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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CORY LONGO, individually and on behalf of all others similarly situated, et al.,

Plaintiffs,

v.

OSI SYSTEMS, INC., et al.,

Defendants.

Case No. 2:17-cv-08841-FMO-SKx

CLASS ACTION

DECLARATION OF ELI R. GREENSTEIN IN SUPPORT OF (I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

Hearing Date: May 12, 2022
Time: 10:00 a.m.
Courtroom: 6D
Judge: Hon. Fernando M. Olguin

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I, Eli R. Greenstein, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz" or "Lead Counsel"), Court-appointed Lead Counsel in the above-captioned action ("Action") and counsel for Court-appointed Lead Plaintiff, Arkansas Teacher Retirement System ("Lead Plaintiff" or "ATRS"), and named plaintiff, John A. Prokop (with ATRS, "Plaintiffs").[1] I have actively supervised and participated in the prosecution and resolution of the Action and have personal knowledge of the matters set forth herein. I respectfully submit this Declaration in support of: (i) Lead Plaintiff's motion for final approval of the proposed settlement ("Settlement") and proposed plan for allocating the Net Settlement Fund to eligible members of the Settlement Class ("Plan of Allocation" or "Plan") and (ii) Lead Counsel's motion for an award of attorneys' fees and litigation expenses ("Fee and Expense Application").[2]

2. The Court, having overseen this complex securities class action for several years, is familiar with the claims and defenses asserted by the Parties. This Declaration provides highlights of the Action and describes: (a) the efforts undertaken by Lead Counsel and the other Plaintiffs' Counsel[3] firms to prosecute the Action (*infra* Part II); (b) the events leading up to the Settlement, the terms of the Settlement, and the risks that Lead Plaintiff and Lead Counsel considered in determining that the Settlement provides an excellent recovery for the Settlement Class (*infra* Parts III-IV); (c) the notice provided

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[1] Capitalized terms that are not defined in this Declaration have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 22, 2021 ("Stipulation"). ECF No. 125-4. Unless otherwise noted, all internal quotations, citations, or other punctuation are omitted, and all emphasis is added.

[2] In addition to this Declaration, Lead Plaintiff and Lead Counsel are submitting: (i) the Memorandum in Support of Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation ("Settlement Memorandum"); and (ii) the Memorandum in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Fee and Expense Memorandum").

[3] "Plaintiffs' Counsel" refers collectively to Lead Counsel Kessler Topaz, together with (i) Court-appointed Liaison Counsel Kiesel Law LLP; and (ii) additional counsel for Plaintiffs, Saxena White P.A. and Keil & Goodson P.A.

to the Settlement Class (*infra* Part V); (d) the Plan of Allocation for the Net Settlement Fund (*infra* Part VI); and (e) Lead Counsel's Fee and Expense Application (*infra* Part VII).

I. PRELIMINARY STATEMENT

3. The Settlement if approved by the Court, will resolve the claims against Defendants[4] in this Action for $12,500,000 in cash on behalf of the Settlement Class preliminarily certified by the Court for settlement purposes on December 30, 2021. ECF No. 131. Since the Court granted preliminary approval of the Settlement, the Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), has notified potential Settlement Class Members of the Settlement by mail in accordance with the Court's Preliminary Approval Order.[5] A.B. Data also caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire* and established and maintains a website dedicated to the Settlement, www.OSISystemsSecuritiesSettlement.com.[6]

4. The Settlement was achieved following nearly four years of highly contested litigation, during which time Lead Counsel, together with the other Plaintiffs' Counsel firms, expended significant efforts and resources on behalf of the Settlement Class. Plaintiffs' Counsel's efforts prosecuting this case included, *inter alia*: (i) a comprehensive investigation of the alleged securities fraud claims against Defendants, including analysis of voluminous publicly available information regarding OSI including, its filings with the

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[4] Defendants are OSI Systems, Inc. ("OSI" or the "Company"); OSI's President, Chairman of the Board, and Chief Executive Officer during the relevant time period Deepak Chopra ("Chopra"); OSI's Executive Vice President and Chief Financial Officer during the relevant time period Alan Edrick ("Edrick"); and OSI's Executive Vice President, the President of OSI Solutions Business, and a member of OSI's Board during the relevant time period and OSI's former Chief Financial Officer Ajay Mehra ("Mehra"). Defendants Chopra, Edrick, and Mehra are collectively referred to herein as the "Individual Defendants."

[5] *See* Declaration of Eric Schachter Regarding: (A) Mailing of the Notice, Claim Form, and Exclusion Request Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Schachter Decl.") filed contemporaneously herewith, ¶¶ 2-9.

[6] *See* Schachter Decl., ¶¶ 10, 12.

Securities and Exchange Commission ("SEC"), government regulatory filings and reports, securities analysts' reports, OSI press releases and other public statements, and public media reports and legal documents about OSI; (ii) interviews with former OSI employees and relevant third parties, and analysis and translation of numerous Albanian documents; (iii) consultation with experts on issues such as accounting, financial reporting, loss causation, and damages; (iv) preparation of two detailed amended complaints; (v) extensive briefing on Defendants' multiple motions to dismiss; (vi) substantial discovery, including the review of a large portion of the approximately 46,600 pages of documents produced by Defendants and a third party; and (vii) an intensive mediation process and corresponding briefing before a highly experienced and nationally recognized mediator and former Federal Judge, the Honorable Layn R. Phillips ("Judge Phillips").

