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*Counsel for Lead Plaintiff Houston Municipal Employees Pension System and Class Counsel*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE:

BofI HOLDING, INC. SECURITIES LITIGATION.

Case No. 3:15-cv-02324-GPC-KSC

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Hon. Gonzalo Paul Curiel
Courtroom 2D (2nd Floor–Annex)

Date: June 3, 2022
Time: 1:30 p.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on June 3, 2022, at 1:30 p.m. in Courtroom 2D of the above-entitled Court, located at 221 West Broadway, Suite 2190, San Diego, California, 92101, Lead Plaintiff Houston Municipal Employees Pension System will move this Court, pursuant to Federal Rule of Civil Procedure 23(e), for an Order (1) granting preliminary approval of the class action Settlement, (2) appointing JND Legal Administration to serve as Settlement Administrator, (3) approving the proposed Notice program, including the form and content of the proposed Notice documents and the claims process set forth in the Declaration of Luiggy Segura and the proposed Order Preliminarily Approving Settlement, and (4) entering a scheduling order setting the Settlement Hearing and other necessary dates.

This Motion is supported by the accompanying memorandum of points and authorities, the Stipulation of Settlement (and attached exhibits), the Declaration of Katherine Lubin Benson, the Declaration of Luggy Segura (and attached exhibits), the Declaration of Seven P. Feinstein, Ph.D, CFA, arguments of counsel, and any other matters properly before the Court.

Dated: April 15, 2022

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: *s/ Katherine Lubin Benson*
Katherine Lubin Benson

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE:

BofI HOLDING, INC. SECURITIES LITIGATION.

Case No. 3:15-cv-02324-GPC-KSC

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Hon. Gonzalo Paul Curiel
Courtroom 2D (2nd Floor–Annex)

Date: June 3, 2022
Time: 1:30 p.m.

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## INTRODUCTION

After over six years of vigorously contested litigation, Court-appointed Lead Plaintiff and Class Representative Houston Municipal Employees Pension System ("Plaintiff" or "HMEPS") and Defendants BofI Holding, Inc. ("BofI" or the "Bank"), Gregory Garrabrants, James Argalas, Paul J. Grinberg, Andrew J. Micheletti, and Nicholas A. Mosich have reached a settlement to resolve this securities class action. Under the proposed Settlement,[1] BofI's insurers will, on behalf of Defendants, create a $14.1 million cash fund to compensate Class members and in return, release Plaintiff and the Class's claims against Defendants.

The Settlement is fair, reasonable, and adequate. Plaintiff and Class Counsel vigorously prosecuted this action on behalf of the Class and developed a deep understanding of the strengths and weaknesses of the action. Plaintiff's claims survived three challenges to the pleadings and were upheld on appeal to the Ninth Circuit; Plaintiff (over Defendants' opposition) successfully certified a Rule 23(b)(3) class; and the parties engaged in over a year of intensive fact discovery covering several areas of BofI's business. Notwithstanding its confidence in the merits of its claims, Plaintiff recognizes the challenge of proving its claims at trial. The Settlement—which is the product of extensive, arm's length negotiations overseen by experienced mediator Hon. Daniel Weinstein (Ret.)—ensures substantial and meaningful relief for Class Members. Accordingly, Plaintiff respectfully asks the Court to find that the Settlement satisfies Rule 23(e)'s standard for preliminary approval, approve notice to the Class, and set a schedule for final approval.

## BACKGROUND

### I. Relevant Allegations

As detailed in its Third Amended Complaint ("TAC") (ECF No. 136),

[1] Unless otherwise indicated, capitalized terms herein have the same meanings as defined in the Stipulation and Agreement of Settlement ("Settlement"), filed concurrently herewith.

Plaintiff alleges BofI and certain of its officers and directors falsely and misleadingly presented the Bank as a prudent lending institution with adequate internal controls and compliance infrastructure to oversee its risks. Specifically, during the Class Period (September 4, 2013 through October 13, 2015), Defendants promoted the Bank's underwriting criteria as "conservative" and "disciplined." TAC ¶ 152. Defendants also touted the Bank's "culture of . . . strong risk management" and "significant investments" in compliance infrastructure. *Id.* ¶ 51. Plaintiff alleges that in reality, BofI routinely "flout[ed] its own underwriting guidelines and originat[ed] risky loans in order to pad the Bank's loan origination volume" (*id.* ¶ 12), and that senior managers at the Bank also "failed to implement and enforce adequate internal controls . . . and systematically disregarded whatever internal controls were ostensibly in place." *Id.* ¶ 56.

Plaintiff alleges that the falsity of Defendants' representations were revealed to the market on October 13, 2015, when former BofI auditor Charles Matthew Erhart filed a federal whistleblower complaint which was reported in the press, including by the *New York Times*. *Id.* ¶¶ 10, 124–25; *see Erhart v. BofI Holding, Inc.*, No. 3:15-cv-2287-BAS-NLS (S.D. Cal. Oct. 13, 2015), ECF No. 1 (the "Erhart Complaint"). The price of BofI stock immediately declined $10.72 per share, or 30.2%, from a closing price of $35.50 on October 13, 2015, to close at $24.78 on October 14, 2015, on extremely high trading volume. TAC ¶ 126.

## II. Procedural History

### A. Investigation and Consolidation

Following the filing of the Erhart Complaint, several investors commenced proposed class actions. *See* ECF No. 1. This Court consolidated the actions and appointed HMEPS as lead plaintiff and Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser" or "Class Counsel") as lead counsel. ECF No. 23. Plaintiff and Lieff Cabraser extensively investigated the nature of the claims in this action, including by speaking with numerous former Bank employees who served as

confidential witnesses ("CWs") in the complaints. On April 11, 2016, Plaintiff filed its consolidated amended complaint ("CAC"). ECF No. 26.

