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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT, INC., *et al.*,

Defendants.

Case No. 3:14-cv-02129-MMA-AGS

CLASS ACTION

CLASS REPRESENTATIVES' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

Hearing Date: July 22, 2020
Time: 10:00 a.m. PDT
Courtroom: 3D
Judge: Hon. Michael M. Anello

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 22, 2020 at 10:00 a.m., in Courtroom 3D of the Edward J. Schwartz United States Courthouse, located at 221 West Broadway, San Diego, California 92101, before the Honorable Michael M. Anello, the Court-appointed Class Representatives, Arkansas Public Employees Retirement System and Pensionskassen For Børne-Og Ungdomspaedagoger (the "Class Representatives"), by and through their undersigned attorneys, and on behalf of the Court-certified Class, will and hereby do move for Orders pursuant to Rule 23 of the Federal Rules of Civil Procedure: (i) granting final approval of the proposed class action settlement on the terms set forth in the Stipulation and Agreement of Settlement, dated February 10, 2020 ("Stipulation" or "Settlement");[1] and (ii) approving the proposed plan for allocating the net proceeds of the Settlement to the Class ("Plan of Allocation").

This motion is based upon, *inter alia*: (i) this Notice of Motion; (ii) the Memorandum of Points and Authorities in support thereof, filed simultaneously herewith; (iii) the accompanying Joint Declaration of Joshua E. D'Ancona and Jeffrey J. Angelovich in Support of (A) Class Representatives' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses and the exhibits attached thereto; (iv) the Stipulation; (v) the pleadings, motions, briefs, evidence, and other records on file in this Action; and (vi) other such matters, evidence, and argument as the Court may consider at or prior to the hearing of this motion. This motion is made pursuant to the Court's February 19, 2020 Order Granting Class Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement and Authorizing Dissemination of Notice of the Settlement to the Class (ECF No. 518, "Preliminary Approval Order").

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation located on the Court's docket at ECF No. 516-3.

Class Counsel are not aware of any opposition to the motion. Pursuant to the Preliminary Approval Order, any objections must be filed by July 1, 2020. Proposed Orders granting the relief requested herein will be submitted in connection with Class Representatives' reply submission on or before July 15, 2020, pursuant to the Preliminary Approval Order and after the deadline for objections has passed.

DATED: June 17, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Joshua E. D'Ancona
Joshua E. D'Ancona

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT, INC., et al.,

Defendants.

Case No. 3:14-cv-2129-MMA-AGS

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

Hearing Date: July 22, 2020
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Court-appointed Class Representatives, Arkansas Public Employees Retirement System ("APERS") and Pensionskassen For Børne-Og Ungdomspaedagoger ("PBU") (collectively, "Class Representatives"), on behalf of themselves and the Court-certified Class, submit this Memorandum in support of their motion, pursuant to Federal Rule of Civil Procedure ("Rule") 23, for: (i) final approval of the proposed settlement of this class action on the terms set forth in the Stipulation and Agreement of Settlement, dated February 10, 2020 ("Stipulation" or "Settlement"); and (ii) approval of the proposed plan for allocating the net proceeds of the Settlement to the Class ("Plan of Allocation" or "Plan").[1]

I. PRELIMINARY STATEMENT

After more than five years of hard-fought litigation, which included expansive fact and expert discovery, a contested motion for class certification, vigorously disputed summary judgment and *Daubert* motions, extensive pre-trial briefing and trial preparation, as well as protracted, arm's-length negotiations facilitated by experienced mediators, Class Representatives and Class Counsel succeeded in securing a significant common-fund recovery of $65,000,000 in cash for the Class. Subject to the Court's final approval, this Settlement will resolve all claims asserted in the Action and related claims against Defendants and Defendants' Releasees. The Settlement delivers a clear benefit and excellent result for the Class and warrants final approval.

[1] All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Stipulation and the Joint Declaration of Joshua E. D'Ancona and Jeffrey J. Angelovich in Support of (A) Class Representatives' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Joint Declaration" or "Jt. Decl."). The Joint Declaration is an integral part of this submission and, for the sake of brevity in this Memorandum, Class Representatives respectfully refer the Court to the Joint Declaration for a detailed description of, among other things: the claims asserted (¶¶ 13-18), the procedural history of the Action (¶¶ 19-72), the negotiations leading to the Settlement (¶¶ 73-80), the risks of continued litigation (¶¶ 81-96), compliance with the Court's Preliminary Approval Order and the reaction of the Class to date (¶¶ 97-101), and the Plan of Allocation (¶¶ 102-08). Unless otherwise noted, all internal quotation marks, citations, or other punctuation are omitted, and all emphasis is added herein.

As set forth herein, the Settlement provides a certain recovery for the Class in a case that presented serious risks of no recovery at all, and represents a significant percentage of the Class's *maximum* amount of potentially recoverable aggregate damages as estimated by Class Representatives' damages expert. Notably, by obtaining approximately 14% of the Class's estimated potential aggregate damages, Class Representatives have recovered significantly more for this Class than the average recovery—ranging between 3.9% and 4.8% of estimated aggregate damages—in recent comparable securities class action settlements.[2]

This Settlement is also distinguished from typical securities class action settlements by how far the Action had advanced towards trial at the time of resolution. When the Settlement was reached, Class Counsel were preparing the Class's claims for a jury trial scheduled to begin in eight days. Over the prior five-plus years, Class Counsel and Class Representatives had, *inter alia*: (i) conducted a thorough investigation into the Class's claims; (ii) drafted two complaints, including the operative Second Amended Complaint; (iii) opposed two motions to dismiss; (iv) reviewed over 750,000 pages of documents (and much more electronic data) produced by Defendants and non-parties; (v) taken or defended 37 depositions across the country; (vi) consulted with and retained numerous expert witnesses and consultants; (vii) obtained class certification and overcome Defendants' Rule 23(f) petition to the Ninth Circuit; (viii) exchanged expert reports and participated in depositions of the Parties' class certification and seven merits experts; (ix) defeated Defendants' motion for summary judgment; (x) briefed motions *in limine* and

