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Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

In re QUALITY SYSTEMS, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	No. 8:13-cv-01818-CJC-JPR CLASS ACTION JOINT DECLARATION OF ROBERT R. HENSSLER JR. AND BENJAMIN GALDSTON IN SUPPORT OF: (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AND (B) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4) DATE: November 19, 2018 TIME: 1:30 p.m. CTRM: 7C JUDGE: Honorable Cormac J. Carney

ROBERT R. HENSSLER JR. and BENJAMIN GALDSTON declare as follows:

1. Robert R. Henssler Jr. is a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), counsel for Lead Plaintiff City of Miami Fire Fighters' and Police Officers' Retirement Trust ("Miami"). Benjamin Galdston is a member of Bernstein Litowitz Berger & Grossman LLP ("Bernstein Litowitz"), counsel for Lead Plaintiff Arkansas Teacher Retirement System ("ATRS"). We were actively involved in prosecuting this action (the "Litigation"), are familiar with the proceedings, and have personal knowledge of the matters set forth herein based on our active supervision and participation in the Litigation.

2. Pursuant to Federal Rule of Civil Procedure ("Rule") 23, we submit this declaration in support of: (a) final approval of the Stipulation of Settlement dated July 16, 2018 (ECF No. 95-2) ("Stipulation" or "Settlement"),[1] which provides for an all-cash recovery of $19 million on behalf of the Class to resolve this securities class action against all Defendants; (b) approval of the proposed Plan of Allocation; and (c) approval of the application for an award of attorneys' fees and expenses to Robbins Geller and Bernstein Litowitz (collectively, "Lead Counsel"), including an award to Lead Plaintiffs Miami and ATRS (collectively, "Lead Plaintiffs") for their time representing the Class pursuant to 15 U.S.C. §78u-4(a)(4).[2]

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[1] The Stipulation resolves the claims asserted against Defendants Steven T. Plochocki ("Plochocki"), Paul Holt ("Holt"), and Sheldon Razin ("Razin") (together, the "Individual Defendants") and Quality Systems, Inc. ("QSI" or the "Company") (collectively, the "Defendants"). All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Stipulation.

[2] Pursuant to the July 30, 2018 Order Granting Preliminary Approval of Class Action Settlement and Lifting Stay (ECF No. 96) ("Notice Order"), the Court certified the Litigation as a class action on behalf of 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; (c) present or former executive officers or directors of QSI and their immediate family members; (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 legal representatives,

I. PRELIMINARY STATEMENT

3. This class action seeks recovery from QSI and certain of its senior executives and directors for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"). The operative complaint alleges that Defendants made false and misleading statements and omissions relating to QSI's sales and financial performance. *See generally* Amended Complaint for Violations of the Federal Securities Laws (ECF No. 26) ("Amended Complaint").

4. This case has been vigorously litigated since its commencement more than four years ago through its settlement, which was reached in principle on May 10, 2018. The Settlement was achieved only after Lead Counsel, *inter alia*: (a) conducted a thorough pre-discovery investigation where it reviewed and analyzed numerous relevant publicly-available documents (including the Company's SEC filings, conference call and presentation transcripts, media reports, and analyst reports), as well as information obtained from interviews with former QSI employees; (b) fully briefed and argued Defendants' motion to dismiss and fully briefed Lead Plaintiffs' motion for reconsideration; (c) successfully appealed the dismissal of the Amended Complaint with prejudice to the Ninth Circuit; (d) opposed Defendants' petition for a writ of certiorari to the United States Supreme Court; (e) moved for an order to unseal documents and information from Ahmed Hussein's state court action[3]; (f) consulted with Bjorn I. Steinholt of Caliber Advisors, Inc., Lead Plaintiffs' economic expert regarding loss causation, damages, and related issues; (g) submitted a joint proposed stipulated protective order after meet and confers, motion practice, and a telephonic conference with Magistrate Judge Rosenbluth regarding the protective order's

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

[3] *Hussein v. Quality Sys., Inc., et al.*, Case No. 30-2013-00679600-CU-NP-CJC (Super. Ct. Cal., Cty. of Orange) ("Hussein Litigation").

provisions; (h) engaged in numerous meet and confers regarding Lead Plaintiffs' discovery requests and the production of electronically-stored information, ultimately resulting in the production of over 350,000 pages of documents by Defendants and non-parties; (i) reviewed, organized, and analyzed the produced documents to assemble the evidence supporting the claims and countering the defenses; (j) drafted requests for admission; (k) prepared for a Rule 30(b)(6) deposition of QSI; (l) defended against a motion to compel disclosure of confidential witness identities; (m) assessed the risks of obtaining class certification and prevailing on the claims at summary judgment and trial, as well as the Class' ability to collect on a final judgment, if obtained; and (n) participated in a full-day mediation with Gregory P. Lindstrom, Esq., of Phillips ADR, a respected and experienced mediator after exchanging evidentiary-based mediation statements and continued settlement negotiations under Mr. Lindstrom's supervision after the mediation. The efforts that were required to complete these tasks were significant.

5. The Settlement is the product of hard-fought litigation and takes into consideration the risks specific to the case. The Settlement is also the result of extensive, well-informed, arm's-length negotiations between the parties, facilitated by Mr. Lindstrom. These negotiations were conducted by experienced and capable counsel for Lead Plaintiffs and Defendants with a full understanding of both the strengths and weaknesses of their respective positions. The Settlement represents a substantial recovery in light of the significant risks Lead Plaintiffs faced, including prevailing in a potential review by the Supreme Court, obtaining class certification, defeating any summary judgment motions, successfully bringing the action to trial, surviving any appeals, and ultimately collecting on any judgment upheld.

6. Lead Counsel believes that the Settlement represents a very good result for the Class, especially given the requirements for class certification and the highly contested factual disputes that may have been resolved against Lead Plaintiffs and the Class. Had discovery continued, Lead Counsel believes that further evidence would have

been uncovered supporting Lead Plaintiffs' claims. Yet, the substantial investigation and discovery, extensive motion practice, detailed legal research, and the mediation process informed Lead Counsel that, while it believed the case was meritorious, the case also had risks to be carefully considered in determining the course of action (*i.e.*, whether to settle and on what terms, or to litigate through further proceedings, including class certification, further discovery, summary judgment, and trial).

7. Defendants' arguments throughout the Litigation made it clear that there were unsettled factual and legal issues – many of which could have been the subject of expert testimony – that Lead Plaintiffs and the Class would face in motions for summary judgment and at trial. Any of these factual or legal issues could have been decided against Lead Plaintiffs and the Class, resulting in no recovery or a smaller recovery than that obtained in the Settlement. Lead Plaintiffs and Lead Counsel carefully considered all of these issues, and the risks attendant to them, in deciding to settle on the terms set forth in the Stipulation.

8. Lead Counsel conferred with Lead Plaintiffs on whether to accept the Settlement and on what terms. Balancing all the circumstances and risks both sides faced were the Litigation to continue, Lead Plaintiffs and Lead Counsel concluded that settlement on the terms agreed upon was in the best interests of the Class. The Settlement confers a substantial, immediate benefit to the Class, and eliminates the significant risks that continued litigation posed. It is respectfully submitted that the Settlement should be approved as fair, reasonable, and adequate; Lead Counsel should be awarded attorneys' fees of 25% of the $19 million Settlement Amount, litigation expenses of $159,715.35, plus interest on both amounts at the same rate and for the same period as earned by the Settlement Fund; Lead Plaintiffs should be awarded $4,119.26 as reimbursement for the time their representatives devoted to the case as permitted under the Private Securities Litigation Reform Act of 1995 ("PSLRA"); and the Plan of Allocation should be approved as fair, reasonable, and adequate, as it was developed with Lead Plaintiffs' economic expert and tracks the theory of damages asserted.

9. Lead Counsel has, as described below, vigorously prosecuted this Litigation on a wholly contingent basis and has advanced or incurred all litigation expenses for over four years. By doing so, Lead Counsel has solely shouldered the risk of an unfavorable result. Lead Counsel has received no compensation for its efforts; nor has it been paid its very substantial expenses. The lengthy and vigorous nature of the Litigation has resulted in considerable expenses as well as the investment of over 9,300 hours of attorney and other professional and paraprofessional time.

10. The fee application for 25% of the $19 million Settlement Amount is fair and reasonable both to the Class and to Lead Counsel, and thus warrants the Court's approval. It is within the range of fees frequently awarded in these types of actions and is justified in light of the substantial benefits conferred on the Class, the risks undertaken, the quality of representation, and the nature and extent of the legal services provided.

11. Lead Counsel also should be awarded its litigation expenses of $159,715.35, which were reasonably and necessarily incurred in prosecuting the Litigation. This amount includes costs incurred for: (a) locating and interviewing non-party witnesses; (b) Lead Plaintiffs' economic expert, whose services Lead Counsel required to successfully prosecute and resolve this case; (c) transportation and lodging for Lead Counsel to attend Court appearances, client meetings, oral argument before the Ninth Circuit, and the mediation; (d) online factual and legal research; (e) creating and managing a database of over 350,000 pages of documents; and (f) the mediation. As described in detail herein, these expenses were reasonably and necessarily incurred to plead Lead Plaintiffs' claims, respond to Defendants' motion to dismiss, seek reconsideration and appeal the dismissal with prejudice, conduct appropriate discovery and evaluate the evidence obtained, research the legal issues arising throughout the Litigation, seek Class certification, assess the case's strengths and weaknesses, and, after vigorous prosecution, obtain the successful Settlement on the terms proposed.

12. Because of the legal services provided by Lead Counsel, as well as other factors bearing on the reasonableness of the Settlement as described herein, Lead Counsel respectfully requests that the Court grant final approval of the Settlement, approve the Plan of Allocation, and award Lead Counsel its requested attorneys' fees and litigation expenses, as well as the reimbursement of Lead Plaintiffs' time pursuant to 15 U.S.C. §78u-4(a)(4).

