UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEONARD HOWARD, individually and on behalf of all others similarly situated, Plaintiff, v. LIQUIDITY SERVICES INC., et al., Defendants.	Civil Action No. 14-1183 (BAH) Chief Judge Beryl A. Howell

CLASS REPRESENTATIVES' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND INCORPORATED MEMORANDUM OF LAW

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Class Representatives Caisse de dépôt et placement du Québec ("Caisse") and the City of Newport News Employees' Retirement Fund ("NNERF") (collectively, "Lead Plaintiffs" or "Class Representatives"), on behalf of themselves and all members of the certified Class, respectfully submit this memorandum of law in support of their motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed Settlement of this securities class action (the "Action") against Liquidity Services Inc. ("LSI"), William P. Angrick III, and James M. Rallo (collectively, the "Defendants"), and approval of the proposed Plan of Allocation for the net proceeds of the Settlement.[1] This motion addresses the approval of the Settlement and the Plan of Allocation. A separate motion, filed herewith, addresses Class Counsel's request for an award of attorneys' fees and payment of litigation expenses.

This motion is supported by the following memorandum of points and authorities and the accompanying Joint Declaration of Jonathan Gardner and Andrew D. Abramowitz in Support of (I) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Payment of litigation expenses, dated August 31, 2018 ("Joint Declaration" or "Joint Decl."), and the exhibits attached thereto.[2]

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[1] The terms of the Settlement are set forth in the Stipulation and Agreement of Settlement, dated as of June 19, 2018, previously filed with the Court (the "Stipulation," ECF No. 117-1). All capitalized terms used herein that are not defined have the same meanings ascribed to them in the Stipulation.

[2] All exhibits referenced herein are annexed to the Joint Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex.__-__." The first numerical reference is to the designation of the entire exhibit attached to the Joint Declaration and the second numerical reference is to the exhibit designation within the exhibit itself.

The Joint Declaration is an integral part of this motion and is incorporated herein by reference. For the sake of brevity, the Court is respectfully referred to the Joint Declaration for, *inter alia*, a detailed description of the allegations and claims, the procedural history of the Action, the risks faced by the Class Representatives in pursuing litigation, and the negotiations that led to a settlement.

PRELIMINARY STATEMENT

The Parties have reached a proposed settlement of this securities class action in the amount of $17,000,000 in cash (the "Settlement") that, if approved by the Court, will resolve all claims asserted, or that could have been asserted, against the Defendants and the other Released Defendant Parties. As set forth below and in the accompanying Joint Declaration, the Settlement is a very good result for the Class, attributable to the Class Representatives' and Class Counsel's comprehensive efforts over the past three and a half years to litigate claims under the federal securities laws, namely allegations that LSI and the Individual Defendants made materially false and misleading statements and failed to disclose information to investors about the financial performance of LSI's retail division, as well as its growth by acquisition in the Company's capital assets division. Class Representatives allege that the false and misleading statements and omissions inflated the price of LSI's common stock, and that when Defendants later allegedly disclosed that the retail division was not performing as strongly as Defendants had previously indicated, LSI's stock price declined.

Class Representatives fully endorse the Settlement. *See* Declaration of Jérôme Lussier on behalf of Caisse, dated August 30, 2018, submitted as Exhibit 1, and Declaration of Frank S. James on behalf of the NNERF, dated August 31, 2018, submitted as Exhibit 2. The Settlement was achieved only after rigorous litigation, at a time when Class Representatives and Class Counsel had developed a thorough understanding of the strengths and weaknesses of the claims and defenses in the Action, and following arm's-length negotiations conducted under the auspices of the Honorable Layn R. Phillips (ret.), a highly-respected mediator with substantial experience overseeing negotiations of complex securities class actions. The $17,000,000 Settlement avoids all the risks, uncertainties, and expense of continued litigation, and provides a certain and substantial financial benefit for the Class. While Class Representatives and Class

Counsel believe that the claims asserted are meritorious and strong, given the significant obstacles to recovery—including establishing the falsity of the alleged misstatements, proving that Defendants acted with scienter, proving loss causation, prevailing on *Daubert* motions and a likely summary judgment motion, securing a favorable jury verdict, and protecting that verdict through post-trial motions and appeals—Class Representatives and Class Counsel respectfully submit that the Settlement provides a fair and reasonable resolution of the claims in this Action and should be finally approved.