**B. Pleadings Challenges**

Over the next two years, the parties engaged in four separate rounds of highly contested pleadings motions.

On May 11, 2016, Defendants moved to dismiss the CAC, as to all claims, for failure to sufficiently allege falsity and scienter. ECF No. 37. In a September 27, 2016 decision, this Court held Plaintiff had sufficiently pleaded Section 10(b) claims against Garrabrants and thus against BofI, as well as a Section 20(a) claim against Garrabrants as a "controlling person" of the Bank. ECF No. 64. Notably, the Court explained that "[i]n their more than 140-page complaint, Plaintiffs point to copious facts as evidence that BofI statements, and their omissions, were false and misleading when made" (*id.* at 4), and that the CAC "stated with tremendous care" why those statements were false and misleading (*id.* at 15). In addition, the Court identified "a number of facts from which the Court can infer that CEO Gregory Garrabrants knew that BofI was deviating from its stated lending practices and failing to maintain adequate internal and audit controls." *Id.* at 23–25. Accordingly, the Court upheld Plaintiff's claims as to BofI and Garrabrants but dismissed (with leave to amend) the claims against the other individual defendants. *Id.* at 31–32.

On November 25, 2016, Plaintiff filed a Second Amended Complaint ("SAC"), primarily to make clear that Section 20(a) claims could lie against Defendants Micheletti, Grinberg, Mosich, and Argalas. ECF No. 79. On December 23, 2016, Defendants moved to dismiss the SAC, again as to all claims, for failure to plead falsity and scienter. ECF No. 88. This Court denied in part and granted in part Defendants' motion on May 23, 2017. ECF No. 113. Notably, the Court identified several examples of alleged misstatements regarding "BofI's loan underwriting practices" and "its internal controls and compliance infrastructure"

(*id.* at 9, 12–24), but it concluded alleged misstatements relating to other topics were not actionable (*id.* at 28–38). It also upheld Plaintiff's Section 20(a) claims against Defendants Micheletti, Grinberg, Mosich, and Argalas. *Id.* at 38–59.

After answering the SAC (ECF No. 116) on June 20, 2017, Defendants moved for judgment on the pleadings under Rule 12(c), on September 29, 2017, arguing that Plaintiff failed to sufficiently allege loss causation. ECF No. 123. On December 1, 2017, this Court granted the motion and dismissed Plaintiff's claims with leave to amend, holding that neither the Erhart Complaint nor a series of articles published on the financial research and analysis website *Seeking Alpha* could constitute corrective disclosures for alleged misstatements regarding BofI's internal controls, compliance infrastructure, and loan underwriting standards. ECF No. 134 at 8–21.

Following the Court's dismissal, Plaintiff filed its TAC on December 22, 2017, which alleged misrepresentations relating to (1) BofI's internal controls, compliance infrastructure, and risk management; (2) the Bank's loan underwriting standards and loan credit quality; and (3) government and regulatory investigations. ECF No. 136. On January 19, 2018, Defendants moved to dismiss yet again, reasserting their challenge on loss causation grounds. In a March 21, 2018 order, the Court granted Defendants' motion and dismissed the action with prejudice and entered judgment. ECF Nos. 156 & 157.

### C. Appeal to the Ninth Circuit

Plaintiff appealed. ECF No. 158. Over the ensuing eight months, the parties briefed the appeal, and a panel of the Ninth Circuit heard oral argument on January 7, 2020. On October 8, 2020, the Ninth Circuit issued its opinion, reversing and remanding in part. *In re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781 (9th Cir. 2020). Importantly, the appellate court held Plaintiff had "adequately pleaded a viable claim under § 10(b) and Rule 10b-5 for the two categories of misstatements the district court found actionable, with the Erhart lawsuit serving as a potential

corrective disclosure." *Id.* at 798. According to the Ninth Circuit, the Erhart Complaint "disclosed facts that, if true, rendered false BofI's prior statements about its underwriting standards, internal controls, and compliance infrastructure." *Id.* at 793. The Ninth Circuit separately affirmed this Court's conclusions that the *Seeking Alpha* articles did not constitute corrective disclosures, and that Plaintiff failed to allege the falsity of alleged misstatements concerning government and regulatory investigations. *Id.* at 794–98.

Defendants sought a petition for rehearing and rehearing en banc, which was denied. *In re BofI Holding, Inc. Sec. Litig.*, No. 18-55415 (9th Cir. Nov. 16, 2020), ECF No. 43. Defendants then petitioned for writ of certiorari to the U.S. Supreme Court on March 26, 2021, which Plaintiff opposed on June 25, 2021. The Supreme Court denied that petition on October 4, 2021. *BofI Holding, Inc. v. Houston Mun. Emps. Pension Sys.*, 142 S. Ct. 71 (2021).

**D. Discovery**

On remand, in December 2020, this Court directed the parties to immediately begin discovery. *See generally* ECF No. 170 (appeal mandate hearing transcript). Over the course of the next fourteen months, the parties exchanged voluminous discovery and vigorously litigated a substantial number of issues.