II. SUMMARY OF LEAD PLAINTIFFS' ALLEGATIONS

13. The Amended Complaint alleges that Defendants violated Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder, by making certain materially false and misleading statements about QSI's sales and financial performance during the Class Period. Specifically, the Amended Complaint alleges that Defendants made material misrepresentations and omissions concerning: (a) QSI's sales and sales "pipeline," (b) demand for QSI's products, and (c) QSI's projected revenue and earnings growth. According to the Amended Complaint's allegations, these alleged misstatements artificially inflated QSI's stock price during the Class Period. Lead Plaintiffs allege that when the false and misleading nature of these statements and omissions was publicly revealed, the price of QSI common stock dropped significantly, causing QSI investors substantial financial harm. The Amended Complaint also alleges insider trading violations against Defendant Plochocki under Section 10(b) and Rule 10b-5.

III. PROCEDURAL HISTORY

14. The following sections summarize the principal events that occurred during the course of this Litigation and the legal services provided by Lead Counsel.

15. As described in detail below, preparing an Amended Complaint sufficient to satisfy the PSLRA and applicable pleading standards required a comprehensive and thorough investigation. Lead Counsel also faced the arduous tasks of defending Lead Plaintiffs' claims from Defendants' motion to dismiss, seeking reconsideration of dismissal with prejudice, briefing and arguing a successful appeal before the Ninth

Circuit, and full briefing of Defendants' petition for a writ of certiorari to the United States Supreme Court. In discovery, significant attorney and staff time was required to obtain responsive information, and Lead Counsel met and conferred extensively with defense counsel and exchanged detailed communications regarding the multiple disputes that arose. Lead Counsel reviewed and analyzed over 350,000 pages of documents produced by Defendants and non-parties in preparing Lead Plaintiffs' case, consulted with Lead Plaintiffs' economic expert on the complex issues of damages and loss causation, and prepared for and participated in a full-day mediation.

16. The Litigation involved significant disputes during all phases. Defendants vigorously challenged the pleadings and the proper scope of discovery, and extensive efforts were required to sustain and maintain Lead Plaintiffs' claims through the pleading, appeal, and discovery stages. In order to develop and defend Lead Plaintiffs' claims in the manner that led Defendants to agree to the Settlement, Lead Counsel spent over 9,300 hours diligently prosecuting this case. There is no doubt that continued litigation would have been highly contentious, requiring considerable time and expense to prepare the case for class certification, summary judgment, and trial.

A. Appointment as Lead Plaintiffs

17. On November 19, 2013, Deerfield Beach Police Pension Fund filed the original complaint in this Court seeking recovery on behalf of purchasers or acquirers of QSI securities during the period from May 26, 2011 through July 25, 2012, inclusive. ECF No. 1. Pursuant to the PSLRA, ATRS moved on January 21, 2014 for appointment as lead plaintiff, and for approval of its selection of lead counsel. ECF No. 8. Miami also moved for appointment as lead plaintiff and for approval of its selection of lead counsel on January 21, 2014. ECF No. 12. On February 3, 2014, ATRS and Miami filed a stipulation for an order appointing both entities as lead plaintiffs and their chosen counsel as lead counsel. ECF No. 20.

18. The Court entered an order on February 4, 2014, appointing Miami and ATRS as Lead Plaintiffs, and Robbins Geller and Bernstein Litowitz as Lead Counsel.

ECF No. 22. Lead Plaintiffs actively participated in all significant aspects of the case, and throughout the entirety of the Litigation. Lead Counsel regularly communicated with Lead Plaintiffs regarding the status of the case. Lead Plaintiffs also reviewed pleadings, briefs, and correspondence regarding the Litigation, and also engaged with Lead Counsel regarding the status of the Litigation, discovery strategy, and possible settlement. Lead Plaintiffs also preserved, collected, searched for and produced information during the Litigation and in response to discovery requests. Lead Plaintiffs were kept apprised of all settlement negotiations with Defendants and ultimately approved the Settlement.[4]

B. Preparing and Defending the Amended Complaint

19. Lead Counsel conducted an exhaustive factual investigation in order to prepare the Amended Complaint. This involved a thorough review of voluminous materials, including: (a) QSI's SEC filings; (b) transcripts of QSI's public presentations and earnings conference calls; (c) analyst reports regarding QSI and its industry and market; (d) information obtained from interviews with former QSI employees; (e) media and news reports; and (f) analysis of the price movement of QSI stock. On April 7, 2014, following Lead Counsel's detailed investigation, Lead Plaintiffs filed their Amended Complaint for Violations of the Federal Securities Laws (the "Amended Complaint"). ECF No. 26.

1. The Motion to Dismiss

20. On June 20, 2014, Defendants filed their motion to dismiss the Amended Complaint. ECF No. 29. Defendants argued that the Amended Complaint failed to adequately plead that Defendants' public statements were false and misleading,

[4] *See* Declaration of Ornel N. Cotera in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Settlement; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Cotera Decl.") and Declaration of Arkansas Teacher Retirement Systems in Support of (A) Lead Plaintiffs' Motion for Final Approval of Settlement; (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (C) Lead Plaintiff Award ("ATRS Decl."), submitted herewith.

asserting that: (a) the Amended Complaint did not clearly identify which statements were alleged to be false and why; (b) the challenged statements were forward-looking and accompanied by adequate warnings, and thus were not actionable under the PSLRA's "safe harbor" provision; (c) many of the statements were inactionable statements of corporate optimism or "puffery"; and (d) the alleged facts failed to establish that the challenged statements were false at the time they were made.

21. Defendants also argued that the Amended Complaint did not allege sufficient facts giving rise to a strong inference of scienter. Defendants asserted, among other things, that: (a) information provided by former QSI employees did not support a strong inference of scienter, (b) the alleged facts did not establish that Defendant Plochocki's insider sales were suspicious in timing or amount, and (c) the "core operations" doctrine did not apply. Finally, Defendants argued that the Amended Complaint failed to allege a primary violation under Section 10(b) sufficient to support control-person liability under Section 20(a) of the Exchange Act. Defendants supported their motion with a request for judicial notice of various documents, including numerous SEC filings. ECF No. 29-2.

22. On August 8, 2014, Lead Plaintiffs filed their opposition to Defendants' motion to dismiss, which required significant time to research and draft. ECF No. 32. In opposing Defendants' motion to dismiss, Lead Plaintiffs argued, among other things, that: (a) the facts alleged in the Amended Complaint established the false and misleading nature of the challenged statements; (b) none of the challenged statements were protected under the PSLRA's safe harbor provision for forward-looking statements; (c) Defendants' statements were not puffery or mere corporate optimism; (d) a strong inference of scienter was supported by both the core operations doctrine and Defendant Plochocki's stock sale; and (e) the Amended Complaint adequately pleaded an independent insider trading claim against Defendant Plochocki under Section 10(b) of the Exchange Act. Lead Plaintiffs also challenged Defendants' attaching of attorney-prepared appendices to the declaration filed in support of the motion to dismiss.

23. On September 11, 2014, Defendants filed a reply in support of their motion to dismiss. ECF No. 35. They also filed a second request for judicial notice, this time regarding slides that purportedly had been shown during conferences in which certain alleged misstatements were made. ECF No. 35-1. Lead Counsel continued to evaluate the arguments and research the case law referenced in the briefing to prepare for the hearing on Defendants' motion to dismiss.

24. On October 20, 2014, the Court heard oral argument on Defendants' motion to dismiss. Lead Plaintiffs raised concerns regarding judicial notice of the presentation slides, arguing that while Lead Plaintiffs did not oppose judicial notice of the slides' existence, they did oppose judicial notice of the supposed truth of the slides' contents and that the slides purportedly were "widely disseminated." 10/20/14 Tr. at 18:16-21. During the hearing, Lead Counsel responded to various questions from the Court and arguments of defense counsel. *Id*. at 7:23-11:22, 18:14-22:6.

25. After the hearing, the Court issued its October 20, 2014 order granting Defendants' motion to dismiss with prejudice. ECF No. 39. The Court held that "[t]he majority of Defendants' allegedly fraudulent statements are forward-looking." *Id.* at 8. The Court also found that the PSLRA's safe harbor provision applied to these alleged misstatements because each was accompanied by sufficiently meaningful cautionary language, and Lead Plaintiffs had failed to sufficiently allege that Defendants acted with actual knowledge of the alleged materially false or misleading nature of the statements. *Id.* at 9-12. In finding sufficient cautionary language, the Court cited "contemporaneous presentation slides that were used during [the] conferences," *id.* at 9, which were included in the documents for which the Court took judicial notice. *Id.* at 4 n.5. While the Court recognized that "a few statements . . . may be classified as non-forward-looking," it held that these statements were either non-actionable puffery or Lead Plaintiffs had failed to allege falsity of the historical results. *Id.* at 8.

26. Regarding Defendants' scienter, the Court held that the Amended Complaint's allegations were insufficient as they did not identify the contents of the

alleged real-time data to which Defendants had access that was inconsistent with their contemporaneous statements. *Id.* at 11. The Court also held that the allegations regarding the Individual Defendants' involvement in the Company's day-to-day operations were "wholly conclusory and . . . insufficient to support an inference of scienter." *Id.* And the Court ruled that two SEC comment letters and Defendant Plochocki's stock sale did not give rise to a strong inference of actual knowledge of falsity, holding that the letters merely sought reorganization in QSI's proxy materials and that Plochocki's sale "was not a dramatic deviation from his prior trading practices." *Id.* at 11-12.

2. The Motion for Reconsideration

27. On November 17, 2014, Lead Plaintiffs filed a motion for reconsideration of the decision dismissing the Amended Complaint with prejudice, which required substantial time to prepare. ECF No. 40. Lead Plaintiffs argued that leave to amend should be granted because additional facts could be pleaded demonstrating that the PSLRA safe harbor did not apply, as well as additional facts supporting falsity, scienter, and materiality. Lead Plaintiffs also argued that the Court should reconsider taking judicial notice of the PowerPoint slides submitted by Defendants with their reply in support of their motion to dismiss. Lead Plaintiffs argued that Defendants had not established the authenticity of the slides or whether or how the slides had been shown to investors and that it had been improper to submit the slides in support of new arguments in their reply brief.