THE NOTICE PROGRAM AND PRELIMINARY APPROVAL

Following the Court's certification of the Class, on November 17, 2017, the Class Representatives filed an unopposed motion to approve the form and content of the Notice of Pendency of Class Action (the "Class Notice") and Summary Notice of Pendency of Class Action, (ECF No. 109), which the Court granted on November 21, 2017 (ECF No. 111). The Class Notice was mailed by the administrator, the Garden City Group, LLC ("GCG"), to more than 72,500 potential Class Members. ECF No. 115 ¶ 8. It notified potential Class Members of, among other things: (i) the pendency of the Action against Defendants; (ii) the Court's certification of the Action on behalf of the certified Class; and (iii) their right to request to be excluded from the Class, the effect of remaining in the Class or requesting exclusion, and the requirements for requesting exclusion. The Class Notice was also posted on the website for the Action and the Summary Notice was published in *Investor's Business Daily* and disseminated over the internet using *PRNewswire*. *Id.* ¶¶ 9-10. Six valid requests for exclusion from the Class were received in connection with the Class Notice. *Id.* ¶¶ 12-14 and Exhibit E attached thereto.

On June 20, 2018, the Class Representatives moved for preliminary approval of the Settlement. ECF No. 116. On June 21, 2018, the Court entered the Preliminary Approval Order, authorizing that notice of the Settlement be sent to Class Members and scheduling the Settlement

Hearing for October 5, 2018, to consider whether to grant final approval to the Settlement. ECF No. 118. Following preliminary approval, the $17,000,000 Settlement Amount was deposited into an escrow account and has been invested for the benefit of the Class pursuant to the terms of the Settlement. Stipulation ¶ 5. If and when the Settlement becomes final, at the conclusion of the claims process, the Net Settlement Fund will be distributed in accordance with the Plan of Allocation approved by the Court.

Pursuant to the Preliminary Approval Order, the Court instructed GCG to disseminate copies of the Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses and Proof of Claim (collectively the "Claim Packet") by mail and to publish the Summary Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses. ECF No. 118. The Settlement Notice, attached as part of Exhibit 3 - A to the Joint Decl., provided potential Class Members with information about the terms of the Settlement and, among other things: their right to opt-back into the Class (for those who previously requested exclusion in connection with the Class Notice); their right to object to any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the procedure for submitting a Claim Form in order to be eligible for a payment from the net proceeds of the Settlement. The Settlement Notice also informed Class Members of Class Counsel's intention to apply for an award of attorneys' fees of no more than 25% of the Settlement Fund and for payment of litigation expenses, including reimbursement to the Class Representatives pursuant to the PSLRA, in an amount not to exceed $980,000.

On July 6, 2018, GCG began mailing Claim Packets to potential Class Members, as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. *See* Affidavit of Brian Stone Regarding (A) Mailing of the Settlement Notice and Proof of Claim

Form; (B) Publication of Summary Settlement Notice; and (C) Website and Telephone Helpline ("Mailing Aff."), Exhibit 3 ¶¶4-7. On July 16, 2018, GCG caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over *PR Newswire*. *Id.* ¶8. To date, 93,001 copies of the Claim Packet have been mailed to potential Class Members and their nominees. *Id*. ¶7.

Pursuant to the terms of the Preliminary Approval Order, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, or to opt back into the Class, is September 14, 2018. *See* Ex. 3 - A. To date, the Class's reaction to the proposed Settlement has been overwhelmingly positive. While the deadline for objecting has not yet passed, there have been no objections to either the proposed Settlement or the Plan of Allocation. *See* Joint Decl. ¶¶71, 97.

HISTORY OF THE ACTION

This securities fraud class action was commenced with the filing of an initial complaint on July 14, 2014. ECF No. 1. Following briefing, and pursuant to the PSLRA, the Court entered an Order on October 14, 2014, appointing Caisse and the NNERF as Lead Plaintiffs, approving their selection of Labaton Sucharow LLP ("Labaton Sucharow") and Spector Roseman Kodroff & Willis, P.C. (now Spector Roseman & Kodroff, P.C.) ("Spector Roseman") as lead counsel, and consolidating related securities class actions into the litigation, *Howard v. Liquidity Services, Inc.* ECF No. 32.

