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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 IN RE VOCERA COMMUNICATIONS,) MASTER FILE NO. 3:13-cv-03567 EMC
INC., SECURITIES LITIGATION)
18 _____) CLASS ACTION
19 This Document Relates to:)
20 All Actions.) DECLARATION OF JONATHAN
21) GARDNER IN SUPPORT OF LEAD
22) PLAINTIFFS' MOTION FOR FINAL
23) APPROVAL OF CLASS ACTION
24) SETTLEMENT AND PLAN OF
25) ALLOCATION AND LEAD COUNSEL'S
26) MOTION FOR AN AWARD OF
27) ATTORNEYS' FEES AND PAYMENT OF
28) EXPENSES
Date: June 23, 2016
Time: 1:30 p.m.
Judge: The Hon. Edward M. Chen
Dep't: 5, 17th Floor

1 I, JONATHAN GARDNER, declare as follows pursuant to 28 U.S.C. §1746:

2 1. I am a partner of the law firm of Labaton Sucharow LLP, court-appointed Lead
3 Counsel for Arkansas Teacher Retirement System (“ATRS”) and Baltimore County Employees’
4 Retirement System (“BCERS”) (together, “Lead Plaintiffs”) and the proposed Settlement Class,
5 and am admitted to appear *pro hac vice* before this Court.¹ I have been actively involved in
6 prosecuting and resolving this Action, am familiar with its proceedings, and have personal
7 knowledge of the matters set forth herein based upon my supervision and participation in all
8 material aspects of the Action.

9 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, I submit this
10 declaration in support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement
11 and Plan of Allocation of Settlement Proceeds as well as Lead Counsel’s Motion for an Award of
12 Attorneys’ Fees and Expenses. Both motions have the full support of Lead Plaintiffs. *See*
13 Declaration of George Hopkins, Executive Director of ATRS and Declaration of Keith Dorsey,
14 Director of Budget & Finance of BCERS, attached hereto as Exhibits 1 and 2 respectively.²

15 3. The Settlement will resolve all claims asserted in the Action, as well as all
16 Released Claims, against all Defendants and Released Defendant Parties on behalf of the
17 Settlement Class, which consists of all persons and entities that purchased or acquired the
18 publicly traded securities of Vocera between March 28, 2012 and May 2, 2013, inclusive, and
19 were allegedly damaged thereby (the “Settlement Class”).³ To date, there have been no
20 objections to the proposed Settlement.

21 _____
22 ¹ All capitalized terms not otherwise defined herein have the same meaning as that set forth
23 in the Stipulation and Agreement of Settlement, dated as of January 14, 2016 (the “Stipulation”,
24 ECF No. 186-1).

25 ² Citations to “Exhibit” or “Ex. ___” herein refer to exhibits to this Declaration. For clarity,
26 exhibits that themselves have attached exhibits will be referenced as “Ex. ___-___.” The first
27 numerical reference refers to the designation of the entire exhibit attached hereto and the second
28 numerical reference refers to the exhibit designation within the exhibit itself.

³ Excluded from the Settlement Class are: (i) the Defendants; (ii) members of the
immediate families of the Individual Defendants; (iii) Vocera’s subsidiaries and affiliates; (iv)
any person who is or was an officer or director of Vocera or any of Vocera’s subsidiaries or
affiliates during the Class Period; (v) any entity in which any Defendant has a controlling
interest; (vi) the Underwriters; and (vii) the legal representatives, heirs, successors and assigns of
any such excluded person or entity. Notwithstanding the foregoing sentence, any Underwriter
shall not be excluded solely to the extent it, or an agent, or affiliate thereof, held Vocera

1 **I. PRELIMINARY STATEMENT: THE SIGNIFICANT RECOVERY ACHIEVED**

2 4. After more than two years of vigorously contested litigation, Lead Plaintiffs have
3 succeeded in obtaining a recovery for the Settlement Class in the amount of \$9 million, in cash,
4 which has been deposited in an interest-bearing escrow account for the benefit of the Settlement
5 Class. As set forth in the Stipulation, in exchange for this payment, the proposed Settlement
6 resolves all claims asserted by Lead Plaintiffs and the Settlement Class in the Action and all
7 Released Claims against the Released Defendant Parties.

8 5. The proposed Settlement was negotiated at arm's-length and reached only after
9 extensive mediation conducted under the auspices of United States District Judge Layn R.
10 Phillips (Ret.) ("Judge Phillips"), as mediator. Judge Phillips is highly respected by jurists and
11 lawyers and is recognized as one of the premier mediators of complex, multi-party, high-stake
12 cases, both in the United States and abroad.

13 6. Before agreeing to the Settlement, Lead Counsel conducted an extensive
14 investigation into the events underlying the claims alleged in the Action and also conducted
15 extensive discovery. In connection with its pre-filing investigation, Lead Counsel analyzed the
16 evidence adduced from, *inter alia*: (i) reviewing and analyzing documents filed publicly by the
17 Company with the Securities & Exchange Commission ("SEC"); (ii) reviewing and analyzing
18 press releases, news articles, and other public statements issued by or concerning the Company
19 and Defendants as well as research reports issued by financial analysts concerning the Company;
20 (iii) interviewing 23 former Vocera employees and other persons with relevant knowledge; and
21 (iv) consulting with experts in damages evaluation and related causation issues in shareholder
22 securities actions. In connection with formal discovery, among other things, Lead Counsel
23 deposed the Company's Chief Executive Officer, reviewed approximately 94,300 documents
24 (approximately 483,980 pages) produced by Defendants, including emails from the Individual

25 _____
(continued)

26 securities in a fiduciary capacity or otherwise on behalf of any third-party client, account, fund,
27 trust, or employee benefit plan that otherwise falls within the definition of the Settlement Class.
28 Also excluded from the Settlement Class are any Settlement Class Members who properly
exclude themselves by submitting a valid and timely request for exclusion in accordance with the
requirements set forth in the Notice.

1 Defendants, and approximately 31,500 documents (approximately 287,000 pages) produced in
2 connection with third party discovery. At the time the Settlement was reached, Lead Counsel
3 had a thorough understanding of the strengths and weaknesses of the Parties' positions.

4 7. The Settlement Amount of \$9 million is above median reported settlement
5 amounts, which was \$6.1 million in 2015. See Laarni T. Bulan, Ellen M. Ryan, and Laura E.
6 Simmons, *Securities Class Action Settlements- 2015 Review and Analysis* (Cornerstone Research
7 2016) (Ex. 3 hereto) at 6.

8 8. Further, as discussed below, Lead Plaintiffs retained an expert to analyze loss
9 causation issues and estimate potential damages. Lead Plaintiffs' consulting damages expert has
10 estimated maximum aggregate damages for the class in the range of approximately \$100 million
11 to \$225 million, assuming that 100% of the two alleged stock drops were proven to relate to
12 revelations of the alleged fraud. This range is also a function of when the "locked-up" shares
13 from Vocera's March 28, 2012 initial public offering ("IPO") and the September 7, 2012
14 secondary public offering ("SPO") are assumed to have begun trading. The most aggressive end
15 of the range (\$225 million in damages) assumes that the locked-up shares were bought by class
16 members at the end of 2012, after both lock-ups had expired. A more moderate approach
17 (resulting in \$169 million in damages) assumes that the locked-up shares were bought when each
18 of the lock-up dates expired (September 24, 2012 for the IPO shares and November 7, 2012 for
19 the SPO shares). A more conservative estimate of maximum damages (resulting in \$101.5
20 million in damages) was calculated by using a computer model to estimate when the locked-up
21 shares entered the market over time.⁴

22 9. Pursuant to the above estimate of damages, the \$9 million Settlement represents a
23 gross recovery of approximately 4% to 9% of Lead Plaintiffs' consulting expert's best case
24 estimated damages—a favorable recovery in light of the countervailing legal and factual
25

26 ⁴ As set forth below, Defendants believe that damages are substantially smaller than Lead
27 Plaintiffs estimate due to Defendants' position that only a small fraction, if any, of the stock
28 price declines on February 28 and May 3, 2013 can be attributed to corrective information.
Damages would also decrease if only one of the alleged corrective disclosures was established at
trial.

1 arguments and litigation risks. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
2 1042 (N.D. Cal. 2008) (\$13.75 million settlement yielding 6% of potential damages was “higher
3 than the median percentage of investor losses recovered in recent shareholder class action
4 settlements”); *see also* Lead Plaintiffs’ Notice of Motion and Motion for Final Approval of Class
5 Action Settlement and Plan of Allocation and Memorandum of Points and Authorities in Support
6 Thereof (“Approval Brief”), §I.B.4.

7 10. In choosing to settle, Lead Plaintiffs and Lead Counsel took into consideration the
8 significant risks associated with advancing the claims alleged in the Complaint, as well as the
9 duration and complexity of the legal proceedings that remained ahead. As discussed in more
10 detail in Section IX., *infra*, there were risks that the Court would find as a matter of law that
11 Lead Plaintiffs’ evidence in support of falsity, loss causation, and/or scienter did not create a
12 genuine issue of material fact. Additionally, Lead Plaintiffs’ motion for class certification was
13 pending at the time the Parties agreed to settle and there was a risk that the Court would not
14 certify the class. Further, Lead Plaintiffs faced additional trial-related risks. For example, there
15 was a substantial risk that, despite the use of testimony from respected experts, a jury might not
16 understand the complex issues to be presented concerning healthcare reform and the use of
17 backlog to meet quarterly revenue, or might not accept Lead Plaintiffs’ arguments regarding the
18 causal relationship between Defendants’ alleged corrective disclosures and the drop in price of
19 Vocera’s securities. Issues relating to loss causation and damages would likely have come down
20 to an inherently unpredictable and hotly disputed “battle of the experts,” with Defendants’
21 experts focusing heavily on other confounding information. Furthermore, there was a significant
22 risk that a jury could find that during the Class Period Defendants did not act with the required
23 state of mind, *i.e.*, with scienter. Accordingly, in the absence of a settlement, there was a very
24 real risk that the Settlement Class could have recovered nothing or an amount significantly less
25 than the negotiated Settlement.