**1. The Parties Exchanged Voluminous Discovery.**

The parties exchanged a substantial amount of written discovery. *First*, Plaintiff served its first set of requests for production of documents on December 23, 2020, which contained forty-seven individual document requests. Decl. of Katherine Lubin Benson ("Benson Decl.") ¶ 9. Thereafter, Plaintiff served seven subsequent sets of requests for production, five sets of interrogatories, and one set of requests for admission. *Id.* In total, Plaintiff propounded 106 document requests, 21 interrogatories, and 2 requests for admission. In response to Plaintiff's discovery requests, Defendants produced (and Plaintiff reviewed and analyzed) 89,041 documents totaling 633,885 pages. *Id.* ¶¶ 9–10. *Second*, Defendants served

a total of 145 document requests, 24 interrogatories, and one request for admission, to which Plaintiff responded. *Id.* ¶ 12. In total, Plaintiff produced 47 documents totaling 892 pages. *Id.* ¶ 13. *Lastly*, Plaintiff issued document subpoenas on six third-party entities referenced in the TAC, including two outside auditors. These entities collectively produced 2,037 documents totaling 23,043 pages. *Id.* ¶ 14.

The parties' extensive document discovery efforts were supplemented by deposition testimony from several key witnesses. Plaintiff deposed three witnesses, and Defendants deposed six witnesses. Key deponents included: Gregory Brunt, Chief Investment Officer at HMEPS; Rhonda Smith, former Executive Director at HMEPS; Peter Neumeier, an investment manager for HMEPS; Jan Durrans, EVP and Chief of Staff and Chief Performance Officer at BofI; and Ron Pitters, Chief Information Officer at BofI. *Id.* ¶ 16. Further, at the time they reached a settlement in principle of the claims in this action, the parties had scheduled twenty-one additional depositions which were set to occur between March 2, 2022 and April 15, 2022. *Id.* Having prepared over the course of several months, Class Counsel planned to depose key witnesses in the case, including the five individual Defendants and other current and former senior executives at BofI.

**2. <u>The Parties Vigorously Litigated Numerous Discovery Disputes.</u>**

Throughout the discovery process, the parties regularly met and conferred regarding discovery issues and, when appropriate, brought disputes to the Court for judicial determination. In total, the parties sought the Court's assistance in resolving at least seventy-seven discrete discovery disputes. *Id.* ¶¶ 17–18.

For example, at the outset of discovery and following remand of the case from the Ninth Circuit, the parties reached impasse as to a number of issues concerning the proper scope of discovery. On February 22, 2021, the parties identified and brought to the Court's attention four threshold disputes for judicial determination: (i) the relevant time period for discovery; (ii) whether Defendants

must produce discovery from the Erhart Action; (iii) whether Defendants must produce information relating to underwriting standards and credit quality; and (iv) whether Defendants must produce documents all of the internal control, compliance infrastructure, and risk management deficiencies alleged in the TAC. On February 26, 2021, Judge Crawford issued an order regarding these threshold disputes, adopting Plaintiff's relevant time period for document discovery and concluding Plaintiff was entitled to discovery regarding (1) internal controls, compliance infrastructure, and risk management deficiencies, and (2) underwriting standards and credit quality, "irrespective of whether specific instances of wrongdoing are alleged in both the *Erhart* complaint and the TAC." ECF No. 182 at 3–4. Defendants objected and in May 2021, this Court affirmed Judge Crawford's rulings. ECF No. 196.

In the ensuing year, the parties presented dozens of disputes for judicial determination after spending countless hours meeting and conferring to narrow the scope of their disputes, conferring with Judge Crawford's law clerk regarding these disputes, and appearing before Judge Crawford for oral argument. The parties' disputes covered nearly every facet of discovery. In addition to the threshold issues discussed above, the parties raised several other disputes that affected discovery as a whole, including the appropriate number and identity of document custodians, search terms, and assertions of the attorney-client privilege, work product doctrine, and the bank examination privilege. *See* Benson Decl. ¶ 21. Plaintiff raised many specific issues including, among other things, requests to compel documents and information relating to: (i) loans issued by the Bank during the relevant period; (ii) BofI's policies and practices concerning internal controls, underwriting, and human resources; (iii) personnel files for key witnesses; and (iv) deposition testimony from the Erhart Action and related actions. *See id.* ¶ 22. In addition, on at least two occasions, the parties raised disputes arising from Plaintiff's deposition subpoenas to third-party witnesses. *See id.* ¶ 23.

On multiple occasions, the parties sought further relief from this Court by objecting to Judge Crawford's discovery rulings. *See id.* ¶ 24. Three such objections were pending before this Court at the time when the parties reached a settlement in principle. *See* ECF Nos. 343, 344, 354.

Lastly, in addition to presenting discovery disputes for judicial resolution, the parties spent considerable time meeting with Judge Crawford to ensure discovery proceeded in an organized and timely manner—including by appearing at nine regularly scheduled telephonic discovery status conferences with Judge Crawford during the second half of 2021. *See* ECF No. 230 at 4–5. In advance of these conferences, the parties' counsel coordinated to prepare biweekly joint status reports. *See id.* at 5.

**E. Class Certification**

Plaintiff moved to certify a class of investors on May 28, 2021. ECF No. 208. Defendants opposed, asserting that the predominance element was not satisfied because Plaintiff had not met the requirements of *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). ECF No. 211. Plaintiff replied on July 23, 2021. ECF No. 226. The parties exchanged expert reports in connection with the class certification motion, and Defendants deposed Plaintiff's expert. After a hearing (ECF No. 245), the Court granted Plaintiff's motion and certified a Class consisting of all persons and entities that, during the period from September 4, 2013 through October 13, 2015, inclusive, purchased or otherwise acquired shares of the publicly traded common stock of BofI, as well as purchasers of BofI call options and sellers of BofI put options, and were damaged thereby. ECF No. 247. The Court also appointed HMEPS as Class Representative, and Lieff Cabraser as Class Counsel. *Id.*

The Court approved Plaintiff's proposed notice plan and directed notice to the Class on December 21, 2021. ECF No. 324. The notice period concluded on March 21, 2022. ECF No. 368 (Decl. of Luiggy Segura) ¶¶ 17–18. In total, nine

requests for exclusion were received, only one of which constitutes a timely valid request. *Id.* ¶ 18.

