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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

STEAMFITTERS LOCAL 449 PENSION PLAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MOLINA HEALTHCARE, INC., J. MARIO MOLINA, JOHN C. MOLINA, TERRY P. BAYER, and RICK HOPFER, Defendants.	Case No. 2:18-cv-03579 AB (JCx) CLASS ACTION **LEAD PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION** Date: October 22, 2020 Time: 10:00 a.m. Court: 7B (Hon. André Birotte Jr.)

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MEMORANDUM OF POINTS AND AUTHORITIES

Lead Plaintiff Steamfitters Local 449 Pension Plan ("Steamfitters" or "Lead Plaintiff"), by its counsel Labaton Sucharow LLP ("Lead Counsel"), respectfully submits this memorandum of points and authorities in support of its motion, pursuant to Federal Rule of Civil Procedure 23(e), requesting: (i) final approval of the proposed Settlement of this class action (the "Action"); (ii) approval of the proposed plan of allocation for the proceeds of the Settlement (the "Plan of Allocation"); and (iii) final certification of the Settlement Class.[1]

PRELIMINARY STATEMENT

As detailed in the Settlement Agreement, previously filed with the Court (ECF No. 72), Lead Plaintiff and Molina Healthcare, Inc. ("Molina" or the "Company"), J. Mario Molina, John C. Molina, Terry P. Bayer, and Rick Hopfer (collectively, "Defendants") have agreed to a settlement of the claims in this securities class action, and the release of all Released Claims, in exchange for a payment of $7,500,000 in cash. This recovery is a favorable result for the Settlement Class and avoids the substantial risks and expenses of continued litigation, including the risk of recovering less than the Settlement Amount, or nothing at all.

The Settlement was reached only after Lead Plaintiff and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the claims brought pursuant to the Securities and Exchange Act of 1934. As discussed below and more fully described in the Declaration of Christine M. Fox in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and

[1] All capitalized terms used herein are defined in the Stipulation and Agreement of Settlement, dated May 5, 2020 (the "Settlement Agreement") and have the same meanings as set forth therein. ECF No. 72.

Payment of Expenses (the "Fox Declaration" or "Fox Decl."), filed herewith,[2] by the time the Settlement was agreed to, Lead Counsel had conducted a wide-ranging investigation, opposed Defendants' motion to dismiss, briefed an appeal of the Court's dismissal of the Complaint, reviewed documents produced pursuant to the mediation process, and consulted with economic and industry experts. *See generally* Fox Decl. at §III.

The Settlement is also the product of extensive arm's-length negotiations between the Parties, which included an in-person mediation session under the auspices of a respected mediator, Michelle Yoshida, Esq. of Phillips ADR. While the Parties did not agree to resolve the Action at the mediation, they subsequently continued discussions and the Parties agreed, in principle, to a settlement, subject to the negotiation of a mutually acceptable long form stipulation of settlement. ¶¶37-40.

The Settlement is a favorable result in light of the risks of continued litigation. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants are strong, they recognize that there were substantial barriers to a greater recovery, especially in light of Lead Plaintiff's appeal of the Court's order granting Defendants' motion to dismiss the Complaint ("MTD Order") before the Ninth Circuit Court of Appeals ("Ninth Circuit"). Even if the Ninth Circuit had reversed the District Court's dismissal, Lead Plaintiff faced years of continued litigation with no guarantee of success. In light of the recovery for the

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[2] The Fox Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Fox Declaration.

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

Settlement Class and the risks of continued litigation, as discussed further below and in the Fox Declaration, Lead Plaintiff respectfully submits that the Settlement is fair, reasonable, and adequate, and warrants final approval by the Court. *See* Declaration on Behalf of Steamfitters Local 449 Pension Plan. Ex. 1 at 2.

Additionally, Lead Plaintiff requests that the Court approve the proposed Plan of Allocation, which was set forth in the Notice sent to Settlement Class Members. The Plan of Allocation, which was developed by Lead Counsel in consultation with Lead Plaintiff's consulting damages expert, provides a reasonable and equitable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims. The Plan of Allocation is fair and reasonable, and should likewise be approved.