5. Moreover, the negotiations leading to the Settlement were hard fought and required the Parties' careful analysis of complex factual and legal issues as well as their consideration of the significant risks specific to the case. The Parties' negotiations included a full-day formal mediation session with Judge Phillips in August 2021 and follow-up negotiations with the continued assistance of Judge Phillips, culminating in the acceptance of a formal mediator's proposal to resolve the Action for $12.5 million. Following their agreement-in-principle to settle the Action, the Parties spent additional weeks negotiating the specific terms of the Settlement as set forth in the Stipulation.

6. The substantial investigation, discovery, motion practice, and legal research outlined herein informed Lead Plaintiff and Lead Counsel that, while they believed their case was meritorious, it also had weaknesses and risks that were conscientiously evaluated in determining what course of action was in the best interest of the Settlement Class. As set forth in further detail below, despite the fact that Lead Plaintiff believed that its allegations and claims were supported by legal authority, expert analysis, and evidence resulting from extensive pre-trial investigation and discovery, the specific circumstances involved here presented many uncertainties with respect to Plaintiffs' ability to successfully proceed through class certification, expert discovery, summary judgment,

trial, and the inevitable post-trial appeals. Considering all the circumstances and risks Plaintiffs faced if the Action continued to trial, Lead Plaintiff and Lead Counsel reasonably concluded that the Settlement was fair and reasonable and in the best interests of the Settlement Class.

7. In addition to seeking final approval of the Settlement, Lead Plaintiff also seeks approval of the Plan of Allocation set forth in Appendix A to the Notice as fair and reasonable. To prepare the Plan, Lead Counsel engaged a respected expert, the economic consulting firm Global Economics Group LLC. Pursuant to the Plan, the Net Settlement Fund will be allocated on a *pro rata* basis to Settlement Class Members who timely submit valid Claims based on their "Recognized Claim" amount as calculated under the Plan. As set forth in the accompanying Settlement Memorandum, substantially similar plans have been approved and used effectively to distribute recoveries in other securities class actions.[7]

8. Finally, Lead Counsel requests an award of attorneys' fees for the considerable work conducted in the Action in the face of the substantial risk of non-recovery, as well as payment of Litigation Expenses. Specifically, Lead Counsel is applying, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees in the amount of 25% of the Settlement Fund, and for payment of Plaintiffs' Counsel's Litigation Expenses in the total amount of $134,863.08, to be paid out of the Settlement Fund. The requested fee is consistent with the 25% "benchmark" established in the Ninth Circuit; well within the range of fees approved by courts in this Circuit, including for securities class actions; and is amply supported by each of the relevant factors set forth in *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). The reasonableness of the 25% fee also is confirmed by a lodestar cross-check resulting in a *negative* "multiplier" of approximately 0.77, which falls below the range of positive multipliers typically awarded in complex cases, including securities class actions, by Courts in this

[7] *See* Settlement Memorandum, § III.

Circuit. Moreover, the 25% fee request is made in accordance with the percentage negotiated *ex ante* under Lead Counsel's retainer agreement with Lead Plaintiff.

9. The Settlement is precisely the kind of result Congress envisioned in enacting the PSLRA. The Court-appointed Lead Plaintiff, ATRS, a large sophisticated institutional investor, supervised Lead Counsel, participated in all material aspects of the litigation, remained informed throughout the settlement negotiations, and ultimately approved the Settlement. ECF No. 125-6 (ATRS Declaration), ¶¶ 6-9. Lead Plaintiff believes the Settlement obtained is a favorable result for the Settlement Class. *Id*., ¶ 9. Additionally, the reaction of the Settlement Class itself has been positive. To date, there have been no objections to any aspect of the Settlement and only one request for exclusion from the Settlement Class has been received.[8]

10. For the reasons discussed herein and in the accompanying memoranda, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and Plan of Allocation are "fair, reasonable, and adequate" in all respects, and that the Court should therefore approve them pursuant to Rule 23(e). Likewise, Lead Counsel respectfully submits that the request for attorneys' fees and Litigation Expenses is fair and reasonable and warrants approval.

II. HISTORY AND PROSECUTION OF THE ACTION

A. Summary of the Settlement Class's Claims

11. The Settlement Class's claims in the Action are fully set forth in the First Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws ("First Amended Complaint" or "FAC"), filed June 13, 2019. ECF No. 76.[9] The FAC asserts: (i) claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder; and

[8] Settlement Class Members have until March 28, 2022, to request exclusion from the Settlement Class or to submit an objection. Any additional requests for exclusion or objections received after this submission will be addressed in Lead Plaintiff's April 11, 2022 reply.

[9] Citations to "¶ __" refer to paragraphs in the FAC.

(ii) "control person" claims against the Individual Defendants under Section 20(a) of the Exchange Act. ¶¶ 306-22.

12. OSI manufactures and sells electronic scanning systems and components for homeland security, healthcare, defense, and aerospace. During the Class Period, the Company generated more than 50% of its revenues from its Security division, which sells and provides services for X-ray security and inspection systems to detect explosives, weapons, drugs, and other illegal goods. ¶ 1.