**F. Mediation and Settlement**

The case schedule provided for a fact discovery cut-off of April 15, 2022. With discovery ongoing, the parties retained the Honorable Daniel Weinstein (Ret.) of JAMS to explore the possibility of a settlement. The parties held a mediation session by Zoom with Judge Weinstein on January 13, 2022, which was attended by representatives from HMEPS, Defendants, and their insurers, in addition to counsel for all parties. Following the mediation session, the parties continued to communicate through Judge Weinstein about a potential resolution of the action. On February 23, 2022, the parties reached an agreement in principle to settle all claims in the matter. The parties notified the Court of the settlement that evening. ECF No. 365.[2] Thereafter and in furtherance of that agreement in principle, the parties negotiated and signed a Term Sheet reflecting the material terms of the agreement, which was executed on February 28, 2022, and then modified by written agreement on March 7, 2022. On April 13, 2022, the parties executed the Stipulation and Agreement of Settlement.

**G. Summary of Settlement Terms**

The Settlement provides for a payment of $14.1 million to a common Settlement Fund on behalf of the already-certified Class. Settlement ¶¶ 1.30, 4. In return for this payment, Plaintiff and Class Members will release all claims that have been or could have been asserted against Defendants, relating to the facts, events, and transactions alleged in this action. Settlement ¶ 1.25. No portion of the $14.1 million Settlement Fund will revert to Defendants. After deduction of notice-related costs and any Court-approved award of attorneys' fees, reimbursement of

[2] The following day, this Court vacated all deadlines, scheduling orders, and motion hearings in the action. ECF No. 366 at 1. It further set deadlines for briefing and schedule a hearing on this motion. *Id.* at 2. Those deadlines were later amended. ECF No. 369.

litigation expenses, and service award to HMEPS as Class Representative, the Settlement Fund will be distributed on a *pro rata* basis to all Class Members, as set forth in the proposed Plan of Allocation. Settlement ¶¶ 1.20, 1.23; Ex. A-1 (Long-Form Notice) at 14–20.

## LEGAL STANDARD

Class actions "may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). The Ninth Circuit has a "strong judicial policy . . . favor[ing] settlements, particularly where complex class action litigation is concerned." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (citation omitted).

Rule 23(e) governs a district court's analysis of the fairness of a proposed class action settlement and creates a multistep process for approval. First, the court must determine it is likely to "certify the class for . . . judgment on the proposal" and "approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B). Second, the court must direct notice to the proposed settlement class, describing the terms of the proposed settlement and the definition of the class, to give them an opportunity to object to or opt out of the proposed settlement. *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). In the context of securities class actions, the Private Securities Litigation Reform Act ("PSLRA") imposes additional requirements for the form and content of notice to the proposed settlement class. 15 U.S.C. § 78u-4(a)(7). Third, after a fairness hearing, the court may grant final approval to the proposed settlement on a finding that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2).

## ARGUMENT

### I. The Settlement Is Fair, Reasonable, and Adequate.

A court should preliminarily approve a settlement and direct notice to the class if it finds that it is likely to approve the settlement as "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(B)(i); (e)(2). Rule 23 was recently amended to

articulate the "primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note. Specifically, in evaluating a proposed settlement, district courts are directed to consider whether "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).[3] The circumstances here readily satisfy the criteria for approval of the Settlement.

### A. Rule 23(e)(2)(A): Plaintiff and Class Counsel Have More Than Adequately Represented the Class.

The Court must first consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This analysis includes "the nature and amount of discovery" undertaken in the case. Fed. R. Civ. P. 23(e), 2018 adv. comm. note.

Here, Plaintiff and Class Counsel's unquestionably "extensive" efforts in this case have been more than adequate. 4 William B. Rubenstein, *Newberg on Class Actions* § 13:49 (5th ed. Dec. 2021 update) ("*Newberg*"). They have expended an immense amount of effort prosecuting this case since their appointment in January

[3] The amended Rule 23(e)(2) was not intended "to displace any factor" courts have articulated as relevant to the decision whether to approve a class settlement as fair and adequate. Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note. In the Ninth Circuit, these factors are: "[1] the strength of the plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) (citation omitted). The amended Rule 23(e)(2) "overlap[s]" with and "substantively track[s]" the Ninth Circuit's test for evaluating a settlement's fairness. *Loomis v. Slendertone Distrib., Inc.*, 2021 WL 873340, at *4 n.4 (S.D. Cal. Mar. 9, 2021); *Greer v. Dick's Sporting Goods, Inc.*, 2020 WL 5535399, at *2 (E.D. Cal. Sept. 15, 2020). As such, Plaintiff's analysis of Rule 23(e)(2) accounts for the Ninth Circuit's factors and discusses them where applicable.

2016. Plaintiff and Class Counsel's efforts in this case have included identifying numerous confidential witnesses, defending against four rounds of motions on the pleadings, prevailing on appeal of the Court's dismissal to the Ninth Circuit, and succeeding in certifying a Class of investors in BofI securities.

In the fourteen months following remand of this case, Class Counsel also engaged in extensive discovery efforts, which included propounding over a hundred discovery requests, reviewing of hundreds of thousands of pages of documents produced by Defendants and third parties; preparing for, taking, and defending nine depositions (with at least twenty-one additional depositions scheduled); and litigating dozens of discovery disputes, many of which required significant briefing and oral argument, and some of which required further appeal to this Court. *See* Benson Decl. ¶¶ 9–25. This extensive discovery work allowed both sides to gain "a good understanding of the strengths and weaknesses of their respective cases," reinforcing "that the settlement's value is based on . . . adequate information." *Newberg*, *supra*, § 13:49; *see also Valenzuela v. Walt Disney Parks & Resorts U.S., Inc.*, 2019 WL 8647819, at *6 (C.D. Cal. Nov. 4, 2019); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *8 (N.D. Cal. Dec. 18, 2018) (class counsel "vigorously prosecuted this action through dispositive motion practice, extensive initial discovery, and formal mediation").