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On June 18, 2020, the Court entered an order preliminarily approving the Settlement and approving the proposed forms and methods of providing notice to the Settlement Class (the "Preliminary Approval Order", ECF No. 86). Pursuant to and in compliance with the Preliminary Approval Order, through records maintained by Molina's transfer agent and information provided by brokerage firms and other nominees, beginning on July 6, 2020, the Court-appointed Claims Administrator Angeion Group ("Angeion"), caused, among other things, the Notice and Claim Form (together, the "Notice Packet") to be mailed by first-class mail to potential Settlement Class Members. *See* Declaration of Charlie Ferrara Regarding: (A) Mailing of Notice; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusions and Objections, dated September 15, 2020. Ex. 2 at ¶¶4-8. A total of 65,800 Notice Packets have been mailed as of September 11, 2020. *Id*. at ¶8. On July 20, 2020, the Summary Notice was published in *Investor's Business Daily* and was disseminated over the internet using *PR Newswire*. *Id*. at ¶9 and Exhibits B and C attached thereto. The Notice and Claim Form were also posted, for review and easy downloading, on the

website established by Angeion for purposes of this Settlement, as well as Labaton Sucharow's website. *Id*. at ¶10.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 2-A. The Notice also gave the deadlines for objecting, seeking exclusion, submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. To date, the Settlement Class's reaction to the proposed Settlement has been positive. While the deadline (October 1, 2020) for requesting exclusion or objecting to the Settlement has not yet passed, to date there have been no requests for exclusion, no objections to the proposed Settlement, and no objections to the Plan of Allocation.[3]

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

A. Standards for Final Approval of the Settlement

The Ninth Circuit has recognized that there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).[4] It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'r*, 688 F.2d 615, 625 (9th Cir. 1982). Settlements of complex cases, such as this one, greatly contribute to the efficient utilization of scarce judicial

[3] Should any objections or requests for exclusion be received, Lead Plaintiff will address them in its reply papers, which are due to be filed with the Court on October 15, 2020.

[4] All internal quotations and citations are omitted unless otherwise stated.

resources and achieve the speedy resolution of claims. *See, e.g.*, *Garner v. State Farm Mut. Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain and substantial recovery for the Plaintiff class.").

Federal Rule of Civil Procedure 23(e) requires court approval of any class action settlement. The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Under the Federal Rules, a court reviews a settlement using four main factors. *Id.*[5] They are whether:

> (A) class representatives and 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, 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) an agreement required to be identified under Rule 23(e)(3); and

[5] Fed. R. Civ. P. 23(e)(2) is intended to "direct[] the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal." Fed. R. Civ. P. 23 Committee Notes on Rules – 2018 Amendment at Subdivision (e)(2).

(D) the proposal treats class members equitably relative to each other.

These standards largely overlap with the pre-amendment factors considered within the Ninth Circuit: (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 of the proposed settlement. *See Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004). *Accord, Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672 CRB (JSC), 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) (approving settlement after considering both the "Rule 23(e)(2) factors, which became effective on December 1, 2018, and the factors identified in" Ninth Circuit case law). "[T]o the extent possible the Court would apply the factors listed in Rule 23(e)(2) through the lens of the Ninth Circuit's factors and existing relevant precedent." *Jiangchen v. Rentech, Inc.*, No. CV 17-1490-GW(FFMX), 2019 WL 5173771, at *4 (C.D. Cal. Oct. 10, 2019).

For the reasons discussed herein and in the Fox Declaration, the proposed Settlement meets the criteria for final approval.

B. Lead Plaintiff and Lead Counsel Have Adequately Represented the Class and the Settlement was Negotiated at Arm's-Length

In determining whether to approve a class action settlement, the Court should consider "whether the class representatives and class counsel have adequately represented the class" (Fed. R. Civ. P. 23(e)(2)(A)) and "whether the proposal was negotiated at arm's length (Fed. R. Civ. P. 23(2)(B)). "These

considerations overlap with certain Hanlon factors, such as the non-collusive nature of negotiations, the extent of discovery completed, and the stage of proceedings." *In re Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-04883-BLF, 2019 WL 3290770, at *7 (N.D. Cal. July 22, 2019) (citing *Hanlon*, 150 F.3d at 1026).

1. Lead Plaintiff and Lead Counsel Have Adequately Represented the Settlement Class

Lead Plaintiff Steamfitters is a sophisticated institutional investor and has substantial experience with securities class actions. Lead Plaintiff has been involved throughout the litigation and supports approval of the Settlement. *See* Ex. 1.

