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THE HONORABLE BENJAMIN H. SETTLE  
(On Reference to The Honorable J. Richard Creatura)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

EVAN BROWN, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

PAPA MURPHY'S HOLDINGS, INC. and  
WELDON SPANGLER,

Defendants.

Case No. 19-cv-05514-BHS-JRC

LEAD PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT

NOTE ON MOTION CALENDAR:  
December 17, 2021

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1           **I. INTRODUCTION**

2           Lead Plaintiff Evan Brown (“Lead Plaintiff”)<sup>1</sup> respectfully requests that the Court  
3 preliminarily approve the proposed cash Settlement of \$2.4 million for the Settlement Class  
4 comprised of the former public shareholders of Papa Murphy’s. The Settlement is a testament to  
5 Lead Plaintiff’s persistence and perseverance despite the multiple roadblocks erected by Defendants,  
6 including their Petition for Permission to Appeal which was granted after Lead Plaintiff defeated  
7 Defendants’ multiple rounds of motions to dismiss. The sizeable Settlement represents  
8 approximately 6.75-17.25% of potential recoverable damages, an amount significantly higher than  
9 the 1.7% 2020 median recovery in securities class actions.<sup>2</sup> Moreover, the Settlement ensures that  
10 only the public shareholders partake in the recovery by excluding Papa Murphy’s directors and  
11 certain entities affiliated with them, which collectively owned more than half of the Company’s  
12 shares. The Settlement is a particularly excellent outcome for the Settlement Class because it enables  
13 them to avoid the significant risks of further litigation, which were magnified in this case given that  
14 the Ninth Circuit granted Defendants’ 28 U.S.C. § 1292(b) Petition for Permission to Appeal the  
15 same day the Settlement was reached. The Settlement was reached after two months of arm’s length  
16 negotiations between experienced counsel representing the Settling Parties. As set forth below, the  
17 Settlement is fair, reasonable, and adequate, warranting preliminary approval by this Court.

18           **II. HISTORY OF THE LITIGATION**

19           Given the extensive procedural and factual background associated with the Litigation, this  
20 section provides a brief overview. *See* Stipulation at 2-7 for a fuller, detailed history. On June 7,  
21 2019, Lead Plaintiff filed this Class Action against Papa Murphy’s, its CEO Weldon Spangler, the  
22 Company’s Directors, and its financial advisor North Point (collectively, the “Original Defendants”).  
23 ECF No. 1. On September 9, 2019, the Court granted Lead Plaintiff’s motion for appointment as

24 <sup>1</sup> All capitalized terms not defined herein have the same meanings as set forth in the Stipulation  
25 of Settlement dated November 29, 2021 (“Stipulation”) filed contemporaneously herewith as  
26 Exhibit 1 to the Declaration of Juan E. Monteverde in Support of Lead Plaintiff’s Motion for  
Preliminary Approval of Settlement (“Monteverde Decl.”).

<sup>2</sup> *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review*, 1, 20 (NERA Jan. 25, 2021) (Monteverde Decl., Ex. 2).

1 Lead Plaintiff pursuant to the PSLRA, and approved his selection of Monteverde as Lead Counsel  
2 and Breskin as Liaison Counsel. ECF No. 17.

3 On November 8, 2019, Lead Plaintiff filed his Amended Complaint, and in response, the  
4 Original Defendants filed their Motions to Dismiss on January 7, 2020. ECF No. 22, 25-26. On  
5 March 9, 2020, Lead Plaintiff filed his Opposition to the Original Defendants' Motions to Dismiss  
6 and also filed a Rule 41 Notice of Dismissal dismissing North Point. ECF No. 29-31. The Original  
7 Defendants then filed their Reply to Lead Plaintiff's Opposition on April 8, 2020. ECF No. 32. On  
8 June 10, 2020, the Court granted the Original Defendants' Motions to Dismiss without prejudice.  
9 ECF No. 35.