HMEPS has been an exemplary representative of the Class in the over six years since it was appointed Lead Plaintiff. During that time, HMEPS oversaw Class Counsel's work on the pleadings, appeal, and class certification, attended the Early Neutral Evaluation meeting with Judge Crawford in 2017, participated in discovery including producing documents and producing two HMEPS employees to sit for deposition, and participated in the mediation sessions and settlement negotiations with Judge Weinstein. *See* Benson Decl. ¶¶ 13, 16, 28.

Indeed, the Rule 23(e)(2)(A) "analysis is redundant of the requirements of Rule 23(a)(4) and Rule 23(g)," *Hudson v. Libre Tech. Inc.*, 2020 WL 2467060, at

*5 (S.D. Cal. May 13, 2020) (Curiel, J.) (quotation marks omitted), which this Court previously held were satisfied in certifying the Class and appointing Plaintiff as Class Representative and Lieff Cabraser as Class Counsel (ECF No. 247 at 7). It follows from that prior ruling that "the adequacy factor under Rule 23(e)(2)(A) is also met." *Hudson*, 2020 WL 2467060, at *5.

### B. Rule 23(e)(2)(B): The Settlement Is the Result of Arm's-Length Negotiations.

The Court must also consider whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). This "procedural concern[]" requires the Court to examine "the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e), 2018 adv. comm. note. There is "no better evidence" of "a truly adversarial bargaining process . . . than the presence of a neutral third party mediator." *Newberg, supra,* § 13:50.

Here, the parties engaged in "serious, informed, and non-collusive" settlement negotiations with the aid of Hon. Daniel Weinstein (Ret.), a "neutral and experienced mediator[]." *Baker v. SeaWorld Ent., Inc.*, 2020 WL 4260712, at *6 (S.D. Cal. July 24, 2020); *Soto v. Diakon Logistics (Del.), Inc.*, 2015 WL 13344896, at *3 (S.D. Cal. Feb. 5, 2015). The parties held an all-day mediation by Zoom on January 13, 2022, but were unable to reach resolution that day. *See* Benson Decl. ¶ 28. With Judge Weinstein's assistance, the parties continued their discussions over the next several weeks, including exchanges of demands and offers, and on February 23, 2022 agreed to a settlement in principle, which was then formalized into a Term Sheet. *See id.* ¶¶ 28–29. That counsel for all parties agree that the proposed Settlement represents a commendable result also weighs in favor of preliminary approval. *See Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *6 (C.D. Cal. Oct. 10, 2019) ("The recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement." (citation omitted)).

Moreover, no signs of collusion are present here. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). Class Counsel will apply for an award of attorneys' fees of up to 25 percent of the Settlement Fund. This award will be "separate from the approval of the Settlement, and neither [Plaintiff nor Class Counsel] may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees." *Cheng Jiangchen*, 2019 WL 5173771, at *6. In addition, there is no "'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds." *Bluetooth*, 654 F.3d at 947. Finally, no portion of the Settlement Fund will revert to Defendants or their insurers. *See id.*

**C. Rule 23(e)(2)(C): The Relief for the Class is Substantial.**

The Court must "ensure the relief provided for the class is adequate," taking into account (1) the costs, risks, and delay of trial and appeal; (2) the effectiveness of any proposed distribution plan, including the claims process; (3) the terms of any proposed award of attorney's fees; and (4) any agreement made in connection with the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). These factors support all preliminary approval here.

**1. The Settlement Relief Outweighs the Costs, Risks, and Delay of Trial and Appeal.**

In order to assess "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), the Court must "evaluate the adequacy of the settlement in light of the case's risks." *In re Wells Fargo & Co. S'holder Derivative Litig.*, 2019 WL 13020734, at *5 (N.D. Cal. May 14, 2019). This requires weighing "'[t]he relief that the settlement is expected to provide'" against "'the strength of the plaintiffs' case[ and] the risk, expense, complexity, and likely duration of further litigation.'" *Id.* (alteration adopted) (first quoting Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note; and then quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

The Settlement of $14.1 million provides valuable relief to the Class. Plaintiff's expert estimates that recoverable damages range from $135.3 to $158.5 million. Feinstein Decl. ¶¶ 29, 33.[4] The Settlement amount therefore represents somewhere between ***8.9%*** and ***10.4%*** of estimated damages. This compares favorably to the median recovery of 4.9% for cases with estimated damages of ranging from $75 to 149 million, and 4.0% for cases with estimated damages of $150 to 249 million, among securities class action settlements between 2012 and 2020.[5] Accordingly, the Settlement Fund exceeds "the typical recovery in securities litigation" and represents an excellent result for the Class. *In re Zynga Inc. Sec. Litig.*, 2015 WL 6471171, at *11 (N.D. Cal. Oct. 27, 2015) (settlement fund representing 14% of estimated damages); *see also Vataj v. Johnson*, 2021 WL 1550478, at *9 (N.D. Cal. Apr. 20, 2021) (2% of damages was "consistent with the typical recovery in securities class action settlements"); *Baker*, 2020 WL 4260712, at *6 (14% of estimated damages); *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *8 (N.D. Cal. July 22, 2019) (between 5% and 9.5% of estimated damages); *McPhail v. First Command Fin. Planning, Inc.*, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) ("approximately 7% of the estimated damages").