Thereafter, in drafting the Amended Complaint for Violations of the Federal Securities Laws (the "Complaint"), Class Counsel conducted a thorough factual investigation, which included, among other things, a review and analysis of: (i) documents filed publicly by the Company with the U.S. Securities and Exchange Commission ("SEC"); (ii) publicly available information, including press releases, news articles, and other public statements issued by or

concerning the Company and the Defendants; (iii) research reports issued by financial analysts concerning the Company; (iv) other publicly available information and data concerning the Company; and (v) interviews with 31 former employees of the Company and third-parties with relevant knowledge (20 of whom provided information as confidential witnesses). Joint Decl. ¶14.

On December 15, 2014, Class Representatives filed the Complaint (ECF No. 35), asserting claims under Sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 ("Exchange Act").

On March 2, 2015, Defendants moved to dismiss the Complaint. ECF No. 40. On March 31, 2016, the Court issued a Memorandum Opinion, as well as an Order, denying in part (as to the retail division) and granting in part (as to the other allegations in the Complaint concerning growth by acquisition) Defendants' motion to dismiss. ECF Nos. 52-53. Thereafter, on May 16, 2016, Defendants filed their answer to the Complaint, denying all allegations of wrongdoing and damages and asserting numerous affirmative defenses. ECF No. 56.

On November 21, 2016, Defendants moved for reconsideration of the Court's decision on the motion to dismiss. ECF No. 73. On December 6, 2016, Defendants moved to stay discovery. ECF No. 75. Class Representatives opposed both motions on December 16, 2016. ECF No. 77. On December 21, 2016, the Court denied Defendants' motion for reconsideration, without prejudice, and denied their motion to stay discovery as moot. *See* Minute Order, December 21, 2016.

Counsel for Class Representatives and Defendants have conducted thorough class and fact discovery. Class Counsel reviewed and analyzed approximately 500,000 pages of documents produced by Defendants and third-parties, which included approximately 274,000

pages from Defendants and approximately 223,000 from third-parties. Counsel for the Parties also took or defended 15 depositions, including two depositions of Class Representatives, Class Representatives' investment advisors, numerous current and former employees of the Company, three non-parties, and Class Representatives' market efficiency expert. *See* Joint Decl. ¶¶43-62.

On September 2, 2016, Lead Plaintiffs filed their motion for class certification (ECF No. 64), supported by the expert report by Chad Coffman, CFA who opined on the efficiency of the market for LSI shares and whether the calculation of Class Members' damages was subject to a common methodology, (ECF No. 64-4). Defendants opposed the motion on March 14, 2017. ECF No. 81. Two weeks later, on April 5, 2017, Defendants moved for partial summary judgment on the issue of reliance. ECF No. 83. Lead Plaintiffs opposed the summary judgment motion on May 16, 2017. ECF No. 89. On September 6, 2017, the Court certified the Class, appointed Caisse and the NNERF as Class Representatives, and appointed lead counsel as Class Counsel. ECF Nos. 100-101. In the same Order, the Court denied Defendants' motion for partial summary judgment. *Id.*

In an effort to explore a negotiated resolution of the Action, in December 2017, the Parties engaged Judge Layn Phillips, a well-respected and highly experienced mediator and retired federal judge with considerable knowledge and expertise in the field of securities class actions, to assist them. In advance of the mediation session, the Parties provided detailed mediation statements and exhibits to Judge Phillips, which addressed issues bearing on both liability and damages. On February 8, 2018, Class Counsel and counsel for Defendants met for a full day with Judge Phillips in an attempt to reach a settlement. However, the mediation session did not result in an agreement. Following the mediation, Judge Phillips continued his efforts to facilitate discussions and to mediate a potential resolution. Ultimately, the Parties reached an

agreement in principle to settle the Action on March 7, 2018. After further extensive negotiations, the Parties executed a Term Sheet as of April 12, 2018. The Parties subsequently negotiated the Stipulation, which sets forth the final terms and conditions of the Settlement, including, among other things, a release of claims against Defendants in return for a cash payment by or on behalf of Defendants of $17,000,000 for the benefit of the Class. *See* Joint Decl. ¶¶63-65.[3]

ARGUMENT

I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Under Rule 23(e) of the Federal Rules of Civil Procedure, the Settlement should be approved if the Court finds it "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2). In this regard:

> It is well-established that courts assume a limited role when reviewing a proposed class action settlement. They should not substitute their judgment for that of counsel who negotiated the settlement. Rather, courts . . . strongly encourage settlements [and] [i]n the context of class actions, settlement is particularly appropriate given the litigation expenses and judicial resources required in many such suits.