26 11. Lead Plaintiffs and Lead Counsel carefully considered all of these issues in
27 deciding to settle the Action for \$9,000,000. On balance, considering all the circumstances and
28 risks both sides faced if the Parties had continued to trial, both Lead Plaintiffs, for themselves

1 and the Settlement Class, and Defendants concluded that settlement on the terms agreed upon
2 was in their respective best interests.

3 12. Lead Counsel and Liaison Counsel, Robbins Geller Rudman & Dowd LLP
4 (collectively, "Plaintiffs' Counsel"), prosecuted this Action on a wholly contingent basis and
5 advanced and incurred significant litigation expenses. By doing so, Plaintiffs' Counsel
6 shouldered the risk of an unfavorable result. Plaintiffs' Counsel have not received any
7 compensation for their efforts, nor have they been paid for their substantial expenses incurred to
8 date. The complex nature and scope of the facts and law underlying the alleged securities
9 violations resulted in the investment of 9,695 hours of attorney and other professional and
10 paraprofessional time, as well as expenses of \$382,010.86. *See* §XI., *infra*.

11 13. Lead Counsel's fee application for 25% of the Settlement Fund is fair both to the
12 Settlement Class and to Lead Counsel, and warrants the Court's approval. This fee request is
13 within the range of fee percentages frequently awarded in this type of action and, under the
14 particular facts of this case, is fully justified in light of the substantial benefits that Lead Counsel
15 conferred on the Settlement Class, the risks it undertook, the quality of its representation, the
16 nature and extent of the legal services, and the fact that counsel pursued the case on a
17 contingency basis.

18 **II. SUMMARY OF LEAD PLAINTIFFS' CLAIMS**

19 14. Vocera is a communications company that markets and sells communications
20 systems primarily to hospitals and healthcare centers. In its March 2012 IPO, which marks the
21 beginning of the Class Period, Vocera billed itself as a "growth" company with a potential
22 untapped market worth over \$6 billion dollars. As set forth in detail below, Lead Plaintiffs
23 alleged that Defendants made materially false and misleading statements and omissions by
24 touting the growth of the Company to investors as strong and consistent, while failing to disclose
25 that the Company was not performing as well as Defendants had led the market to believe, and
26 that Vocera was shipping products from its backlog of bookings ahead of time to pump up its
27 quarterly sales figures, thereby concealing the Company's ongoing shortfalls in projected sales
28 and revenue.

1 15. Lead Plaintiffs alleged that on February 27, 2013, in a partial revelation of the
2 truth, Defendants disclosed for the first time that the Company was seeing delays in government
3 deals due to the Budget Control Act (“BCA”, also known as budget sequestration) and that the
4 Company’s bookings were down and its backlog had decreased year over year. Lead Plaintiffs
5 also alleged that on May 2, 2013, Vocera announced that results for the first quarter of 2013
6 (ended March 21, 2013) would be slightly lower than expected due to customers’ expense
7 reductions associated with healthcare reform (including the Affordable Care Act (“ACA”)), the
8 BCA, and unrelated sales execution issues. Vocera also reduced its annual guidance for 2013 at
9 that time. Lead Plaintiffs alleged that these facts evidenced that Defendants’ growth story had
10 been compromised.

11 16. Lead Plaintiffs filed the Consolidated Amended Class Action Complaint on
12 September 19, 2014 (the “Complaint”) (ECF No. 104). The Complaint asserted violations of
13 Section 11 of the Securities Exchange Act of 1933 (the “Securities Act”) by Vocera, the
14 Individual Defendants, certain of Vocera’s directors, as well as J.P. Morgan Securities LLC,
15 Piper Jaffray & Co., Robert W. Baird & Co., William Blair & Company, LLC, Wells Fargo
16 Securities, LLC, and Leerink Partners LLC (the “Underwriters”); violations of Section 12(a)(2)
17 of the Securities Act by Vocera and the Underwriters; violations of Section 15 of the Securities
18 Act by the Individual Defendants and certain of Vocera’s directors; violations of Section 10(b) of
19 the Securities Exchange Act of 1934 (the “Exchange Act”) by Vocera and the Individual
20 Defendants; and violations of Section 20(a) of the Exchange Act by the Individual Defendants.⁵

21 17. Defendants have denied and continue to deny any wrongdoing or that they have
22 committed any act or omission giving rise to any liability or violation of law, including the U.S.
23 securities laws. Defendants have denied and continue to deny each of the claims alleged by Lead
24 Plaintiffs on behalf of the Settlement Class, including all claims in the Complaint. Defendants
25 believe that they have meritorious defenses to all claims asserted or that could have been asserted
26 based on the allegations of the Complaint. Defendants also have denied and continue to deny,

27 _____
28 ⁵ As detailed below in Section III.D., only the claims asserted under the Exchange Act
survived the motions to dismiss.

1 among other things, that Lead Plaintiffs and the Settlement Class have suffered damages; that the
2 prices of Vocera securities were artificially inflated by reason of the alleged misrepresentations,
3 non-disclosures, or otherwise; and that Lead Plaintiffs and the class were otherwise harmed in
4 any other way by the conduct alleged in the Complaint.

5 **III. RELEVANT PROCEDURAL HISTORY**

6 18. The Action was commenced on August 1, 2013 by the filing of an initial
7 complaint in the United States District Court for the Northern District of California, alleging
8 violations of the federal securities laws. ECF No. 1. Another securities class action complaint
9 was also filed in the United States District Court for the Northern District of California, *Duncan*
10 *v. Vocera Communications, Inc.*, Case No. 13-CV-05399 JST, and the actions were consolidated
11 into this Action by Order dated November 20, 2013. ECF No. 61.

12 **A. Appointment of Lead Plaintiffs**

13 19. On November 20, 2013, pursuant to the provisions of the Private Securities
14 Litigation Reform Act of 1995 (“PSLRA”), the Court appointed ATRS and BCERS as Lead
15 Plaintiffs and approved their selection of Labaton Sucharow to serve as Lead Counsel
16 representing the putative class. ECF No. 61.

17 **B. Lead Plaintiffs’ Motion to Review and Use Documents Gathered During the**
18 **Investigation**

19 20. During the course of Lead Plaintiffs’ investigation of the facts underlying the
20 matters in the Action, issues arose with respect to certain Vocera documents that had been
21 provided to one of Lead Counsel’s investigators.

22 21. On April 22, 2014, Lead Plaintiffs filed a motion seeking Court approval to use
23 the Vocera documents in advance of discovery going forward, which motion Defendants
24 opposed. ECF Nos. 73 and 82.

25 22. On July 10, 2014 the Court heard argument on Lead Plaintiffs’ motion. On July
26 30, 2014, the Court issued an order (ECF No. 93), permitting Lead Counsel to use certain of the
27 documents subject to a protective order and claims of privilege.
28

1 **C. The Complaint**

2 23. Lead Plaintiffs filed the Complaint on September 19, 2014. As noted above, the
3 Complaint was the result of a significant effort by Lead Counsel which included, among other
4 things: (i) review and analysis of documents filed by the Company with the SEC; (ii) review and
5 analysis of press releases, news articles, and other public statements issued by or concerning
6 Defendants; (iii) review and analysis of research reports issued by financial analysts concerning
7 the Company; (iv) review and analysis of industry specific legislation, including the ACA and
8 BCA; (v) locating and contacting dozens of former Vocera employees and other witnesses with
9 relevant knowledge, with the accounts of four former employees included in the Complaint as
10 confidential witness accounts; (vi) review and analysis of internal Vocera documents provided
11 by former Vocera employees; and (vii) review and analysis of news articles, media reports, and
12 other publications concerning the Company.

13 24. Additionally, in their effort to prepare the Complaint, Lead Counsel consulted
14 with an expert concerning loss causation and damages.

15 25. The Complaint alleged, among other things, that with respect to the Exchange Act
16 claims, that Defendants made false and misleading statements regarding the effect of the ACA
17 and the BCA and the true financial condition of the Company. In particular, the Complaint
18 alleged that at the time of the IPO and during the Class Period, healthcare reform (and later, the
19 BCA) was negatively impacting Vocera's business in the form of reduced bookings (sales), as
20 hospitals tightened their belts on the large capital outlays required to install and operate Vocera's
21 product. Complaint ¶¶94-97. As alleged in the Complaint, to mask the effect that healthcare
22 reform was having on the Company, Defendants allegedly recognized revenue ahead of
23 schedule, pulling in orders from backlog to make up for the revenue shortfall and to "smooth"
24 Vocera's earnings. *Id.* ¶¶103-04, 111-15. The Complaint alleged that during this time,
25 Defendants continued to tout the Company's growth and "strong results" allegedly misleading
26 the market as to Vocera's true financial condition. *Id.* ¶¶170-72, 191, 214.

27 26. With respect to the Securities Act claims, the Complaint alleged that the
28 registration statement issued in connection with Vocera's IPO, represented that new healthcare

1 reform legislation (the ACA) was having a positive impact on the market for Vocera's product.
2 *Id.* ¶¶343, 349-53, 365-72. The Complaint also alleged that the registration statement issued in
3 connection with Vocera's SPO repeated these positive statements. *Id.* ¶¶354-355, 373-79. The
4 Complaint alleged that Defendants failed to disclose that at the time of the IPO and the SPO,
5 health care reform was having a negative impact on Vocera's bookings and revenues. *Id.* ¶¶358-
6 63, 371-72, 380-81.