28. On December 15, 2014, Defendants filed their opposition to Lead Plaintiffs' motion for reconsideration. ECF No. 41. They argued that Lead Plaintiffs' motion was based on the standard for leave to amend rather than the standard governing a motion for reconsideration and that until reconsideration is granted, the Court lacked jurisdiction to consider a motion for leave to amend. Defendants also argued that reconsideration would be improper under Local Rule 7-18 because: (a) Lead Plaintiffs failed to present new facts that were previously unavailable to them; (b) no new

material facts or changes in law had occurred since the order granting dismissal; and (c) the Court had not failed to consider material facts in deciding that amendment was futile. Finally, Defendants argued that judicial notice was proper, arguing that Lead Plaintiffs had not previously challenged the authenticity of the PowerPoint slides at issue or that the slides had been shown to the audience at presentations.

29. On December 22, 2014, Lead Plaintiffs filed a reply in support of their motion for reconsideration. ECF No. 42. They argued, among other things, that Local Rule 7-18 could not abridge Rule 59(e), which allows reconsideration when it would correct a clear error or prevent manifest injustice. Lead Plaintiffs also argued that dismissal without leave to amend after the first motion to dismiss caused manifest injustice, especially considering the complexity of the applicable securities law. Regarding judicial notice, they argued that they had properly challenged the slides' contents and that the slides purportedly were "widely disseminated," citing oral argument during the motion to dismiss hearing. On December 23, 2014, the Court took the motion under submission. ECF No. 43.

30. On January 5, 2015, the Court denied Lead Plaintiffs' motion for reconsideration. ECF No. 46. The Court reasoned that amendment would have been futile because the Court had determined that there was sufficient cautionary language accompanying the forward-looking statements, which meant that the PSLRA's safe harbor provision would apply (even if new facts could be alleged that would show actual knowledge of the falsity of the statements). In other words, "the basis for the Court's dismissal with prejudice was *not* about Plaintiffs' failure to plead with requisite 'specificity and detail,'" but rather "a definitive legal bar via the safe harbor to Plaintiffs' claims – the affirmative finding that each of the forward-looking statements was accompanied by meaningful cautionary language." *Id.* at 5. The Court also found that the proposed amendments did not amount to "the requisite showing for reconsideration under Local Rule 7-18," as Lead Plaintiffs did not show that the new allegations proposed were either not discoverable with reasonable

diligence or had emerged after the dismissal. *Id.* at 5-6. Finally, the Court found that judicial notice of the PowerPoint slides was proper.

C. The Appeals

1. Appeal to the Ninth Circuit

31. On January 30, 2015, Lead Plaintiffs filed their Notice of Appeal with the United States Court of Appeals for the Ninth Circuit. ECF No. 47. Lead Counsel diligently researched and analyzed numerous issues for appeal and reviewed an exhaustive collection of precedent and persuasive authority in preparation for Lead Plaintiffs' opening brief. On August 12, 2015, Lead Plaintiffs filed their 67-page opening brief with the Ninth Circuit. On appeal, Lead Plaintiffs argued that: (a) the Amended Complaint sufficiently alleged actionable false and misleading statements; (b) the Amended Complaint sufficiently alleged Defendants' scienter; (c) rather than having the case dismissed with prejudice, Lead Plaintiffs should have been given the opportunity to amend their allegations; and (d) the District Court erred in taking judicial notice that the PowerPoint slides were purportedly shown to investors.

32. Regarding the alleged false and misleading statements and omissions, Lead Plaintiffs argued that the Amended Complaint's allegations were sufficiently particularized and showed that conditions at QSI were inconsistent with the challenged statements. Lead Plaintiffs pointed to Defendant Plochocki's admission that the market had become saturated, as well as facts provided by numerous witnesses, including two former directors and several former employees. Lead Plaintiffs also argued that the District Court had erred in labeling certain challenged statements as inactionable "puffery" because the court had not considered the context in which the statements were made, including that the statements were regarding QSI's sales pipeline, the key financial metric of the Company and one that analysts had repeatedly asked about. Lead Plaintiffs also pointed out that analysts did not interpret the challenged statements as mere puffery.

33. Regarding the PSLRA's safe harbor for forward-looking statements, Lead Plaintiffs argued that the portion of statements identified as forward-looking by the District Court were nonetheless not protected by the safe harbor because the statements were made with actual knowledge of their falsity and were not accompanied by meaningful cautionary language. In essence, the cautionary language could not be meaningful as it did not acknowledge that the risks outlined had already come to fruition through historical and present saturation of QSI's market, missed targets, slowdown of QSI's business, and decline in the more lucrative "greenfield" sales. Lead Plaintiffs also argued that the cautionary language was not sufficient because Defendants failed to update it based on recent events, only made quick references to cautionary language during conferences, and contradicted the warnings by continuing to make certain forecasts and to use past results for predicting the future.

34. On appeal, Lead Plaintiffs also challenged the District Court's holding that the Amended Complaint insufficiently pleaded Defendants' knowledge that their statements were materially misleading. Lead Plaintiffs pointed to Defendants' own statements admitting to monitoring the Company's sales and forecasting information, as well as several witnesses' corroboration, including support from a former employee who had been tasked with generating the Salesforce reports and former director Ahmed Hussein. According to Lead Plaintiffs, the District Court had focused on one paragraph summarizing the Amended Complaint's allegations but ignored those separate, more detailed allegations. Lead Plaintiffs also argued that the "core operations" doctrine supported an inference of scienter, as did the close proximity between the challenged statements and the subsequent disclosures contradicting those statements. And Lead Plaintiffs argued that Defendant Plochocki's stock sale was suspicious because it amounted to 87% of his holdings and earned him more than seven times his annual salary, was executed when QSI's stock price was near its peak, and followed a three-and-a-half year period in which Plochocki sold no shares.

According to Lead Plaintiffs, these and other allegations taken holistically raised a strong inference of scienter.

35. Finally, Lead Plaintiffs argued that the District Court erred in taking judicial notice of the PowerPoint slides, arguing that Lead Plaintiffs had challenged the slides' authenticity and whether they had been shown during the conferences. Lead Plaintiffs also argued that dismissal with prejudice had been unwarranted considering the demanding and technical nature of complex securities suits, the additional allegations that Lead Plaintiffs could provide to cure any pleading defect, and the fact that amendment would not be futile considering that the PSLRA safe harbor provision did not apply.

36. On October 13, 2015, Defendants filed a 57-page answering brief. Defendants argued that: (a) the Amended Complaint failed to allege an actionable misstatement, did not create a strong inference of scienter, and did not allege an insider trading claim against Plochocki; (b) dismissal without leave to amend was proper; and (c) the District Court properly took judicial notice of PowerPoint slides purportedly shown to investors.

37. Regarding the alleged false and misleading statements and omissions, Defendants argued that there was no dispute that the majority of alleged false statements were forward-looking. For the non-forward-looking statements, Defendants argued that they reflected QSI's corporate optimism and were "puffery," especially where Defendants also provided historical financial results that were not restated or challenged.

38. Defendants also took issue with Lead Plaintiffs' characterization of certain statements as non-forward-looking, arguing that some of those were in fact forward-looking. They argued that the PSLRA safe harbor provision applied to the forward-looking statements because the statements in the Company's SEC filings were accompanied by meaningful cautionary language, which included detailed risk factors, while statements made at investor conferences were accompanied by slides

with sufficient cautionary language. Defendants also took issue with Lead Plaintiffs' argument that the risk disclosures were insufficient because the risks had already become reality. According to Defendants, Lead Plaintiffs were arguing that the cautionary language was insufficient because Defendants "knew" that the risks had already materialized, and this sort of argument was precluded by precedent. Defendants also argued that cautionary language can be meaningful even if repetitive, and that the cautionary language at issue was not repetitive.

39. Defendants also argued that the PSLRA's safe harbor applied because the Amended Complaint did not contain facts sufficient to create a strong inference that the statements were made with actual knowledge of their falsity. Defendants argued that the "actual knowledge" inference was even more difficult to establish than an inference of scienter, which also includes deliberate recklessness, and that Lead Plaintiffs' allegations had failed to give rise to even a general inference of scienter.

40. In arguing that the Amended Complaint failed to allege facts sufficient to give rise to a strong inference of scienter, Defendants argued that the allegations based on information from former QSI personnel were conclusory or based on the witnesses' expectations and failed to show that Defendants had contemporaneous knowledge of any particular facts that specifically contradicted their statements. Defendants also took issue with the witnesses' background, noting that some had not worked at QSI during the Class Period, one was from a small division, and others had not had personal contact with the Individual Defendants.

41. Regarding Defendants' own statements illustrating their access to sales data, Defendants argued that none of these statements served as evidence that the data in question actually contradicted the alleged misstatements. In their answering brief, Defendants also argued that Lead Plaintiffs had not established that the "core operations" doctrine applied, while the temporal proximity between the alleged misstatements and disclosures alone was not sufficient to establish scienter. Defendants also listed reasons other than fraud for the temporal proximity, such as the

Company's "historical reporting pattern." Finally, Defendants argued that the timing of Plochocki's stock sale was not suspicious because it was not precisely at the stock's peak price, it was five months before the last alleged corrective disclosure, and the sale was consistent with his prior trading. Defendants also pointed to the lack of trading by other insiders.

42. Regarding Lead Plaintiffs' motion for reconsideration, Defendants argued that its denial was proper because: (a) Lead Plaintiffs had not attached a proposed complaint to their motion for reconsideration; (b) Lead Plaintiffs simply repeated previous legal arguments; and (c) the new allegations proposed were insufficient. Finally, Defendants argued that the District Court properly took judicial notice of the PowerPoint slides and cautionary language. They argued that the District Court had reasonably determined that Lead Plaintiffs had waived their objection to judicial notice and that it was proper to take judicial notice of the slides' content and dissemination at the conferences where Defendants made certain alleged misstatements.