Throughout the Action, Lead Plaintiff also benefited from the advice of knowledgeable counsel well-versed in shareholder class action litigation and securities fraud cases. Labaton Sucharow LLP is among the most experienced and skilled firms in the securities litigation field, and has a long and successful track record in such cases. *See* Ex. 3-C. Lead Counsel has served as lead counsel in a number of high profile and influential cases. *Id.*

Lead Counsel has vigorously litigated the Action since its inception. Lead Counsel, among other things: (i) conducted a thorough investigation that included the review of publicly available information, as well as non-public information regarding the Company provided to Lead Counsel by former employees of Molina, and interviews with more than 40 potential witnesses; (ii) prepared and filed a detailed Amended Class Action Complaint (the "Complaint"); (iii) researched and drafted an opposition to Defendants' motion to dismiss; (iv) briefed an appeal before the Ninth Circuit after the Court granted Defendants' motion to dismiss the Complaint; (v) reviewed several thousand pages of core documents produced by Defendants in advance of the mediation; and (vi) worked closely with experts knowledgeable about damages and causation

issues and healthcare industry information technology (IT) systems. *See generally* Fox Decl. at §§III-V.

Accordingly, prior to, and over the course of the litigation, Lead Counsel explored the strengths and weaknesses of the claims and defenses and developed a deep understanding of the merits of the claims. Lead Plaintiff and Lead Counsel had a firm understanding of the likelihood of success and the potential for recovery at trial at the time the Settlement was entered into. *See, e.g.*, *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement where record established that "all counsel had ample information and opportunity to assess the strengths and weaknesses of their claims and defenses"); *Redwen v. Sino Clean Energy, Inc.*, No. 11-3936, 2013 WL 12303367, at *7 (C.D. Cal. July 9, 2013) (settlement approved when, as here, "the parties have spent a significant amount of time considering the issues and facts in this case and are in a position to determine whether settlement is a viable alternative"); *Destefano v. Zynga Inc.*, No. 12-04007-JSC, 2016 WL 537946, at *12 (N.D. Cal. Feb. 11, 2016) (noting that the extent of discovery completed and stage of proceedings supports final approval of settlement where plaintiffs engaged in a pre-filing investigation, opposed defendants' motions to dismiss and a motion for reconsideration, worked with consultants, propounded and responded to some discovery, and prepared and participated in mediation session).

After this process, Lead Counsel and Lead Plaintiff concluded that the proposed Settlement was fair and reasonable. As the Ninth Circuit observed in *Rodriguez v. West Publishing Corporation*, Lead Counsel's informed opinion supports approval as "[t]his circuit has long deferred to the private consensual decision of the parties" and their counsel in settling an action. *Rodriguez*, 563 F.3d 948, 965 (9th Cir. 2009); *see also Nat'l Rural Telecomm. Coop. v. DirectTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'[g]reat weight' is accorded to the

recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."); *In re NVIDIA Corp. Derivative Litig*., No. 06-cv-06110-SBA (JCS), 2008 WL 5382544, at *4 (N.D. Cal. Dec. 22, 2008) ("[S]ignificant weight should be attributed to counsel's belief that settlement is in the best interest of those affected by the settlement."). Accordingly, it respectfully submitted that Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class.

2. The Settlement Was Negotiated at Arm's-Length

Courts have long recognized that there is an initial presumption that a proposed settlement is fair and reasonable when it is the product of arms-length negotiations. *See Roberti v. OSI Sys., Inc*., No. CV1309174MWFMRW, 2015 WL 8329916, at *3 (C.D. Cal. Dec. 8, 2015) ("The arms-length nature of the negotiation resulting in the proposed Settlement supports final approval."); *In re Netflix Privacy Litig*., No. 5:11cv-00379, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013) ("Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive, arms' length negotiations conducted by capable and experienced counsel"); *cf Jiangchen*, 2019 WL 5173771 at *6 (finding that the settlement was the product of "serious, informed, non-collusive negotiations performed at arms-length" where it involved a mediator and vigorousness litigation).