7 27. On February 27, 2013, in an alleged partial disclosure of the truth, Defendants
8 disclosed that the Company was seeing delays in government deals due to the BCA and that the
9 Company's bookings were down and backlog had decreased year over year. Vocera's stock
10 dropped from \$29.07 to \$26.37, or over 9%. *Id.* ¶¶20, 237-46. Defendants, however, allegedly
11 continued to provide the market with revenue guidance that was higher than the annual guidance
12 the Company had allegedly struggled to meet in 2012 and continued to assure the market that the
13 Company was on a positive growth trajectory. *Id.*

14 28. On May 2, 2013, Vocera announced that results for the first quarter of 2013
15 (ended March 31, 2013) would be slightly lower than expected due to customer's expense
16 reductions associated with healthcare reform, the BCA, and unrelated sales execution issues.
17 Vocera also reduced its annual guidance for 2013 at that time. *Id.* ¶¶21-22, 146. Lead Plaintiffs
18 alleged that these facts evidenced that Defendants' growth story had been compromised.

19 29. Lead Plaintiffs alleged that, as a result of these revelations, Vocera's stock
20 plunged over 37% – closing at an all-time low of \$12.15 per share on May 3, 2013, more than
21 24% below the IPO price, 57% below the price of the SPO, and over 63% below the Class Period
22 high of \$32.97. *Id.* ¶23.

23 **D. Defendants' Motions to Dismiss the Complaint**

24 30. Defendants, certain of the Company's outside directors, and the Underwriters
25 filed motions to dismiss the Complaint on November 3, 2014. ECF Nos. 110 and 111. With
26 respect to the Exchange Act Claims, Defendants argued, *inter alia*, that: (i) statements in
27 Vocera's earnings calls and releases, offering materials and 10-K were identified as forward
28 looking and included meaningful cautionary language, and therefore, were protected by the

1 PSLRA’s “safe harbor”; (ii) Lead Plaintiffs failed to specify how the alleged misstatements were
2 false and misleading given that, among other reasons, this was not a restatement case and at no
3 time had Vocera adjusted its financial results or backtracked on its historical accounting; (iii)
4 Lead Plaintiffs could not establish that the Company’s executives had actual knowledge that
5 their forward-looking statements were materially false or that they acted with the requisite
6 *scienter* given that (a) the confidential witnesses lacked personal knowledge to credit their
7 assertions and none of the confidential witnesses claimed that defendants actually engaged in
8 fraud, and (b) the stock sales of Zollars, Lang, and Zerella were neither suspicious in amount or
9 in timing; and (iv) Lead Plaintiffs failed to allege loss causation because nothing in Vocera’s
10 supposedly corrective disclosures on February 27, 2013 and May 2, 2013 tied the Company’s
11 disappointing results to any sort of fraudulent practice. *See* ECF No. 111.

12 31. With respect to the Securities Act claims, Defendants and the outside directors
13 argued that Lead Plaintiffs’ Securities Act claims failed for the same reasons that Lead Plaintiffs’
14 Exchange Act claims failed – there were no facts establishing a materially false statement or
15 omission in the Offering Materials regarding the Company’s growth prospects or the effects of
16 the ACA on Vocera’s business. They also argued that the Complaint failed to allege a known
17 trend or uncertainty required to be disclosed under the securities laws. Finally, they argued that
18 the alleged misstatements in the Offering Materials were protected by the “bespeaks caution”
19 doctrine. ECF No. 110.

20 32. In their opposition to the motion to dismiss the Exchange Act claims, filed with
21 the Court on November 26, 2014, Lead Plaintiffs argued, among other things, that: (i) the
22 accounts of many of the confidential witnesses supporting the Complaint were well-pleaded and
23 independently supported by the Company’s own internal documents; and (ii) Defendants’
24 misstatements and omissions regarding the ACA, the BCA, financial results, the Company’s
25 current success and growth, and future projections of growth were actionable and not protected
26 by the PSLRA’s “safe harbor” because: (a) they were not forward-looking; (b) they were not
27 identified as forward-looking; (c) they were not accompanied by the requisite cautionary
28

1 language, and (d) for those statements that included purported cautionary language, the
2 cautionary language was not “meaningful.” ECF No. 120.

3 33. Lead Plaintiffs also argued that the Complaint adequately pled a strong inference
4 of *scienter*, positing that *scienter* was supported by internal Company documents which detailed
5 the booking and revenue shortfalls during the Class Period; reliable confidential witnesses; the
6 fact that Defendants Zollars’ and Lang’s Class Period stock sales were dramatically out of line
7 with their trading during the months following the Class Period; the inferences arising from the
8 “core operations doctrine”; and the temporal proximity between statements made on March 22,
9 2013 when the Company told the market that Vocera’s growth story was intact and statements
10 made just five weeks later regarding disappointing results and reduced guidance. *Id.*

11 34. In their opposition to the motion to dismiss the Securities Act Claims, filed with
12 the Court on November 26, 2014, Lead Plaintiffs argued, among other things, that none of
13 Defendants’ arguments were supported by the authority upon which they relied, and Defendants
14 ignored the indisputable allegations of the confidential witnesses and the Company’s own
15 documents. ECF No. 121.

16 35. On December 17, 2014, Defendants, along with the outside directors, and the
17 Underwriters filed reply briefs in further support of their motions to dismiss the Complaint. ECF
18 Nos. 124 and 127.

19 36. On February 11, 2015, after a hearing and thorough argument, the Court issued its
20 Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss (the “MTD Order”).
21 ECF No. 143. The Court denied the motion to dismiss the Exchange Act claims and granted
22 without prejudice the motion to dismiss the claims brought under the Securities Act. Therefore,
23 pursuant to the MTD Order, the claims against Vocera’s outside directors and the Underwriters
24 were dismissed. With respect to the Exchange Act claims, the Court found that, for the reasons
25 stated on the record during the hearing on the motions to dismiss, Lead Plaintiffs’ “allegations
26 stated with particularity why Defendants’ statements and omissions regarding Vocera’s growth
27 and the effects of the ACA and BCA were misleading.” *Id.* at 2-3. The Court also found that
28 Lead Plaintiffs’ “allegations create a ‘strong inference’ of *scienter*.” *Id.* at 3 (citation omitted).

1 37. On April 27, 2015, Defendants served their Answer to the Complaint and asserted
2 29 affirmative defenses. ECF No. 156.

3 **E. Rule 26(f) Reports and Case Management**

4 38. Following the Court's MTD Order, on February 19, 2015, the Parties filed an
5 Updated Joint Case Management Conference Statement, pursuant to Rule 26(f) of the Federal
6 Rules of Civil Procedure, where the Parties set forth their respective positions on the
7 commencement of discovery concerning the Exchange Act Claims (Lead Plaintiffs stating it
8 should commence immediately; Defendants stating it should remain stayed unless and until Lead
9 Plaintiffs notified Defendants that they would not file an amended pleading or Lead Plaintiffs'
10 Securities Act claims survive a motion to dismiss) and set forth proposed dates for class
11 certification, fact discovery, expert discovery, and summary judgment, among other dates. ECF
12 No. 144.

13 39. On February 26, 2015, the Court held a case management conference where the
14 Court heard the Parties' views on the commencement of discovery, as previously outlined in the
15 February 19, 2015 Updated Joint Case Management Conference Statement. The Court stated
16 that the Parties were allowed to proceed with discovery on claims not dismissed. ECF No. 145.

17 40. On April 3, 2015, the Court entered a Case Management and Pretrial Order for
18 Jury Trial (ECF No. 152), setting forth updated dates for the filing of a class certification motion
19 and related briefing, fact and expert discovery cut-off, summary judgment, and hearings on class
20 certification and summary judgment. The Court also directed the Parties to participate in private
21 mediation by December 31, 2015 and set a trial date for December 5, 2016.

22 **IV. EXTENSIVE FACT DISCOVERY, INVESTIGATION, AND ANALYSIS**

23 41. Prior to reaching the Settlement, Defendants and non-parties produced, and Lead
24 Counsel reviewed, almost 771,000 pages of core documents. This discovery is discussed below.

25 **A. Discovery Propounded On Defendants**

26 42. On March 11, 2015, Lead Plaintiffs served their first set of document requests on
27 Defendants. These expansive, thorough requests covered forty-nine separate categories.
28 Defendants served their written responses and objections to the requests on April 13, 2015 and

1 began a rolling production of documents on April 15, 2015. Subsequent productions took place
2 on or about June 4, 2015, July 22, 2015, August 20, 2015, August 28, 2015, September 10, 2015,
3 September 24, 2015, and October 8, 2015.

4 43. On May 11, 2015, the Parties exchanged initial disclosures pursuant to Federal
5 Rule of Civil Procedure 26(a)(1)(A).

6 44. Lead Plaintiffs also served Requests for Admission on Defendants on June 5,
7 2015. Defendants served their objections and responses to the Requests for Admission on July 6,
8 2015.

9 45. Defendants' objections, responses, and initial production to Lead Plaintiffs'
10 discovery requests prompted numerous meet and confer sessions with Defendants as to the scope
11 and manner of Defendants' document production. Through this effort and over the course of
12 many weeks of meet and confer sessions and protracted letter-writing on various discovery
13 matters, the Parties successfully came to agreement on many issues, including search terms,
14 custodians, a protocol for electronically stored information, a protocol for a privilege log, and the
15 relevant time frame for which Defendants would search for and produce documents.

16 46. Lead Counsel made great efforts and employed significant resources, including
17 technical resources, to review and cull Defendants' production. To properly analyze and process
18 this technical and proprietary information in a cost-effective and efficient manner, Lead Counsel
19 developed a document review process that encompassed a number of resources.

20 47. First, in order to facilitate the cost and time-efficient nature of this process,
21 documents were placed in an electronic database that was created and maintained by Liaison
22 Counsel, Robbins Geller. The database allowed counsel to search for documents through
23 Boolean-type searches, as well as by multiple categories, including author and/or recipients, type
24 of document (*e.g.*, emails, memoranda, and SEC filings), date, and Bates number. The database
25 also provided a streamlined ability to cull and organize witness specific documents in folders for
26 review and any necessary mediation preparation.

27 48. Second, to perform an initial review of Defendants' document production, a team
28 of attorneys was assembled by Lead Counsel. The majority of the attorneys working on the

1 review possessed extensive experience reviewing documents in complex cases, including cases
2 of a technical nature.