10 Lead Plaintiff was not discouraged and on July 10, 2020, he filed his Second Amended  
11 Complaint narrowing claims against the more active alleged wrongdoers, Papa Murphy's and  
12 Weldon Spangler ("Defendants"). ECF No. 36. On August 24, 2020, Defendants filed a Motion to  
13 Dismiss the Second Amended Complaint ("Second Motion to Dismiss"). ECF No. 41. Lead Plaintiff  
14 responded with his Opposition to the Second Motion to Dismiss on October 8, 2020, and then on  
15 November 2, 2020, Defendants filed their Reply. ECF No. 42, 44. On January 12, 2021, Magistrate  
16 Judge Creatura issued his Report and Recommendation denying Defendants' Second Motion to  
17 Dismiss, and despite Defendants' Objections, the Report and Recommendation was adopted by the  
18 Court on April 22, 2021. ECF No. 47, 51, 57.

19 On May 6, 2021, Defendants moved to certify the Court's April 22<sup>nd</sup> Order for interlocutory  
20 appeal, which Lead Plaintiff opposed on May 17, 2021. The Court granted Defendants' motion, and  
21 Defendants filed their Petition for Permission to Appeal on August 16, 2021. On September 9, 2021,  
22 Lead Plaintiff filed an Answer in Opposition to Defendants' Petition. While Defendants' Petition  
23 for Permission to Appeal was pending, the Settling Parties, through counsel, held several discussions  
24 and negotiations regarding a potential settlement. On October 12, 2021, after two months of arm's  
25 length negotiations and Lead Counsel consulting with a damages' expert, the Settling Parties came  
26

1 to terms on the Settlement described herein. Later that evening, the Ninth Circuit issued an Order  
2 granting Defendants’ Petition for Permission to Appeal. ECF No. 67.

3 On October 18, 2021, the Settling Parties executed a term sheet for the Settlement.

4 On October 25, 2021, the Settling Parties re-filed a joint motion in the Ninth Circuit to stay  
5 the appellate proceedings, under the newly assigned appellate case number. The motion was  
6 referred to Chris Goelz, Ninth Circuit Mediator, and on November 2, 2021, Mr. Goelz issued an  
7 order staying Defendants’ appeal and vacating the briefing schedule established for the appeal.

8 The Settling Parties then reduced the terms of the Settlement into the Stipulation, which is  
9 now subject to this Court’s approval.

10 Thereafter, the Settling Parties informed the Ninth Circuit of the execution of the Stipulation,  
11 and on November 29, 2021, the Ninth Circuit issued an order remanding the case so that this Court  
12 may consider the Settlement.

13 **III. TERMS OF THE SETTLEMENT**

14 Pursuant to the Settlement, Papa Murphy’s shall cause its D&O insurance carrier to pay, on  
15 behalf of Defendants, the Settlement Amount of \$2.4 million into the Escrow Account, which will  
16 then be distributed to the Authorized Claimants in accordance with the Plan of Allocation described  
17 fully in the Notice. *See* Stipulation, Ex. A-1. Defendants, Papa Murphy’s Directors, and certain  
18 Supporting Stockholders affiliated with them are excluded from the Settlement, thereby ensuring  
19 that only aggrieved shareholders partake in the recovery.

20 **IV. ARGUMENT**

21 The Ninth Circuit has repeatedly reiterated the “strong judicial policy that favors settlements,  
22 particularly where complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d  
23 1095, 1101 (9th Cir. 2008). Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a class  
24 action settlement requires court approval, and there are three stages to obtaining a court’s final  
25 approval: (i) the parties ask a court to preliminarily approve a proposed settlement; (ii) notice is sent  
26 to the class describing the settlement; and (iii) the court holds a fairness hearing to determine whether

1 to give final approval to the settlement. *See Rinky Dink Inc v. Elec. Merch. Sys.*, 2015 U.S. Dist.  
2 LEXIS 195753, at \*4 (W.D. Wash. Dec. 11, 2015). In accordance with the first stage, Lead Plaintiff  
3 requests preliminary approval of the Settlement, as the Settlement is fair, reasonable, and adequate.