[2] Cornerstone Research reported that in 2019, the median securities class action settlement amount was 4.8% of estimated damages for cases with estimated damages between $250 - $499 million, and over the prior decade (2010 through 2018), the median settlement amount for such cases was 3.9% of estimated damages. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2019 Review and Analysis*, Cornerstone Research, at 6 (2020), http://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis; *see also* Jt. Decl., ¶ 11. Had Class Representatives settled at that median percentage here, the Court would be evaluating a settlement between $18.1 - $22.3 million.

motions to exclude experts; (xi) carried out extensive pre-trial preparations, including *inter alia*, exchanging lists of witnesses, exhibits and deposition designations, evidentiary objections, draft jury instructions, and attending a pre-trial conference; (xii) conducted a mock jury trial and focus group exercise to obtain an empirically-based understanding of how a San Diego jury would react to the evidence to be presented at trial; and (xiii) engaged in extended settlement negotiations facilitated by experienced mediators. From these efforts and others discussed herein and in the Joint Declaration, at the time of settlement, Class Representatives and Class Counsel knew the strengths and weaknesses of the Class's claims and were amply prepared to evaluate the risks of continued litigation against the certain and immediate cash recovery obtained for the Class through the Settlement.

While Class Representatives and Class Counsel believe the Class's claims are strong, they recognize the significant risk that a trial of the Action and any appeals could have resulted in a smaller recovery—or none at all. For example, at trial a jury would have been asked to evaluate Class Representatives' claims that Defendants' statements regarding the *Blackfish* effect were materially misleading against Defendants' defense that the *Blackfish* effect, if any, was: (i) de minimis in relation to SeaWorld's overall size; (ii) a mere public-relations distraction that did not affect SeaWorld's business or financials; and/or (iii) not considered new information by the market when disclosed in August 2014, but, instead, a previously known factor materially affecting SeaWorld.

Moreover, Defendants would challenge Class Representatives' ability to prove loss causation and the full amount of claimed damages. At trial, Defendants would have maintained that the price decline in SeaWorld common stock on the alleged corrective disclosure date was caused by factors unrelated to the alleged fraud, and that the "truth" regarding the alleged fraud had been revealed prior to the end of the Class Period. Resolution of these and other issues would likely have come down to a "battle of the experts" with no guarantee as to which expert's testimony would be more compelling to a

jury, much less a unanimous one. And, if Class Representatives won at trial, Defendants likely would have pursued appeals and individual Class Member damages trials—delaying any recovery for years, and possibly eliminating it entirely. In the face of these and other risks, Class Representatives and Class Counsel secured a certain and immediate benefit for the Class in the amount of $65,000,000 through the Settlement.

In its February 19, 2020 Preliminary Approval Order, this Court preliminarily approved the Settlement, finding it likely to be finally approved as being fair, reasonable, and adequate to the Class. The Settlement has the full support of Class Representatives—sophisticated institutional investors with experience acting as fiduciaries on behalf of investors in securities actions, and the reaction of the Class to date has been positive. While the deadline to submit objections to the Settlement has not yet passed, following the dissemination of 16,597 Postcard Notices and 4,244 Notices to Class Members and Nominees as well as publication of the Summary Notice online and in high-circulation media, not a single Class Member has filed an objection to the Settlement or the Plan of Allocation. *See* Jt. Decl., ¶ 12.[3]

Class Representatives and Class Counsel respectfully submit that: (i) the Settlement readily meets the standards for final approval under Rule 23 and is a fair, reasonable, and adequate result for the Class; and (ii) the Plan of Allocation is a fair and reasonable method for equitably distributing the Net Settlement Fund.

II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e)(2) requires judicial approval of any class action settlement. Whether to grant such approval lies within the sound discretion of the district court. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018) ("Deciding whether a settlement is fair is ultimately 'an amalgam of delicate balancing, gross

[3] *See* Declaration of Ed Barrero Regarding: (A) Mailing of Postcard Notice and Notice; (B) Posting of Notice and Claim Form on Settlement Website; and (C) Publication of Summary Notice ("Barrero Decl."), attached as Exhibit 3 to the Joint Declaration.

approximations and rough justice,' best left to the district judge, who has … a firsthand grasp of the claims, the class, the evidence, and the course of proceedings."). Further, the decision to grant final approval should be guided by the Ninth Circuit's strong "[j]udicial policy [that] favors settlement in class actions … where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation." *Velazquez v. Int'l Marine & Indus. Applicators, LLC*, 2018 WL 828199, at *4 (S.D. Cal. Feb. 9, 2018) (Anello, J.). As this Court and the Ninth Circuit have recognized:

> The court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Rodriguez v. Bumble Bee Foods, LLC, 2018 WL 1920256, at *2 (S.D. Cal. Apr. 24, 2018) (Anello, J.).

"Under [Rule] 23(e)(2), a district court may approve a class action settlement only after finding that the settlement is fair, reasonable, and adequate." *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1120-21 (9th Cir. 2020). In making that determination, recently amended Rule 23(e)(2) provides that a court should 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, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Rule 23(e)(2)'s "first and second factors are viewed as 'procedural' in nature, and the third and fourth factors are viewed as 'substantive' in nature." *Hudson v. Libre Tech. Inc.*, 2020 WL 2467060, at *5 (S.D. Cal. May 12, 2020) (Curiel, J.).

Consistent with this guidance, the Ninth Circuit has long identified similar factors that courts may consider in deciding whether to approve a class settlement:

> (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.

See Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004).[4] "District courts may consider some or all of these factors." *Campbell*, 951 F.3d at 1121; *Rodriguez*, 2018 WL 1920256, at *3. Further, "[t]his list is not exclusive and different factors may predominate in different factual contexts." *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Moreover, a court "need not reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Class Plaintiffs*, 955 F.2d at 1291; *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

As set forth below, the Settlement is fair, reasonable, adequate, and warrants final approval under the Rule 23(e)(2) factors and the law of the Ninth Circuit.[5]

[4] The "goal" of the 2018 amendments to Rule 23(e)(2) was "not to displace" any of the factors historically articulated by the various Circuits, "but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Campbell*, 951 F.3d at 1121 n.10.