43. On November 11, 2015, after fully reviewing and analyzing Defendants' answering brief and the authorities cited, Lead Plaintiffs filed their reply brief. Lead Plaintiffs argued, among other things, that: (a) the non-forward-looking statements were not mere puffery, as they "addressed subjects that were both definite and measurable," as well as material; (b) the cautionary language accompanying forward-looking statements was not sufficient because of its repetition and because, whether Defendants knew it or not, the risks had already materialized; (c) the Amended Complaint adequately alleged that Defendants had actual knowledge that the forward-looking statements were misleading; and (d) Lead Plaintiffs need not allege the specific contents of reports accessed by Defendants in order to have such reports contribute to the holistic analysis of scienter.

44. After full briefing before the Ninth Circuit, Lead Counsel continued to monitor recent decisions throughout the country on issues relevant to Lead Plaintiffs'

appeal. On two separate occasions, Lead Counsel submitted to the Ninth Circuit recent decisions supporting Lead Plaintiffs' positions, pursuant to Federal Rule of Appellate Procedure 28(j). In doing so, Lead Counsel analyzed the persuasive authorities and how they supported Lead Plaintiffs' arguments. Lead Counsel also analyzed the arguments made by Defendants regarding the recent decisions in order to prepare for oral argument.

45. On December 5, 2016, a three-judge panel of the Ninth Circuit heard oral argument on Lead Plaintiffs' appeal. During the argument, Lead Counsel responded to numerous questions from the panel, as well as points and authorities raised by Defendants' counsel. On July 28, 2017, the Ninth Circuit issued its opinion reversing the District Court's dismissal of the Amended Complaint and remanding the case. *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130 (9th Cir. 2017). For the first time, the Ninth Circuit addressed the issue of "mixed" statements, *i.e.*, those containing representations regarding current and/or past facts as well as representations about the future. The court found that Defendants made numerous mixed statements and that the cautionary language was insufficient. Specifically, the court held that "[b]ecause Defendants made materially false or misleading non-forward-looking statements about the state of QSI's sales pipeline, virtually no cautionary language short of an outright admission that the non-forward-looking statements were materially false or misleading would have been adequate" for safe harbor protection. *Id.* at 1148. The Ninth Circuit also found that eight of the challenged statements were non-forward looking, and that these statements were false and misleading and more than mere puffery when taken in context.

46. The Ninth Circuit also held that Lead Plaintiffs had adequately pleaded scienter and Defendants' actual knowledge that the forward-looking statements were false or misleading. The appellate court found that the confidential witnesses were sufficiently described and that their statements contributed to a strong inference of Defendants' scienter. The Ninth Circuit also pointed to the allegations that QSI's

executives had told investors that they had access to real-time sales data. And the Ninth Circuit reasoned that Plochocki's "massive and uncharacteristic" stock sale "made near the apogee of QSI's stock price during the Class Period, and shortly before the stock went into a steep decline" was "to say the least, 'suspicious.'" *Id.* at 1146.

47. Following the Ninth Circuit's decision, on September 5, 2017, Defendants filed a petition for rehearing *en banc*. Defendants' petition principally concerned the panel's holding that the PSLRA safe harbor did not apply to Defendants' statements, and Defendants also took issue with the panel's holding that the Amended Complaint adequately pleaded scienter. Regarding the safe harbor, Defendants argued, among other things, that: (a) the panel's interpretation of the safe harbor was incorrect; (b) the decision conflicted with precedent from the Ninth Circuit and elsewhere; and (c) the decision would "chill voluntary corporate disclosures" by "nullify[ing] the safe harbor."

48. On September 29, 2017, the panel denied Defendants' petition for rehearing after "[t]he full court ha[d] been advised of the petition . . . and no judge of the court ha[d] requested a vote on whether to rehear the matter en banc." In order to successfully appeal the dismissal of the Amended Complaint, Lead Counsel expended significant time reviewing the District Court record, researching, reviewing and analyzing case law, preparing Lead Plaintiffs' opening brief, reviewing and analyzing Defendants' answering brief, preparing Lead Plaintiffs' reply brief, and preparing for oral argument.

49. On October 10, 2017, the Ninth Circuit issued its formal mandate to the District Court. The next day, the case was reopened in the District Court, and thereafter the parties promptly convened an initial conference pursuant to Rule 26(f). On October 31, 2017, the parties filed their joint case management report pursuant to Rule 26(f). ECF No. 57. On November 7, 2017, Defendants filed their Answer to the Amended Complaint, denying all material allegations and raising 12 purported affirmative defenses. ECF No. 60. Lead Counsel analyzed the asserted defenses and

considered making a formal challenge to Defendants' Answer. On November 16, 2017, the Court issued a Scheduling Order (ECF No. 64), as well as an Order Regarding Settlement Procedures, Pre-Trial Conference and Trial. ECF No. 65.

2. Petition for Writ of Certiorari to the U.S. Supreme Court

50. On January 26, 2018, Defendants filed their petition for a writ of certiorari with the U.S. Supreme Court. In their petition, Defendants took issue with the Ninth Circuit's holding as to the PSLRA's safe harbor for forward-looking statements. Defendants argued that the Ninth Circuit had erroneously declared a categorical "admission-of-falsity" rule that when forward-looking statements are accompanied by false or misleading non-forward-looking statements, cautionary language is not sufficiently meaningful to protect the forward-looking statements unless it admits the non-forward-looking statements' falsity. According to Defendants, there was already a circuit split on the interpretation of the safe harbor, with some courts judging the adequacy of the accompanying cautionary language based solely on the factors discussed in such language itself, and other courts judging the adequacy of cautionary language based on all of the factors that could cause the forward-looking statement to end up being incorrect. In other words, the latter approach looks to see whether there were material omissions in the cautionary language. Defendants argued that this interpretation of the safe harbor was wrong based on the text and legislative history of the PSLRA and that the Ninth Circuit's opinion used this interpretation and then "took it to a new extreme."

51. According to Defendants, the Ninth Circuit's approach would "effectively nullify" the safe harbor and undermine the policies behind the PSLRA. Defendants argued that Congress passed the PSLRA in part to enable companies to make disclosures of projections and forecasts by lowering the risk of litigation regarding such forward-looking statements. Defendants also argued that the decision essentially created another approach to the PSLRA's safe harbor, adding to the

conflict among the different circuits and contributing to forum shopping by plaintiffs. In further support of their petition, Defendants illustrated that the Ninth Circuit had found the cautionary language to be adequate as to purely forward-looking statements (*i.e.*, those that were not accompanied by challenged non-forward-looking statements). Therefore, Defendants argued, the purported new rule from the Ninth Circuit "was outcome determinative" in the case, making this case "an especially good vehicle" for the Supreme Court "to resolve the confusion over the proper interpretation of the PSLRA safe harbor."

52. On March 22, 2018, Lead Plaintiffs filed their opposition to the petition for a writ of certiorari. Lead Plaintiffs argued that there was no real circuit split regarding the interpretation of "meaningful" cautionary language under the PSLRA's safe harbor. In doing so, Lead Plaintiffs examined cases from circuits that Defendants had claimed only looked at the cautionary language itself in determining whether such language was adequate. Instead of excluding other information in determining whether the cautionary language was adequate, these circuits also "consider the context in which the purported cautions are made" and whether "existing and/or historical facts support or detract from those cautions." Lead Plaintiffs also examined cases from circuits that purportedly looked outside the cautionary language itself to assess its adequacy, concluding that there was no real conflict of interpretation among the various circuits.

53. Lead Plaintiffs also argued that contrary to Defendants' assertion, the Ninth Circuit had not declared a new blanket rule that, in order to be protected under the PSLRA's safe harbor, all forward-looking statements that were mixed with misleading non-forward-looking statements were required to have cautionary language admitting that the non-forward-looking statements are false or misleading. Rather, the Ninth Circuit came to its decision based on the particular facts of the case and "specifically disclaimed" making any general rule to be applied in all cases. In addition, Lead Plaintiffs argued that forum shopping was not a realistic concern, as

there is no real difference in how the circuits interpret the PSLRA's safe harbor, and the vast majority of securities class actions are filed where the corporate defendant's principal place of business is located.

54. In opposing Defendants' petition, Lead Plaintiffs also defended the Ninth Circuit's holding based on the particular facts of this case. They illustrated that the cautionary language presented by Defendants could not be "meaningful" under the safe harbor because specific events had already occurred, including declining "greenfield" sales, missed sales targets, and saturation in QSI's market. Lead Plaintiffs also pointed out the repetitive nature of Defendants' cautionary language, illustrating examples of Defendants' failure to update the relevant cautionary language even though QSI's business was already suffering lower sales and earnings.

55. On April 10, 2018, Defendants filed their reply in support of their petition for a writ of certiorari. At the time of the parties' agreement in principle to settle this Litigation, Defendants' petition for a writ of certiorari was fully briefed and pending. Lead Plaintiffs faced the serious risk that their claims would be cut back or eliminated entirely, in addition to the certain and substantial delay of any recovery were the petition to be granted.

D. Plaintiffs' Motion to Unseal Court Records

56. On September 2, 2016, Lead Plaintiffs filed a motion to unseal documents and information in the Hussein Litigation pending in California state court. Such documents had been sealed pursuant to seven different motions to seal filed by Defendants QSI, Razin, and Plochocki. Lead Plaintiffs argued that the PSLRA's discovery stay provisions did not provide an "overriding interest" under the California Rules of Court sufficient to overcome the right of public access to the documents and files submitted to the court.

57. On September 23, 2016, QSI filed its opposition to Lead Plaintiffs' motion to unseal court records, arguing that federal law, including the PSLRA and the Securities Litigation Uniform Standards Act ("SLUSA"), established the overriding

interest of "preventing federal securities class action plaintiffs from accessing confidential party discovery exchanged in a parallel state court action" until after the motion-to-dismiss stage of the federal action. On September 29, 2016, Lead Plaintiffs filed their reply in support of their motion.