3 49. Much of the initial review (“first level review”) was conducted by attorneys
4 experienced in electronic document discovery in securities and complex cases, many of whom
5 had performed similar functions in other matters. These attorneys utilized review guidelines and
6 protocols that were put in place and monitored regularly to ensure efficient and accurate review
7 of the documents. This initial review was structured to avoid duplicative work and to minimize,
8 to the extent possible, the amount of hours necessary for document review. An experienced team
9 of attorneys oversaw the review to ensure that it was as thorough and efficient as possible and to
10 thereafter closely examine the more probative or “hot” documents.

11 50. All aspects of the document review were carefully supervised to eliminate
12 inefficiencies and to ensure a high quality work-product. This supervision included multiple in-
13 person training sessions, the creation of a set of relevant materials and protocols, including a
14 coding sheet, presentations regarding the key legal and factual issues in the case, and in-person
15 instruction from more senior attorneys.

16 **B. Lead Plaintiffs’ Deposition of Defendants’ 30(b)(6) Witness**

17 51. On June 12, 2015, Lead Plaintiffs took the deposition of Defendants’ 30(b)(6)
18 witness, Brent Lang (the Company’s current CEO) in California. The deposition lasted over four
19 hours and covered a myriad of topics including, for example: (i) the Company’s bookings and
20 backlog procedures, (ii) the identify of Vocera personnel responsible for preparing Vocera’s
21 business plans or strategies; (iii) processes and procedures for monitoring, analyzing, and
22 reporting Vocera’s actual or projected sales; and (iv) processes and procedures for monitoring,
23 analyzing, and reporting the impact of regulations and pending regulations like the ACA and the
24 BCA on Vocera’s business.

25 **C. Discovery Propounded On Lead Plaintiffs**

26 52. Lead Plaintiffs also actively responded to discovery requests. On March 30,
27 2015, Defendants served their First Set of Document Requests and First Set of Interrogatories on
28 Lead Plaintiffs. Lead Plaintiffs served their written responses and objections on May 4, 2015.

1 On June 10, 2015, Defendants served their Second Request for Production of Documents on
2 Lead Plaintiffs. Lead Plaintiffs served supplemental responses and objections on June 26, 2015.
3 Lead Plaintiffs produced responsive documents, including account statements and trading
4 activity, among other types of documents. The discovery responses and production of
5 documents were the subjects of an extensive meet and confer process between the Parties to
6 negotiate the scope of Lead Plaintiffs' responses and production.

7 53. All of the documents produced by Lead Plaintiffs were placed in an electronic
8 database that was created by and maintained by Precision Discovery, an external technology and
9 litigation support vendor. The database, called Relativity, allowed Lead Counsel to search for
10 documents through Boolean-type searches, as well as by multiple categories, such as by author
11 and/or recipients, type of document, date, bates number, etc.

12 54. Defendants also served deposition notices on Lead Plaintiffs and deposed two
13 Rule 30(b)(6) representatives of the Lead Plaintiffs. Lead Counsel defended each of these
14 depositions. The depositions taken of Lead Plaintiffs are set forth below, and covered topics
15 relating to Lead Plaintiffs' trading of Vocera stock and each plaintiff's adequacy to serve as a
16 Class Representative.

- 17 • Defendants deposed Keith Dorsey, Director of Budget and Finance at
18 BCERS, on July 29, 2015 in San Francisco, California, who testified as a
19 Rule 30(b)(6) witness for BCERS. The deposition lasted more than five
20 hours.
- 21 • Defendants deposed Rodney Graves, a Senior Investment Manager at
22 ATRS, on August 5, 2015, in San Francisco, California who testified as a
23 Rule 30(b)(6) witness for ATRS. The deposition lasted more than five
24 hours.

25 **D. Third-Party Discovery**

26 55. Lead Plaintiffs served third-party subpoenas on at least 35 non-parties, including
27 Vocera's customers, analysts, underwriters, auditors, and consultants seeking documents relevant
28 to Lead Plaintiffs' claims. Lead Plaintiffs received documents from 11 of these non-parties,
constituting approximately 287,000 pages of documents.

1 **V. LEAD PLAINTIFFS' CLASS CERTIFICATION MOTION**

2 56. On July 15, 2015, Lead Plaintiffs filed their motion for class certification, seeking
3 certification of a class of all persons and entities who purchased or acquired the publicly traded
4 securities of Vocera between March 28, 2012 and May 2, 2013, inclusive and who were
5 damaged thereby. Lead Plaintiffs also moved for their appointment as Class Representatives and
6 for the appointment of Labaton Sucharow as Class Counsel and Robbins Geller as Liaison
7 Counsel. *See* ECF No. 163.

8 57. In connection with this motion, Lead Plaintiffs submitted an expert report by
9 Professor Steven P. Feinstein, Ph.D., CFA ("Feinstein Report") who opined on, among other
10 things, whether the common stock of Vocera traded in an efficient market during the Class
11 Period and whether damages can be computed using a common methodology for all class
12 members. *See* ECF No. 164-2.

13 58. Defendants filed their opposition to Lead Plaintiffs' motion on September 2,
14 2015. ECF No. 170. Among other things, Defendants argued that Lead Plaintiffs failed to
15 satisfy their burden of providing evidence sufficient to demonstrate that the element of reliance is
16 subject to common proof. In making this argument, Defendants challenged the conclusions and
17 analyses set forth in the Feinstein Report and submitted a report from their own expert -
18 Professor Steven Grenadier (ECF No. 173) - who opined that Professor Feinstein did not
19 examine: (i) the speed of price reactions; (ii) whether the stock fully incorporated new
20 information; and (iii) whether Vocera's stock responded to news on other days, among other
21 things. ECF No. 170 at 10. Defendants also argued that Lead Plaintiffs failed to show how
22 damages can be established on a class-wide basis. *Id.* at 14-20. Defendants also challenged the
23 typicality and adequacy of ATRS and BCERS. *Id.* at 23.

24 59. Lead Plaintiffs filed their reply brief in further support of class certification on
25 September 30, 2015. ECF No. 179. In connection with this filing, Lead Plaintiffs submitted a
26 Reply Declaration of Professor Feinstein. ECF No. 180-1. Lead Plaintiffs argued that
27 Defendants failed to rebut the presumption of market efficiency and that Grenadier's critique of
28

1 Feinstein's analysis was both unsupported by any legal authority or evidence and was
2 misleading.

3 60. Lead Plaintiffs' motion for class certification was pending when the Parties
4 agreed to settle the Action.

5 **VI. LEAD PLAINTIFFS' EXPERT**

6 61. As noted above, Lead Plaintiff retained Professor Feinstein to prepare an initial
7 expert report and a rebuttal expert report in connection with Lead Plaintiffs' motion for class
8 certification. Lead Plaintiff also utilized Professor Feinstein to prepare a damages analysis in
9 connection with Lead Plaintiffs' mediation discussions with Defendants. This damages analysis
10 was valuable in helping Lead Counsel achieve the Settlement.

11 **VII. NEGOTIATION OF THE SETTLEMENT**

12 62. The Parties agreed to participate in a mediation scheduled for October 15, 2015
13 before Judge Phillips. The mediation was preceded by the exchange of mediation statements
14 detailing the Parties' respective positions and supporting evidence. Lead Counsel worked
15 diligently and extensively to prepare Lead Plaintiffs' Mediation Statement, while marshaling the
16 facts and documentary evidence obtained through their fact discovery and consultation with and
17 input from their loss causation and damages expert. The Parties' respective mediation statements
18 thoroughly set forth Lead Plaintiffs' and Defendants' respective positions and included
19 substantial supporting documentation.

20 63. On October 15, 2015, the Parties, by their representatives, along with Lead
21 Plaintiff ATRS, participated in a lengthy mediation in Corona del Mar, California, facilitated by
22 Judge Phillips. The October 15, 2015 mediation session resulted in an agreement-in-principle to
23 settle the Action.

24 64. Lead Plaintiffs and Defendants thereafter memorialized the final terms of
25 settlement in the Stipulation, which was executed by the Parties on January 14, 2016 and filed
26 with the Court on January 15, 2016 (ECF No. 186-1), along with Lead Plaintiffs' motion and
27 supporting memorandum of points and authorities seeking preliminary approval of the
28 Settlement (ECF No. 186). On February 12, 2016, the Court issued an Order Re Supplemental

1 Briefing and/or Evidence (ECF No. 188), requesting the Parties to submit a supplemental brief
2 on a few issues, including the scope of the Release, strength of Lead Plaintiffs' case, why certain
3 requested information is needed in connection with exclusion requests and objections, and edits
4 to the long-form Notice and Summary Notice, among other things. Following the Parties' Joint
5 submission on February 19, 2016 and a hearing before the Court on March 3, 2016, the Court
6 entered an amended order on March 4, 2016 (ECF No. 198) preliminarily approving the
7 Settlement, preliminarily certifying the Settlement Class, and directing the Parties to give notice
8 to the Settlement Class. *Id.*

9 **VIII. LEAD PLAINTIFFS' COMPLIANCE WITH PRELIMINARY APPROVAL**
10 **ORDER**

11 65. Pursuant to the Preliminary Approval Order, the Court appointed The Garden City
12 Group ("GCG") as Claims Administrator and instructed GCG to disseminate copies of the
13 Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and
14 Expenses and Proof of Claim (collectively the "Claim Packet") by mail and to publish the
15 Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys'
16 Fees and Expenses.