13. The FAC alleges that Defendants made false and misleading statements and omissions regarding the success of OSI's "turnkey" security screening solutions business and its announcement of a major $250 million contract with the government of Albania. ¶¶ 71-72. The FAC alleges that Defendants touted the turnkey business as the key to its future success, but by the beginning of the Class Period, OSI had only booked two turnkey contracts, the most recent of which was in 2012. ¶ 67. The FAC further alleges that throughout the Class Period, Defendants touted the Albanian contract as evidence that its turnkey business was gaining traction in the market and would "transform[]" the Company's business and future profit model. ¶¶ 50, 58. For example, on January 28, 2014, Defendant Chopra stated, "[a]fter winning the new turnkey services contract earlier this year in Albania, we have clearly established our leadership in growing this particular service segment and expect to continue to leverage our position for further growth." ¶ 148. Defendants also touted OSI's "100% market share" of all turnkey contracts in the world as further evidence of the success of its security business. ¶ 150; *see also* ¶ 78.

14. The FAC alleges that unbeknownst to investors, the Albanian contract was subject to an undisclosed arrangement whereby OSI previously sold 49% of the OSI subsidiary holding the rights to the Albanian contract to an Albanian construction company ("ICMS") owned by an Albanian dentist with reported ties to the outgoing Albanian government, for only 490 Lekë—the equivalent of $4.50. ¶¶ 83-86. The 49% arrangement with ICMS also included a "profit shar[ing]" agreement. ¶ 84.

15. The FAC alleges that on December 6, 2017 (i.e., the first alleged corrective disclosure) a financial analyst firm, Muddy Waters Research ("MWR"), issued a detailed report revealing certain facts surrounding the Albanian contract, including the transfer of 49% of OSI's Albanian contract entity to ICMS. *See generally* ¶¶ 118-210. The MWR report concluded that OSI "obtained a major turnkey contract in Albania through corruption." ¶ 15. The report also included translations from Albanian reports and corporate documents laying out the history of OSI's 49% transfer to ICMS and speculating that OSI could be subject to violations of the Foreign Corrupt Practices Act of 1977, *as amended*, 15 U.S.C. §§ 78dd-1, *et seq.*("FCPA"). ¶¶ 118-19. The FAC alleges that within hours of the MWR report, Defendants issued a press release acknowledging OSI's partnership and profit-sharing arrangement with ICMS but denying any corruption or improper conduct. ¶¶ 121-22. Following these revelations, the price of OSI common stock declined 29% and the price of OSI Bonds declined 15%. ¶ 123.

16. The FAC further alleges that on February 1, 2018 (i.e., the second alleged corrective disclosure), OSI announced that it was the target of SEC and Department of Justice ("DOJ") investigations regarding its compliance with the FCPA. ¶ 129. On this news, the price of the Company's stock price declined another 18%, and the price of OSI Bonds declined nearly 6%. ¶ 130. OSI subsequently announced that the SEC and DOJ had dropped their investigations without any finding of wrongdoing. ¶ 130 n.10.

17. Defendants deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever, and have asserted myriad defenses to Plaintiffs' claims.

B. Commencement of the Action and Lead Plaintiff Appointment

18. This case commenced on December 7, 2017, with the filing of a class action complaint styled *Longo v. OSI Systems, Inc.*, Case No. 2:17-cv-08841-FMO-SK. ECF No. 1. Thereafter, three related complaints were filed, and on March 1, 2018, the Court consolidated the actions and appointed ATRS and Kessler Topaz as Lead Plaintiff and Lead Counsel, respectively. ECF No. 35.

C. Extensive Investigation and Preparation of the Consolidated Complaint

19. Following the Court's March 1, 2018 Order, Lead Plaintiff and Lead Counsel continued their extensive investigation into the claims and potential claims against OSI, which, as noted, had begun following the Company's December 6, 2017 corrective disclosure announcement. Lead Counsel worked diligently to discover key facts and develop the most salient and persuasive elements of this case. As a result of this investigation, and as discussed below, Lead Plaintiff and Lead Counsel significantly developed and expanded the theory of liability alleged in the original complaint.

20. As part of its comprehensive investigation of the claims in the Action, Lead Counsel reviewed and analyzed relevant publicly available information about OSI, including: (i) OSI's public filings with the SEC; (ii) research and other reports by securities and financial analysts covering OSI's business; (iii) OSI press releases and other public statements made by or about Defendants; (iv) news articles and other media reports about OSI or its turnkey business; (v) transcripts of OSI's earnings calls and investor and industry conferences; and (vi) pricing, trading, and other data concerning OSI Securities. Lead Counsel also reviewed a substantial volume of materials concerning the Albanian entities related to OSI's turnkey contract and its partnership with ICMS and the financial analyst firm (MWR) that published information regarding the partnership on the first alleged corrective disclosure date. Given the length of the Class Period (over four years) and the fact that multiple analysts followed OSI and paid close attention to OSI's turkey contracts during the Class Period, the volume of these materials was substantial.

21. In connection with the preparation of the Consolidated Class Action Complaint for Violations of the Federal Securities Laws ("Consolidated Complaint" or "CAC") (ECF No. 46), Lead Counsel also consulted with experts, including: (i) a GAAP accounting and financial reporting expert to assess the accounting treatment and reporting surrounding OSI's Albanian contract and related partnership with ICMS, (ii) a consulting firm specializing in international business transactions, and (iii) an economics expert to provide analyses relating to loss causation and damages that aided Lead Counsel in

drafting the CAC, particularly regarding the statistically significant impact of the two alleged corrective disclosures and other events during the Class Period.