58. A hearing was held on October 6, 2016, regarding the motion to unseal, and the court denied the motion on October 11, 2016. While the motion to unseal was ultimately unsuccessful, Lead Counsel believes it was important to pursue this discovery in its diligent representation of Lead Plaintiffs and the Class.

E. Discovery

59. Lead Counsel propounded numerous document requests to Defendants. In response to the document requests, Defendants produced approximately 178,900 pages of documents. Months of meet-and-confer calls, correspondence and negotiations were necessary for Lead Plaintiffs to obtain responsive documents, and Lead Counsel spent many hours reviewing and analyzing these documents. At the time of Settlement, Lead Counsel had completed much of the substantial task of organizing, reviewing and analyzing the documents in preparation for class certification briefing and for fact witness depositions, and was undertaking additional steps necessary to prepare for summary judgment and, ultimately, trial.

1. Initial Disclosures

60. The parties exchanged initial disclosures pursuant to Rule 26(a)(1) on November 10, 2017. Lead Plaintiffs identified 139 possible witnesses who were likely to have discoverable information, including individual party witnesses, non-parties, and current and former officers, directors, or employees of QSI. Lead Plaintiffs also gathered the contact information to the extent possible for each witness, and discerned the possible topics for which the witnesses may have discoverable information. Lead Plaintiffs also identified preliminary categories of potential documents in their possession, custody, or control that were relevant to the Amended Complaint's allegations. Defendants identified 19 possible witnesses in their initial

disclosures, including individual party witnesses, non-parties, and current and former QSI employees.

2. Document Production

a. Lead Plaintiffs' Requests

61. On October 19, 2017, Lead Plaintiffs served their First Request for Production of Documents to Defendants, containing 33 requests regarding all aspects of the Amended Complaint's claims. The requests sought documents and communications related to, among other items: (a) QSI's projection and forecasting processes; (b) QSI's regular reporting of sales and other operating metrics; (c) QSI's sales processes and pipeline; (d) saturation in the electronic healthcare systems market; (e) QSI's and its executives' public statements; (f) QSI's decision to not affirm its previous guidance or provide revised guidance; (g) potential or actual revisions to QSI's risk warnings; (h) Board of Directors materials; (i) executives' trading plans and purchases, sales, or holdings of QSI securities; (j) QSI's reported financial results; (k) the departure of QSI's directors, officers, or executives; and (l) the Hussein Litigation.

62. Defendants served their responses to Lead Plaintiffs' first set of requests on November 20, 2017, refusing to produce documents in response to 24 requests, including 17 requests for which Defendants would not produce any documents "[a]bsent an agreement between the parties regarding the scope" of the requests. Lead Counsel spent significant time meeting and conferring and exchanging correspondence with defense counsel to resolve Defendants' objections. The process also included extensive negotiation over the search terms, custodians, and relevant time periods to be used in Defendants' search for responsive Electronically-Stored Information ("ESI"), as well as discussions regarding responsive non-ESI.

63. As a result of Lead Counsel's diligent efforts to pursue relevant information, Defendants produced over 178,000 pages of documents. The size of the production, and the fact that documents were produced electronically, required Lead

Counsel to expend significant time and expense on document hosting, storage, review, and analysis. Lead Counsel utilized industry-leading Relativity software, which permitted it to search, sort, categorize, tag, prioritize, highlight, and annotate documents electronically. At the time of the Settlement, Lead Counsel had spent hundreds of hours working in Relativity to carefully review and organize these documents, as well as the documents received from non-parties, in preparation for depositions, summary judgment, and trial.

b. Defendants' Requests

64. On November 20, 2017, QSI served on Lead Plaintiffs its First Set of Requests for Production of Documents, comprising 41 individual requests to each of the Lead Plaintiffs. Lead Plaintiffs each objected and separately responded to the requests on December 20, 2017. The parties met and conferred regarding QSI's requests, and in accordance with the parameters set out in Lead Plaintiffs' responses and as additionally agreed to by the parties in the meet-and-confer process, Lead Plaintiffs searched their ESI and non-ESI and produced over 11,000 pages of documents. This production required Lead Counsel to spend significant time consulting with Lead Plaintiffs to search for and retrieve responsive documents, and then compiling, organizing, and preparing the documents for production.

c. Non-Party Subpoenas

65. Lead Plaintiffs also made substantial efforts to research and locate relevant evidence that could be obtained from non-parties, and thus served 37 non-party subpoenas for production of documents. The documents obtained from these non-parties were necessary to supplement Defendants' document production as Lead Plaintiffs gathered evidence to support their claims.

66. To that end, Lead Plaintiffs sought documents from the following categories of non-parties: (a) analysts who covered or followed QSI or QSI's industry during the Class Period; (b) QSI's investor relations consultant; (c) QSI's customers;

(d) former QSI leadership; and (e) QSI's outside auditor. Specifically, Lead Plaintiffs subpoenaed the following non-parties for documents:

Third Party	***Date Served***
Credit Suisse Securities (USA) LLC	10/25/17
JMP Securities LLC	10/25/17
Auriga USA LLC	10/26/17
Avondale Partners LLC	10/26/17
Brean Capital LLC	10/26/17
Caris & Company, Inc.	10/26/17
Citigroup Global Markets, Inc.	10/26/17
Cowen & Company, LLC	10/26/17
Deutsche Bank Securities Inc.	10/26/17
EnTrust Capital n/k/a EntrustPermal Securities LLC	10/26/17
FBR Capital Markets & Company	10/26/17
Goldman, Sachs & Co.	10/26/17
ISI Group, LLC n/k/a Evercore Group, LLC	10/26/17
Jefferies LLC	10/26/17
JP Morgan Securities LLC	10/26/17
Leerink Partners LLC	10/26/17
Morgan Keegan & Co. Inc.	10/26/17
Morgan Stanley & Co. LLC	10/26/17
Oppenheimer & Co. Inc.	10/26/17
Piper Jaffray & Co.	10/26/17
Raymond James & Associates	10/26/17
S&P Capital IQ n/k/a S&P Global Market Intelligence	10/26/17
Sterne, Agee & Leach, Inc.	10/26/17
UBS Securities LLC	10/26/17
Wells Fargo Securities LLC	10/26/17
William Blair & Company LLC	10/26/17
Accounting Research & Analytics, LLC	10/27/17
First Analysis Securities Corporation	10/27/17
Maxim Group LLC	11/2/17
Surveyor Capital c/o Citadel, LLC	11/2/17
PricewaterhouseCoopers, LLP	11/9/17
Pairelations, LLC	12/8/17
Hanger, Inc.	1/29/18
Health Management Associates, Inc.	1/31/18
Scott Decker	2/13/18
Patrick Cline	2/13/18

Third Party	*Date Served*
Green Arrow Management LLC	4/30/18

67. Lead Counsel spent significant time and effort researching and deciding who to subpoena, drafting the subpoenas, meeting and conferring with the subpoenaed non-parties, tracking down and following up with subpoenaed non-parties who failed to respond or insufficiently responded, and reviewing and analyzing the subpoenaed productions, which together totaled over 101,000 pages, in order to gather evidence in support of Lead Plaintiffs' claims.

68. Additionally, on December 8, 2017, Defendants served a notice of issuance of non-party subpoenas to Stephens Investment Management Group ("Stephens"), who was ATRS's investment manager responsible for its QSI purchases during the Class Period, and Champlain Investment Partners ("Champlain"), who was Miami's investment manager responsible for its QSI purchases during the Class Period. Accordingly, Stephens and Champlain produced nearly 109,000 pages of documents in total.

3. Preparation for Rule 30(b)(6) Deposition of QSI

69. On December 22, 2017, ATRS served a notice of deposition of Defendant QSI pursuant to Rule 30(b)(6). In preparing the notice of deposition, Lead Counsel analyzed the issues in the case and determined the topics for examination, including, *inter alia*: (a) QSI's Salesforce system; (b) the Company's information technology resources; (c) the tracking of QSI's sales performance and market; (d) QSI's sales forecasting; (e) the Company's Board meetings; (f) SEC comment letters; and (g) QSI's preservation, search and collection of potentially responsive ESI and non-ESI in connection with the Litigation. On January 14, 2018, QSI served its objections and responses to the deposition notice. Based on extensive meet-and-confer discussions with Defendants, Lead Plaintiffs obtained certain information regarding, among other things, QSI's information technology systems and document preservation and production efforts, and thus agreed on January 29, 2018 to take the

deposition of QSI off calendar without prejudice to Lead Plaintiffs' ability to reopen the deposition.

4. Requests for Admission

70. Lead Counsel also prepared requests for admission to Defendants seeking, among other things, the identification of undisputed facts as well as those in dispute. On March 23, 2018, Lead Plaintiffs served their first requests for admission to all Defendants. These consisted of 21 requests which sought to aid in establishing specific facts relevant to class certification and to clarify Defendants' positions with regards to those facts. On April 23, 2018, Defendants responded to the requests for admission, making only three admissions in response to the 21 requested.

5. Discovery Disputes

71. The parties participated in a lengthy meet-and-confer process regarding the production of documents in this Litigation. Defendants contested production of certain categories of responsive documents, and as a result, Lead Counsel was required to engage in extensive meet-and-confer discussions with Defendants' counsel concerning Defendants' discovery responses. Through Lead Counsel's diligent and successful efforts, Defendants produced 178,944 pages of documents. However, not every conflict could be resolved through the meet-and-confer process. Namely, the parties were unable to resolve disputed issues regarding: (a) the appropriate language in a protective order; and (b) Defendants' interrogatory seeking the identities of the confidential witnesses referenced in the Amended Complaint.

a. Protective Order Regarding Discovery in the Case

72. In order to obtain a stipulated protective order regarding discovery in the case, extensive meet-and-confer discussions, a motion and joint stipulation, and a two-part conference with Magistrate Judge Rosenbluth were all required. Once the case had been reopened pursuant to the Ninth Circuit's mandate, Lead Counsel and Defendants' counsel had contentious discussions regarding the language to be

included in a stipulated protective order in the case. Because the parties were unable to arrive at a resolution regarding certain aspects of a protective order, on December 19, 2017, Lead Plaintiffs filed a motion for a protective order (ECF No. 67), and the parties filed a joint stipulation regarding the dispute, pursuant to Local Rule 37-2. ECF No. 68. Lead Counsel thoroughly researched the legal issues arising in the joint stipulation and submitted a supplemental memorandum of law in support of Lead Plaintiffs' motion on December 28, 2017. ECF No. 69.