Osher v. SCA Realty I, Inc., 945 F. Supp. 298, 304 (D.D.C. 1996) (internal citations omitted). Indeed, "there is a long-standing judicial attitude favoring class action settlements," *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349, 357 (D.D.C. 2007), and "the discretion of the Court to reject a settlement is restrained by the 'principle of preference' that encourages settlements," *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 30 (D.D.C. 2011), as amended (Nov. 10, 2011).

[3] A more detailed description of the history of the Action is available at paragraphs 11-62 of the Joint Declaration.

Courts in this Circuit have generally considered the following factors in determining whether a settlement is fair, reasonable, and adequate: "'(a) whether the settlement is the result of arm's-length negotiations; (b) the terms of the settlement in relation to the strengths of plaintiffs' case; (c) the status of the litigation proceedings at the time of settlement; (d) the reaction of the class; and (e) the opinion of experienced counsel.'" *Ceccone v. Equifax Info. Servs. LLC*, No. 13-cv-1314, 2016 WL 5107202, at *4 (D.D.C. Aug. 29, 2016) (quoting *Alvarez v. Keystone Plus Constr. Corp.*, 303 F.R.D. 152, 159 (D.D.C. 2014)). As discussed below, each of these factors weighs in favor of final approval.

A. The Fact that the Settlement Is the Result of Non-Collusive, Arm's-Length Negotiations Favors Approval

"A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 55 (D.D.C. 2008) (internal citations omitted); *see also Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 227 (D.D.C. 2015).

Here, the Settlement meets these requirements and is entitled to this presumption. The Settlement was reached as a result of months of arm's-length negotiations between highly experienced counsel. Class Representatives are represented by Class Counsel, Labaton Sucharow and Spector Roseman, firms that are deeply well-versed in prosecuting securities class actions. *See* Exs 4 - D & 5 - C. Defendants were represented by Weil Gotshal & Manges LLP, a premier international defense firm. The arm's-length nature of the negotiations is further evidenced by the fact that they were conducted through a highly experienced and well-regarded

mediator and former judge, Hon. Layn R. Phillips.[4] Settlement negotiations, moreover, were hard fought. The Parties were unable to come to an agreement during the February 8, 2016 mediation. Only after an additional month of negotiations, facilitated by the continued efforts of Judge Phillips, did the Parties finally reach an agreement in principle to settle the Action on March 7, 2018. The Parties then negotiated the terms of that settlement and executed a Term Sheet on April 12, 2018. Joint Decl. ¶¶63-65.

Further, more than three years of litigation and discovery preceded the Settlement, which allowed the Parties to fully assess the strengths and weaknesses of the claims and defenses asserted in the Action. Indeed, the case has been subject to a full sequence of motion to dismiss briefing, class certification briefing, and briefing on a motion for partial summary judgment. Discovery yielded approximately 500,000 pages of documents, and an exhaustive review of those documents elucidated the strengths and weaknesses of Class Representatives' claims. Counsel for the Parties also took or defended 15 depositions, including the depositions of Class Representatives. *Id.* ¶¶19-62. The rigorous briefing on Lead Plaintiffs' motion for class certification shed significant light on the strengths and weaknesses of the case—as did an expert report submitted in support of class certification and the deposition of Lead Plaintiffs' expert—

[4] *See In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013) (noting the procedural fairness of settlement mediated by Judge Phillips); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459, 465 (S.D.N.Y. 2013) (noting the procedural fairness of settlement reached through a mediation session before Judge Phillips); *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (finding procedural fairness of settlement that was mediated by Judge Phillips and describing Judge Phillips as "an experienced and well-regarded mediator of complex securities cases"); *see also In re Delphi Corp. Sec. Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) (speaking of Judge Phillips, "the Court and the parties have had the added benefit of the insight and considerable talents of a former federal judge who is one of the most prominent and highly skilled mediators of complex actions").

including the difficulties Lead Plaintiffs would face establishing an adequate damages model and demonstrating loss causation. *Id.* ¶¶36-41, 82-88.