Here, Lead Plaintiff and Lead Counsel agreed to settle after rigorous litigation efforts and through a mediation process overseen by a highly regarded and experienced mediator, Michelle Yoshida, Esq. of Phillips ADR. ¶¶37-40. The mediation, held Corona in del Mar, California on February 27, 2020, involved an extended effort to settle the claims and was preceded by the exchange of mediation statements and Molina's production to Lead Plaintiff of thousands of pages of nonpublic documents concerning the allegations of the Complaint. *Id*. While these discussions narrowed the differences between Lead Plaintiff and

Defendants, the Parties did not reach a settlement on that day. *Id*. Thereafter, on March 5, 2020, following continued arm's-length negotiations facilitated and supervised by Ms. Yoshida, the Parties reached an agreement-in-principle to settle the Action. *Id*. It is respectfully submitted that this factor supports approval of the Settlement.

C. The Relief Provided by the Settlement Is Adequate in Light of Risks of Further Litigation

In determining whether a class-action settlement is "fair, reasonable, and adequate," the Court must also consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This factor under Rule 23(e)(2)(C) essentially encompasses four of the seven factors of the traditional 9th Circuit analysis: (1) the amount offered in settlement; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class-action status throughout the trial; and (4) the strength of plaintiffs' case. *See Hanlon*, 150 F.3d at 1026.

Here, the $7.5 million Settlement Amount presents a favorable recovery for the Settlement Class. As noted in the Fox Declaration, Lead Plaintiff's damages expert has estimated that if liability were established with respect to all of the claims, including in connection with the three alleged corrective disclosures, the most reasonable estimate of aggregate damages likely recoverable at trial was $177.5 million to $220.8 million, taking into account the exclusion of gains on pre-Class Period purchases and the "parsing out" or disaggregation of the impact of non-fraud related information from the alleged stock price declines in reaction to certain of the corrective disclosures. (Without disaggregation, damages excluding pre-Class Period gains are approximately $257 million.). ¶66. Accordingly, the Settlement recovers between 3% and 4.2% of aggregate damages likely recoverable at trial. *Id*.

Courts regularly approve settlements that recover a similar percentage of damages. *See, e.g., IBEW v. Int'l Game Tech.*, No. No. 3:09–cv–00419–MMD–WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving $12.5 million settlement representing "about 3.5% of the maximum damages that Plaintiffs believe[d] could be recovered at trial" and finding it "within the median recovery in securities class actions settled in the last few years"); *Schuler v. Medicines Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (approving $4,250,000 settlement that reflected approximately 4.0% of estimated recoverable damages and noting percentage "falls squarely within the range of previous settlement approvals").

Notably, although Lead Plaintiff believes that the case against Defendants is strong, that confidence must be tempered by the fact that the Settlement is certain and that every case involves significant risk of no recovery, particularly in a complex case such as this one, which was dismissed with prejudice by the Court.

1. Risks of Prevailing on the Appeal

After the Court dismissed this case in December 2018 in response to Defendants' motion to dismiss the Complaint, Lead Plaintiff appealed the decision to the Ninth Circuit. The appeal was fully briefed. Although the Parties agreed to settle the Action before the Ninth Circuit heard oral argument, had the Action not settled, the Ninth Circuit could certainly have affirmed the decision of the District Court. As discussed in the Fox Declaration, Lead Plaintiff faced the significant risk that the Ninth Circuit would agree with the reasoning in the MTD Order and affirm the decision dismissing the Action. ¶54.

Even if the case was successfully restored as result of the appeal, Defendants would have continued to challenge (i) the material falsity of each alleged misstatement and omission alleged in the Complaint; and (ii) whether Defendants acted with the requisite scienter. ¶¶56-63.

2. Risks in Proving Falsity

Even if the Ninth Circuit had reversed the MTD Order and remanded the case, Defendants would likely continue to press challenges to Lead Plaintiff's ability to establish falsity, both at the summary judgment stage and at trial. Defendants would continue to argue that the alleged false statements regarding the "scalability" of Molina's infrastructure were protected under the Private Securities Litigation Reform Act's ("PSLRA's") safe harbor. ¶57. Molina would also likely continue to assert that statements about the Company's ability to increase the scale of its IT infrastructure were more akin to forward-looking projections than statements of current fact. *Id*. Defendants would likely point to disclosures in Molina's public filings and argue that the Company sufficiently warned about the risks and uncertainties associated with both its expansion into the ACA Marketplaces and its IT systems' ability to keep pace with growth. ¶58. Defendants would undoubtedly maintain that they had adequately warned the market about these future risks, and the risks simply materialized later in time, which Defendants could not have predicted. *Id*.