22. Lead Counsel also conducted interviews with dozens of former employees and third parties, including a former Vice President of OSI's Rapiscan division in 2014 and 2015, a former Rapiscan Director from 2006 through mid-to-late 2013, and a former Rapiscan Executive from 2013 through 2015. The development of relevant facts from these witnesses directly benefited the Settlement Class. For example, the CAC cited facts these witnesses provided which helped Plaintiffs plead scienter with respect to Defendants' statements concerning the Albanian contract and the "core operations" inference. *See* ECF No. 111 at 17 n.10 (order referencing facts provided by former employees in pleading scienter). In addition to this factual investigation, Lead Counsel thoroughly researched Ninth Circuit law applicable to the claims and Defendants' potential defenses, including issues concerning falsity, materiality, scienter, and loss causation. Following Lead Counsel's investigation, Plaintiffs and Lead Counsel filed the 128-page CAC on May 4, 2018. ECF No. 46.

D. Defendants' First Motion to Dismiss

23. On July 3, 2018, Defendants filed a motion to dismiss the CAC ("First Motion to Dismiss"), along with a 25-page supporting memorandum, pursuant to Rule 12(b)(6). ECF No. 48. Defendants challenged the sufficiency of the CAC's allegations concerning nearly every element of Plaintiffs' claims. Defendants argued that the CAC failed to allege that their statements were materially false or misleading, that they acted with scienter, or that their conduct caused Plaintiffs' losses. More specifically, Defendants argued, *inter alia*, that:

- None of their statements were false or misleading and there was no duty to disclose OSI's partnership surrounding the Albanian contract;
- The allegedly concealed facts regarding the Albanian contract were neither corrupt nor material to a reasonable investor;

- The allegedly omitted facts regarding the Albanian partnership published at the end of the Class Period were publicly available and thus the "truth was on the market" and could not materially mislead investors;
- Defendants' statements regarding the prospective benefits of the Albanian contract, revenue and margin projections for the contract, when the Albanian contract would become operational, and future plans for OSI's turnkey business were protected by the PSLRA's safe harbor for forward-looking statements;
- Defendants' statements were vague statements of optimism amounting to no more than inactionable puffery;
- The CAC failed to plead a "strong inference" of scienter and/or Defendants' knowledge that the Albanian deal was corrupt or violated the FCPA;
- Defendants' stock sales did not support scienter because they were not suspicious in timing or amount in light of the length of the Class Period;
- The CAC's "core operations" allegations were inadequate as a matter of law to allege the requisite level of scienter or "deliberate recklessness" under Ninth Circuit precedent;
- The CAC failed to plead that the Individual Defendants were "controlling persons" of OSI for purposes of Section 20(a) of the Exchange Act; and
- Plaintiffs did not adequately plead loss causation because, *inter alia*: (i) the first alleged corrective disclosure was based on publicly available information and speculation by a short-seller and thus was not "corrective," and (ii) the second alleged corrective disclosure regarding announcement of an SEC investigation was not followed by a later confirmation of wrongdoing and thus did not establish loss causation under the Ninth Circuit's decision in *Loos v. Immersion Corp.*, 762 F.3d 880, 890 n.3 (9th Cir. 2014) ("*Loos*").

24. On July 3, 2018, Defendants filed a 13-page request for judicial notice in connection with their First Motion to Dismiss ("First Request for Judicial Notice"), seeking to notice or incorporate by reference dozens of documents including: (i) SEC

filings, press releases, earnings call transcripts, and investor presentations, (ii) documents relating to the Albanian contract, including corporate records and Albanian statutes, and (iii) tables and calculations derived from SEC filings regarding Defendants' stock sales during the Class Period. ECF No. 49.

25. Lead Counsel reviewed and analyzed Defendants' briefing, exhibits, and extensive legal authority and conducted additional legal research into Defendants' arguments. On August 30, 2018, Plaintiffs filed a 25-page opposition to Defendants' First Motion to Dismiss, citing numerous authorities to support their contentions and distinguishing Defendants' key authorities cited in support of their motion. ECF No. 53.

26. In their opposition to the First Motion to Dismiss, Plaintiffs vigorously defended their allegations, arguing that the CAC adequately alleged all elements of Plaintiffs' claims under the Exchange Act, including falsity, materiality, scienter, loss causation, and damages. Specifically, Plaintiffs argued, *inter alia*, that:

- By speaking affirmatively about the importance of the Albanian contract and the turnkey business throughout the Class Period, Defendants triggered a legal duty to disclose the adverse facts surrounding the Albanian partnership which rendered their statements misleading;
- The adverse facts surrounding the Albanian contract were not publicly available and required expertise and foreign translation of complex documents beyond the reach of a reasonable investor;
- Defendants had direct knowledge of the Albanian partnership and arrangement with ICMS as it was one of only four turnkey contracts in the Company's history;
- Defendants' omissions regarding OSI's profit-sharing agreement with an undisclosed Albanian partner were material given the importance of the contract to investors and Defendants' repeated statements touting the turnkey business as OSI's most important segment for future growth;

- Defendants' stock sales during the Class Period were highly unusual and inconsistent with prior trading history thus supporting an inference of scienter;
- The CAC adequately alleged loss causation because the facts revealed on the two alleged corrective disclosure dates were directly connected to the revelations regarding the Albanian contract at the heart of Plaintiffs' fraud allegations; and
- The CAC sufficiently alleged "control person" liability under Section 20(a) based on the Individual Defendants' actual participation and power to control and direct the Company and its turnkey contracts.

