. Additionally, although the Court foresees no management problems from litigating this dispute as a class action, the Supreme Court has held that a district court “need not inquire whether the case, if tried, would present intractable management problems” in a “settlement-only class certification.” *Amchem*, 521 U.S. at 620. As a result, the superiority requirement is met.

B. Fairness of the Proposed Settlement

Plaintiff also seeks preliminary approval of the Settlement Agreement. Rule 23(e) “requires the district court to determine whether a proposed settlement is fundamentally fair, reasonable, and accurate.” *Staton*, 327 F.3d at 959 (quoting *Hanlon*, 150 F.3d at 1026). To determine whether this standard is met, a district court must consider a number of factors, including “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; . . . and the reaction of the class members to the proposed settlement.” *Id.* (quoting *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)). At the preliminary approval stage, a full “fairness hearing” is not required; rather, the inquiry is whether the settlement “appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

Having reviewed the arms-length negotiation process and substantive terms of the Settlement Agreement, the Court finds no obvious deficiencies or grounds to doubt its fairness. The parties did not settle until after almost five years of litigation, substantial

discovery, and a private mediation session before a neutral mediator. *See In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) (“A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced capable counsel after meaningful discovery.”) (internal quotation and citations omitted). There is no evidence of collusion during the parties’ settlement negotiations, particularly given that the parties accepted the mediator’s “double-blind” proposal. Indeed, “[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007).

Moreover, the Court finds that the benefits provided to the proposed settlement class appropriately balance the risks of continued litigation. Lead Plaintiffs and the Class Members’ path to recovery was not without significant obstacles. Defendants vigorously argued that the representations made by QSI were not false or did not otherwise violate the securities laws, and continued to challenge the sufficiency of the Amended Complaint. And Defendants’ petition for a writ for certiorari remains pending before the Supreme Court, adding to the risk of delay and termination of the litigation altogether. Additionally, Lead Plaintiffs and the Class faced a difficult task of proving up causation and damages given the uncertain effect on stock price of corrective disclosures made by Defendants during the Class Period. Trial no doubt would have included a great deal of expert testimony on these complex and difficult questions. And an appeal would have been virtually certain, whatever the result at trial. Further litigation entails significant risks for all involved parties, including the risk that Class Members would recover nothing at all. *See In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007) (“Additional consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement.”). Accordingly, the relative strength of the Class Members’ claims, combined with the risk of obtaining and

1 maintaining class status and the likely duration of further litigation, all weigh in favor of
2 granting preliminary approval of the Settlement Agreement.

3
4 In light of such risks, the substantive terms of the Settlement Agreement are
5 reasonable. The parties' agreement provides for a Settlement Amount of \$19 million.
6 (Settlement Agreement ¶ 1.36.) The Settlement Agreement defines the Net Settlement
7 Fund ("NSF") as the Settlement Amount less any attorneys' fees (up to 25% of the
8 Settlement Amount, or \$4,750,000), attorneys' expenses and an incentive award to each
9 Lead Plaintiff (together, not to exceed \$300,000), notice and administration expenses, (up
10 to \$500,000), taxes and tax expenses. (*Id.* ¶¶ 1.28, 2.8; Dkt. 95-2Ex. A-1 at 2–3.) The
11 parties have not provided the Court with a full estimate of what the NSF will be if their
12 requests for deductions are granted, but the proposed notice documents indicate that the
13 per-share award will drop \$0.17 if the Court approves Lead Counsel's fee and expense
14 application, (*Id.* Ex. A-1 at 3), and from this the Court deduces that the NSF will be
15 approximately \$13,373,000. That fund will be distributed on a *pro rata* basis to Class
16 Members who submit valid claims, based on the relative size of their recognized claims.
17 (*Id.* Ex. A-1 at 15.) If any claimant's authorized distribution calculates to less than \$10, it
18 will not be included in the calculation and no distribution will be made to that authorized
19 claimant. The parties estimate that the average distribution, pre-deductions, will be \$0.63
20 per share. (*Id.* Ex. A-1 at 3.) If there is a balance remaining in the NSF after an initial
21 distribution, and if Lead Counsel and the Claims Administrator determine that it is cost-
22 effective to do so, the Claims Administrator shall conduct a re-distribution, to authorized
23 claimants who have cashed their initial distributions and who would receive at least \$10
24 from such redistribution. (*Id.* Ex. A-1 at 16.) These redistributions shall be repeated
25 until the balance remaining in the NSF is *de minimis*, and thereafter that remaining
26 balance shall be distributed to non-sectarian, not-for-profit organizations. The formula
27 for distributing the NSF is fair, as it will compensate Class Members according to the
28

1 relative size of their claims, how many shares they owned and for how long—or, in other
2 words, according to how much they were harmed by Defendants’ alleged activities.

3
4 Lead Counsel apparently intends to seek a 25% fee. The Ninth Circuit has set 25%
5 as the benchmark for common fund cases. *Torrisi v. Tucson Electric Power Co.*, 8 F.3d
6 1370, 1376 (9th Cir. 1993). It is unclear what incentive award will be sought for Lead
7 Plaintiffs, given that the Settlement caps the incentive award and the attorneys’ expenses
8 together at \$300,000. The Court notes that Lead Plaintiffs’ incentive award may be
9 excessive as compare to the per-share recovery, which is likely to be small. *See In re*
10 *Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act Litig.*, 295 F.R.D.
11 438, 470 (C.D. Cal. 2014) (explaining that California district courts typically approve
12 incentive awards between \$3,000 and \$5,000). Furthermore, the actual amount awarded
13 by the Court to Lead Counsel and Lead Plaintiffs will affect the amount of relief afforded
14 to the settlement class, as they directly detract from the NSF. (*See* Settlement Agreement
15 ¶ 1.28.) The Court will expect Class Counsel to explain and provide detailed evidence as
16 to why a 25% attorneys’ fees award, reimbursement for attorneys’ expenses, Lead
17 Plaintiffs’ incentive award, and administration costs are fair and just. Although the Court
18 has concerns regarding the proposed incentive awards and expenses, it nonetheless finds
19 that the Settlement Agreement is appropriate for preliminary approval, pending a full
20 fairness hearing. As discussed above, the settlement eliminates the significant risk of
21 non-recovery in continuing litigation. Moreover, none of the signs of caution flagged by
22 the Ninth Circuit—such as where the class receives no monetary distribution or where the
23 fees not awarded revert to defendants—are present here. The Court will make its final
24 decision on the fairness and adequacy of the settlement after the parties have addressed
25 the Court’s concerns identified herein and after Class Members have had an opportunity
26 to object.