Recovery of $14.1 million for the Class is further supported by the risks Plaintiff faced in the remainder of the case. Early on, Plaintiff "faced significant obstacles in this case, including needing to survive multiple motions to dismiss that raised important and complicated issues." *In re Extreme Networks*, 2019 WL

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[4] These estimates assume between 4.7 million and 5.9 million damaged shares, and up to $18.7 million in total damages to BofI option holders. Feinstein Decl. ¶¶ 29, 33.

[5] Laarni T. Bulan & Laura E. Simmons, CORNERSTONE RSCH., *Securities Class Action Settlements–2021 Review and Analysis* 6 (2022), https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf (the "Cornerstone Report"). The Cornerstone Report's calculation of these median recovery rates compares settlement amounts to so-called "simplified tiered damages," which "uses simplifying assumptions to estimate per-share damages and trading behavior" and "is not intended to represent actual economic losses borne by shareholders." *Id.* at 5.

3290770, at *8. Defendants challenged nearly every element of a 10(b) claim on the pleadings, including the existence of actionable misstatements, scienter, falsity, and loss causation. Plaintiff could expect Defendants would mount similar challenges to those elements at summary judgment and trial.

Loss causation in particular has loomed large over the case since the beginning. At class certification, the Court observed the potential for "storm clouds on the horizon" relating to that element of Plaintiff's claim. ECF No. 248 (class certification hearing) at 3:8–9. Plaintiff also anticipated that Defendants would have renewed their contention that statements relating to underwriting standards and credit quality were not actionable. *See* ECF No. 170 at 5:18–6:21. Indeed, the Court recognized at the appeal mandate hearing that it had yet to finally determine which alleged misstatements were actionable. *Id.* at 8:4–15 (acknowledging the Ninth Circuit "left the door open" for further arguments regarding "exactly what statements are and are not part of the case"). Defendants were also expected to challenge the element of falsity, a portion of Plaintiff's claim that relied heavily on the testimony of confidential witnesses. Finally, Plaintiff could expect Defendants to assert that the alleged misstatements did not cause any price impact, and that any damages caused by the misrepresentations were lower than Plaintiff claimed. *See* ECF No. 180 at 62. In such cases, the Class's entitlement to damages could have "come down to an unpredictable battle of the experts," or "the jury could have decided in Defendants' favor, resulting in [Plaintiff's] claims being severely reduced, or eliminated." *Baker*, 2020 WL 4260712, at *7. Defendants' "many substantive, potentially meritorious defenses," weigh in favor of the Settlement. *In re Extreme Networks*, 2019 WL 3290770, at *8.

Further, it is well-recognized that "securities actions in particular are often long, hard-fought, complicated, and extremely difficult to win." *Id.* That was certainly true in this action, which has been pending for over six years, with summary judgment and trial still to come. Expenses would have continued to

mount through trial. *See Baker*, 2020 WL 4260712, at *7. Plaintiff and the Class also faced unique challenges because the trial would have opened eight years after the close of the Class Period. *See Rihn v. Acadia Pharms. Inc.*, 2018 WL 513448, at *4 (S.D. Cal. Jan. 22, 2018) (finding "substantial risks in continued litigation," in part because the relevant events "took place as long as four and a half years ago"); *Four in One Co. v. S.K. Foods, L.P.*, 2014 WL 4078232, at *8 (E.D. Cal. Aug. 14, 2014) ("[T]he passage of time could impact potential deponents' memories and availability."). And even if Plaintiff were to obtain a favorable trial verdict, Defendants would have undoubtedly engaged in "vigorous post-trial motion practices . . . and likely appeals to the Ninth Circuit—delaying any recovery for years." *Baker*, 2020 WL 4260712, at *7. These realities underscore the strength of the proposed relief to Class members.

**2. The Settlement Will Effectively Distribute Relief to the Class.**

Second, the Court must examine "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." Fed. R. Civ. P. 23(e), 2018 adv. comm. note.

The Settlement claims process will be straightforward and effective. Authorized claimants will make a claim by submitting a valid and timely claim form to the Settlement Administrator. Claimants will be required to submit information relating to their shares and options purchased or sold during and shortly after the Class Period. The Net Settlement Fund will then be distributed on a *pro rata* basis. This claims process satisfies Rule 23(e)(2)(c)(ii)'s requirement that settlement funds be distributed "in as simple and expedient a manner as possible." *Hilsley v. Ocean Spray Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (Curiel, J.) (quoting *Newberg, supra*, § 13:53). In addition, no Settlement

funds will revert to Defendants; after payment of attorneys' fees, expenses, service awards, and notice administration, all money will be distributed to Class Members. Settlement ¶ 13. This is a "[s]ignificant[]" fact that further demonstrates the Settlement's fairness and effectiveness. *Hilsley*, 2020 WL 520616, at *7.

### 3. Class Counsel Will Seek a Reasonable Award of Attorneys' Fees.

The terms of Class Counsel's "proposed award of attorney's fees, including timing of payment," are also reasonable. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). Class Counsel will move the Court for an award of attorneys' fees of up to 25 percent of the Settlement Fund ($3,525,000). Such a fee request is well in line with Ninth Circuit precedent, under which 25 percent of the common fund is a presumptively reasonable "benchmark" for attorneys' fees. *See Bluetooth*, 654 F.3d at 942. Courts in this Circuit frequently approve attorneys' fees requests at the benchmark, including in complex securities class action settlements. *See, e.g.*, *In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at *6 (S.D. Cal. Mar. 17, 2021) (25%); *Brown v. China Integrated Energy Inc.*, 2016 WL 11757878, at *12 (C.D. Cal. July 22, 2016) (same). In fact, courts in the Ninth Circuit "routinely" award fees that exceed the 25 percent benchmark. *Beaver v. Tarsadia Hotels*, 2017 WL 4310707, at *10 (S.D. Cal. Sept. 28, 2017) (Curiel, J.); *see In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming fee award of 33% of total recovery).