3. Risks in Proving Scienter

Assuming that Lead Plaintiff prevailed in its appeal, Lead Plaintiff would still need to prove that Defendants made the alleged false statements with the intent to mislead investors or with deliberate recklessness. As courts have recognized, defendant's state of mind in a securities case "is the most difficult element of proof and one that is rarely supported by direct evidence." *See In re Amgen Inc. Sec. Litig.*, No. 07cv-2536, 2016 WL 10571773, at *3 (C.D. Cal. Oct. 25, 2016); *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) (noting that scienter is a "complex and difficult [element] to establish at trial"). In this regard, Defendants would have continued to attack the information provided by the five confidential witnesses, and other witnesses and

evidence obtained by Lead Plaintiff. Defendants would likely argue that Lead Plaintiff could not establish that the Molina brothers' knew of the alleged fraud, despite the fact that they made a majority of the allegedly false statements. Further, Defendants would likely continue to argue that Lead Plaintiff could only show that Defendants had access to information, rather than what they knew at the time they made the allegedly false statements. ¶61. Moreover, with respect to the alleged core operations doctrine, Defendants would likely seek to narrow Lead Plaintiff's theory of the case and assert that there is no reason why the leaders of the Company would know about the relative "minutiae" of QNXT. ¶62.

4. Risks in Proving Loss Causation and Damages

Another principal challenge in continuing the litigation is the difficulty of proving loss causation and damages, which would have been hotly contested by Defendants, particularly at class certification and summary judgment, and would continue to be challenged in *Daubert* motions, at trial, in post-trial proceedings and appeals. To succeed at trial "a plaintiff [must] prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

Indeed, as discussed above, Lead Plaintiff's damages expert has estimated that if liability were established with respect to all of the claims, including for the three alleged corrective disclosures, the most reasonable estimate of aggregate damages recoverable at trial was $177.5 million to $220.8 million, taking into account the exclusion of pre-Class Period gains and disaggregation on certain of the corrective disclosures. Without disaggregation, damages (also excluding pre-Class Period gains) were estimated to be approximately $257 million. ¶66.

Defendants would have continued to argue that the stock declines on all three corrective disclosure dates were not attributable to disclosures related to Molina's administrative infrastructure, but were rather the result of announcements about the Company's poor financial performance and strategic

information unconnected to problems with the Company's IT infrastructure. ¶64. Defendants would assert that disaggregating information related to the alleged fraud from the price declines would necessarily show no damages resulting from Lead Plaintiff's theory of the case. ¶65. If these arguments prevailed at class certification, summary judgment, or trial, the Settlement Class could have recovered significantly less or, indeed, nothing.

There was also substantial uncertainty surrounding Lead Plaintiff's expert's ability to isolate the proportion of the stock price declines on the disclosure dates attributable specifically to the alleged fraud. Lead Plaintiff was faced with the difficult task of separating out the impact of statements about the Company's administrative infrastructure from purely financial disclosures on the dates at issue. *Id*. Because of these challenges, Lead Plaintiff's proposed damages methodology would have come under sustained attack by Defendants, and issues relating to damages would likely have come down to an unpredictable and hotly disputed "battle of the experts." As Courts have long recognized, the uncertainty as to which side's expert's view might be credited by the jury presents a substantial litigation risk in securities actions. *See, e.g.*, *Nguyen v. Radient Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014) (approving settlement in securities case where "[p]roving and calculating damages required a complex analysis, requiring the jury to parse divergent positions of expert witnesses in a complex area of the law" and "[t]he outcome of that analysis is inherently difficult to predict and risky"); *In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 WL 7351449, at *6 (N.D. Cal. Nov. 20, 2015) (finding that risks related to the "battle of experts" weighed in favor of settlement approval).