On these facts, "[t]here is no evidence of collusion or coercion on the part of the parties, and no reason for the Court to doubt that the settlement 'was the product of legitimate negotiation on behalf of both sides.'" *Ceccone*, 2016 WL 5107202, at *9 (quoting *Alvarez*, 303 F.R.D. at 163). Thus, this factor weighs in favor of approval, and the Settlement is entitled to a presumption that it is fair, reasonable, and adequate. *Id.*

B. The Terms of the Settlement in Relation to the Strength of the Case Favor Approval

"Next, the Court compares the terms of the settlement with the likely recovery plaintiffs would attain if the case proceeded to trial, an exercise which necessarily involves evaluating the strengths and weaknesses of plaintiffs' case." *In re Fed. Nat'l Mortg. Ass'n Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 103 (D.D.C. 2013); *see also Alvarez*, 303 F.R.D. at 164 (approving settlement in light of "the uncertainty of recovering such damages and the time and money that it would have taken to litigate this case to a verdict"); *Pigford v. Glickman*, 185 F.R.D. 82, 104 (D.D.C. 1999) (considering that "bringing this case to trial likely would have been a very complex, long and costly proposition" in evaluating settlement), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000); *Ceccone*, 2016 WL 5107202, at *10 (weighing guaranteed recovery against the "potential difficulties and uncertainties [that would] reduce the plaintiffs' expected recovery if the case had proceeded to trial" in evaluating settlement).

Here, the Settlement provides for the immediate creation of an all-cash settlement fund of $17,000,000. Considered against the strengths and weakness of Class Representatives' case, this is a very favorable result and weighs heavily in favor of approval. These risks are summarized below and are described in more detail in paragraphs 72-91 of the Joint Declaration.

At summary judgment and at trial, Defendants would likely have continued to argue, as they have throughout the case, that the alleged misstatements were not actionable both because they were vague puffery and by proffering evidence to show their truthfulness. *Id*. ¶¶74-76. Defendants also had numerous scienter defenses that posed very significant hurdles to proving that they acted with an intent to commit securities fraud or with severe recklessness. *Id*. ¶¶77-81. Class Representatives' experts would also likely face *Daubert* challenges and a summary judgment motion on potentially case dispositive issues such as loss causation. *Id*. ¶¶90-91. Should the case get to trial, Class Representatives would have to persuade a jury on each element of the claims.

If Class Representatives successfully navigated all of those obstacles, moreover, they would have only established Defendants' liability. The task of quantifying damages presented yet another risk, including that the factfinder could have concluded that the effect of any fraud was smaller than asserted, and thus a damages award would be substantially lower than that sought by Class Representatives. *Id*. ¶¶82-89. And, of course, even obtaining favorable judgments on liability and damages is not the end of the story. Class Representatives would also have to successfully protect those judgments through appeal.

Against these risks, Class Representatives respectfully submit that the benefit to the Class of a certain $17,000,000 cash settlement, which, according to the estimates of Class Representatives' damages expert constitutes approximately 4% of the ***maximum*** realistic recoverable damages (i.e., approximately $415 million), weighs in favor of approval. *See* Joint Decl. ¶83. Notably, there is a significant risk that the actual recoverable damages would be much less than $415 million and closer to $118 million, if Defendants were able to convince the Court, at summary judgment, or the jury that there were no false statements until 2013. Joint

Decl. ¶85. Using the $118 million figure, the Settlement recovers approximately 14% of potential damages. Moreover, damages could have been even lower if Defendants were able to convince the Court or a jury that the remaining corrective disclosures did not ***correct*** previous false statements or that Class Representatives' expert's disaggregation methodology did not reasonably disaggregate confounding information. *Id.* ¶¶87-88.