27. Plaintiffs also filed an 11-page brief opposing Defendants' First Request for Judicial Notice, citing extensive law and factual analysis relating to both judicial notice and the incorporation by reference doctrine. ECF No. 54. More specifically, Plaintiffs argued that Defendants' attempt to incorporate by reference and/or judicially notice extrinsic evidence, including Albanian corporate documents and legal statutes, was impermissible under Ninth Circuit law.

28. Defendants filed separate replies in support of their First Motion to Dismiss and First Request for Judicial Notice on October 1, 2018. ECF Nos. 55 and 56.

29. On April 22, 2019, the Court held a hearing on Defendants' First Motion to Dismiss. ECF No. 67.

E. Order Granting First Motion to Dismiss With Leave to Amend

30. On May 7, 2019, the Court granted Defendants' First Motion to Dismiss with leave to amend ("First MTD Order"). ECF No. 71. The Court held, *inter alia*, that Plaintiffs failed to allege actionable misrepresentations and to "specify each statement alleged to have been misleading" and the "reason or reasons why the statement is misleading." *Id.* at 5. The Court also held that Plaintiffs did not adequately allege the basis for a legal "duty to disclose" and how "the [ICMS] contract was otherwise obscured from investors." *Id.* at 7, 9. Finally, the Court held that Plaintiffs failed to establish that the concealed facts regarding the Albanian arrangement "would have been material for

[Plaintiffs'] investment decisions" in OSI Securities. *Id.* at 6. The Court granted Plaintiffs leave to amend to address the deficiencies raised in the First MTD Order. *Id.* at 10.

F. First Amended Complaint and Second Motion to Dismiss

31. Prior to filing the FAC, Lead Counsel continued its exhaustive investigation into the facts and law underlying this Action in an attempt to cure the issues raised in the Court's First MTD Order. As part of this investigation, Lead Counsel reviewed an extensive number of publicly available documents, including: (i) public filings made by OSI with the SEC; (ii) press releases and other public statements issued by OSI and the Individual Defendants during investor conference calls; (iii) securities analysts' reports about OSI; (iv) media and news reports related to OSI; (v) data and other information concerning OSI Securities; and (vi) other publicly available information concerning OSI and the Individual Defendants.

32. On June 13, 2019, Plaintiffs filed the FAC which included extensive new allegations addressing the Court's First MTD Order. ECF No. 76. The FAC also streamlined the categories of alleged misstatements and bolstered the allegations of falsity, materiality, scienter, and loss causation. *Id.*

33. On July 24, 2019, Defendants filed a motion to dismiss the FAC ("Second Motion to Dismiss"), along with a 25-page supporting memorandum, pursuant to Rule 12(b)(6) and a 13-page request for judicial notice ("Second Request for Judicial Notice"). ECF Nos. 78 and 79. Defendants challenged nearly every element of Plaintiffs' claims, including falsity, materiality, scienter, and loss causation. More specifically, Defendants argued, *inter alia*, that the FAC did not add sufficient facts to demonstrate that the Albanian contract or OSI's partnership with ICMS were corrupt or violated the FCPA and thus the omitted facts regarding the Albanian partnership were not material to investors. Defendants also argued that the FAC did not adequately allege a duty to disclose facts relating to the Albanian partnership and that their statements were immaterial puffery or general statements of corporate optimism. Defendants argued that their stock trading was not dramatically out of line with prior trading and that all of the

material information regarding the Albanian deal was publicly available on corporate registries and websites. Finally, Defendants argued that the FAC failed to allege loss causation because the corrective disclosures were not actionable as a matter of law because they pertained to public information and unproven government investigations that were ultimately dropped.

34. Lead Counsel reviewed and analyzed Defendants' briefing, exhibits, and extensive legal authority cited therein. Lead Counsel also conducted additional legal research into Defendants' arguments and the responses thereto. On September 13, 2019, Plaintiffs filed a 25-page opposition to Defendants' Second Motion to Dismiss, citing numerous authorities to support their contentions and distinguishing the key authorities that Defendants cited in support of their motion. ECF No. 83. Plaintiffs also filed a 12-page response in opposition to the Second Request for Judicial Notice. ECF No. 84.

35. In their opposition to the Second Motion to Dismiss, Plaintiffs vigorously defended their allegations, arguing that the FAC adequately alleged all elements of Plaintiffs' claims under the Exchange Act, including falsity, scienter, and damages. ECF No. 83. Specifically, Plaintiffs argued, *inter alia*, that:

- The amended allegations "specif[ied] each statement alleged to have been misleading" and the precise "reason or reasons why the statement is misleading" including *inter alia*: (i) how the Albanian contract was procured; (ii) the hundreds of millions of dollars that OSI would generate from the contract; and (iii) its impact on the viability and success of the turnkey business—thus "affirmatively create[ing] an impression of a state of affairs that differs in a material way from the one that actually exists." *Roberti v. OSI Sys., Inc.*, 2015 WL 1985562, at *7 (C.D. Cal. Feb. 27, 2015);
- The FAC added new detailed allegations including screenshots of SEC filings establishing the falsity of Defendants' representations that OSI exclusively owned 100% of its Albanian subsidiary (S2 Albania) and "100% market share" of all three turnkey contracts in the world;