Final approval is also supported by the complexity, expense, and likely duration of continued litigation. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 199) ("the cost, complexity and time of fully litigating the

case all suggest that this settlement was fair"). All the above-noted risks aside, fact and expert discovery would have been protracted. Defendants would likely have sought summary judgment with respect to several elements of Lead Plaintiff's claims and there was no guarantee that the proposed class would prevail in Defendants' continuous challenges and, even if they did, how the Court's rulings would affect damages or how the case would be presented to a jury. A trial of Lead Plaintiff's claims would inevitably be long and complex, and even a favorable verdict would undoubtedly spur a lengthy post-trial and appellate process. *See, e.g.*, *Torrisi*, 8 F.3d at 1376 ("the cost, complexity and time of fully litigating the case all suggest that this settlement was fair"). "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). The Settlement provides the Settlement Class with a prompt and substantial tangible recovery, without the considerable risk, expense, and delay of litigating to completion.

5. The Effective Process for Distributing Relief

The proceeds of the Settlement will be distributed with the assistance of an experienced claims administrator. The Claims Administrator will employ a well-established protocol for the processing of claims in a securities class action. Potential class members will submit, either by mail or online using the Settlement website, the Court-approved Claim Form. Based on the trade information provided by claimants, the Claims Administrator will determine each claimant's eligibility to participate and calculate their respective "Recognized Claims" based on the Court-approved Plan of Allocation. Lead Plaintiff's claims will be reviewed in the same manner. Claimants will be notified of any defects or conditions of ineligibility and be given the chance to contest rejection. Any claim disputes that cannot be resolved will be presented to the Court for a determination.

After the Settlement reaches its Effective Date (Stipulation at ¶38) and the passing of all applicable deadlines, Authorized Claimants will be issued checks. After an initial distribution of the Net Settlement Fund, if there is any balance remaining (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator will, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute the balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, will be contributed to a non-sectarian, not-for-profit charitable organization serving the public interest designated by Lead Plaintiff and approved by the Court. *See* Stipulation at ¶26; Ex. 2-A at ¶80.

6. The Anticipated Attorney's Fees and Expenses Are Reasonable

As set forth in the accompanying motion, Lead Counsel is requesting attorneys' fees of 25% of the Settlement Fund and litigation expenses of $108,880.71. A fee request of 25% is the "benchmark" within the Ninth Circuit and is consistent with numerous settlements approved in the Ninth Circuit. *See, e.g., Torrisi,* 8 F.3d at 1376-77 (reaffirming 25% benchmark); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (same); *see also Zynga,* 2016 WL 537946, at * ("In common fund cases in the Ninth Circuit, the 'benchmark' percentage award is 25 percent of the recovery obtained, with 20 to 30 percent as the usual range.") (citing *Vizcaino,* 290 F.3d at 1047). The Settlement is not contingent upon any particular award to Lead Counsel, which is within the discretion of the Court.

7. The Relief Provided in the Settlement Is Adequate Taking Into Account all Agreements Related to the Settlement

The relief provided to the Settlement Class is also adequate under Rule 23(e)(2)(C)(iv) given that all the agreements under Rule 23(e)(3) treat the Settlement Class fairly.

Here, on May 5, 2020, the Parties formally memorialized the Settlement in the Settlement Agreement. Also as of May 5, 2020, they entered into a confidential Supplemental Agreement Regarding Requests for Exclusion ("Supplemental Agreement"). The Supplemental Agreement sets forth the conditions under which Defendants have the discretion to terminate the Settlement if requests for exclusion from the Settlement Class exceed a certain agreed-upon threshold. As is standard in securities settlements, the Supplemental Agreement has been kept confidential in order to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging a larger individual settlement. Pursuant to its terms, the Supplemental Agreement may be submitted to the Court *in camera* or under seal.

The Settlement Agreement and Supplemental Agreement are the only agreements concerning the Settlement entered into by the Parties. The Settlement does not contain a reversion to Defendants, the Settlement is not "claims-made," and the Settlement is not contingent on any particular fee award to Lead Counsel. All the agreements treat the Settlement Class fairly and support a finding that the relief provided by the Settlement is adequate.