4 **A. The Settlement Should Be Preliminarily Approved**

5 A court preliminarily approving a settlement only establishes an initial presumption of  
6 fairness. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). Preliminary  
7 approval is warranted if the proposed settlement: (1) appears to be the product of serious, informed,  
8 non-collusive negotiations; (2) has no obvious deficiencies and does not improperly grant  
9 preferential treatment to class representatives or segments of the class; and (3) falls within the range  
10 of possible approval. *See Rosas v. Sarbanand Farms, LLC*, 2019 U.S. Dist. LEXIS 223059, at \*3  
11 (W.D. Wash. Dec. 31, 2019); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079.

12 **I. The Settlement is the Product of Serious, Informed, and Non-Collusive**  
13 **Negotiations**

14 A proposed settlement is presumed fair for purposes of preliminary approval if it resulted  
15 from arm's length negotiations. *In re Portal Software, Inc. Sec. Litig.*, No. 03-cv-5138 VRW, 2007  
16 U.S. Dist. LEXIS 51794, at \*15 (N.D. Cal. June 30, 2007). Arm's length negotiations typically take  
17 place over an extended period of time with experienced counsel on both sides, each with an  
18 understanding of the strengths and weaknesses of their own and the opposing party's claims. *In re*  
19 *Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

20 Here, the Settlement was the product of two months of arm's length negotiations between  
21 the Settling Parties during the pendency of Defendants' Petition for Permission to Appeal to the  
22 Ninth Circuit. After building an extensive docket that consisted of, *inter alia*, two amended class  
23 action complaints and two rounds of motions to dismiss, the Settling Parties were well-aware of the  
24 strengths and weaknesses of their respective legal positions. *See Zuern v. IDS Prop. Cas. Ins. Co.*,  
25 2021 U.S. Dist. LEXIS 35730, at \*12 (W.D. Wash. Feb. 25, 2021). Indeed, after this Court granted  
26 the Original Defendants' Motions to Dismiss, Lead Plaintiff re-evaluated his case and fine-tuned his



1 allegations in the Second Amended Complaint to narrow its claims against the active alleged  
2 wrongdoers, Defendants Papa Murphy's and Spangler. Due to Lead Plaintiff's perseverance with  
3 assistance of skilled Lead Counsel, he was able to successfully defeat Defendants' Second Motion  
4 to Dismiss over Defendants' Objections, and Judge Settle adopted Magistrate Judge Creatura's  
5 Report and Recommendation denying Defendants' Second Motion to Dismiss. Moreover, during  
6 settlement negotiations, Lead Plaintiff was assisted by Lead Counsel and its damages expert, so Lead  
7 Plaintiff was fully aware of the potential recoverable damages for the Settlement Class while  
8 negotiating the Settlement.

9 In addition, the Court should give Lead Counsel's recommendation that the Settlement is fair  
10 and adequate a presumption of reasonableness, because Lead Counsel has significant expertise in  
11 securities litigation.<sup>3</sup> *See In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal.  
12 2008). Indeed, Lead Counsel weighed the sizeable Settlement Amount against the risk that in going  
13 forward with the Litigation, the Ninth Circuit, this Court, or a jury might find in favor of Defendants  
14 – resulting in no recovery for the Class.

15 Simply put, during the negotiation of the Settlement, Lead Plaintiff and Lead Counsel were  
16 well-informed of the strengths and weaknesses of the claims at issue, and are confident that the  
17 Settlement is fair, reasonable, and adequate. The Settlement is the product of serious, informed, non-  
18 collusive negotiations between the Settling Parties, and warrants preliminary approval.