17 66. The Notice, attached as Exhibit A to the Affidavit of Jose C. Fraga Regarding (A)
18 Mailing of the Notice and Proof of Claim Form; (B) Publication of Summary Notice; (C)
19 Website and Telephone Helpline; and (D) Report on Requests for Exclusions and Objections
20 Received to Date ("Mailing Affidavit" or "Mailing Aff.") (attached as Ex. 4 hereto), provides
21 potential Settlement Class Members with information on the terms of the Settlement and, among
22 other things: their right to exclude themselves from the Settlement Class; their right to object to
23 any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the
24 manner for submitting a Claim Form in order to be eligible for a payment from the net proceeds
25 of the Settlement. The Notice also informs Settlement Class Members of Lead Counsel's
26 intention to apply for an award of attorneys' fees of no more than 25% of the Settlement Fund
27 and for payment of litigation expenses in an amount not to exceed \$450,000.
28

1 67. As detailed in the Mailing Affidavit, on March 18, 2016, GCG began mailing
2 Claim Packets to potential Settlement Class Members as well as banks, brokerage firms, and
3 other third party nominees whose clients may be Settlement Class Members. Mailing Aff. ¶¶3-5.
4 In total, to date, GCG has mailed 19,847 Claim Packets to potential nominees and Settlement
5 Class Members by first-class mail, postage prepaid. *Id.* ¶6. To disseminate the Notice, GCG
6 obtained the names and addresses of potential Settlement Class Members from listings provided
7 by Vocera's transfer agent and from banks, brokers and other nominees. *Id.* ¶¶3-5.

8 68. On April 1, 2016, GCG caused the Summary Notice to be published in *Investor's*
9 *Business Daily* and to be transmitted over *PR Newswire*. *Id.* ¶8 and Exhibits C and D attached
10 thereto.

11 69. GCG also maintains and posts information regarding the Settlement on a
12 dedicated website established for the Action, www.vocerasecuritieslitigation.com, to provide
13 Settlement Class Members with information concerning the Settlement, as well as downloadable
14 copies of the Claim Packet and the Stipulation. *Id.* ¶9. In addition, Lead Counsel has made
15 relevant documents concerning the Settlement available on its firm website.

16 70. Pursuant to the terms of the Preliminary Approval Order, the deadline for
17 Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the
18 Fee and Expense Application, or to request exclusion from the Settlement Class is June 2, 2016.
19 To date, no objections have been filed with the Court and the Claims Administrator has not
20 received any requests for exclusion from the Settlement Class. *Id.* ¶¶13-15. Should any
21 objections or requests for exclusion be received, Lead Plaintiffs will address them in their reply
22 papers, which are due June 9, 2016.

23 **IX. RISKS FACED BY LEAD PLAINTIFFS IN THE ACTION**

24 71. Based on publicly available information, documents obtained through discovery,
25 discussions with expert consultants, and the extensive review of documentary evidence secured
26 in the Action, Lead Plaintiffs believe that they would be able to adduce evidence to establish
27 Lead Plaintiffs' Exchange Act claims. However, Lead Plaintiffs also realize that they faced
28 considerable risks and defenses in continuing the Action against Defendants. Lead Plaintiffs and

1 their counsel carefully considered these risks during the months leading up to the Settlement and
2 throughout the settlement discussions with Defendants and the mediator.

3 **A. Risks in Proving that Defendants Made False Statements**

4 72. In order for Lead Plaintiffs to prevail, they would first have to establish that
5 Defendants made actionable false or misleading statements or material omissions. Defendants
6 would undoubtedly argue that Lead Plaintiffs could not demonstrate that any of their statements
7 were fraudulent, maintaining as they have throughout the litigation that nothing they said was
8 false, deceptive, or misleading when these statements were made.

9 73. Defendants would likely argue that the statements in contained in Vocera's
10 earnings calls, releases, offering materials, and 10-K, including Vocera's forecasts and guidance,
11 and the statements underlying those forecasts, such as predictions of growth and performance
12 and the anticipated effects of the ACA, are protected from liability by the PSLRA "safe harbor."⁶
13 In particular, Defendants would argue that the statements were identified as forward-looking and
14 accompanied by meaningful cautionary language and thus protected by the first prong of the safe
15 harbor. Defendants would argue, for example, that the disclosures warned investors of Vocera's
16 heavy reliance on the healthcare sector; the high cost of its products; of the changing political,
17 legislative, regulatory, and other influences; the inability to predict the ultimate effect of the
18 ACA on Vocera; and that Vocera might not be able to sustain or increase revenue or achieve the
19 growth rates that it envisioned. With respect to the second prong, Defendants would likely argue
20 that Lead Plaintiffs cannot point to a single fact suggesting that Defendants knew their
21 projections were unattainable given that Vocera met or beat its guidance every quarter in 2012
22 and for FY2012.

23 74. Defendants would also continue to argue that this is not a restatement case and at
24 no time did Lead Plaintiffs allege that Vocera adjusted its financial results or backtracked on its
25 historical accounts. Accordingly, Lead Plaintiffs would face a challenge in rebutting

26 _____
27 ⁶ The PSLRA created a two-pronged "safe harbor" protecting forward-looking statements:
28 (i) the statement is accompanied by "meaningful cautionary statements"; or (ii) plaintiffs fail to
establish that the statement was "made with actual knowledge . . . that the statement was false or
misleading." 15 U.S.C. ¶78u-5(c).

1 Defendants' argument that the misstatements could not have been false or misleading when
2 made.

3 75. Defendants would also likely argue that Lead Plaintiffs' claim that Defendants
4 misled the market by improperly accelerating backlog to meet public guidance in order to
5 maintain the appearance of a healthy company is unsupported by any evidence or the
6 development of a meaningful pattern. In particular, Defendants would argue that, to the
7 contrary, Vocera actually met or exceeded the external revenue guidance it provided to investors.
8 Although Lead Plaintiffs believe they could show that the Company consistently misled its
9 internal revenue projections while increasing its public guidance, Defendants would likely
10 respond that internal booking targets are irrelevant as a matter of law.

11 76. Moreover, Defendants would likely have argued that the Company's use of its
12 backlog is valid and consistent with normal industry practice. Defendants would argue that the
13 Company had the right to ship product at any time after receiving a valid purchase order and as
14 such, the notion of "shipping early" out of backlog is a false premise. In order to succeed at
15 summary judgment or at trial, Lead Plaintiffs would need to put forth evidence that Defendants
16 intentionally and improperly accelerated the Company's backlog, in order to meet guidance.

17 **B. Risks in Proving Defendants' *Scienter***

18 77. There was also a risk that at trial Lead Plaintiffs would not be able to prove
19 scienter, *i.e.*, that Defendants acted with knowledge or with recklessness as to the alleged falsity
20 of their statements and omissions. A defendant's state of mind in a securities case is often the
21 most difficult element of proof and one which is rarely supported by direct evidence or an
22 admission.

23 78. Defendants would likely argue that evidence and testimony could not prove a
24 single specific fact suggesting Defendants' knowledge of or participation in any sort of
25 fraudulent activity. For example, with respect to Lead Plaintiffs' confidential witness testimony,
26 Defendants may have argued that Lead Plaintiffs could not show that CW3, who stated that the
27 ACA was going to impact negatively on hospitals, had actual knowledge of how the ACA was
28

1 impacting Vocera; nor could Lead Plaintiffs show that CW3 had any interaction with Defendants
2 and thus CW3 lacked personal knowledge of Defendants' state of mind.

3 79. Likewise, regarding statements concerning the effects of budget sequestration on
4 Vocera's business, despite CW3's assertion that sequestration took a toll on Vocera's business,
5 Defendants would likely challenge CW3, arguing that CW3 could not say when the BCA began
6 to affect sales or how many sales were allegedly impacted. Further, Defendants would seek to
7 establish that they simply did not know, in mid-to-late 2012, how the budget sequester would
8 ultimately play out and had no ability to predict the impact on Vocera.

9 80. Furthermore, Defendants would argue that Lead Plaintiffs cannot rely on the stock
10 sales of Zollars and Lang during the Class Period, to further prove scienter, given that although
11 Zollars and Lang sold shares during the Class Period, these sales only represented 23% and 46%
12 of their respective holdings, and that such amounts are not indicative of scienter. Defendants
13 would also argue that the sales by Zollars and Lang occurred in connection with the SPO and
14 partial release of the lock-up in late 2012 and are therefore not suspicious in timing given that it
15 is only natural they would want to sell some shares and diversify once the lock-up expired.
16 Defendants would also raise that Zollars, Lang, and Zerella retained the vast majority of their
17 Class Period holdings, and that Zerella actually purchased shares of stock during the Class
18 Period. Moreover, Defendants would argue that Zollars' and Lang's post-Class Period sales
19 cannot serve as a reliable control period comparison to Zollars' and Lang's Class Period sales
20 and that Ninth Circuit law requires a **pre-Class** Period control period.⁷

21 **C. Risks in Proving Loss Causation**

22 81. Defendants also would have vigorously challenged Lead Plaintiffs' ability to
23 establish loss causation, a key elements of Lead Plaintiffs' Exchange Act claims.

24 82. Defendants contended, and likely would continue to maintain, that any potential
25 investment losses suffered by Lead Plaintiffs and the Settlement Class were not caused by the
26 disclosure of any alleged fraud. In that regard, Defendants were expected to argue that nothing
27

28 ⁷ There are no pre-Class period trades as the Class Period begins with the IPO.

1 in the alleged disclosures of February 27, 2013 or May 2, 2013 tied the Company's disappointing
2 results to any sort of improprieties concerning Vocera's backlog practices or the impact of the
3 ACA and the BCA reforms.

4 **1. February 27, 2013 Alleged Corrective Disclosure**

5 83. Lead Plaintiffs alleged that misrepresentations regarding the impact of the BCA
6 on Vocera were corrected on February 27, 2013 when the Company announced that the
7 government "had slowed its funding due to the debt ceiling and sequestration issues."
8 Defendants, however, would likely argue that Lead Plaintiffs cannot show that any of the alleged
9 BCA-related misstatements could have "inflated" Vocera's stock price since: at the time of the
10 IPO in March 2012, there were no possible BCA concerns; it was not until December 2012 that
11 Congress appeared deadlocked on a plan to avoid sequestration; and automatic budget cuts did
12 not begin in earnest until March 2013. Therefore, Defendants would argue that, until these
13 developments occurred, Vocera could not have been in a position to ascertain how its business
14 might be impacted by the BCA. Defendants would also likely add that nothing said on February
15 27, 2013 even hinted at any alleged fraud related to BCA or otherwise suggested that the
16 Company was shipping products early and manipulating backlog to make its numbers.