[5] Because the Settlement was reached after class certification, "this case does not implicate the 'higher standard of fairness' that applies when parties settle a case before the district court has formally certified a litigation class." *Campbell*, 951 F.3d at 1121-22; *see also, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 n.6 (9th Cir. 2015); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963-64 (9th Cir. 2009).

A. Class Representatives and Class Counsel Have Adequately Represented the Class in this Action

The first Rule 23(e)(2) factor—whether Class Representatives and Class Counsel "have adequately represented the class"—favors approval of the Settlement. *See* Rule 23(e)(2)(A). "This analysis is 'redundant of the requirements of Rule 23(a)(4) and Rule 23(g), respectively.'" *Hudson*, 2020 WL 2467060, at *5 (quoting *Newberg on Class Actions* § 13:48 (5th ed.)); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) ("Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?").

In certifying this Class in November 2017, the Court found Class Representatives and Class Counsel had "shown that they will 'fairly and adequately protect the interests of the class,' thereby satisfying the adequacy requirement" of Rules 23(a)(4) and (g). *See* ECF No. 259 at 15-17. In the following two-plus years, Class Representatives and Class Counsel further demonstrated their adequacy by prosecuting this Action to the brink of trial.

First, Class Representatives are sophisticated institutional investors of the type that Congress, in the PSLRA, deemed appropriate to lead securities class actions. Both have aggressively pursued the Class's claims and provided valuable and meaningful assistance to Class Counsel necessary to obtaining the Settlement. *See* Jt. Decl., ¶ 132; *see also* APERS Decl. (Ex. 1 to Jt. Decl.), ¶¶ 5-7; PBU Decl. (Ex. 2 to Jt. Decl.), ¶¶ 1-5. Each devoted considerable time and effort over the course of the litigation, including by, *inter alia*, regularly communicating with Class Counsel, reviewing pleadings and motions, gathering and reviewing documents and information in response to Defendants' discovery requests, preparing and sitting for a deposition, preparing for trial, and participating in settlement negotiations. *Id*. And, as the Court found in November 2017, Class

Representatives have no interests that conflict with or are otherwise antagonistic to those of the rest of the Class. *See* ECF No. 259 at 11-17.

Second, Class Counsel have adequately represented the Class in the years before and since their appointment. As further set forth herein and in detail in the Joint Declaration, Class Counsel litigated this Action for more than five years, undertaking a comprehensive investigation, significant evidence gathering through fact and expert discovery, hard-fought motion practice, intense trial preparations, extensive mediation efforts, and the expenditure of resources necessary to finance every aspect of this prosecution—all of which resulted in an exceptional $65,000,000 recovery for the Class in a case that was originally dismissed for failure to state a claim. *See* Jt. Decl., ¶¶ 19-80, 118-21. With insights gleaned from these efforts, Class Counsel soberly considered the strengths and weaknesses of the Class's claims and the risks of trial to recommend that Class Representatives resolve the Action through the Settlement.[6]

In sum, Class Representatives and Class Counsel adequately represented the Class's interests in this Action. After their prosecution of the Class's claims for over five years, Class Representatives and Class Counsel firmly believe the Settlement represents an outstanding result for the Class. *See* Jt. Decl., ¶ 11; APERS Decl., ¶ 8; PBU Decl., ¶ 8; *see also, e.g.*, *Churchill*, 361 F.3d at 576-77 (instructing courts to consider the "experience and views of counsel").[7]

B. The Settlement Was Negotiated at Arm's Length with the Assistance of Experienced Neutral Mediators

The Settlement was achieved through protracted negotiations, including multiple

[6] For more detail regarding Class Counsel's collective experience in such litigation, *see* Jt. Decl., ¶ 123; *see also* Class Counsel firm resumes attached as Exhibits 4-D and 5-C to the Joint Declaration.

[7] "Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *Rodriguez*, 2018 WL 1920256, at *4.

mediation sessions facilitated by neutral and experienced mediators. This favors approval of the Settlement. *See* Rule 23(e)(2)(B); *Rodriguez*, 563 F.3d at 965 ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution"); *see also Roberti v. OSI Sys, Inc..*, 2015 WL 832996, at *3 (C.D. Cal. Dec. 8, 2015) ("assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.").

The Settlement was reached through sustained, intensive, good-faith bargaining. *See* Jt. Decl., ¶¶ 73-77. After the Parties submitted full mediation statements with exhibits, Magistrate Schopler facilitated a settlement conference in San Diego on May 9, 2019, while Defendants' summary judgment motion was pending, and ultimately presented the Parties with a mediator's proposal that was not accepted. *Id.*, ¶ 74. The Parties also participated in a separate, in-person mediation before Jed D. Melnick, Esq., of JAMS and The Weinstein Melnick Team, in New York on April 3, 2019. *Id.*, ¶¶ 75-76. Despite their best efforts at these mediation sessions, the Parties could not reach a resolution of the Action. After continued negotiations, the Parties attended another in-person mediation in New York before Mr. Melnick in January 2020. *Id*, ¶ 77. Though that session did not produce a resolution, the Parties continued negotiating through Mr. Melnick, who ultimately issued a mediator's proposal that the Action be settled for $65,000,000, which the Parties accepted. *Id.*

Given these protracted negotiations, which continued virtually up to the eve of trial, both sides were well informed of the strengths and weaknesses of the case before agreeing to a resolution. The arm's-length nature of the negotiations leading to the Settlement unquestionably support its approval. *See, e.g.*, *Campbell*, 951 F.3d at 1122 (that "settlement was the result of four in-person, arms'-length mediations before two different mediators"

supported final approval).[8]

C. The Settlement Provides the Class Adequate Relief, Considering the Costs, Risks and Delay of Litigation and Other Relevant Factors

The remaining Rule 23(e)(2) factors overlap considerably with those articulated by the Ninth Circuit, and all entail "a 'substantive' review of the terms of the proposed settlement" that evaluate the fairness of the "relief that the settlement is expected to provide to" the Class. Rule 23(e)(2), advisory committee's note to 2018 amendments; *Churchill*, 361 F.3d at 575-77. To perform such an evaluation, a court must "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, it has been held proper to take the bird in hand instead of a prospective flock in the bush." *Rodriguez*, 2018 WL 1920256, at *3. Here, the Settlement undoubtedly provides adequate relief for the Class, especially when taking into account the costs, risks, and delay of further litigation, and the other relevant factors.