The Settlement's recovery for the benefit of the Class of between approximately 4% and 14% of potentially recoverable damages, assuming that liability was established, compares positively with other securities class action settlements. *Fed. Nat'l Mortg. Ass'n*, 4 F. Supp. 3d at 103-04 (noting that settlement that represents 4-8% of the potential recovery compares favorably with other cases approving securities class action settlements); *see also In re Newbridge Networks Sec. Litig.*, No. 94- cv-1678-LFO, 1998 WL 765724, at *2 (D.D.C. Oct. 22, 1998) ("Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly six to twelve percent of a *potential* trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.") (emphasis in original).

Additionally, the Settlement is well-above the $6 million median settlement amount in securities cases in 2017. *See* Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*, at 30 (NERA Jan. 2018) (reporting median settlement value of $6 million in 2017), attached as Ex. 9 to the Joint Decl.

C. The Advanced Stage of the Litigation Favors Approval

In considering this factor, courts assess "whether counsel had sufficient information, through adequate discovery, to reasonably assess the risks of litigation vis-a-vis the probability of success and range of recovery." *Alvarez*, 303 F.R.D. at 164 (quoting *Cohen v. Chilcott*, 522 F.

Supp. 2d 105, 117 (D.D.C. 2007)) (internal quotations omitted). Here, the Parties engaged in over three and a half years of litigation prior to reaching the Settlement, including vigorous motion to dismiss briefing, partial summary judgment briefing, multiple discovery motions, and class certification briefing. *See generally* Joint Decl. The Class Representatives also engaged in extensive discovery, propounding written discovery on Defendants and subpoenaing approximately 25 non-parties. *Id.* ¶¶43-62. Ultimately, discovery yielded approximately 500,000 pages of documents, which Class Counsel diligently reviewed. *Id.* ¶¶49-51. The Parties also took numerous depositions. *Id.* ¶¶52, 54, 55. As a result of these efforts, Class Counsel had, at the time of the Settlement, "sufficient information" "to reasonably assess the risks of litigation." *Alvarez*, 303 F.R.D. at 164.

Accordingly, this factor weighs in favor of approval as well, because the Settlement "does not come too early to be suspicious nor too late to be a waste of resources." *In re Vitamins Antitrust Litig.*, MDL No. 1285, 2001 WL 856290, at *3 (D.D.C. July 19, 2001).

D. The Overwhelmingly Positive Reaction of the Class to Date Favors Approval

"'The attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court.'" *Ceccone*, 2016 WL 5107202, at *10 (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975)). Here, Class Representatives fully endorse the Settlement. *See* Exhibits 1 & 2. In addition, as of August 30, 2018, the Claims Administrator has disseminated 93,001 copies of the Settlement Notice by mail to potential Class Members and their nominees, Ex. 3 ¶7, and there have been no objections. Further, the Summary Notice was published in the *Investor's Business Daily* on July 16, 2018 and disseminated on *PR Newswire* on July 16, 2018. *Id.* ¶8. Information regarding the Settlement was also posted on the case website, referenced in the Settlement Notice,

www.LiquidityServicesSecuritiesLitigation.com, as well as Class Counsel's websites, www.labaton.com, and www.srkattorneys.com. *Id.* ¶9.

Rule 23(c)(2) requires "that the [class] notice provided be 'the best. . .practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.'" *Ceccone,* 2016 WL 5107202, at *8. Courts have found settlement notice programs satisfactory where the claims administrator mailed individual notice, published notice in a major publication, disseminated the notice using a wire service, set up a dedicated website, email address and telephone hotline, and "advised Class Members of the essential terms of the Settlement Agreement, the Plan of Allocation, how to make a claim, how to object to the settlement, and the date, time, and location of the Fairness Hearing." *See, e.g.*, *Fed. Nat'l Mortg. Ass'n*, 4 F. Supp. 3d at 101 (approving notice program administered by GCG and almost identical to that followed here). Each of these steps was followed here and, as such, the notice program was adequate.

To date, there have been no objections to any aspect of the Settlement. Joint Decl. ¶71. Thus, this factor "unambiguously weighs in favor of approval." *Alvarez*, 303 F.R.D. at 164.

E. The Opinion of Counsel Supports Approval

"[T]he opinion of experienced counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement." *Id.* (quoting *Chilcott*, 522 F. Supp. 2d at 121) (internal quotations omitted); *In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 2003 WL 22037741, at *6 (D.D.C. June 16, 2003) ("[The opinion] of such experienced and informed counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.").