19 ***2. The Settlement Has No Obvious Deficiencies and Does Not Improperly***  
20 ***Grant Preferential Treatment to Lead Plaintiff or Segments of the Class***

21 Under the Plan of Allocation, Authorized Claimants that submit a valid, timely Proof of  
22 Claim will receive distribution from the Net Settlement Fund on a pro rata basis. *See* Stipulation at  
23 11, 22-26; *Zuern*, 2021 U.S. Dist. LEXIS 35730, at \*12-13. Therefore, assuming 100% of the shares  
24 in the Settlement Class submit a valid and timely Proof of Claim, the average distribution will be  
25 \$0.29 per share owned (before payment of Court-approved fees and expenses (estimated to be

26 <sup>3</sup> *See* Monteverde Firm Resume (Monteverde Decl., Ex. 3).

1 approximately \$0.10 per share)). Stipulation, Ex. A-1 at 13. This means that every shareholder in  
2 the Settlement Class will receive equal treatment under the Plan of Allocation.

3 Although Lead Plaintiff intends to seek an award of reasonable costs and expenses directly  
4 relating to his representation of the Settlement Class in an amount up to \$5,000 pursuant to 15 U.S.C.  
5 § 78u-4(a)(4), such an award would “not constitute inequitable treatment of class members”, because  
6 (i) it is not part of the Settlement and must be separately approved by the Court, and (ii) it is only  
7 meant to compensate Lead Plaintiff as a class representative for work done on behalf of the  
8 Settlement Class. *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-cv-04883-BLF, 2019 U.S. Dist.  
9 LEXIS 121886, at \*26 (N.D. Cal. July 22, 2019) (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948,  
10 958-59 (9th Cir. 2009)).

### 11 **3. The Settlement Falls Within the Range of Possible Approval**

12 In determining whether a settlement falls within the range of possible approval, courts weigh  
13 the plaintiff’s expected recovery (*i.e.*, potential damages) against the value of the settlement offer.  
14 *See Zuern*, 2021 U.S. Dist. LEXIS 35730, at \*11. The Settlement represents a recovery of  
15 approximately 6.75-17.25% of the potential recoverable damages for the Settlement Class and will  
16 exclude the nearly nine million Papa Murphy’s shares owned by the Company’s directors and  
17 officers and their affiliates. This ensures that only aggrieved shareholders partake in the recovery,  
18 and that such shareholders receive a much higher per share recovery.

19 Such a sizeable recovery in relation to potential damages is, standing alone, indicative of the  
20 Settlement’s fairness. *See Monteverde Decl.*, Exhibit 2 at 36; *In re Mego Fin. Corp. Sec. Litig.*, 213  
21 F.3d 454, 459 (9th Cir. 2000) (“The settlement amount of almost \$2 million was roughly one-sixth  
22 of the potential recovery, which, given the difficulties in proving the case, is fair and adequate.”).  
23 However, given the substantial risks of further litigation (including the risk of Defendants’ winning  
24 their appeal), the additional expenses associated with further litigation, and the complexity of the  
25 Action, the Settlement is a particularly favorable result for the Settlement Class. *See Churchill Vill.*,  
26 *L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). Although Lead Plaintiff believes his claims

1 have merit, as shown by his success in defeating Defendants’ Second Motion to Dismiss, the risks  
2 of further litigation in this complex securities action—including winning at the Ninth Circuit,  
3 defeating summary judgment, and prevailing at trial on liability and damages—were significant.

4         Simply put, the Settlement is a great outcome for the Settlement Class, and certainly “falls  
5 within the range of reasonableness[.]” *Zuern*, 2021 U.S. Dist. LEXIS 35730, at \*11.