D. Settlement Class Members Are Treated Equitably Relative to One Another and the Proposed Plan of Allocation Should Be Approved

The Plan of Allocation, drafted with the assistance of Lead Plaintiff's damages expert, is a fair, reasonable, and adequate method for allocating the proceeds of the Settlement among eligible claimants and treats all Settlement Class Members equitably, as required by Rule 23(e)(2)(D). Each Authorized

Claimant, including Lead Plaintiff, will receive a distribution pursuant to the Plan, and Lead Plaintiff will be subject to the same formula for distribution of the Settlement as other class members. *See Ciuffitelli v. Deloitte & Touche LLP*, No. 16CV00580, 2019 WL 1441634, at *18 (D. Or. Mar. 19, 2019) ("[t]he Proposed Settlement does not provide preferential treatment to Plaintiffs or segments of the class" where "the proposed Plan of Allocation compensates all Class Members and Class Representatives equally in that they will receive a pro rata distribution based [sic] of the Settlement Fund based on their net losses").

The standard for approval of a plan of allocation in a class action under Rule 23 of the Federal Rules of Civil Procedure is the same as the standard applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008). An allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005). "[A] plan of allocation . . . fairly treats class members by awarding a pro rata share to every Authorized Claimant, even as it sensibly makes interclass distinctions based upon, inter alia, the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue." *Redwen*, 2013 WL 12303367, at *8.

Here, Lead Plaintiff's consulting damages expert prepared the Plan of Allocation after careful consideration of Lead Plaintiff's theories of liability and damages under the Exchange Act. The Plan provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Claim" formulas tied to liability and damages. These formulas consider the amount of alleged artificial inflation in the prices of Molina publicly traded common stock, as quantified by the consulting damages expert.

Individual claimants' recoveries will depend upon when during the Class Period they bought Molina publicly traded common stock and whether and when they sold their securities. Authorized Claimants will recover their proportional "pro rata" amount of the Net Settlement Fund based on their Recognized Loss, calculated under the Plan of Allocation using the transactional information provided by claimants in their claim forms. As a result, the Plan of Allocation will result in a fair distribution of the available proceeds among Settlement Class Members who submit valid claims. The Plan of Allocation was fully described in the Notice and, to date, there has been no objection to the proposed plan. *See* Ex. 2-A at 12-16.

E. Reaction of the Settlement Class to Date

As described above, pursuant to this Court's Preliminary Approval Order, 65,800 copies of the Notice and Claim Form were mailed to potential Settlement Class Members who could be identified with reasonable effort. *See* Ex. 2 at ¶¶4-8. The Summary Notice was published in *Investor's Business Daily* and transmitted over the internet using *PRNewswire* on July 20, 2020. *Id*. at ¶9. Additionally, the Settlement Agreement, Notice, Claim Form, and Preliminary Approval Order were posted to the website dedicated to the Settlement (*id*. at ¶10), as well as Lead Counsel's website.

The Notice advised the Settlement Class of, among other things, the terms of the Settlement, the Plan of Allocation, and the maximum amount of Lead Counsel's request for an award of attorneys' fees and expenses, as well as the procedures and deadlines for filing objections and requesting exclusion from the Settlement Class. *See generally* Ex. 2-A.

The Ninth Circuit has held that notice must be "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." *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351 (9th Cir. 1980). The Ninth Circuit

has also ruled that the objection deadline should fall after motions in support of approval and attorneys' fees and expenses have been filed. *See, e.g., In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010) (requiring that fee motion be made available to the class before the deadline for objecting to the fee). Lead Plaintiff respectfully submits that the notice program utilized here readily meets these standards.

While the objection/exclusion deadline – October 1, 2020 – has not yet passed, to date, no objections and no exclusion requests have been received. ¶51; Ex. 2 at ¶13. The reaction to date supports approval of the Settlement and the proposed Plan of Allocation. Lead Plaintiff will address objections and requests for exclusion, if any, in its reply submission.

II. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS

The Court previously granted preliminary certification to the Settlement Class under Rules 23(a) and (b)(3). *See* ECF No. 86 at 3-4. Because nothing has occurred since then to cast doubt on the propriety of class certification for settlement purposes, and no objections to certification have been received to date, the Court should grant final class certification.

CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court: (i) grant final approval of the Settlement; (ii) finally certify the Settlement Class, for settlement purposes only; and (iii) approve the proposed Plan of Allocation as fair, reasonable, and adequate. Proposed orders will be submitted with Lead Plaintiff's reply submissions, after the deadlines for objecting and seeking exclusion have passed.

Dated: September 17, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2020, I authorized the electronic filing of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing by e-mail to all counsel registered to receive such notice.

/s/ Christine M. Fox
Christine M. Fox