27
28 //

1 The Court's fairness analysis includes evaluating the scope of any release of
 2 claims. *See, e.g., Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 303 (E.D. Cal.
 3 2011) (analyzing scope of release to determine whether preliminary approval of a
 4 settlement was warranted). A settlement agreement may only release claims that are
 5 "based on the identical factual predicate as that underlying the claims in the settled class
 6 action." *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (quoting *Williams v.*
 7 *Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008)). Put another way, a release of claims
 8 that "go beyond the scope of the allegations of the operative complaint" is impermissible.
 9 *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2014 WL 4370694, at *7 (N.D. Cal.
 10 Sept. 3, 2014). The release in this case is appropriately limited. (Agreement ¶ 1.32.)

11 12 **C. Claims Administrator**

13
14 Lead Plaintiffs request appointment of A.B. Data as the Claims Administrator.
 15 Both parties have agreed to designate A.B. Data as the Claims Administrator. (Mot. at
 16 25.) There is no further information in the record that might aid the Court in determining
 17 whether A.B. Data is an adequate settlement claims administrator. But the Court takes
 18 judicial notice that a number of other federal courts in California have approved A.B.
 19 Data as a claims administrator in class action settlements. *See, e.g., Munday v. Navy Fed.*
 20 *Credit Union*, No. SACV151629JLSKESX, 2016 WL 7655807, at *9 (C.D. Cal. Sept.
 21 15, 2016) (appointing A.B. Data as claims administrator); *Lofton v. Verizon Wireless*
 22 *(Vaw) LLC*, No. C 13-05665 YGR, 2016 WL 7985255, at *2 (N.D. Cal. Jan. 28, 2016)
 23 (same). Accordingly, A.B. Data is appointed claims administrator in this case.

24 25 **D. Notice of the Proposed Settlement**

26
27 Finally, Lead Plaintiffs seek approval of the proposed form and manner of notice
 28 of the settlement to be sent to Class Members. Rule 23(c)(2)(B) provides that for Rule

23(b)(3) classes, as here, the Court “must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The notification procedure outlined in the Settlement Agreement satisfies that standard. (*See* Settlement Agreement § 5.) No later than fifteen calendar days after the entry of this Order, QSI will provide the Claims Administrator with identifying information of Class Members. (*Id.* ¶ 5.2.) The Claims Administrator will then provide each Class Member with notice within ten calendar days by mail. (*Id.*) Additionally, the Lead Counsel will publish the Class Notice in *The Wall Street Journal* and once over a national newswire service. (Mot. at 24.)

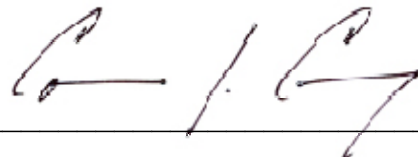
Notice to Class Members must “clearly and concisely state, in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues or defenses; (iv) that the class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion, and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). The proposed Class Notice form provides clear information about the definition of the class and nature of the action, a summary of the terms of the proposed settlement, the terms of the released claims, the process of objecting to the settlement, and the consequences of inaction. (*See* Settlement Agreement Ex. A-1.) The Claim Form that is to be provided along with the Class Notice is similarly acceptable. (*Id.* Ex. A-2.) Class Members will have 120 days after the notice is mailed to either submit the Claim Form or request exclusion. Finally, the notice materials comply with the special requirements found in the Private Securities Litigation Reform Act, which requires that, among other things, the notice materials inform class members of the amount of the settlement in the aggregate and per-share basis, whether the parties disagree on the amount, the amount of desired attorneys’ fees, contact information for counsel, and an explanation for the settlement. 15 U.S.C. §78u-4(a)(7)(A)–(F).

1 As the notice procedure comports with Rule 23(c)(2)(B), the Court directs that
2 notice be distributed to Class Members according to the terms and timeline provided in
3 the Settlement Agreement and attendant exhibits.

4
5 **IV. CONCLUSION**

6
7 In light of the parties' settlement agreement, the Court LIFTS the stay. For the
8 foregoing reasons, the Court GRANTS provisional certification of the class for settlement
9 purposes only; GRANTS preliminary approval of the settlement; APPROVES the
10 appointment of Lead Counsel as Class Counsel; APPROVES Lead Plaintiff to be the
11 class representative; APPROVES A.B. Data to be the Claim Administrator; and
12 APPROVES of the proposed distribution of notice to the class. Notice shall be
13 distributed to class members by **August 14, 2018**. The final approval hearing shall be
14 held on **Monday, November 19, 2018, at 1:30 p.m.**

15
16
17 DATED: July 30, 2018

A handwritten signature in dark ink, appearing to read 'C. J. Carney', is written over a horizontal line.

18
19 CORMAC J. CARNEY
20 UNITED STATES DISTRICT JUDGE
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