The proposed fee is more than supported by Class Counsel's lodestar in the matter, which is approximately $13.9 million as of March 25, 2022, covering over 26,000 hours of work at Class Counsel's current hourly rates. Benson Decl. ¶ 34.[6] The proposed fee would therefore represent a lodestar multiplier of 0.25. This "negative" multiplier "is presumptively reasonable." *Loomis*, 2021 WL 873340, at *9. Class Counsel will also seek reimbursement of litigation expenses of no more

[6] The lodestar and expense figures are subject to audit. Benson Decl. ¶¶ 34-35. Class Counsel will provide final, audited lodestar and expense figures when it moves for attorneys' fees and costs.

than $1.4 million, which includes, among other things, expert witness costs, investigation costs, class notice costs, and the hourly fee for the law firm that acted as independent counsel for several former BofI employees in this action and the Erhart Action. Benson Decl. ¶ 35; *see Baker*, 2020 WL 4260712, at *11.

Class Counsel will file their fee and expense application (along with Plaintiff's request for a service award, discussed below) sufficiently in advance of the deadline for Class Members to object to the request. Class Members will thus have the opportunity to comment on or object to the application prior to the Settlement Hearing, as the Ninth Circuit and Rule 23(h) require. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices & Prods. Liab. Litig.*, 895 F.3d 597, 614–15 (9th Cir. 2018).

**4. No Other Material Agreements Exist.**

Finally, Plaintiff must identify any agreements "made in connection with the proposal." Fed. R. Civ. P. 23(e)(3); *see* Fed. R. Civ. P. 23(e)(2)(C)(iv). This provision is aimed at "related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others." Fed. R. Civ. P. 23(e)(2), 2003 adv. comm. note. Plaintiff has not entered into any such agreements.

The only separate agreement the parties have entered into sets a threshold of opt-outs necessary to trigger Defendants' right to terminate the Settlement. Such agreements are "typically" confidential and not filed in the public record. *In re HealthSouth Corp. Sec. Litig.*, 334 F. App'x 248, 250 n.4 (11th Cir. 2009) (per curiam); *see In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015); *In re Illumina, Inc. Sec. Litig.*, 2019 WL 6894075, at *9 (S.D. Cal. Dec. 18, 2019). The parties also expect to enter into an escrow agreement to hold the Settlement Fund in escrow that has no bearing on the terms of the Settlement.

### D. Rule 23(e)(2)(D): The Proposal Treats Class Members Equitably Relative to Each Other.

The final Rule 23(e)(2) factor asks whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Relevant considerations may include "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note.

#### 1. The Proposed Settlement Distribution Is Equitable.

The Settlement will be distributed on a *pro rata* basis to all Class Members based on the amount of their loss calculated under the Plan of Allocation. Settlement, Ex. A-1 (Long-Form Notice) at 14–20. The Plan of Allocation provides that the Net Settlement Fund will be allocated to Claimants as follows: (a) Class Members with valid claims in connection with their purchase or acquisition of common shares of BofI common stock shall be collectively allocated approximately 95% of the Net Settlement Fund; and (b) Class Members with valid claims in connection with their purchase or acquisition of BofI exchange-traded options shall be allocated approximately 5% of the Net Settlement Fund. *See id.* This *pro rata* distribution method of distributing relief "is standard in securities and class actions and is effective." *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *14 (S.D.N.Y. Oct. 16, 2019) (approving *pro rata* distribution to stock and options purchasers and sellers). *See also Illumina*, 2021 WL 1017295, at *4–5 (approving plan of allocation that "correlates each Settlement Class members' recovery to . . . each Settlement Class member's Recognized Loss"); *In re Health Ins. Innovations Sec. Litig.*, 2021 WL 1341881, at *7 (M.D. Fla. Mar. 23, 2021) (approving settlement with *pro rata* distribution to class members who purchased or sold defendant's stock or options), *R&R adopted*, 2021 WL 1186838 (M.D. Fla. Mar. 30, 2021); *Hefler*, 2018 WL 6619983, at *8 (same).

**2. Plaintiff Will Request a Service Award.**

Plaintiff will request a service award of up to $15,000 to compensate it for time spent pursing the matter on behalf of the Class, including overseeing the case, participating in discovery, and settlement. Benson Decl. ¶ 36. The PSLRA explicitly permits "the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Such awards "are fairly typical in class action cases." *Rodriguez v. W. Pub. Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). *See also Illumina*, 2021 WL 1017295, at *8 (granting $25,000 service award); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020) (granting $25,000 service awards to each institutional investor plaintiff). The anticipated service award for HMEPS does not raise any equitable concerns about the Settlement itself. *Fleming v. Impax Lab'ys Inc.*, 2021 WL 5447008, at *10 (N.D. Cal. Nov. 22, 2021) (service awards "are not per se unreasonable" and "this factor weighs in favor of preliminary approval"); *see Loomis*, 2021 WL 873340, at *8 (granting final approval to settlement with service award for lead plaintiff); *In re Extreme Networks*, 2019 WL 3290770, at *8 (same).