Here, Class Counsel has extensive experience litigating securities class actions, and has submitted the Joint Declaration attesting to Class Counsel's opinion that the settlement is fair,

reasonable, and adequate. *See generally* Joint Decl. Accordingly, this factor also weighs in favor of approval.

II. THE PLAN OF ALLOCATION SHOULD BE APPROVED

"As with settlement agreements, courts consider whether distribution plans are fair, reasonable, and adequate." *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 WL 22037741, at *7 (citing *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 381 (D.D.C. 2002); *In re Vitamins Antitrust Litig.*, No. 99-cv-197 (TFH), 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000).

A plan of allocation need not be tailored to fit each and every class member with "mathematical precision," *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y. 1997), and is "sufficient where. . . . there is 'a rough correlation' between the settlement distribution and the relative amounts of damages recoverable by Class Members," *In re Lorazepam & Clorazepate Antitrust Litig.*, 2003 WL 22037741, at *7; *see also Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (holding that a plan of allocation is fair and reasonable if it has a "reasonable, rational basis"). Courts also consider the opinion of experienced counsel in evaluating plans of allocation. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y. 2010) ("In determining whether a plan of allocation is fair, courts give substantial weight to the opinions of experienced counsel."); *In re Am. Bank Note Holographics, Inc., Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001) ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel. . . . As with other aspects of settlement, the opinion of experienced and informed counsel is entitled to considerable weight.") (internal citations omitted).

Here, the Plan of Allocation is designed to equitably distribute the Settlement proceeds among the members of the Class who were allegedly injured by Defendants' alleged

misrepresentations and who submit valid Claim Forms that are approved for payment ("Authorized Claimants"). Class Counsel developed the Plan of Allocation in consultation with Class Representatives' damages expert. Joint Decl. ¶94. The Plan of Allocation, which was provided in full to Class Members in the Settlement Notice, provides for the calculation of a "Recognized Loss" amount for each properly documented purchase or acquisition of LSI common stock during the Class Period. An Authorized Claimant's total "Recognized Claim" depends on, among other things, when their shares were purchased and/or sold during the Class Period in relation to the disclosure dates alleged in the Action, whether the shares were held through or sold during the statutory 90-day look-back period, *see* 15 U.S.C. § 78u-4(e) (providing methodology for limiting damages in securities fraud actions), and the value of the shares when they were sold or held. *Id.* ¶¶95-96, Ex. 3-A.

The Recognized Loss formulas are tied to liability and damages. In developing the Plan of Allocation, the Class Representatives' damages expert considered the amount of artificial inflation allegedly present in LSI's common stock throughout the Class Period that was purportedly caused by the alleged fraud. This analysis entailed studying the price declines associated with LSI's allegedly corrective disclosures, adjusted to eliminate the effects attributable to general market or industry conditions. In this respect, an inflation table was created and reported in the Settlement Notice as part of the Plan of Allocation. The table will be utilized by the Claims Administrator in calculating Recognized Loss amounts for Authorized Claimants. Joint Decl. ¶95.

Under Class Counsel's direction, the Claims Administrator, GCG, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Claim compared to the aggregate Recognized Claims of all

Authorized Claimants. *Id*. ¶96. The Net Settlement Fund will be distributed to Authorized Claimants on this *pro rata* basis as long as it is economically feasible to do so. Any balance that still remains in the Net Settlement Fund after such distributions, which is not feasible or economical to reallocate, after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, will be donated to one or more not-for-profit organizations recommended by Class Representatives, on notice to Defendants and Defendants' Counsel, and approved by the Court. *See* Stipulation ¶25.

Class Counsel respectfully submit that the Plan provides a fair, reasonable, and rational basis for Class Members to recover their *pro rata* share of the Settlement. To date, moreover, there have been no objections to the Plan of Allocation. Joint Decl. ¶97. Accordingly, the Plan of Allocation should be approved.

CONCLUSION

For the foregoing reasons, Class Representatives respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate. A form of proposed Order and Final Judgment, negotiated by the Parties, and Plan of Allocation Order will be submitted to the Court on September 28, 2018, after the deadline for objections has passed.

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