17 **2. May 2, 2013 Alleged Corrective Disclosure**

18 84. Lead Plaintiffs alleged that the misrepresentations concerning slowed Company
19 growth and the effect of the ACA on Vocera's business were corrected on May 2, 2013 when the
20 Company announced that its business was impacted by uncertainties surrounding the ACA
21 reforms and that the pressure on hospital budgets due to reimbursements under the reforms was
22 elongating the sales cycle. The Company also announced that it missed Q1 2103 revenue
23 projection due to certain sales execution challenges and failure to close certain deals when
24 expected, and that it had reduced its guidance for the remainder of FY 2013. Defendants' likely
25 argument at summary judgment or at trial would be that these statements were not corrective
26 disclosures as none was related to Lead Plaintiffs' alleged theory of fraud. Specifically,
27 Defendants would likely argue that nothing was announced on May 2, 2013 regarding the
28 alleged acceleration of backlog.

1 **D. Risks in Proving Damages**

2 85. Beyond the issues of loss causation, it also was incumbent on Lead Plaintiffs to
3 prove damages. Defendants would have likely asserted that, at most and assuming that the
4 declines following both alleged corrective disclosures could be attributed in their entirety to
5 information that should have been revealed earlier, maximum damages were approximately
6 \$145 million. However, this number, according to Defendants, vastly overstates the potentially
7 recoverable damages given the strong evidence against loss causation discussed above and given
8 that only a portion, if any, of the stock price declines on February 28, 2013 and May 3, 2013
9 could be attributed to corrective information.

10 86. For instance, Defendants would likely counter that the majority of the price
11 decline on February 28, 2013 related to information unrelated to the alleged fraud. With respect
12 to the alleged May disclosure, Defendants would likely focus heavily on the fact that the
13 Company also announced a substantial reduction in its full year guidance to argue that most (if
14 not all) of the price decline was unrelated to the alleged fraud. Accordingly, Defendants would
15 argue that any price-impact attributable to the reduced guidance must be disaggregated and
16 excluded in calculating potential damages. Defendants also may have argued that if the February
17 27, 2013 announcement fully disclosed issues related to the BCA and backlog, then none of the
18 May 3, 2013 decline could also be attributed to those issues, which would have substantially
19 decreased overall damages. To put these arguments into perspective, if just 50% of the February
20 2013 price drop was due to corrective information regarding the BCA and the February
21 disclosure fully corrected the alleged BCA misrepresentations, then aggregate damages would be
22 only approximately \$10 million.

23 87. Lead Plaintiffs retained a reliable and experienced damages expert with whom
24 they consulted extensively, including in connection with the mediation. As noted above, Lead
25 Plaintiffs' expert estimated that the Settlement Class sustained maximum aggregate damages in
26 the range of approximately \$100 million to \$225 million, assuming that 100% of the two alleged
27 stock drops were related to revelations of the alleged fraud. If only the May 2013 disclosure
28 were established at trial, Lead Plaintiffs' expert estimated maximum aggregate damages in the

1 range of approximately \$80 million to \$170 million. These ranges are also a function of when
2 the “locked-up” shares from the IPO and SPO are assumed to have begun trading, as set forth
3 above. If the Court (at summary judgment) or the jury (at trial) were to agree with Defendants’
4 analysis of damages, it would materially reduce Lead Plaintiffs’ alleged damages.

5 88. Proof of loss causation and the technical aspects of damages would have required
6 significant expert testimony and analysis, as well as fact-intensive evidence. Because
7 establishing these elements would involve a “battle of experts,” as well as highly complex
8 medical and financial issues for the jury to sift through and weigh, the outcome of summary
9 judgment and trial was and remains impossible to predict.

10 89. Each of the foregoing arguments that Defendants likely would have raised, if
11 credited by the Court at summary judgment or by a jury at trial, could have resulted in no
12 recovery for the Class or, at a minimum, significantly and adversely impacted potential damages.

13 **E. Risks Concerning Class Certification**

14 90. At the time of settlement, Lead Plaintiffs’ motion for class certification was
15 pending. As noted above, Defendants challenged Lead Plaintiffs’ motion on a variety of
16 grounds. There is no way to know how the Court would have ruled on Lead Plaintiffs’ motion
17 and even if Lead Plaintiffs prevailed, there is no doubt that Defendants would have filed a Rule
18 23(f) petition for an interlocutory appeal of the decision. Accordingly, Defendants would likely
19 have continued to challenge the efficiency of the market for Vocera’s securities, as well as the
20 presumption of reliance through all subsequent stages and before the jury. Decertification after
21 trial also remained a significant risk.

22 **X. PLAN OF ALLOCATION**

23 91. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all
24 Settlement Class Members who wish to participate in the distribution of the Settlement proceeds
25 must submit a valid Proof of Claim, including all required information, postmarked no later than
26 July 18, 2016. As provided in the Notice, after deduction of Court-awarded attorneys’ fees and
27 expenses, notice and administration costs, and all applicable taxes, the balance of the Settlement
28

1 Fund (the “Net Settlement Fund”) will be distributed according to the plan of allocation
2 approved by the Court (the “Plan of Allocation”).

3 92. The proposed Plan of Allocation, which was set forth in full in the Notice (Ex. 4-
4 A at 9-12), is designed to achieve an equitable and rational distribution of the Net Settlement
5 Fund, but it is not a formal damages analysis that would be submitted at trial. Lead Counsel
6 developed the Plan of Allocation in close consultation with Lead Plaintiffs’ consulting damages
7 expert and believes that the plan provides a fair and reasonable method to equitably distribute the
8 Net Settlement Fund among Authorized Claimants.

9 93. The Plan of Allocation provides for distribution of the Net Settlement Fund
10 among Authorized Claimants on a *pro rata* basis based on “Recognized Loss” formulas
11 consistent with Lead Plaintiffs’ theories of liability and damages. These formulas are tied to the
12 amount of alleged artificial inflation in the share prices, as quantified by Lead Plaintiffs’ expert.
13 Lead Plaintiffs’ expert analyzed the movement of Vocera securities and took into account the
14 portion of the stock drops attributable to the alleged fraud.

15 94. The Court-approved Claims Administrator, under Lead Counsel’s direction, will
16 determine each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon
17 each Authorized Claimant’s total Recognized Loss compared to the aggregate Recognized
18 Losses of all Authorized Claimants. Calculation of Recognized Loss will depend upon several
19 factors, including the type of Vocera security purchased or sold and when the claimants
20 purchased or sold the securities. Lead Counsel will file a motion seeking approval of the claim
21 determinations and authorization to distribute the net Settlement proceeds once the
22 administration of the Settlement is complete. After distributions are made to Authorized
23 Claimants, when it is no longer economically feasible to continue to distribute, unclaimed funds
24 will be donated to the Investor Protection program of Consumer Federation of America, as
25 authorized by the Court in the Preliminary Approval Order.

26 95. In sum, the proposed Plan of Allocation, developed in consultation with Lead
27 Plaintiffs’ consulting damages expert, was designed to fairly and rationally allocate the Net
28

1 Settlement Fund among Authorized Claimants. Accordingly, Lead Counsel respectfully submit
2 that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

3 **XI. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**
4 **AND PAYMENT OF EXPENSES**

5 **A. Consideration of Relevant Factors Justify an Award of a 25% Fee in This**
6 **Case**

7 96. For its diligent efforts on behalf of the Settlement Class, Lead Counsel is applying
8 for compensation from the Settlement Fund on a percentage basis. As explained in Lead
9 Counsel's Notice of Motion and Motion for an Award of Attorneys' Fees and Payment of
10 Expenses and Memorandum of Points and Authorities in Support Thereof ("Fee Brief"), courts
11 within the Ninth Circuit recognize that the percentage method is the appropriate method of fee
12 recovery and the prevailing method of determining attorneys' fees in the Ninth Circuit.

13 97. Consistent with the Notice to the Settlement Class, Lead Counsel seeks a fee
14 award of 25% of the Settlement Fund on behalf of itself and Liaison Counsel Robbins Geller
15 Rudman & Dowd LLP. Lead Counsel also requests payment of expenses incurred in connection
16 with the prosecution of the Action from the Settlement Fund in the amount of \$382,010.86, plus
17 accrued interest at the same rate as is earned by the Settlement Fund. Lead Counsel submits that,
18 for the reasons discussed below and in the accompanying Fee Brief, such awards would be
19 reasonable and appropriate under the circumstances before the Court.

20 **1. Lead Plaintiffs Support the Fee and Expense Application**

21 98. Lead Plaintiff ATRS is an institutional investor that provides retirement,
22 disability, and survivor benefits to current and former employees of the Arkansas education
23 community, and manages more than \$14 billion in assets on behalf of approximately 100,000
24 employees. Ex. 1 ¶1.

25 99. Lead Plaintiff BCERS is an institutional investor that provides retirement benefits
26 for employees of Baltimore County and employees of the Baltimore County Revenue Authority,
27 the Baltimore County Board of Education, the Baltimore County Board of Library Trustees, and
28 the Community College of Baltimore County who are not able to participate in the Maryland

1 State Retirement and Pension Systems. BCERS manages more than \$2.5 million in assets on
2 behalf of approximately 17,000 employees. Ex. 2 ¶1.

3 100. Lead Plaintiffs have evaluated and fully support the Fee and Expense Application.
4 See Exs. 1 ¶6 and 2 ¶6. In coming to this conclusion, Lead Plaintiffs—which were substantially
5 involved in the prosecution of the Action and negotiation of the Settlement—considered the
6 recovery obtained as well as Plaintiffs’ Counsel’s substantial effort in obtaining the recovery.
7 Particularly in light of the considerable risks of litigation, Lead Plaintiffs agreed to allow Lead
8 Counsel to apply for 25% of the Settlement Fund. See *id.* Lead Plaintiffs take their roles as
9 Lead Plaintiff seriously to ensure that Lead Counsel’s fee request is fair in light of work
10 performed and the result achieved for the Settlement Class. *Id.*

11 2. The Favorable Settlement Achieved

12 101. Courts have consistently recognized that the result achieved is a major factor to be
13 considered in making a fee award. See Fee Brief, Section I.D.1. Here, the \$9,000,000 settlement
14 is a good result, particularly when considered in view of the substantial risks and obstacles to
15 recovery if the Action was to continue through summary judgment, to trial, and through likely
16 post-trial motions and appeals.