1. The Amount Offered in Settlement

"The critical component of any settlement is the amount of relief obtained by the class." *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *11 (N.D. Cal. Feb. 11, 2016) (amount of settlement is "generally considered the most important" factor). However, it "is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial." *Rodriguez*, 2018 WL 1920256, at *4. By definition, a settlement "embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation." *Officers of*

[8] The fact that the Parties were unable to resolve the Action during the sessions before Magistrate Schopler or either of the two in-person sessions before Mr. Melnick, but required substantial additional negotiations, further demonstrates that the Settlement is the product of arm's-length bargaining and free of collusion. *See, e.g.*, *Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *5 (S.D.N.Y. Oct. 24, 2005) ("A breakdown in settlement negotiations can tend to display the negotiation's arms-length and non-collusive nature.").

Justice v. Civil Service Com'n of City and Cty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982).

Here, the Settlement Amount—$65,000,000—is significant by any measure. The recovery provides an immediate and tangible cash benefit to the Class and eliminates the substantial risk that the Class could recover less, or nothing, if the Action continued. *See* Jt. Decl., ¶¶ 7-10, 81-96, 113-17. This amount also represents a meaningful percentage of the Class's maximum potentially recoverable aggregate damages. *Id.*, ¶¶ 11, 112. Had Class Representatives overcome *all* of the obstacles to establishing liability, loss causation, and damages discussed *infra*, the maximum amount of potentially recoverable aggregate damages would have been $465 million under Class Representatives' damages expert's trading model and per-share damages estimate. *Id.* Thus, the Settlement represents approximately 14% of the maximum amount the Class potentially could have recovered upon total victory at trial and any appeal. *Id.*

By way of comparison, the median securities class action settlement amount in cases with estimated damages between $250 and $499 million was 4.8% of estimated aggregate damages in 2019 and 3.9% of estimated aggregate damages in 2010 through 2018. *See* n.2 *supra.* Indeed, the Settlement, when viewed as a percentage of potentially recoverable damages, is superior to the typical recovery in similar court-approved settlements by a considerable margin. *Id.*[9] The "adequacy of this amount is reinforced by the fact that the

[9] *See also, e.g.*, *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *9 (N.D. Cal. July 22, 2019) (approving settlement representing between 5% and 9.5% of "maximum potential damages"); *Roberti*, 2015 WL 8329916, at *4 (approving settlement representing 8% of "the potential maximum recoverable damages in this case"); *IBEW Local 697 Pension Fund v. Int'l Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving settlement recovering approximately 3.5% of the maximum damages plaintiffs believed could be recovered at trial); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153007, at *6 (C.D. Cal. Sept. 12, 2005) (approving settlement representing 2.7% of damages and finding such percentage was "not [] inconsistent with the average recovery in securities class action[s]"); *In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving 9% settlement as "higher than the median percentage [] recovered in recent shareholder class action settlements.").

amount was originally recommended by [Mr. Melnick], an objective and informed third-party during the mediation process." *Roberti*, 2015 WL 8329916, at *4; *see also* Jt. Decl., ¶ 77. Considered against the extensive risks involved with prosecuting this Action further, the amount provided by the Settlement clearly is adequate, fair, and reasonable.

Additionally, while unknown when the case settled, the current pandemic virtually eliminated the chance of obtaining a larger settlement or satisfying a larger verdict down the road. SeaWorld was forced to close its parks for over two months, suffered a massive loss of revenue shortly after the Settlement funded, including with millions of dollars of Company money. If negotiations had continued into the time of the pandemic, SeaWorld undoubtedly would not have been willing to contribute cash above insurance proceeds, and trial would have further eroded those same proceeds. Simply stated, had the case not resolved when it did, it is unlikely that $65 million could ever have been obtained in the future via settlement, or even possibly at trial.

2. The Risks of Continued Litigation

"To determine whether the proposed settlement is fair, reasonable, and adequate, the Court must balance the continuing risks of litigation (including the strengths and weaknesses of the Plaintiffs' case), with the benefits afforded to members of the Class, and the immediacy and certainty of a substantial recovery." *Velazquez*, 2018 WL 828199, at *4; Rule 23(e)(2)(C)(i); *Churchill*, 361 F.3d at 576. While Class Counsel and Class Representatives believe they had substantial evidence to support their claims and were fully prepared to begin trying this case on February 18, 2020, they acknowledge that doing so posed major challenges and considerable risks. *OmniVision*, 559 F. Supp. 2d at 1041 ("merely reaching trial is no guarantee of recovery"). And, even if a unanimous liability verdict were obtained, there remained no assurance that the jury would have awarded damages in an amount equal to or greater than the Settlement Amount, or that the ultimate judgment could have been protected on appeal. *See* Jt. Decl., ¶¶ 81-83.

To obtain a more empirically based understanding of the challenges Class

Representatives faced at trial, Class Counsel and their jury consultants conducted a two-day mock jury trial and focus group in San Diego in December 2019. *Id.*, ¶ 84. Class Counsel presented key documentary evidence, fact and expert witness video testimony, demonstrative exhibits, and lines of argument that represented the Parties' respective positions to residents of San Diego and Imperial Counties, observed jurors' reactions and attitudes in real-time, and then watched as they engaged in moderated deliberations to reach a verdict. *Id.*, ¶¶ 84-88. In addition to providing insight into how best to present Class Representatives' case at trial, this exercise gave Class Counsel greater understanding of the risks of continued litigation discussed below.