73. On January 11, 2018, a telephonic hearing was held before Magistrate Judge Rosenbluth. The court ruled on certain issues pertaining to the protective order, and the parties met-and-conferred further pursuant to the court's instructions. *See* ECF No. 71. On January 16, 2018, the hearing regarding the protective order was resumed and the Court made additional rulings on the language to be contained in the protective order. *See* ECF No. 75. The parties agreed to a revised proposed stipulated protective order, and the court filed the final stipulated protective order on January 22, 2018. ECF No. 79.

b. QSI's Interrogatory and Motion to Compel

74. On November 20, 2017, QSI served its first interrogatory to Miami, seeking the identities of the confidential witnesses referenced in the Amended Complaint. On December 20, 2017, Miami propounded its objections which were based on numerous grounds, including that it called for information protected by the attorney work-product doctrine.

75. On February 28, 2018, QSI moved to compel disclosure of the confidential witnesses' identities and filed a joint stipulation addressing the motion. ECF No. 85. Lead Counsel diligently further researched and reviewed relevant case law in preparing arguments against QSI's motion to compel. In their portion of the joint stipulation, Lead Plaintiffs argued that the witnesses' identities were protected by the attorney work-product doctrine and this protection had not been waived. Lead Plaintiffs also argued that Defendants could not make a sufficient showing of need to

overcome the work product protection. Finally, Lead Plaintiffs argued that public policy and privacy considerations weighed against compelling disclosure of the witnesses' identities.

76. On March 27, 2018, Magistrate Judge Rosenbluth granted Defendants' motion to compel. ECF No. 89. Recognizing that the case law was unsettled on the work product issue and that "there is authority on either side," the court sided with QSI's authorities and compelled disclosure of the confidential witnesses' identities.

F. Preparation for Class Certification Briefing

77. Prior to the agreement in principle to settle the case, Lead Counsel diligently prepared for class certification briefing by: (a) consulting with Lead Plaintiffs' economic expert, Bjorn I. Steinholt, CFA, of Caliber Advisors, Inc., regarding the complex economic issues related to numerosity, market efficiency, price impact, and damages; (b) thoroughly researching and considering Defendants' probable argument that the alleged misstatements had no impact on QSI's stock price and that therefore the fraud-on-the-market presumption of reliance was rebutted; (c) reviewing and analyzing relevant documents; and (d) starting the work of drafting the motion for class certification.

G. Investigators and Expert Analysis

78. Lead Counsel utilized the services of in-house investigators at Bernstein Litowitz to assist Lead Plaintiffs in prosecuting the Litigation. In-house investigators assisted Lead Counsel in identifying, locating, contacting and interviewing former QSI employees. As a result, Lead Counsel and its investigators were able to contact and interview multiple former QSI employees to ascertain information relating to the claims alleged in this Litigation. Information ascertained in the interviews with these former QSI employees assisted Lead Plaintiffs in forming the allegations in the Amended Complaint and to assemble proof of Lead Plaintiffs' claims.

79. Lead Plaintiffs retained Mr. Bjorn I. Steinholt, CFA, of Caliber Advisors, Inc., as an economic expert, who provided analyses that assisted Lead Counsel on

issues relating to numerosity, market efficiency, damages, and loss causation, and in developing evidence supporting the forthcoming motion for class certification. Mr. Steinholt, an economist who has acted as a financial consultant in over 50 cases, is a Managing Director at Caliber Advisors, Inc., a full-service valuation and economic consulting firm with offices in San Diego, California and Chicago, Illinois. He has more than 25 years of experience providing capital markets consulting, including analyzing and valuing investments. Over the past 15 years, he has been retained on numerous occasions to provide expert testimony relating to materiality, loss causation, and damages in securities class actions similar to this Litigation. He has provided frequent opinions analyzing market efficiency and submitted numerous expert reports to federal courts.

80. Lead Counsel consulted with Mr. Steinholt on numerous occasions on the issues of numerosity, market efficiency, loss causation, and damages. Mr. Steinholt's analyses helped inform Lead Plaintiffs' theories and assisted Lead Counsel in assessing the strengths and weaknesses of the parties' positions. In addition, Mr. Steinholt assisted with the development of the Plan of Allocation, which governs how claims will be calculated and is based on the statutory provisions of the Exchange Act. Mr. Steinholt's services in these proceedings contributed materially to the Litigation and the benefits achieved for the Class in this Settlement.

H. Mediation Process

81. After extensive document production, the parties agreed to meet for a mediation assisted by Gregory P. Lindstrom, Esq., of Phillips ADR, an experienced mediator. The mediation process allowed the parties an opportunity to further evaluate the strengths and weaknesses of their positions before expending additional time and resources on further discovery and taking on the commensurate risk in continuing the Litigation.

82. Lead Counsel dedicated many hours to preparing for the mediation, including diligently reviewing, organizing, and analyzing documents produced by

Defendants to garner evidence supporting Lead Plaintiffs' claims and to decide which documents to include as exhibits to Lead Plaintiffs' mediation statement. After diligent review and analysis of the production, Lead Counsel then spent significant time drafting the mediation statement to highlight the strength of Lead Plaintiffs' claims even at that early juncture in discovery. Upon receiving Defendants' mediation statement prior to the in-person mediation, Lead Counsel spent considerable time reviewing the evidence presented, consulting with their economic expert, and preparing counter-arguments for Lead Plaintiffs' reply statement and the in-person mediation. Lead Counsel similarly analyzed the counter-arguments made in Defendants' reply brief.

83. On May 9, 2018, the parties met with Mr. Lindstrom for a full-day mediation. Participating in all discussions and decision-making at the mediation was ATRS's Deputy Director of Operations, Mr. Graves, who attended the mediation in person. Similarly, Miami had a representative available for consultation with counsel by phone. Mr. Lindstrom actively assisted the parties in assessing the strengths and weaknesses of their respective positions, in addition to the risks presented by continuing the Litigation, such as Defendants' pending petition for a writ of certiorari. While the parties were unable to resolve the Litigation at the mediation, they continued negotiations under Mr. Lindstrom's supervision thereafter.

84. On May 10, 2018, the mediator made a "double-blind" proposal, meaning that neither side would be told how the other responded. That same day, the parties were able to reach a resolution when each accepted the mediator's recommendation to resolve the Litigation for $19 million. Pursuant to the parties' joint stipulation, the Court stayed all proceedings in the case on May 18, 2018. ECF No. 91. And on June 8, 2018, the parties requested that the Supreme Court defer action on Defendants' pending petition for a writ of certiorari until its next scheduled conference on September 24, 2018.

IV. THE STRENGTHS AND WEAKNESSES OF THE CASE

85. After over four years of litigation, including an amended complaint, a motion to dismiss, a motion for reconsideration, a successful appeal to the Ninth Circuit, a pending petition to the U.S. Supreme Court, in-depth analysis of a voluminous document production, witness interviews, comprehensive mediation statements, and preparation for class certification and anticipated summary judgment motions, Lead Counsel believes that it has a thorough understanding of the strengths and weaknesses of Lead Plaintiffs' claims in the Litigation. Although Lead Counsel expected further discovery would uncover additional evidence supporting the Amended Complaint's claims, Lead Counsel also realized that considerable risks existed as the case proceeded, including the possibility that the Class would recover nothing. Lead Counsel and Lead Plaintiffs carefully considered these risks in evaluating whether a settlement was in the best interests of the Class.

86. The pending application for a writ of certiorari to the Supreme Court was a potentially fatal hurdle to any recovery for the Class. Defendants made formidable arguments in their petition, making the grant of certiorari a very real possibility. Were that to happen and if the Supreme Court were to overturn the Ninth Circuit's ruling, it could have had a devastating effect on Lead Plaintiffs' claims, and at best could have made numerous challenged statements inactionable as a matter of law. Even if Lead Plaintiffs ultimately prevailed at the Supreme Court, the resulting delay would be substantial.

87. Class certification was also critical in order for the Class to obtain any recovery. While Lead Counsel was confident that all of Rule 23's elements were met and the Class would be certified, Defendants' inevitable arguments to the contrary would create significant uncertainty as to whether the Litigation would go forward as a class action. Specifically, success at this stage would have required the Court to reject any argument by Defendants that the challenged statements did not artificially inflate or otherwise impact the price of QSI stock and that therefore Lead Plaintiffs

could not rely on the fraud-on-the-market presumption of reliance to satisfy the predominance requirement for class certification as to those statements. Moreover, given the still-developing law regarding defendants' burden to show an absence of price impact at class certification, there was a real risk that even had the Court granted the class certification motion, Defendants would have attempted to bring the case back to the Ninth Circuit by appealing such a decision.

88. Likewise, even if the Court granted class certification, there would always be the risk that the Court might not maintain this Litigation, or particular claims, on a class-wide basis through trial. This risk would be exacerbated by the fact that adverse factual developments and intervening changes in the law are, by their very nature, unpredictable, and these events might frustrate the continued maintenance of the Litigation as a class action. Finally, even if a class were certified, Defendants retained appellate rights. Thus, while Lead Counsel believes that it could have maintained certification through trial, it recognized the risk that certification could be denied, revisited, or modified.