17 102. As discussed above, Lead Plaintiffs’ consulting damages expert has estimated that
18 the Settlement Class sustained maximum damages in the range of approximately \$100 million to
19 \$225 million, assuming that 100% of the two alleged stock drops were related to revelations of
20 the alleged fraud, with approximately \$100 million in aggregate damages being the most realistic
21 maximum estimate. Against this yardstick, the Settlement will compensate Settlement Class
22 Members for approximately 4% to 9% of their estimated maximum losses. As discussed above,
23 and in the Approval Brief, Section I.B.4., the Settlement secures a favorable recovery for the
24 Settlement Class.

25 103. This recovery was the result of very thorough and creative prosecutorial and
26 investigative efforts, complicated motion practice, and vigorous settlement negotiations. As a
27 result of this Settlement, thousands of Settlement Class Members will benefit and receive
28

1 compensation for their losses and avoid the very substantial risk of no recovery in the absence of
2 a settlement.

3 **3. The Risks and Unique Complexities of Contingent Class Action**
4 **Litigation**

5 104. This Action presented substantial challenges from the outset of the case. The
6 specific risks Lead Plaintiffs faced in proving Defendants' liability and damages are detailed in
7 paragraphs 72 to 89, above. These case-specific risks are in addition to the more typical risks
8 accompanying securities class action litigation, such as the fact that this Action is governed by
9 stringent PSLRA requirements and case law interpreting the federal securities laws and was
10 undertaken on a contingent basis.

11 105. From the outset, Plaintiffs' Counsel understood that they were embarking on a
12 complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the
13 substantial investment of time and money the case would require. In undertaking that
14 responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to
15 the prosecution of the Action, and that funds were available to compensate staff and to cover the
16 considerable costs that a case such as this requires. With an average lag time of several years for
17 these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a
18 firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel received no compensation
19 during the course of the Action but have incurred 9,695.05 hours of time for a total lodestar of
20 \$5,145,192.25 and have incurred \$382,010.86 in expenses in prosecuting the Action for the
21 benefit of the Settlement Class.

22 106. Plaintiffs' Counsel also bore the risk that no recovery would be achieved (or that a
23 judgment could not be collected, in whole or in part). Even with the most vigorous and
24 competent of efforts, success in contingent-fee litigation, such as this, is never assured.
25 Plaintiffs' Counsel know from experience that the commencement of a class action does not
26 guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to
27 develop the facts and theories that are needed to sustain a complaint or win at trial, or to
28

1 convince sophisticated defendants to engage in serious settlement negotiations at meaningful
2 levels.

3 107. Lead Counsel is aware of many hard-fought lawsuits where, because of the
4 discovery of facts unknown when the case was commenced, or changes in the law during the
5 pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent
6 professional efforts of members of the plaintiffs' bar produced no fee for counsel.

7 108. Federal appellate reports are filled with opinions affirming dismissals with
8 prejudice in securities cases. The many appellate decisions affirming summary judgments and
9 directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of
10 recovery. *See, e.g., Oracle Corp., Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon*
11 *Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 F.
12 App'x. 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig.*, 669 F.3d 68 (1st
13 Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc.*
14 *Sec. Litig.*, 14 F. App'x. 714 (8th Cir. 2001); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir.
15 2001).

16 109. Successfully opposing a motion for summary judgment is also not a guarantee
17 that plaintiffs will prevail at trial. Indeed, while only a few securities class actions have been
18 tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities*
19 *Litigation*, Case No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), litigated by Lead
20 Counsel, or substantially lost as to the main case, such as *In re Clarent Corp. Securities*
21 *Litigation*, Case No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005).

22 110. Even plaintiffs who succeed at trial may find their verdict overturned on appeal.
23 *See, e.g., Glickenhau & Co., et al. v. Household Int'l, Inc., et al.*, 787 F.3d 408 (7th Cir. 2015)
24 (reversing and remanding jury verdict of \$2.46 billion after 13 years of litigation on loss
25 causation grounds and error in jury instruction under *Janus Capital Group, Inc. v. First*
26 *Derivative Traders*, 131 S.Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th
27 Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*,
28 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and dismissing case with

1 prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning
2 plaintiffs' verdict obtained after two decades of litigation). And, the path to maintaining a
3 favorable jury verdict can be arduous and time consuming. *See, e.g., In re Apollo Grp., Inc. Sec.*
4 *Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No.
5 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court tossing unanimous verdict for
6 plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals (2010 WL 5927988
7 (9th Cir. June 23, 2010)) and judgment re-entered (*id.*) after denial by the Supreme Court of the
8 United States of defendants' Petition for Writ of Certiorari (*Apollo Grp. Inc. v. Police Annuity*
9 *and Benefit Fund*, 131 S. Ct. 1602 (2011)).

10 111. Losses such as those described above are exceedingly expensive for plaintiff's
11 counsel to bear. The fees that are awarded in successful cases are used to cover enormous
12 overhead expenses incurred during the course of litigations and are taxed by federal, state, and
13 local authorities.

14 112. Courts have repeatedly held that it is in the public interest to have experienced
15 and able counsel enforce the securities laws and regulations pertaining to the duties of officers
16 and directors of public companies. Vigorous private enforcement of the federal securities laws
17 and state corporation laws can only occur if private plaintiffs can obtain some parity in
18 representation with that available to large corporate defendants. If this important public policy is
19 to be carried out, courts should award fees that will adequately compensate private plaintiffs'
20 counsel, taking into account the enormous risks undertaken with a clear view of the economics of
21 a securities class action. *See Fee Brief*, §I.D.4. fn. 5.

22 113. As discussed in greater detail above, this case was fraught with significant risk
23 factors concerning liability and damages. Lead Plaintiffs' success was by no means assured.
24 Defendants disputed whether Lead Plaintiffs could establish each element of liability and would
25 no doubt contend, as the case proceeded to trial, that even if liability existed, the amount of
26 damages was substantially lower than Lead Plaintiffs alleged. Were this Settlement not
27 achieved, and even if Lead Plaintiffs prevailed at trial, Lead Plaintiffs and Lead Counsel faced
28 potentially years of costly and risky appellate litigation against Defendants, with ultimate success

1 far from certain and the prospect of no recovery significant. It is also possible that a jury could
2 have found no liability or no damages. Lead Counsel therefore respectfully submits that based
3 upon the considerable risk factors present, this case involved a very substantial contingency risk
4 to counsel.

5 **4. The Work of Plaintiffs' Counsel and the Lodestar Cross-Check**

6 114. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting this
7 case and arriving at the present Settlement in the face of serious hurdles has been time-
8 consuming and challenging. As more fully set forth above, the Action was prosecuted for two
9 years and settled only after Plaintiffs' Counsel overcame multiple legal and factual challenges.
10 Among other efforts, Plaintiffs' Counsel conducted a comprehensive investigation into the
11 class's claims; researched and prepared a detailed Complaint; briefed a thorough opposition to
12 Defendants' motions to dismiss; engaged in formal discovery; and obtained and reviewed more
13 than 125,000 documents from Defendants and various non-parties (approximately 771,000
14 pages); consulted with experts; and engaged in a hard-fought settlement process with
15 experienced defense counsel.

16 115. At all times throughout the pendency of the Action, Lead Counsel's efforts were
17 driven and focused on advancing the litigation to bring about the most successful outcome for
18 the Settlement Class, whether through settlement or trial, by the most efficient means necessary.

19 116. Attached hereto are declarations from Plaintiffs' Counsel, which are submitted in
20 support of the request for an award of attorneys' fees and payment of litigation expenses. *See*
21 Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP in Support of
22 Application for Award of Attorneys' Fees and Expenses (attached as Ex. 5 hereto) and the
23 Declaration of Shawn A. Williams filed on Behalf of Robbins Geller Rudman & Dowd LLP in
24 Support of Application for Award of Attorneys' Fees and Expenses (attached as Ex. 6 hereto).

25 117. Included with these declarations are schedules that summarize the time of each
26 firm (including by category of work conducted), as well as the expenses incurred by category
27
28

1 (the “Fee and Expense Schedules”).⁸ The attached declarations and the Fee and Expense
2 Schedules report the amount of time spent by each attorney and professional support staff
3 employed by Plaintiffs’ Counsel and the “lodestar” calculations, *i.e.*, their hours multiplied by
4 their billing rates. *See* Ex. 5-A through B and Ex. 6-A through B. As explained in each
5 declaration, they were prepared from contemporaneous daily time records regularly prepared and
6 maintained by the respective firms.

7 118. The hourly billing rates of Plaintiffs’ Counsel here range from \$635 to \$985 for
8 partners, \$490 to \$710 for of counsels, and \$350 to \$725 for other attorneys. *See* Exs. 5-A and
9 6-A. (The average hourly rate for attorneys is approximately \$565 per hour and the average
10 hourly rate for non-attorney professionals is approximately \$370 per hour.) It is respectfully
11 submitted that the hourly rates for attorneys and professional support staff included in these
12 schedules are reasonable and customary. Exhibit 7, attached hereto, is a table of billing rates for
13 defense firms compiled by Labaton Sucharow from fee applications submitted by such firms
14 nationwide in bankruptcy proceedings in 2015. The analysis shows that across all types of
15 attorneys, Plaintiffs’ Counsel’s rates here are consistent with, or lower than, the firms surveyed.