6                 **B. Certification of the Settlement Class for Settlement Purposes is Appropriate**

7         In granting preliminary settlement approval, the Court should also certify the Settlement  
8 Class for purposes of effectuating the Settlement under Rules 23(a) and (b)(3) of the Federal Rules  
9 of Civil Procedure. Courts have long acknowledged the propriety of a settlement class. *See, e.g.,*  
10 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619-22 (1997). A settlement class, like other certified  
11 classes, must satisfy all the requirements of Rule 23(a) and Rule 23(b)(3), and this Settlement Class  
12 does so, as shown below. *See id.* at 607-09.

13                 ***1. The Settlement Class Satisfies the Requirements of Rule 23(a)***

14         Class certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder  
15 of all members is impracticable (“numerosity”); (2) there are questions of law or fact common to the  
16 class (“commonality”); (3) the claims/defenses of the class representative are typical of the  
17 claims/defenses of the class (“typicality”); and (4) the class representative will fairly and adequately  
18 protect the interests of the class (“adequacy”). Fed. R. Civ. P. 23(a). The Settlement Class meets  
19 each of these four requirements.

20                 a.         The Numerosity Requirement is Satisfied

21         First, Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is  
22 impracticable.” Courts have held that joinder is impracticable when the proposed settlement class  
23 exceeds 40 class members. *Rinky Dink Inc.*, 2015 U.S. Dist. LEXIS 195753, at \*7. Here, the  
24 numerosity requirement is plainly satisfied, as Lead Plaintiff estimates that there are approximately  
25 8,160,595 shares of Papa Murphy’s in the Settlement Class held by hundreds to thousands of  
26 shareholders across the United States. Stipulation, Ex. A-1 at 13.

1                   b.       The Commonality Requirement is Satisfied

2           Second, Rule 23(a)(2)'s commonality requirement does not mandate that *all* questions of law  
3 and fact be common to all class members, rather the class can have at least one shared legal issue  
4 with differing factual scenarios, or common material facts with differing legal remedies. *Hanlon v.*  
5 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). In *Blackie v. Barrack*, the Ninth Circuit held  
6 that a class of purchasers allegedly defrauded by the same misrepresentations made by a company  
7 satisfied the commonality requirement. 524 F.2d 891 (9th Cir. 1975).

8           As in *Blackie*, the Settlement Class Members here all held shares of Papa Murphy's during  
9 the Settlement Class Period, and thus all share common questions of law and fact, particularly  
10 whether Defendants violated Sections 14(e) and 20(a) of the Exchange Act by preparing and  
11 disseminating a materially misleading Recommendation Statement, and whether shareholders were  
12 damaged as a result. Thus, the Settlement Class satisfies the commonality requirement.

13                   c.       The Typicality Requirement is Satisfied

14           Third, Rule 23(a)(3) requires that the class representative's claims be "typical" of those of  
15 the other class members. Under Rule 23(a)'s permissive standards, claims are "typical" if they are  
16 reasonably co-extensive with those of the other class members. *Hanlon*, 150 F.3d at 1020.

17           As mentioned above, Lead Plaintiff and all other Settlement Class Members bought, sold, or  
18 held shares of Papa Murphy's during the Settlement Class Period, and their claims arise from the  
19 same Recommendation Statement issued in connection with the same Tender Offer. Therefore, the  
20 typicality requirement is satisfied as well.

21                   d.       The Adequacy Requirement is Satisfied

22           Fourth, Rule 23(a)(4) requires that "the representative parties will fairly and adequately  
23 protect the interests of the class." In the Ninth Circuit, legal adequacy is determined using the  
24 following two questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest  
25 with other class members and (2) will the named plaintiffs and their counsel prosecute the action  
26 vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

1 Here, Lead Plaintiff and Lead Counsel have no conflicts of interest with each other or any of  
2 the other Settlement Class Members. In addition, there can be no doubt that Lead Plaintiff and Lead  
3 Counsel have vigorously litigated this Action. Over the last two and a half years, they conducted  
4 extensive investigation into to the facts underlying the asserted claims, drafted comprehensive  
5 pleadings, engaged in substantive motion practice, including opposing multiple motions to dismiss  
6 and successfully defeating Defendants’ Second Motion to Dismiss, vigorously opposed Defendants’  
7 attempt to eliminate the private right of action under Section 14(e) at the Ninth Circuit, and engaged  
8 in arm’s length negotiations with Defendants to obtain a fair recovery for the Settlement Class.