**II. The Court Already Certified the Class.**

The Settlement resolves claims on behalf of the already-certified Class. *See* ECF No. 247; Settlement ¶ 1.7. The Court "does not need to re-certify [the Class] for settlement purposes." *Newberg*, *supra*, § 13:18; *accord ODonnell v. Harris County*, 2019 WL 4224040, at *7 (S.D. Tex. Sept. 5, 2019). Because "the proposed settlement [does not] call[] for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted," Fed. R. Civ. P. 23(e)(1), 2018 adv. comm. note; *ODonnell*, 2019 WL 4224040, at *7, the Court need not take any further action under Rule 23(e)(1). *See, e.g.*, *Hawkins v. Kroger Co.*, 2021 WL 2780647, at *2–3 (S.D. Cal. July 2, 2021) (granting preliminary approval to previously certified class); *ODonnell*, 2019 WL 4224040, at *7 (same).

## III. The Proposed Notice Plan Should Be Approved.

Before a class settlement may be approved, the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). "Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Khoja v. Orexigen Therapeutics, Inc.*, 2021 WL 1579251, at *8 (S.D. Cal. Apr. 22, 2021) (quotation marks omitted); *see also* Fed. R. Civ. P. 23(c)(2)(b) (describing "the best notice that is practicable under the circumstances").

The PSLRA imposes additional requirements for settlement notices in securities fraud class actions. The notice must set forth:

> (i) "[t]he amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis"; (ii) where the parties (as here) do not agree on the average amount of damages per share recoverable, "a statement from each settling party concerning the issue or issues on which the parties disagree"; (iii) "a statement indicating which parties or counsel intend to make . . . an 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"; (iv) "[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 (v) "[a] brief statement explaining the reasons why the parties are proposing the settlement."

*Khoja*, 2021 WL 1579251, at *8 (alterations in original) (quoting 15 U.S.C. § 78u-4(a)(7)).

The proposed Notice program here was designed in consultation with the proposed Settlement Administrator and meets all applicable standards.[7] The Notice program includes direct notice to Class Members sent by first class U.S. Mail for all

[7] This Court appointed JND Legal Administration as Notice Administrator for the previous issuance of class notice. ECF No. 324 at 3. Plaintiff again requests that the Court appoint JND Legal Administration to administer the Settlement. *See, e.g.*, *Hilsley*, 2020 WL 520616, at *9 (appointing settlement administrator after previously appointing the same administrator to issue notice to the Rule 23(b)(3) class).

members for whom address information is available (which is nearly the entire class), publication notice in *PR Newswire* and *Investor's Business Daily*, and the establishment of a settlement website—where Class Members can view the full Settlement Agreement, the Notice, and other key case documents. Decl. of Luiggy Segura Regarding Notice and Settlement Administration ¶¶ 6–9. The proposed long-form notice, which will be mailed to every Class Member, will inform Class members, in clear and concise terms, about the nature of this case, the Settlement, and their rights, including all of the information required by Rule 23(c)(2)(B) and the PSLRA. *See* Settlement, Ex. A-1 (Long-Form Notice). Similarly, the proposed summary notice, which will be published in *PR Newswire* and *Investor's Business Daily*, will provide Class members with basic information about the nature of this case, the Settlement, and their rights. *See* Settlement, Ex. A-3 (Summary Notice); *see also Cheng Jiangchen*, 2019 WL 5173771, at *8 (notice program that included published summary notice "list[ing] most of the required information" identified by Rule 23(c)(2)(B) and the PSLRA was "the best notice that is practicable under the circumstances"). The proposed Notice program is also set forth in in the proposed Order, attached as Exhibit A to the Settlement.

The Settlement also provides Class members with an additional opportunity to opt out of the Class, and allows those that opted out in connection with the previous notice to opt back into the Class following the Settlement. Rule 23(e)(4) permits an additional opt-out period in such circumstances where "the class action was previously certified under Rule 23(b)(3)" and "individual class members . . . had an earlier opportunity to request exclusion." Fed. R. Civ. P. 23(e)(4). As the Advisory Committee recognized, "[a] decision to remain in the class is likely to be more carefully considered and is better informed when settlement terms are known." Fed. R. Civ. P. 23(e)(3) [now (e)(4)], 2003 adv. comm. note. Class members should have the opportunity to make a decision about whether to participate in the Class and recover in the Settlement now that full information

about the Settlement is known. Because this renewed opt-out/opt-in period will be reflected in the proposed notice to the Class, it will not require any additional expense nor will it delay approval of the Settlement.

## IV. Proposed Schedule for Dissemination of Notice and Final Approval Hearing

Plaintiff proposes that the Court enter a scheduling order consistent with the dates set forth below:

| Event | Date |
|---|---|
| Dissemination of Settlement Notice | 21 days following entry of order granting preliminary approval ("PA Order") |
| Last Day for Plaintiff to File Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award | 45 days following entry of PA Order |
| Deadline for Class Members to Opt out of or Back Into the Class | 60 days following entry of PA Order |
| Deadline for Class Members to File Objections | 60 days following entry of PA Order |
| Last day for Plaintiff to File a Motion for Final Approval of the Settlement, and Responses to any Class Member Objections | 28 days before the Settlement Hearing |
| Settlement Hearing | At the Court's discretion (at least 100 days after the PA Order) |
| Deadline for Class Members to Make Claims under the Settlement | 30 days after the Settlement Hearing |

These dates are set forth in the proposed Order, attached as Exhibit A to the Settlement.

## CONCLUSION

For the forgoing reasons, Plaintiff respectfully requests that this Court:

1. Grant preliminary approval to the Settlement Agreement;
2. Appoint JND Legal Administration to serve as Settlement Administrator;

3. Approve the proposed Notice program, including the form and content of the proposed Notice documents and the claims process set forth in the Declaration of Luiggy Segura and the proposed Order Preliminarily Approving Settlement; and

4. Enter a scheduling order consistent with the dates set forth above.

Dated: April 15, 2022

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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