First, Class Representatives faced challenges in establishing liability.[10] This case did not involve "smoking gun" documents unambiguously establishing Defendants' liability. *Id.*, ¶ 81. Instead, the jury would have to evaluate Class Representatives' claims using largely circumstantial evidence that Defendants knew or should have known of the *Blackfish* impact, yet denied it. *Id*, ¶ 89. Defendants would deny these claims and emphasize that the SeaWorld-branded parks set revenue records in the middle of the Class Period, contradicting any suggestion of apparent and sustained impact. *Id.* And with arguably stronger evidence of falsity accruing later in the Class Period, the risk of obtaining only a partial victory tied to the last months of the Class Period was real. *Id.*

Similarly, Defendants would dispute that the requisite element of scienter was satisfied for each alleged misrepresentation. *Id.*, ¶ 90. While Class Representatives were prepared to present strong scienter evidence, aside from Class Representatives' experts, every fact witness at trial would have been hostile. *Id.*, ¶ 81. Thus, Defendants could rebut Class Representatives' evidence with persuasive live witness testimony from current and former SeaWorld executives, denying they downplayed anything of significance, claiming the analyses the Company performed accounted for all attendance and business drivers

[10] In considering the strengths and risks surrounding the prosecution of this Action, it is noteworthy that the Court initially dismissed the original complaint in this case at the pleading stage for failure to adequately state a claim. *See* ECF No. 102.

without detecting any material impact from *Blackfish*, and otherwise explaining away Class Representatives' documentary evidence. *Id.*, ¶ 90. Further, Defendants argued throughout the Action that their corporate procedures, designed to ensure a rigorous vetting process by numerous informed stakeholders, supported the accuracy of Defendants' public statements and demonstrated a lack of scienter. *Id*, ¶ 91; *see also*, *e.g.*, ECF No. 361 at 25-37.

Class Counsel tested many of these arguments before the mock jury in December 2019. Jt. Decl., ¶¶ 84-90. The risk that the liability evidence would portray an ambiguous picture, and that the fairly technical and complicated points Class Representatives needed to make to adequately unwind Defendants' arguments would frustrate jurors, or simply be rejected by them, was legitimate. *Id.*, ¶¶ 81-91.

Second, Class Representatives faced significant trial risks related to the Rule 10b-5 elements of loss causation and damages, where Class Representatives' claims rest heavily on expert testimony about sophisticated economic and statistical concepts. *Id.*, ¶¶ 92-94. Defendants' experts presented contrary opinions and, thus, the outcome on these elements likely would have come down to an unpredictable battle of the experts. *Id.*, ¶ 92. Moreover, throughout this Action, Defendants argued that a literal interpretation of the alleged corrective disclosure, on which Class Representatives' ability to prove loss causation hinged, demonstrated that the disclosure could not have "corrected" any of Defendants' challenged statements and certainly none from the first roughly 9 months of the approximately 12-month Class Period. *See id.*, ¶ 93; ECF Nos. 361 at 14-22 and 419 at 2-7. If the jury accepted this simple argument, Class Representatives' claims could have been severely reduced, or eliminated. *See* Jt. Decl., ¶ 93.[11]

Further, Class Representatives' damages evidence faced a risk of being rejected, in whole or in part, by the jury. *Id.*, ¶ 94. Class Representatives claim the same amount of artificial inflation affected SeaWorld stock throughout the Class Period as a result of

[11] The element of loss causation, in Class Counsel's experience, is a very difficult and confusing concept for jurors to adequately understand, creating uncertainty and great risk at trial. The mock trial reinforced this belief.

Defendants' alleged fraud—a claim supported through expert evidence, based on sophisticated economic analyses. *Id.* Defendants' damages expert asserted technical arguments to the contrary, and Defendants raised appealing commonsense attacks on this damages theory. *Id.* For example, Defendants argued the claimed constant inflation on every day of the Class Period contradicted Class Representatives' liability theory that *Blackfish*'s impact on SeaWorld grew over time, rendering the theory ill-fitting and unreasonable. *Id.*; *see also* ECF Nos. 361 at 23-25 and 419 at 7-8. Based on these and other damages arguments, the risk existed that, even after finding liability and causation, a jury could return an award of very low damages for the Class, or none at all. Jt. Decl., ¶ 94; *see also, e.g.*, *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001).

Finally, Class Representatives faced additional jury and trial risks. *See* Jt. Decl., ¶¶ 95-96. Because Class Representatives would have had to obtain a unanimous jury verdict to establish liability, a single juror with entrenched sympathies toward SeaWorld or antipathies toward other pertinent issues, like class action lawsuits, could have singlehandedly defeated the Class. *Id.*, ¶ 95. Indeed, SeaWorld is a longstanding and well-regarded San Diego institution, which may have influenced at least one member of a local jury. *Id.*, ¶¶ 81-82, 95. Moreover, controversial political or social issues of animal captivity and activism underlie many of the events at issue in this Action and could have unpredictably affected how jurors viewed evidence and arguments. *Id.* Further, every live witness at trial, with the exception of Class Representatives' experts, would have been prepared by Defendants and hostile towards the Class's interests. *Id.*, ¶ 81. And, the Class's success depended in some ways on the jury's understanding of relatively complex economic concepts related to securities fraud and stock markets. *Id.*, ¶ 82.

Class Counsel analyzed each of these risks for years, and further empirically tested them before San Diego mock jurors in December 2019. *Id.*, ¶¶ 19-96. If realized, any one of these risks could have resulted in no recovery for the Class. By resolving the Action through the Settlement, in contrast, Class Representatives guaranteed the Class an

immediate cash recovery of $65 million. This factor strongly supports final approval.

3. The Complexity, Expense and Duration of Continued Litigation

In addition to the risk of continued litigation, in evaluating the fairness of the Settlement, the "expense, complexity and likely duration of further litigation" or "delay of trial and appeal" should be taken into account. *See* Rule 23(e)(2)(C)(i); *Churchill*, 361 F.3d at 576. "Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015). Here, these factors further underscore the fairness of the Settlement.

Courts consistently acknowledge that securities fraud class actions are "notably complex, lengthy, and expensive cases to litigate[,]"[12] and this Action is no exception. Perhaps the best example of the complexity of the factual issues involved here is the mountain of evidence and briefing submitted to the Court in connection with summary judgment and *Daubert* motions,[13] which resulted in a meticulous 100 plus-page opinion by this Court. *See* ECF No. 468. Moreover, Class Representatives estimated that trial here would last approximately one month. *See, e.g.*, ECF No. 512 at 7:8-9; *In re Amgen Sec. Litig.*, 2016 WL 10571773, at *3 (C.D. Cal. Oct. 25, 2016) ("A trial of a complex, fact-intensive case like this could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation."). The expense involved with litigating the Action for five-plus years was significant. Jt. Decl., ¶¶ 125-30. Trial would have increased those expenses significantly, requiring a full trial team from across the country to move to San Diego to work around the clock for many weeks and possibly months.