- The FAC included six pages of new facts and a detailed step-by-step analysis of how and why each of the facts necessary to piece together OSI's Albanian arrangement were either *never* disclosed publicly, or were obscured in complex Albanian records that required expert analysis beyond the reach of investors;
- The FAC included new detailed allegations explaining the precise basis for Defendants' legal "duty to disclose" the adverse facts surrounding the Albanian arrangement—i.e., once Defendants "chose to tout positive information to the market" regarding the Albanian contract, the revenues derived from it, and its impact on the turnkey business, "they [were] bound to do so in a manner that wouldn't mislead investors, including disclosing adverse information that cuts against the positive information." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1009 (9th Cir. 2018); and
- Plaintiffs' amended allegations established that the concealed facts regarding the Albanian arrangement were material. The FAC includes numerous allegations showing that investors viewed the Albanian contract as a direct proxy for the overall success of the turnkey model—indeed, Defendants and analysts highlighted the Albanian contract during every investor conference call during the Class Period. The FAC includes quotes from OSI's own Board minutes showing that Defendants discussed the Albanian contract during at least nine meetings.

36. Defendants filed separate replies in support of their Second Motion to Dismiss and Second Request for Judicial Notice on October 11, 2019.[10] ECF Nos. 90 and 91.

37. On October 18, 2019, on its own motion, the Court continued the hearing on Defendants' Second Motion to Dismiss to November 21, 2019. ECF No. 93.

[10] On October 4, 2019, the Action was transferred from Judge Virginia A. Phillips to Judge Fernando M. Olguin. ECF No. 88.

38. On November 7, 2019, the Court issued an order requiring the Parties, by no later than November 15, 2019, to file either a stipulation or response to show cause why two parallel derivative actions, *Riley v. Chopra, et al*., No. 18-3371 FMO (SKx) (C.D. Cal.) and *Kocen v. Chopra, et al*., No. 19-1741 FMO (SKx) (C.D. Cal.) should not be consolidated with this Action. ECF No. 94.

39. On November 15, 2019, pursuant to the Court's November 7, 2019 Order, the Parties submitted separate responses as to why the derivative cases should not be consolidated with the present Action. ECF Nos. 97 and 98.

40. On November 18, 2019, the Court took the hearing on Defendants' Second Motion to Dismiss off calendar and placed it under submission. ECF No. 99.

G. Order Denying Second Motion to Dismiss Without Prejudice

41. On March 11, 2020, the Court denied Defendants' Second Motion to Dismiss without prejudice for referencing materials outside of the pleadings. ECF No. 106. The Court stated that "Defendants shall file their Answer to the Complaint or a Rule 12(b)(6) motion without incorporating any documents by reference or attaching any exhibits no later than March 26, 2020." *Id.* at 4.

H. Defendants' Third Motion to Dismiss

42. On March 26, 2020, Defendants filed a second motion to dismiss the FAC ("Third Motion to Dismiss"), along with a 25-page supporting memorandum, pursuant to Rule 12(b)(6). ECF No. 107. Defendants' briefing argued, *inter alia*, that even without the incorporation of various documents by reference, the FAC failed to sufficiently allege the elements of falsity, materiality, scienter, and loss causation.

43. Lead Counsel reviewed and analyzed Defendants' briefing and legal authority cited therein. Lead Counsel also conducted additional legal research into Defendants' arguments and the responses thereto. On April 9, 2020, Plaintiffs filed a 25-page opposition to Defendants' Third Motion to Dismiss, citing numerous authorities to support their contentions and distinguishing the key authorities that Defendants cited in support of their motion. ECF No. 108.

44. Defendants filed a reply in support of their Third Motion to Dismiss on April 16, 2020. ECF No. 109.

45. On April 24, 2020, the Court, on its own motion, removed the hearing on the Third Motion to Dismiss (scheduled for April 30, 2020) from the calendar and placed it under submission. ECF No. 110.

I. Order Denying Third Motion to Dismiss and Defendants' Answer

46. On March 31, 2021, the Court issued a detailed 22–page order denying Defendants' Third Motion to Dismiss in its entirety ("Third MTD Order"). ECF No. 111. On April 23, 2021, Defendants filed a 232-page Answer to the FAC. ECF No. 114. The Answer responded to each allegation in the FAC and set forth 11 affirmative defenses.

J. The Parties' Extensive Discovery Efforts

47. Following the Court's Third MTD Order sustaining the FAC, which lifted the PSLRA's discovery stay, the Parties immediately commenced negotiating initial disclosures, discovery parameters, a detailed pretrial schedule, and other matters required pursuant to Rule 26(f). Discovery in the Action was contested from the outset. In order to present a compelling record to the jury, Lead Counsel engaged in extensive discovery-related negotiations with counsel for Defendants and third parties.

48. Through its efforts, Lead Counsel obtained approximately 46,600 pages of discovery from Defendants and a third party. As set forth below, Lead Counsel reviewed and analyzed these documents to develop the record for future depositions, class certification, summary judgment, and trial. Plaintiffs also took advantage of other discovery tools under the Rules, including serving interrogatories under Rule 33.

49. Defendants likewise aggressively pursued discovery from Plaintiffs, serving an initial set of 49 unique document requests and a first interrogatory seeking the identity of the confidential witnesses referenced in the FAC.

50. Lead Counsel's discovery efforts provided Lead Plaintiff with a thorough understanding of the strengths and weaknesses of its claims and assisted Lead Counsel in

considering and evaluating the fairness of the Settlement. A summary of those discovery efforts follows.