89. Besides overcoming the class certification hurdle, Lead Plaintiffs faced significant risks to establishing liability. Not only did Lead Plaintiffs face the possibility of the Supreme Court granting certiorari and finding numerous challenged statements to be inactionable, but Defendants may have also argued at summary judgment or trial that certain statements, not specifically addressed by the Ninth Circuit, were inactionable as free-standing, forward-looking statements under the appellate court's decision. Of course, Defendants would also argue that none of the challenged statements were materially false or misleading. While Lead Counsel believed that it had obtained evidence contradicting Defendants' public statements, Defendants would have likely pointed to evidence undermining Lead Plaintiffs' allegations that Defendants had made false and misleading statements and omissions. The Court would have been permitted to weigh the evidence on both sides at this later stage of the Litigation and could have ruled in Defendants' favor.

90. Defendants would also argue that the evidence did not support a finding that the misstatements and omissions were made with scienter. Proving scienter is notoriously difficult, as it requires proving a defendant's state of mind. While Lead Counsel believed it had obtained strong evidence of scienter and would obtain more through discovery, there was a substantial risk that Lead Plaintiffs would depose all Defendants and others with relevant knowledge, only to end up with insufficient evidence of scienter in the eyes of the Court or jury. Along with facts gleaned through discovery, Lead Plaintiffs would have pointed to the timing and amount of Defendant Plochocki's sale of QSI shares as strong evidence of scienter. Specifically, Lead Plaintiffs would have illustrated that the sale was made at a time when the stock price was near its highest during the Class Period, and that the sale involved the vast majority of Plochocki's holdings of QSI stock. At the same time, Defendants would have argued that Plochocki's sale was not suspicious but rather consistent with his prior trading history, namely a lone sale he made in 2008 of approximately 97% of his QSI holdings. In addition, Defendants would have argued that Plochocki sold his stock months before the disclosures or stock price decline. Finally, Defendants would point to the fact that no other insiders had made similar sales during the Class Period. Clearly the question of scienter was not without risk, and the Court or jury could have decided against Lead Plaintiffs.

91. Lead Plaintiffs and Lead Counsel also had to consider Defendants' likely arguments regarding loss causation. Defendants would likely argue that the corrective disclosures alleged in the Amended Complaint did not reveal that any challenged statements were false or misleading at the time they were made and that proving loss causation was therefore an impossible task for Lead Plaintiffs. Defendants would also likely point to other factors that purportedly caused some or all of the decline in QSI's stock price. In order to succeed against Defendants' loss causation challenges, Lead Plaintiffs would have to rely on expert testimony, which would create additional challenges.

92. First, Lead Plaintiffs' experts would need to survive *Daubert* challenges. Even if successful in defending against such challenges, Lead Plaintiffs would also have to address Defendants' experts, who would present testimony purportedly demonstrating the absence of a causal link between the stock price decline and the disclosures at the end of the Class Period. These experts would also likely present challenges to Lead Plaintiffs' damages assessment. The resulting "battle of the experts" would not only be costly, even at summary judgment, but could result in confusion to a jury tasked with evaluating complicated and competing expert testimony. The reaction of a jury to competing expert testimony is highly unpredictable, and Lead Counsel recognizes the possibility that a jury could be swayed by Defendants' expert testimony and find that there were no damages or only a fraction of the amount of damages Lead Plaintiffs contended were suffered by the Class. Thus, even if Lead Plaintiffs were successful at proving Defendants' liability, the amount of damages that would actually be recovered would remain uncertain.

93. For the Class to ultimately prevail on its claims, it would have to survive Defendants' inevitable motion – or even motions – for summary judgment, and then prevail at trial. Summary judgment would pose a number of risks to the Class. Defendants, just like Lead Plaintiffs, would present their strongest evidence to the Court. Lead Plaintiffs would have to demonstrate to the Court that a genuine issue of material fact existed with regard to each element of its securities claims. Defendants would undoubtedly bolster their motion for summary judgment with any exculpatory evidence that arose during merits discovery.

94. Given the complex and multifaceted nature of the issues, trying this Litigation before a jury would be extremely complex, unpredictable, and could take weeks to complete. A successful jury verdict would likely result in Defendants filing post-trial motions and appeals to limit or overturn the verdict. The post-trial motion and appeals process would probably span several years, during which time the Class would receive no payment. In addition, an appeal of any verdict would carry with it

the risk of reversal, in which case the Class would receive nothing despite having prevailed at trial.

95. In summary, the time, expense, and uncertainty of continuing to prosecute this Litigation through class certification, summary judgment, trial, and potential appeals supported the conclusion that the Settlement provided a fair and reasonable outcome for the Class. There were several significant risks involved in proceeding further in this Litigation, each of which was carefully considered by Lead Counsel in consultation with Lead Plaintiffs, in making the determination to settle on the agreed terms. After a careful assessment of these risks, the evidence obtained thus far, and the circumstances of the case, it is Lead Counsel's belief that the Settlement is in the best interest of Lead Plaintiffs and the Class.

V. SETTLEMENT NEGOTIATIONS AND TERMS OF THE SETTLEMENT

96. During the course of the Litigation, the parties agreed to mediate before Gregory P. Lindstrom, Esq., of Phillips ADR, and participated in a full-day mediation session at the Phillips ADR offices in Corona Del Mar, California on May 9, 2018. *See* III.H, *supra*. Lead Plaintiffs addressed the merits of their case through submission of a detailed mediation statement as well as a reply to Defendants' brief, but the mediation ultimately ended without a resolution. On May 10, 2018, Mr. Lindstrom issued a "double-blind" mediator's recommendation in an effort to help the parties resolve the matter and settle the Litigation. Lead Plaintiffs and Defendants accepted the mediator's recommendation in the amount of the Settlement.

97. Lead Counsel specializes in complex federal civil litigation, particularly the litigation of securities class actions. Our experience in the field allowed us to identify the complex issues involved in this case and to formulate strategies to effectively prosecute them. We believe that our reputations as attorneys who will zealously carry a meritorious case through to trial and appeals, as well as our

demonstrated ability to vigorously develop the evidence in this case, placed us in a strong position in settlement negotiations with the Defendants.

98. Upon approval of the Stipulation by the Court and entry of a judgment that becomes a final judgment, and upon satisfaction of the other conditions to the Settlement, the Settlement Fund will pay for certain administrative expenses, including: (a) notice and administration expenses; (b) taxes assessed against the income earned on the Settlement Fund and related tax expenses; and (c) Lead Counsel's fees and litigation expenses and the costs and expenses of Lead Plaintiffs, to the extent awarded by the Court. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed to Class Members who submit valid Proof of Claim and Release forms which demonstrate a recognized loss under the Plan of Allocation.

VI. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS AND WARRANTS APPROVAL

99. Lead Plaintiffs and Lead Counsel believe that they could have prevailed on the merits of the case. Defendants, however, were just as adamant that the claims would fail. There was a very real risk, as discussed in detail above, that Lead Plaintiffs and the Class would not prevail at class certification, summary judgment, or trial. Had the Litigation successfully reached trial, the Class faced the risk that the jury would not be convinced that Defendants' misrepresentations and omissions were misleading, material, made with the requisite scienter, or was a cause of investors' losses. There was also the risk that the jury would reduce the damages awarded for the reasons described above. Finally, the risks of delay and reversal were readily illustrated by Defendants' pending petition for a writ of certiorari, as well as the likely appeal by Defendants if the Class were to prevail at trial.

100. Having considered all of the foregoing and having evaluated Defendants' defenses, it is Lead Counsel's informed judgment, based on all proceedings to date and its extensive experience in litigating class actions under the federal securities

laws, that the Settlement of this matter upon a payment of $19 million in exchange for a mutual release of all claims, and on the other terms set forth in the Stipulation, is fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiffs which, among other things, actively supervised and directed the Litigation, reviewed the pleadings, consulted with Lead Counsel, and provided information during discovery, were kept well-apprised of the settlement negotiations and also agree that the Settlement is in the best interest of the Class. *See* Cotera Decl., ¶¶2-4; ATRS Decl., ¶¶2-4.

VII. THE COURT'S NOTICE ORDER

101. Pursuant to this Court's July 30, 2018 Order, ECF No. 96, as well as the August 3, 2018 Addendum, ECF No. 98, the Court-approved Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release Form (the "Proof of Claim") was mailed to all Class Members who could be identified with reasonable effort commencing on August 14, 2018, and was posted on the Settlement website at www.QSISecuritiesSettlement.com. Also pursuant to the Order and Addendum, the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Expenses ("Summary Notice") was published in the national edition of *The Wall Street Journal* and over *PR Newswire* on August 14, 2018. The Notice advised Class Members of the Settlement, the Plan of Allocation, and the fee and expense application, as well as their settlement options, including the procedure for objecting to the Settlement, the Plan of Allocation, or the fee and expense application. While the time to file objections, October 29, 2018, has not passed, to date, Lead Counsel is not aware of any Class Member filing an objection to the Settlement, the Plan of Allocation, or the request for an award of attorneys' fees and expenses. Lead Plaintiffs will respond to any objections on or before November 12, 2018.

VIII. THE PLAN OF ALLOCATION

102. The Net Settlement Fund will be distributed to Class Members who, in accordance with the terms of the Stipulation, are entitled to a distribution and who submit a valid and timely Proof of Claim. Class Members' claims will be calculated under the Plan of Allocation set forth in the Notice mailed to Class Members, if the plan is approved by the Court. The Plan of Allocation, which was prepared in consultation with Plaintiffs' economic expert Mr. Steinholt, is based on Lead Plaintiffs' damages theory and includes the proposed plan for allocating the Net Settlement Fund among eligible Class Members. The Plan of Allocation provides that a Class Member must have a Distribution Amount of at least $10.00 in order to participate in the distribution of the Net Settlement Fund.

IX. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES IS REASONABLE UNDER THE RELEVANT FACTORS

103. The successful prosecution of this action required Lead Counsel and its paraprofessionals to perform 9,301.7 hours of work and incur $159,715.35 in litigation expenses, as detailed in the accompanying Declaration of Robert R. Henssler Jr. Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl.") and Declaration of Benjamin Galdston on Behalf of Bernstein Litowitz Berger & Grossmann LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Bernstein Litowitz Decl."). Based on the extensive efforts on behalf of the Class, as described above, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and requests a fee in the amount of 25% of the Settlement Amount, plus interest.