16 119. Plaintiffs’ Counsel have collectively expended approximately 9,695 hours in the
17 prosecution and investigation of the Action. *See* Exs. 5-A, 6-A, and 8. The resulting collective
18 lodestar is \$5,145,192.25. *Id.* (Of this time, approximately 8,000 hours were spent by attorneys
19 and 1,725 hours by other professionals, for respective lodestars of approximately \$4.5 million
20 and \$645,000.) Pursuant to a lodestar “cross-check,” applied within the Ninth Circuit, the
21 requested fee of 25% of the Settlement Amount (\$2,250,000) results in a *negative* “multiplier” of
22 .44 on the lodestar, which does not include any time that will necessarily be spent from this date
23 forward administering the Settlement, preparing for and attending the Settlement Hearing,
24 assisting class members, and moving for a distribution order. Accordingly, Plaintiffs’ Counsel
25 are seeking approximately 44% of their legal fees.

26
27
28 ⁸ Attached hereto as Exhibit 8 is a summary table of the lodestars and expenses of Plaintiffs’ Counsel.

1 **5. The Skill Required and Quality of the Work**

2 120. Lead Counsel Labaton Sucharow is among the most experienced and skilled
3 securities litigation law firms in the field. The expertise and experience of its attorneys are
4 described in Exhibit 5-H, annexed hereto. Since the passage of the PSLRA, Labaton Sucharow
5 has been approved by courts to serve as lead counsel in numerous securities class actions
6 throughout the United States, and in several of the most significant federal securities class
7 actions in history. Here, Labaton Sucharow attorneys have devoted considerable time and effort
8 to this case, thereby greatly benefiting the outcome by bringing to bear many years of collective
9 experience.

10 121. For example, Labaton has served as lead counsel in a number of high profile
11 matters, for example: *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing
12 the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and
13 Ohio Police & Fire Pension Fund and reaching settlements of \$1 billion); *In re HealthSouth*
14 *Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.) (representing the State of Michigan Retirement
15 System, New Mexico State Investment Council, and the New Mexico Educational Retirement
16 Board and securing settlements of more than \$600 million); *In re Countrywide Sec. Litig.*, No.
17 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and
18 reaching settlements of more than \$600 million); *In re Schering-Plough Corp. / ENHANCE*
19 *Securities Litigation*, Civil Action No. 08-397 (DMC) (JAD) (D.N.J.) (representing
20 Massachusetts Pension Reserves Investment Management Board and reaching a settlement of
21 \$473 million). *See* Ex. 5-H hereto.

22 122. This depth of experience was called upon here given the unique and complex
23 facts underlying the claims and defenses in the Action, which interwove the securities laws and
24 financial reporting with practices in mobile communications, healthcare reform, and budget
25 sequestration.

26 **B. Request for Litigation Expenses**

27 123. Lead Counsel seeks payment from the Settlement Fund of \$382,010.86 in
28 litigation expenses reasonably and necessarily incurred by Plaintiffs' Counsel in connection with

1 commencing and prosecuting the claims against Defendants. The Notice informs the Settlement
2 Class that Lead Counsel will apply for payment of litigation expenses of no more than \$450,000,
3 plus interest at the same rate earned by the Settlement Fund. *See* Ex. 4-A at 2, 6. The Notice
4 also apprised the Settlement Class that Lead Counsel might seek payment of Lead Plaintiffs'
5 expenses and lost wages in an amount not to exceed \$40,000. *Id.* The amounts requested herein
6 are well below these caps. And to date, no objection to Lead Counsel's request for payment of
7 expenses or Lead Plaintiffs' request for reimbursement, have been raised.

8 124. From the beginning of the case, Lead Counsel was aware that it might not recover
9 any of its expenses, and, at the very least, would not recover anything until the Action was
10 successfully resolved. Thus, Lead Counsel was motivated to, and did, take steps to minimize
11 expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the
12 case.

13 125. As set forth in the Fee and Expense Schedules, Plaintiffs' Counsel have incurred a
14 total of \$382,010.86 in litigation expenses in connection with the prosecution of the Action. *See*
15 *See* Ex. 5-C through G and Ex. 6-C through D. As attested to, these expenses are reflected on
16 the books and records maintained by each firm. These books and records are prepared from
17 expense vouchers, check records, and other source materials and are an accurate record of the
18 expenses incurred. These expenses are set forth in detail in Plaintiffs' Counsel's declarations,
19 which identify the specific category of expense—*e.g.*, online/computer research, experts' fees,
20 travel costs, costs related to discovery, photocopying, telephone, fax and postage expenses.

21 126. One of the most significant categories of expenses was the cost of experts and
22 consultants, which totals \$140,082.00 or approximately 37% of the expenses. As touched on
23 above, Lead Plaintiffs retained experts to opine on such areas as market efficiency, insider
24 trading, loss causation, damages, and to prepare the proposed Plan of Allocation.

25 127. Additionally, Lead Counsel paid \$17,250 in mediation fees assessed by the
26 mediator in this matter.

27 128. Another large component of expenses, \$95,490.95 or 25%, relates to litigation
28 support expenses, such as: the costs associated with electronic discovery; deposition transcripts;

1 material produced by confidential witness; and the representation of confidential witnesses by
2 independent counsel.

3 129. Approximately \$60,571 in expenses concern travel, business transportation, and
4 working meals.

5 130. The other expenses for which Lead Counsel seek payment are the types of
6 expenses that are necessarily incurred in litigation and routinely charged to clients billed by the
7 hour. These expenses include, among others, legal and factual research, duplicating costs, long
8 distance telephone and facsimile charges, filing fees, and postage and delivery expenses.

9 131. All of the litigation expenses incurred, which total \$382,010.86, were necessary to
10 the successful prosecution and resolution of the claims against Defendants.

11 **C. The Costs and Expenses Requested by Lead Plaintiffs are Fair and**
12 **Reasonable**

13 132. Additionally, Lead Plaintiffs seek reasonable lost wages and expenses, pursuant to
14 the PSLRA, 15 U.S.C. § 78u-4(a)(4), that they directly incurred in connection with their
15 representation of the class in the total amount of \$15,658.20. The amount of time and effort
16 devoted to this Action by Lead Plaintiffs is detailed in their separate declarations. *See* Ex. 1 ¶¶4,
17 8-13 and Ex. 2 ¶¶4, 8-17.

18 133. ATRS hereby requests \$3,747.15 for its lost wages to represent the Settlement
19 Class. *See* Ex. 1.

20 134. BCERS hereby requests \$11,911.05 for its lost wages and expenses to represent
21 the Settlement Class. *See* Ex. 2.

22 135. Lead Counsel respectfully submit that these modest awards, which will be paid
23 directly to the Lead Plaintiffs, are fully consistent with Congress's intent, as expressed in the
24 PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role
25 in bringing and supervising actions of this type.

26 136. In view of the complex nature of the Action, the expenses incurred were
27 reasonable and necessary to pursue the interests of the class. Accordingly, we respectfully
28

1 submit that the expenses incurred by Plaintiffs' Counsel and Lead Plaintiffs should be paid in
2 full from the Settlement Fund.

3 **XII. THE REACTION OF THE SETTLEMENT CLASS TO THE FEE AND EXPENSE**
4 **APPLICATION**

5 137. As mentioned above, consistent with the Preliminary Approval Order, a total of
6 19,847 Notices have been mailed to potential Settlement Class Members advising them that Lead
7 Counsel would seek an award of attorneys' fees not to exceed 25% of the Settlement Fund, and
8 payment of expenses in an amount not greater than \$450,000. *See* Ex. 4 ¶6. Additionally, the
9 Summary Notice was published in *Investor's Business Daily*, and disseminated over *PR*
10 *Newswire*. *Id.* ¶8. The Notice and the Stipulation have also been available on the settlement
11 website maintained by the Claims Administrator. *Id.* ¶9.⁹ While the deadline set by the Court
12 for Settlement Class Members to object to the requested fees and expenses has not yet passed, to
13 date Lead Plaintiffs have received no objections. Lead Counsel will respond to any objections
14 received in its reply papers, which are due June 9, 2016.

15 **XIII. MISCELLANEOUS EXHIBITS**

16 138. Attached hereto as Exhibit 9 is a compendium of unreported cases, in alphabetical
17 order, cited in the accompanying Fee Brief.

18 **XIV. CONCLUSION**

19 139. In view of the significant recovery to the Settlement Class and the substantial
20 risks of this litigation, as described above and in the accompanying memorandum of law, Lead
21 Plaintiffs and Lead Counsel respectfully submit that the Settlement should be approved as fair,
22 reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved
23 as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial
24 risks, the quality of work performed, the contingent nature of the fee, and the standing and
25 experience of Lead Counsel, as described above and in the accompanying memorandum of law,
26 Lead Counsel respectfully submits that a fee in the amount of 25% of the Settlement Fund be

27 _____
28 ⁹ Lead Plaintiffs' motion for approval of the Settlement and Lead Counsel's motion for an
award of attorneys' fees and expenses will also be posted on the Settlement website.

1 awarded; that litigation expenses in the amount of \$382,010.86 be paid in full; and that Lead
2 Plaintiffs' lost wages and expenses be reimbursed in full.

3

4 I declare under penalty of perjury that the foregoing is true and correct. Executed on
5 May 19, 2016.

6

/s/Jonathan Gardner
JONATHAN GARDNER

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ECF ATTESTATION

I, Jonathan Gardner, am the ECF User whose ID and Password are being used to file this:

**DECLARATION OF JONATHAN GARDNER IN SUPPORT OF LEAD PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN
OF ALLOCATION AND LEAD COUNSEL’S MOTION FOR AN AWARD OF
ATTORNEY’S FEES AND PAYMENT OF EXPENSES.**

In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have concurred in this filing.

DATED: May 19, 2016

By: /s/ Jonathan Gardner
Jonathan Gardner

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

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

Executed on May 19, 2016

/s/ Jonathan Gardner
JONATHAN GARDNER

1 **Mailing Information for a Case 3:13-cv-03567-EMC**

2 ***Brado v. Vocera Communications Inc et al***

3 **Electronic Mail Notice List**

4 The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing).

(No manual recipients)