1. Rule 26(f) Report, Protective Order, and Initial Disclosures

51. In April and May of 2021, the Parties held a series of conferences pursuant to Rule 26(f). As a result of these discussions, the Parties were able to reach agreement on the vast majority of the joint discovery plan, including certain limitations on discovery and a proposed pretrial schedule to govern the case.

52. On May 24, 2021, the Parties exchanged initial disclosures pursuant to Rule 26(a)(1). Plaintiffs served 12 pages of disclosures including information regarding 96 relevant OSI employees, affiliates, and third parties. Defendants served eight pages of disclosures, including relevant information regarding the identity and location of relevant documents and witnesses. Defendants then served updated disclosures on May 25, 2021.

53. On June 9, 2021, the Parties filed with the Court a Joint Report and Discovery Plan Pursuant to Rule 26(f) and Local Rule 26-1 that summarized the Parties' positions regarding, *inter alia*: (i) the legal and factual issues in the case; (ii) anticipated motions; (iii) discovery limitations; (iv) a proposed schedule; (v) settlement/alternative dispute resolution (ADR); and (vi) anticipated length of trial. ECF No. 118. The report also set forth a proposed pretrial schedule. ECF No. 118-1

54. On June 11, 2021, the Court issued a Scheduling and Case Management Order setting a December 10, 2021 deadline to complete fact discovery. ECF No. 119.

2. Plaintiffs' Document Discovery Propounded on Defendants

55. On May 12, 2021, Plaintiffs served their First Set of Requests for Production of Documents to Defendants ("Document Requests"), which included 56 unique requests. The Document Requests sought, *inter alia*, documents concerning (i) OSI's turnkey business, turnkey contracts, and Albanian contract; (ii) the accounting and financial performance relating to OSI's turnkey business, turnkey contracts, and Albanian contract; (iii) OSI's plans and strategies relating to the turnkey business; (iv) ICMS, including

communications regarding ICMS and all work that ICMS did in connection with the Albanian contract; (v) the sale of 49% of S2 Albania to ICMS; (vi) OSI's relationship with the Government of Albania; and (vii) any change in the price of OSI's common stock and OSI Bonds during the Class Period.

56. On June 11, 2021, Defendants served 62 pages of responses and objections to the Document Requests. Over the course of the following weeks, the Parties held multiple meet and confer conferences to address Defendants' objections and negotiate the parameters of each of Plaintiffs' 56 document requests.

3. The Parties' Meet and Confer Efforts and Negotiations Regarding Document Discovery

57. The Parties met and conferred extensively concerning Plaintiffs' Document Requests, including hours of telephonic meet and confers and the exchange of correspondence. A summary of some of the main disputes follows.

58. The Parties held a meet and confer on June 25, 2021, during which the Parties discussed Defendants' responses and objections to the Document Requests. Specifically, Defendants contended that they were not able to commit to a date certain for a single large-scale production of all responsive documents and the Parties agreed that production on a rolling basis was appropriate. Plaintiffs also requested that Defendants prioritize certain categories of documents, including: (i) documents concerning the SEC/DOJ investigation of FCPA issues ("Government Materials"); (ii) materials produced in the parallel derivative action, *Riley, et al., Derivatively and on Behalf of OSI Systems, Inc. v. Chopra, et al.*, No. 2:18-cv-03371-FMO (SKx) (C.D. Cal); (iii) organizational charts of OSI, Rapiscan, S2 Global, and S2 Albania and documents sufficient to identify custodians and personnel relevant to OSI's turnkey business; (iv) documents related to the Albanian contract and OSI's arrangement with ICMS; (v) documents concerning S2 Albania; and (vi) documents relating to Defendants' stock sales and OSI's policies and procedures regarding insider trading.

59. During the June 25, 2021 meet and confer, the Parties also discussed discovery related to the OSI Bonds, communications regarding Defendants' trading in OSI common stock during the Class Period, and Defendants' activity in Albania generally to the extent such documents were in Defendants' possession, custody, or control.

60. The Parties subsequently held several additional meet and confer conferences regarding the scope and details of Plaintiffs' Document Requests. Because of the volume and complexity of the information sought, it was important to establish an effective and efficient way to handle relevant electronically stored information ("ESI"). During the meet and confer process, the Parties discussed and negotiated joint protocols for handling ESI. Among other things, the Parties' ESI discussions outlined the sources of relevant ESI to be produced, prescribed the form in which ESI would be produced (including relevant metadata), and set forth other terms governing production of hard copies. Separately, the Parties negotiated extensively over which potential custodians' files would be searched, the terms to be used to conduct those searches, and the relevant time frame for Defendants' collection of relevant documents.

61. Ultimately, Defendants produced over 46,000 pages of documents responsive to Plaintiffs' document requests.

4. Plaintiffs' Document Discovery Propounded on Non-Parties

62. In addition to the extensive discovery obtained from Defendants, Plaintiffs served an aggregate of 75 document requests on the following non-parties:

- Financial Industry Regulatory Authority, Inc. (5 requests)
- J.P. Morgan Securities, LLC (17 requests)
- Merrill Lynch, Pierce, Fenner, & Smith, Inc. (17 requests)
- Moss Adams, LLP (19 requests)
- Wells Fargo Securities, LLC (17 requests)

63. At the time the Parties reached their agreement-in-principle to resolve this Action, Lead Counsel had engaged in communications and/or meet and confer

conferences with all subpoenaed non-parties and received a production from Wells Fargo Securities, LLC.