104. The percentage-of-the-fund method is the appropriate method of compensating counsel in PSLRA class actions because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum recovery in the shortest amount of time under the circumstances. As set

forth in the accompanying memorandum in support of Lead Counsel's application for an award of attorneys' fees and expenses, numerous courts have applied the percentage-of-the-fund method in awarding fees and doing so is consistent with the PSLRA. *See* 15 U.S.C. §78u-4(a)(6). In light of the nature and extent of the Litigation, its diligent prosecution, the complexity of the factual and legal issues presented, and the other factors described above and in the accompanying application for attorneys' fees and expenses, Lead Counsel believes that the requested fee of 25% of the Settlement Amount, plus interest, is fair and reasonable.

105. A 25% fee award is consistent with the benchmark percentage awarded by courts in the Ninth Circuit and in this District. It is also justified by the specific facts and circumstances in this case and the substantial risks that Lead Counsel faced in successfully prosecuting this Litigation.

A. The Requested Fee Is Supported by the Lead Plaintiffs

106. Lead Plaintiffs actively monitored, supervised and directed the Litigation and consulted with Lead Counsel during the course of settlement negotiations. Lead Plaintiffs spent considerable time and effort fulfilling their duties and responsibilities as Lead Plaintiffs, including reviewing various pleadings and other documents, identifying and providing information in discovery, participating in discussions with Lead Counsel regarding significant developments in the Litigation, and keeping informed of or attending the mediation. Lead Plaintiffs support Lead Counsel's request for a fee of 25% of the Settlement Amount, which favors granting the requested fee award. *See* Cotera Decl., ¶5; ATRS Decl., ¶5.

107. Likewise, the reaction of the rest of the Class to the Settlement supports the requested fee. As of this filing, no known objectors have come forward.

B. The Requested Fee Is Supported by the Effort Expended and Results Achieved

108. As set forth herein, the $19 million cash Settlement provides a substantial, certain and immediate benefit for the Class, which was achieved as a

result of extensive prosecutorial and investigative efforts, complicated motion practice, diligent appellate advocacy, contentious discovery disputes, and analysis of voluminous evidence, as detailed herein. This successful result was largely due to the persistent efforts of Lead Counsel, nationally recognized leaders in litigating securities class actions and complex litigation. Lead Counsel is comprised of highly experienced and specialized professionals able and willing to prosecute even the most difficult cases through to trial and any subsequent appeals.

109. Nevertheless, as discussed in greater detail above, this case was fraught with significant risk factors concerning liability and damages. Opposing Lead Counsel were extremely skilled and respected defense attorneys from Latham & Watkins LLP, a highly reputable firm known for its talented and forceful advocacy in complex litigation. Thus, Lead Plaintiffs' success was by no means assured. Defendants disputed whether the alleged misrepresentations and omissions were actionable, and whether Defendants made the alleged misrepresentations and omissions with the requisite scienter. Defendants would also vigorously dispute whether the action should be certified as a class action and whether the alleged fraud caused investors any losses. Were this Settlement not achieved, lengthy and expensive litigation would have continued, including fact depositions, expert discovery, summary judgment and *Daubert* briefing, trial, potential appellate practice before the Supreme Court, and any additional appeals following a judgment.

110. Moreover, the $19 million Settlement represents approximately 7%-13% of estimated damages as preliminarily assessed by Lead Counsel's expert, and as much as 22% or more of such estimated damages when taking into account Defendants' loss causation and materiality challenges. The Settlement is also a very good recovery for the Class in the context of recoverable damages when compared to settlements in other securities class actions. For example, the median settlement in 2017 as a percentage of estimated damages was 2.6% for securities class actions

overall. *See* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review* (NERA Jan. 29, 2018), Figure 29 at 38.

111. As a result of this Settlement, thousands of Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement. These factors also support Lead Counsel's request for an award of attorneys' fees of 25% of the Settlement Amount.

C. The Complexity of This Action's Factual and Legal Questions Supports the Requested Fee Award

112. From the outset, this action was an especially difficult and highly uncertain securities case, with no assurance whatsoever that the Litigation would survive Defendants' attacks on the pleadings, motions for summary judgment, trial, and appeal. As described above, the Litigation presented a number of sharply contested issues of both fact and law, and Lead Plaintiffs faced formidable defenses to liability, causation and damages. Additionally, although Lead Plaintiffs successfully appealed the dismissal of the suit with prejudice, the petition for a writ of certiorari was pending and very difficult issues remained at class certification and as to key elements of Lead Plaintiffs' claims. The substantial risks made it far from certain that any recovery, let alone $19 million, would ultimately be obtained.

D. The Risk of Contingent Class Action Litigation Supports the Requested Fee Award

113. As set forth in the accompanying motion for attorneys' fees and expenses, a determination of a fair fee should include consideration of the contingent nature of the fee, the financial burden carried by Lead Counsel, and the difficulties that were overcome in obtaining the Settlement.

114. This action was prosecuted by Lead Counsel on a contingent fee basis. Lead Counsel committed over 9,300 hours of attorney and paraprofessional time and incurred $159,715.35 in expenses in prosecuting the Litigation, as set forth in the accompanying Robbins Geller and Bernstein Litowitz Declarations. In addition, as set forth in the accompanying Robbins Geller and Bernstein Litowitz Declarations, based

on Lead Counsel's current rates, its total lodestar for this period is $5,062,465. Lead Counsel's rates have been approved by other courts and are consistent with other attorneys engaged in similar litigation. Lead Counsel fully assumed the risk of an unsuccessful result. Lead Counsel has received no compensation for its services during the course of this Litigation and has incurred very significant expenses in litigating for the benefit of the Class. Any fees or expenses awarded to Lead Counsel have always been at risk and are completely contingent on the result achieved. To date, Lead Counsel has received no compensation for their efforts or payment of litigation expenses. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result, and that such a result would be realized only after a lengthy and difficult effort. At the same time, Lead Counsel was faced at every step with determined, skilled and resourceful opposition by Defendants and their counsel.

115. Under these circumstances, Lead Counsel is justly entitled to the award of a reasonable percentage fee based on the common fund obtained for the Class. A 25% fee, plus expenses, is fair and reasonable under the circumstances present here.

116. There are numerous cases, including many handled by Lead Counsel, where class counsel in contingent fee cases such as this, after expenditure of thousands of hours of time and incurring significant costs, have received no compensation whatsoever. Class counsel who litigate cases in good faith and receive no fees whatsoever are often the most diligent members of the plaintiffs' bar. The fact that defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in high-risk cases like this one gives rise to meaningful settlements in actions such as this. The losses suffered by class counsel in other actions, where class counsel ultimately received little or no fee, should not be ignored. Lead Counsel know from personal experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation is never assured. For example, in *In re Oracle Corp. Sec. Litig.*, No C 01-00988 SI, 2009 U.S. Dist. LEXIS 50995 (N.D.

Cal. June 16, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010), a case that Robbins Geller prosecuted, the court granted summary judgment to defendants after eight years of litigation, and after plaintiff's counsel incurred over $6 million in expenses, and worked over 100,000 hours, representing a lodestar of approximately $40 million.

117. Lawsuits like this one are expensive to litigate. Those unfamiliar with the efforts required to litigate class actions often focus on the aggregate fees awarded at the end but ignore the fact that those fees fund enormous overhead expenses incurred during the course of many years of litigation, are taxed by federal and state authorities, are used to fund the expenses of other contingent cases prosecuted by class counsel, and help pay the salaries of the firms' attorneys and staff.

118. As discussed in greater detail above, this case was fraught with significant risk factors concerning liability and damages. Lead Plaintiffs' success was by no means assured. Defendants disputed whether Lead Plaintiffs could even establish liability and would no doubt contend, as the case proceeded to trial, that even if liability existed, the amount of damages was substantially lower than Lead Plaintiffs claimed. Were this Settlement not achieved, and even if Lead Plaintiffs prevailed at trial, Lead Plaintiffs and Lead Counsel faced potentially years of costly and risky appellate litigation. It is also possible that a jury could have found no liability or no damages. Lead Counsel therefore believes that based upon the substantial risk factors present, an award of attorneys' fees of 25% of the Settlement Amount is reasonable.

X. PLAINTIFFS' REQUESTS FOR AWARDS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

119. The PSLRA allows a class representative to seek an award of reasonable costs and expenses (including lost wages) relating to its representation of the Class. 15 U.S.C. §78u-4(a)(4).

120. Lead Plaintiffs Miami and ATRS request an award of $2,000 and $2,119.26 respectively, to compensate them for their time in representing the Class. Cotera Decl., ¶¶6-7; ATRS Decl., ¶¶6-7.

121. Lead Plaintiff Miami represented the Class and worked closely with Lead Counsel Robbins Geller to obtain a favorable result which warrants approval of the requested award.

122. Lead Plaintiff ATRS represented the Class and worked closely with Bernstein Litowitz. ATRS requests an award to compensate it for its expenditure of time in representing the interest of the Class.

123. These awards are fair and reasonable as both Miami and ATRS worked with, and provided important information to, Lead Counsel to assist in the preparation and litigation of this action.

XI. CONCLUSION

124. For all the foregoing reasons, Lead Counsel respectfully requests that the Court approve the Settlement and the Plan of Allocation, award Lead Counsel fees of 25% of the Settlement Amount and its litigation expenses of $159,715.35, plus interest on both amounts at the same rate and for the same period as that earned on the Settlement Fund until paid, and approve the award of $4,119.26 to Lead Plaintiffs under 15 U.S.C. §78u-4(a)(4).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 15th day of October, 2018, at San Diego, California.

ROBERT R. HENSSLER JR.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 15th day of October, 2018, at San Diego, California.

BENJAMIN GALDSTON

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 15, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Robert R. Henssler Jr.

ROBERT R. HENSSLER JR.

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Mailing Information for a Case 8:13-cv-01818-CJC-JPR In re Quality Systems, Inc. Securities Litigation

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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Cypen and Cypen
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