Further, if Class Representatives succeeded at trial, they would have faced vigorous post-trial motion practice, potential individual trials for Class Members whom Defendants

[12] *See, e.g., In re PAR Pharms. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013) (citing examples).

[13] *See, e.g.*, ECF Nos. 344, 347, 351, 355, 358, 359.

challenged in the claims process, and likely appeals to the Ninth Circuit—delaying any recovery for years with the possibility of eliminating it entirely. Jt. Decl., ¶¶ 53-54; *see also* ECF No. 272 (Defendants' appeal of class certification demonstrates the likelihood of further appeals). Even with a verdict at trial affirmed on appeal, the Class would face a potentially complex, lengthy, and contested claims process. *See* Jt. Decl., ¶ 81.[14] In similar actions that were tried, the time from verdict to final judgment has taken as long as *seven* years.[15] *See Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011), *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012) ("Considering these risks, expenses and delays, an immediate and certain recovery for class members … favors settlement of this action.").

4. The Extent of Discovery Completed and Stage of Proceedings

"A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." *Velazquez*, 2018 WL 828199, at *5; *see also Churchill*, 361 F.3d at 575. "A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Adoma v. University of Phoenix, Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012). This factor strongly supports final approval.

As reflected in the more than 500 docket entries, it is apparent that the Settlement was reached only after vigorous litigation. From the commencement of this Action in 2014 through the Parties' agreement to settle two weeks before trial in 2020, Class Representatives and Class Counsel spent substantial time and resources analyzing and zealously litigating the factual and legal issues this Action involved. Jt. Decl., ¶¶ 19-80.

[14] *See also, e.g.*, ECF No. 512 at 9:15-10:3 (Defendants' counsel stating: "The absent class members will each need to go through the exact same process that the Lead Plaintiff has already gone through were there to be a base liability finding. Each claimant . . . will have to be subject to discovery and a claims process, … and each ultimately perhaps to summary judgment and trial on the reliance issue.").

[15] *See, e.g.*, *Jaffe Pension Plan v. Household Int'l., Inc.*, No. 1:02-cv-05893, Verdict Form, ECF No. 1611 (N.D. Ill. May 7, 2009) & Final Judgment and Order of Dismissal With Prejudice, ECF No. 2267 (N.D. Ill. Nov. 10, 2016); *see also In re Vivendi Universal, S.A. Sec. Litig.*, Civ. No. 02-5571 (RJH/HBP) (S.D.N.Y.), Verdict Form, ECF No. 998 (Feb. 2, 2010) & Final Judgment, ECF No. 1317 (May 9, 2017).

Before reaching the Settlement, Class Representatives through Class Counsel had completed both fact and expert discovery—which included, *inter alia*: analyzing over 750,000 pages of documents and additional electronic data from Defendants and third parties; serving or responding to numerous written discovery requests and subpoenas; examining over 4,000 privilege claims; litigating multiple discovery disputes formally through motion practice and informally in conferences with Defendants; preparing and exchanging class certification expert reports and merits reports for seven expert witnesses; and taking or defending 37 depositions throughout the country. *Id.*, ¶¶ 32-48.

Also, Class Representatives and Class Counsel briefed two dispositive motions to dismiss, successfully moved for class certification, defeated a Rule 23(f) appeal, litigated numerous confidentiality disputes, briefed a winning opposition to Defendants' summary judgment motion involving the submission of 592 individual exhibits and a statement of facts that, once replied-to by Defendants, exceeded 900 pages in length, briefed and argued *Daubert* motions regarding five experts, and prepared for trial, including marshaling over 1,000 exhibits and responding to thousands of objections thereto, preparing and responding to dozens of video deposition designations for witnesses' testimony, preparing and analyzing responses to juror questionnaires, drafting jury instructions, contentions of law and fact, and a proposed pre-trial order, briefing and arguing motions *in limine*, and attending a pre-trial conference. Joint Decl., ¶¶ 49-55, 59-72. In addition, they also briefed mediation statements, participated in formal mediation sessions, and conducted a two-day mock jury trial and focus group exercise. *Id.*, ¶¶ 73-80, 84-88.

This substantial record demonstrates that, when the Settlement was reached, Class Representatives and Class Counsel had more than "enough information to make an informed decision about settlement based on the strengths and weaknesses" of their case. *Amgen.*, 2016 WL 10571773, at *4 (finding "in favor of granting final approval" where discovery was complete and "case was on the verge of trial"). Indeed, the only stage of litigation not completed in its entirety was trial.

5. The Reaction of Class Members

"In addition to the enumerated fairness factors of Rule 23(e)(2), courts within the Ninth Circuit typically consider the reaction of the class members to the proposed settlement." *In re Google LLC St. View Elec. Commc'ns Litig.*, 2020 WL 1288377, at *15 (N.D. Cal. Mar. 18, 2020); *Churchill*, 361 F.3d at 577. "The absence of a large number of objectors supports the fairness, reasonableness, and adequacy of the settlement." *Velazquez*, 2018 WL 828199, at *6. Here, as of the date of this filing, no objections to the Settlement have been filed. Jt. Decl., ¶¶ 12, 101. Moreover, Class Representatives support and endorse the Settlement as well. *See* APERS Decl., ¶ 8; PBU Decl., ¶ 8. This factor favors approval of the Settlement.

D. The Remaining Rule 23(e)(2) Factors Also Support Final Approval

In evaluating the Settlement, amended Rule 23(e)(2) instructs courts to also consider: (i) the effectiveness of the proposed method of distributing the relief provided to the class, including the method of processing class member claims; (ii) the terms of any proposed award of attorney's fees, including the timing of payment; (iii) any other agreement made in connection with the proposed settlement; and (iv) whether class members are treated equitably relative to each other. *See* Rule 23(e)(2)(C)(ii)-(iv), (e)(2)(D). These factors also support final approval of the Settlement.