9 Moreover, Lead Counsel is highly qualified in tender offer litigation and is responsible for  
10 improving the law for shareholders in tender offers with a significant victory that lowered the  
11 standard of liability under Section 14(e) of the Exchange Act in this Circuit. Thereafter, Lead  
12 Counsel successfully preserved the victory by obtaining dismissal of a *writ of certiorari* as  
13 improvidently granted at the United States Supreme Court. *Emulex Corp. v. Varjabedian*, 139 S. Ct.  
14 1407 (2019). Also, Lead Counsel is recognized as a preeminent securities firm listed in the **Top**  
15 **50** in the 2018-2020 ISS Securities Class Action Services Report.

16 In sum, the adequacy requirement is satisfied, and the Settlement Class meets all four  
17 requirements for class certification under Rule 23(a).

18 **2. The Settlement Class Meets the Requirements of Rule 23(b)(3)**

19 Lead Plaintiff seeks certification of the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3).  
20 Certification under Rule 23(b)(3) requires “that the questions of law or fact common to class  
21 members predominate over any questions affecting only individual members, and that a class action  
22 is superior to other available methods for fairly and efficiently adjudicating the controversy.” When  
23 assessing predominance and superiority, a court may consider that the class will be certified for  
24 settlement purposes only, and thus a showing of manageability at trial is not required. *See Amchem*,  
25 521 U.S. at 618.

1 a. Common Legal and Factual Questions Predominate

2 Here, questions common to all Settlement Class Members substantially predominate over  
3 any individualized questions. The common issues in this Action that predominate are: (1) whether  
4 the Recommendation Statement contained materially misleading statements; and (2) whether the  
5 alleged material misrepresentations caused recoverable losses. *See In re Hot Topic, Inc. Sec. Litig.*,  
6 No. CV 13-02939 SJO (JCx), 2014 U.S. Dist. LEXIS 155544, at \*17 (C.D. Cal. Nov. 3, 2014). The  
7 same alleged course of conduct by Defendants forms the basis for all of the Settlement Class  
8 Members' claims. As discussed above, there are numerous common issues relating to Defendants'  
9 liability at the core of this Action that predominate over any individualized issues, so the  
10 predominance requirement of Rule 23(b)(3) is met.

11 b. A Class Action is Superior to Other Methods of Adjudication

12 Rule 23(b)(3) sets forth that a class action must be the superior method of adjudication. In  
13 securities cases, like this one, alleging that misleading statements were disseminated to hundreds of  
14 shareholders across the country, a class action is undoubtedly superior to other methods of  
15 adjudication because it promotes judicial economy. *See Desai v. Deutsche Bank Sec. Ltd*, 573 F.3d  
16 931, 937 (9th Cir. 2009).

17 Accordingly, the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied, and certification  
18 of the Settlement Class is appropriate.

19 **C. The Notice Program Satisfies Due Process, Rule 23, and PSLRA Requirements**

20 Rule 23(e)(1) of the Federal Rules of Civil Procedure requires that all members of the class  
21 be notified of the terms of any proposed settlement. The notice must state in plain, easily understood  
22 language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims,  
23 issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the  
24 member so desires; (v) that the court will exclude from the class any member who requests  
25 exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class  
26

1 judgment on members. Fed. R. Civ. P. 23(c)(2)(B). Furthermore, in securities class actions, the  
2 PSLRA also requires that the notice provide the following information:

3 (1) “[t]he amount of the settlement proposed to be distributed to the parties to the  
4 action, determined in the aggregate and on an average per share basis;” (2) “[i]f the  
5 parties do not agree on the average amount of damages per share that would be  
6 recoverable if the plaintiff prevailed on each claim alleged under this chapter, a  
7 statement from each settling party concerning the issue or issues on which the parties  
8 disagree;” (3) “a statement indicating which parties or counsel intend to make . . . an  
9 application [for attorneys’ fees or costs], the amount of fees and costs that will be  
sought (including the amount of such fees and costs determined on an average per  
share basis), and a brief explanation supporting the fees and costs sought;” (4) “[t]he  
name, telephone number, and address of one or more representatives of counsel for  
the plaintiff class who will be reasonably available to answer questions from class  
members;” and (5) “[a] brief statement explaining the reasons why the parties are  
proposing the settlement.”

10 15 U.S.C. § 78u-4(a)(7).

11 Here, the proposed form of the Notice (Stipulation, Ex. A-1) and the proposed form of the  
12 Summary Notice (Stipulation, Ex. A-3) meet all the requirements listed in Rule 23(e) and the  
13 PSLRA. The location of each of these required pieces of information within the Notice and Summary  
14 Notice is detailed in the Monteverde Declaration at ¶¶ 3-7. Moreover, the Notice and Summary  
15 Notice are similar, if not identical, to the methods used in countless other securities class actions that  
16 have been “found to be satisfactory and meet due process.” *In re Celera Corp. Sec. Litig.*, No. 5:10-  
17 CV-02604-EJD, 2015 U.S. Dist. LEXIS 42228, at \*18-20 (N.D. Cal. Mar. 31, 2015). Therefore, this  
18 Court should approve the form of Notice and Summary Notice.

19 **D. Anticipated Legal Fees and Expenses**

20 As set forth in the Notice, Lead Counsel intends to request an award of attorneys’ fees of  
21 one-third of the Settlement Fund, plus expenses not to exceed \$25,000. A one-third fee of the \$2.4  
22 million Settlement Amount would equate to \$800,000, which is less than the value of the time that  
23 Lead Counsel has expended in this Action to date and would provide a negative multiplier to Lead  
24 Counsel’s lodestar to date.

**E. Proposed Schedule of Events**

The proposed Preliminary Approval Order includes the following schedule:

<b><u>EVENT</u></b>	<b><u>DEADLINE</u></b>
Notice mailed to the Settlement Class (“Notice Date”)	21 calendar days after entry of the Preliminary Approval Order
Summary Notice published	10 calendar days after the Notice Date
Deadline for filing briefs in support of the Settlement, certification of the Settlement Class, Plan of Allocation, or request for an award of attorneys’ fees and expenses	35 calendar days prior to the Final Approval Hearing
Deadline for requesting exclusion from the Settlement Class and notifying Counsel of objections to the Settlement, Plan of Allocation, or request for fees and expenses	21 calendar days prior to the Final Approval Hearing
Deadline for objectors to file objection papers with the Court	14 calendar days prior to the Final Approval Hearing
Deadline to be provided to Defendants’ Counsel copies of all Requests for Exclusion	14 calendar days prior to the Final Approval Hearing
File declaration confirming mailing and publishing of Notice and Summary Notice	7 calendar days prior to the Final Approval Hearing
Reply papers in support of the Settlement, Plan of Allocation, or request for an award of attorneys’ fees and expenses	7 calendar days prior to the Final Approval Hearing
Final Approval Hearing	At the Court’s convenience, but no less than 110 calendar days after entry of the Preliminary Approval Order
Last day for submitting Proof of Claim and Release forms	120 calendar days after the Notice Date or such other time as set by the Court

See Stipulation, Ex. A at 3-6, 8-10.

**V. CONCLUSION**

For the foregoing reasons, the Settlement warrants this Court’s preliminary approval, and entry of the Preliminary Approval Order.



1 Dated: December 1, 2021

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