First, the proposed method of distribution and claims processing ensures equitable treatment of Class Members. *See* Rule 23(e)(2)(C)(ii), (e)(2)(D). Class Members' claims will be processed and the Net Settlement Fund distributed pursuant to a standard method routinely found effective in securities class actions. The Court-authorized Claims Administrator will review and process all Claims received, provide Claimants with an opportunity to cure any deficiency or request judicial review of the denial of their Claims, if applicable, and ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund, as calculated under the Plan of Allocation, which is designed to achieve an equitable and rational distribution of the Net Settlement Fund. *See* Section III

infra; *see also* Jt. Decl., ¶¶ 102-08. Importantly, none of the Settlement proceeds will revert to Defendants. *See* Stipulation, ¶ 14.

Second, the relief provided by the Settlement remains adequate upon consideration of the terms of the proposed award of attorneys' fees and reimbursement of reasonable expenses incurred in prosecuting this Action, including the timing of any such Court-approved payments. *See* Rule 23(e)(2)(C)(iii). As shown in the accompanying Fee Memorandum, the requested attorneys' fees of 22% of the Settlement Fund, made in accordance with Class Representatives' retention agreements and to be paid only upon the Court's approval, are reasonable in light of the efforts of Class Counsel over the past five-plus years in taking this Action from initial dismissal to the brink of trial and a $65,000,000 recovery, as well as the significant risks and expenses Class Counsel shouldered at every step.[16]

The requested 22% fee award is eminently reasonable and fully supported by Ninth Circuit case law, which repeatedly "permit[s] awards of attorneys' fees ranging from 20 to 30 percent of settlement funds, with 25 percent as the benchmark award." *In re NCAA Ath. Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x at 653 (collecting cases); *HCL Partners Ltd. P'ship v. Leap Wireless Int'l, Inc.*, 2010 WL 4156342, at *2 (S.D. Cal. Oct. 15, 2010) (Anello, J.) (finding requested 25% fee award "reasonable in light of the amount of efforts expended to achieve the settlement"). Further, any fee award is separate from the approval of the Settlement, and neither Class Counsel nor Class Representatives may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys'

[16] In connection with Class Counsel's fee request, Class Counsel also seek payment from the Settlement Fund of Litigation Expenses in the total amount of $2,174,939.19, which amount *includes* reimbursement of Class Representatives' reasonable costs in representing the Class in the aggregate amount of $70,569.00. Jt. Decl., ¶ 109; *see also, e.g.*, *In re NCAA Ath. Grant-in-Aid Cap Antitrust Litig.*, 768 F. App'x 651, 654 (9th Cir. 2019) ("district court did not abuse its discretion when it calculated the percentage [of settlement to award as attorneys' fees] without including expenses in the numerator") (citing *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) ("reasonableness of attorneys' fees is not measured by the choice of the denominator")).

fees. *See* Stipulation, ¶ 17. The proposal that any Court-awarded attorneys' fees be paid upon issuance of such an award is reasonable and consistent with common practice in similar cases, as the Stipulation dictates that if the Settlement were terminated or any fee award subsequently modified, Class Counsel must repay the subject amount with interest to the Settlement Fund. *Id.*[17]

Third, as previously disclosed, the only agreement the Parties entered in addition to the Stipulation was a confidential Supplemental Agreement regarding requests for exclusion. *See* ECF No. 516-1 at 18-19; Stipulation, ¶ 37; *see also* Rule 23(e)(2)(C)(iv). The Parties' Supplemental Agreement, which is a standard provision in class actions that does not affect the fairness analysis,[18] became null upon the Court's finding that a second opt-out period was unnecessary in light of the extensive notice program undertaken after class certification. *See* Preliminary Approval Order, ¶ 11; ECF No. 516-1 at 18.

* * *

For the reasons set forth above and in greater detail in the Joint Declaration, the Settlement is fair, reasonable, and adequate when evaluated under any standard, or set of factors and, therefore, warrants the Court's final approval.

III. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE AND WARRANTS FINAL APPROVAL

"Approval of an allocation plan under [Rule] 23 is governed by the same standards

[17] Such provisions in class action settlements, sometimes termed "quick-pay" provisions, "have generally been approved by other federal courts." *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 952 F.3d 471, 487 (4th Cir. 2020) (finding objection to "quick-pay provision" in which attorneys were paid upon approval of settlement but "promised to refund (with interest) the fees awarded pursuant to the quick-pay provision if the Attorney's Fees Order is vacated" "border[ed] on frivolous" as there was "no reason to buck" the trend of other federal courts approving such quick-pay provisions); *see also, e.g.*, *Miller v. Ghirardelli Chocolate Co.*, 2014 WL 4978433, at *5 (N.D. Cal. Oct. 2, 2014) ("Such 'quick pay' provisions are routinely approved by courts in this district.").

[18] *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4, 2018) (a termination option "triggered by the number of class members who opt out" does not "by itself render the Settlement unfair.").

applicable to the overall settlement – the plan must be both fair and reasonable." *In re Wireless Facilities, Inc. Secs. Litig. II*, 2008 WL 11338455, at *6 (S.D. Cal. Dec. 19, 2008) (Stormes, J.) (citing *Class Plaintiffs*, 955 F.2d at 1284). The aim of such a plan "is to provide an equitable basis for distributing the settlement fund. The allocation formula and overall plan, especially when created by experienced counsel, needs only a reasonable, rational basis for approval." *Id.* at *17-18; *Nguyen v. Radient Pharms. Corp.*, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) (same). A plan that "reimburses class members based on the extent of their injuries is generally reasonable." *In re Oracle Sec. Litig.*, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994).

The Plan of Allocation developed by Class Counsel and Class Representatives' damages expert is a fair and reasonable method for allocating the Net Settlement Fund. *See* Jt. Decl., ¶¶ 102-08. The Plan is designed to equitably distribute the Net Settlement Fund to Class Members who timely submit valid Claim Forms demonstrating they suffered economic losses from Defendants' alleged securities fraud, as opposed to losses caused by market, industry, or unrelated Company-specific factors. *Id.*, ¶ 104.

The straightforward formula (set forth in Appendix A to the Notice) is based upon the estimated amount of artificial inflation in the price of SeaWorld common stock during the Class Period in the per share amount submitted by Class Representatives' damages expert in his merits report. *Id.* To have a Recognized Claim under the Plan, a Claimant must have purchased or otherwise acquired SeaWorld common stock during the Class Period and held those shares through the alleged August 13, 2014 corrective disclosure. *Id.*, ¶ 105. A Claimant's Recognized Loss Amount is determined under the formula based upon several factors, including the date(s) when the Claimant purchased/acquired their shares of SeaWorld common stock during the Class Period, and whether such shares were sold and if so, when and at what price, taking into account the PSLRA's statutory limitation on recoverable damages. *Id.*

Under the Plan, Epiq will calculate each Authorized Claimant's *pro rata* share of the

Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.*, ¶ 106. Once Epiq has processed all submitted Claim Forms and provided Claimants the opportunity to cure any deficiencies or challenge any rejection, Class Counsel will move for authorization to distribute the Net Settlement Fund. *Id.*, ¶ 107. The structure of the Plan is similar to ones that have been used to equitably apportion settlement proceeds in many other securities class actions.[19] The Plan was fully disclosed in the Notice and, to date, no objections to the Plan have been filed. Jt. Decl., ¶¶ 102, 108. Accordingly, Class Counsel and Class Representatives believe the Plan is fair, reasonable, and adequate and should be approved. Rule 23(e)(2)(C)(ii), (e)(2)(D).

IV. THE CLASS RECEIVED ADEQUATE NOTICE THAT SATISFIED DUE PROCESS AND RULE 23 AND SHOULD BE APPROVED

Notice provided to the Class here satisfied: (i) Rule 23 because "the best notice that is practicable under the circumstances" was directed "in a reasonable manner to all class members who would be bound by the" proposed Settlement, *see* Rule 23(c)(2)(B), (e)(1); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); *In re MGM Mirage Secs. Litig.*, 708 F. App'x 894, 896 (9th Cir. 2017); and (ii) due process because the notice was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). And, the notices adequately described the terms of the Settlement "in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Lane*, 696 F.3d at 826.

In accordance with the Preliminary Approval Order and subsequent March 16 Notice Order, Epiq mailed by First-Class mail the Postcard Notice to all potential Class Members,

[19] *See, e.g.*, *Hefler*, 2018 WL 4207245, at*11; *Nguyen*, 2014 WL 1802293, at *5; *Wireless Facilities*, 2008 WL 11338455, at *6; *Ansell v. Laikin*, 2012 WL 13034812, at *9 (C.D. Cal. July 11, 2012); *Oracle*, 1994 WL 502054, at *1.

and Nominees (in bulk), who previously received the Class Notice, as well as any other potential Class Members identified through further reasonable effort, beginning on April 10, 2020. *See* Barrero Decl., ¶¶ 7-8. On the same day, Epiq mailed the Notice Packet to the Nominees contained in its Nominee database. *Id.*, ¶ 10. To date, Epiq has disseminated 16,597 Postcard Notices and 4,244 Notices to prospective Class Members and Nominees. *Id.*, ¶ 12. On April 13, 2020, Epiq further published the Summary Notice in *Investor's Business Daily* and transmitted it over *PR Newswire*. *Id.*, ¶ 14. Contemporaneously with this multi-layered notice campaign, Epiq updated the website previously developed for this Action in connection with Class Notice, www.SeaWorldSecuritiesLitigation.com, to provide information about the Settlement and the important dates and deadlines related thereto, including downloadable copies of the Notice and Claim Form, Stipulation, Preliminary Approval Order, and Second Amended Complaint. *Id.*, ¶ 17. Epic further updated the interactive voice-response system callers hear when contacting the toll-free helpline for this matter in order to respond to inquiries regarding the Settlement. *Id.*, ¶¶ 15-16; Jt. Decl., ¶¶ 97-100.

The content disseminated through this extensive notice campaign was more than adequate, as it "generally describe[d] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Young v. LG Chem, Ltd.*, 783 F. App'x 727, 736 (9th Cir. 2019). In addition to directing Class Members to the website for additional information about the Action and Settlement, the notices collectively provided or described to Class Members, *inter alia*: (i) all of the information required by the PSLRA; (ii) the nature, history, and status of the litigation; (iii) the Class definition and exclusions therefrom; (iv) the reasons the Parties proposed the Settlement; (v) the Settlement Amount; (vi) the estimated average recovery per damaged share; (vii) the Class's claims and issues; (viii) the Parties' disagreement over damages and liability; (ix) the maximum amount of attorneys' fees and expenses for which Class Counsel and Class Representatives would seek payment from the Settlement Fund; (x) the

Plan of Allocation; (xi) the date, time, and place of the Court's final Settlement Fairness Hearing; (xii) Class Members' rights to object or participate in the Settlement Fairness Hearing; and (xiii) how to obtain additional information about the Action and Settlement by contacting Class Counsel or Epiq, or by visiting the website. *See* Barrero Decl., Exs. A & B; *see also* Jt. Decl., ¶ 98.

In sum, the robust notice campaign here provided sufficient information for Class Members to make informed decisions regarding the Settlement, fairly apprised them of their rights with respect to the Settlement, represented the best notice practicable under the circumstances, and complied with the Court's Preliminary Approval Order and March 16 Notice Order, Rule 23, the PSLRA, and due process. *See, e.g.*, *Young*, 783 F. App'x at 736; *MGM Mirage*, 708 F. App'x at 896; *Lane*, 696 F.3d at 826.

V. CONCLUSION

For each of the reasons set forth herein and in the Joint Declaration, Class Representatives respectfully request that the Court grant final approval of the Settlement, approve the Plan of Allocation, and determine that the notice campaign to the Class was adequate.

Dated: June 17, 2020

Respectfully submitted,

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Additional Counsel for Class Representatives

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Joshua E. D'Ancona
Joshua E. D'Ancona