64. Plaintiffs also prepared and served a Freedom of Information Act request on the Transportation Security Administration ("TSA") and Department of Homeland Security ("DHS") seeking seven categories of documents relating to the TSA/DHS investigations and disbarment order surrounding OSI contracts.

5. Implementation of Document Review Protocol

65. Lead Counsel's document review, which proceeded according to the protocols discussed below, began shortly after Defendants started producing documents.

66. *First*, in anticipation of receiving documents, Lead Counsel solicited bids from database vendors for a document-management system that could accommodate the size of the anticipated production, enable the review of documents housed on the database by multiple users, and offer the latest coding, review, and search capabilities for electronic discovery management. Ultimately, Lead Counsel negotiated a favorable pricing arrangement with KLDiscovery Ontrack, LLC ("KLD"), a third-party vendor, to host this significant volume of information on its sophisticated electronic database. This allowed attorneys performing document review to organize and categorize the large volume of documents produced by issue and degree of relevance, and to identify the critical documents supporting the Settlement Class's claims.

67. *Second*, once the documents were loaded into KLD's database, Lead Counsel prepared and implemented a detailed review protocol to facilitate the analysis of the documents and rank documents by relevance and priority. This allowed Lead Counsel to focus its review on the most relevant documents first, and extract potentially irrelevant material by prioritizing documents based on their relative importance, custodian, and topical issue. In conjunction with this protocol, Lead Counsel created a comprehensive coding manual, with explanatory notes covering: (i) key facts, custodians, and topics in the Action; (ii) relevance coding instructions; and (iii) "tags" covering relevant issues and sub-issues.

68. Next, Lead Counsel assembled a team of experienced attorneys to review and analyze the documents received in discovery. This team of attorneys, which included attorneys for Plaintiffs' Counsel, reported directly to senior associates and partners at Kessler Topaz, participating in meetings to discuss their findings. In requiring the attorneys involved in document analysis to meet periodically with senior associates and/or partners, Lead Counsel sought to ensure that reviewing attorneys were aware of: (i) the issues being identified in the document review; (ii) why certain documents were higher-value; and (iii) how such documents were informing the theories of liability. Beyond these meetings, the attorneys involved in reviewing and analyzing documents communicated to ensure that coding decisions were applied consistently and that all team members were apprised of important developments with respect to the document review and development of case theories. In total, Plaintiffs' Counsel reviewed a large portion of the approximately 46,600 pages of documents produced in discovery. Notably, the review of documents had a direct impact on the Settlement as Lead Plaintiff's mediation briefing included relevant excerpts of central documents relating to the claims and defenses in the litigation.

6. Plaintiffs' Interrogatories Propounded on Defendants

69. On June 29, 2021, Plaintiffs served their First Set of Interrogatories ("Interrogatories") on Defendants which included six unique interrogatories. The Interrogatories sought information concerning, *inter alia*: (i) the persons or entities that had a role or involvement in negotiating and executing the Albanian contract; (ii) agreements between OSI and ICMS regarding ICMS's role and/or financial interests in the Albanian contract; (iii) the timeline of negotiations for the Albanian contract; (iv) the individuals and entities who purchased the OSI Bonds; (v) the accounting treatment for the Albanian contract; and (vi) Defendants' theory regarding Plaintiffs' damages. Defendants served 19 pages of objections and responses to Plaintiffs' Interrogatories on August 12, 2021.

7. Defendants' Discovery Propounded on Plaintiffs

70. Defendants also sought extensive discovery from Plaintiffs. *First*, on June 25, 2021, OSI served an interrogatory regarding the identification of confidential witnesses. Plaintiffs served a response to Defendants' interrogatory on July 26, 2021. *Second*, on July 1, 2021, OSI served Plaintiffs with 49 unique document requests, which covered subjects including: (i) Plaintiffs' investments in OSI Securities; (ii) Plaintiffs' investment strategies and records; (iii) Lead Counsel's investigation; (iv) Plaintiffs' participation in the Action; and (v) all lawsuits that Plaintiffs have participated in. Plaintiffs served a response to Defendants' document requests on August 2, 2021.

8. Plaintiffs' Foreign Discovery Efforts

71. At the time the Parties reached their agreement-in-principle to resolve this Action, Plaintiffs had initiated efforts to seek discovery in Albania. Specifically, Plaintiffs' Counsel prepared detailed legal research memoranda regarding the legal options for seeking discovery in Albania in light of Albania's failure to sign on to the Hague Convention on Pretrial Discovery. In addition, Plaintiffs' Counsel prepared letters rogatory that Lead Counsel was preparing to file with the Court if the mediation was unsuccessful.

III. THE SETTLEMENT

A. The Parties' Arm's-Length Settlement Negotiations and Mediation

72. The Parties engaged in extensive arm's-length negotiations that ultimately led to the $12.5 million Settlement. The Parties selected Judge Phillips as the mediator because of his successful track record resolving complex securities class actions like this one. On August 26, 2021, Lead Counsel, representatives of Defendants, Defendants' Counsel, and representatives of Defendants' insurer carriers participated in a full-day mediation session before Judge Phillips. In advance of that session, the Parties submitted to Judge Phillips two rounds of detailed mediation briefing and exhibits addressing both liability and damages. In preparing the mediation briefs, Lead Counsel worked with an

economic expert on the issues of loss causation and damages. Despite vigorous negotiations, the August 26, 2021 mediation session ended without any agreement.

73. Over the next few weeks, Judge Phillips conducted further discussions with the Parties and Defendants' insurance carriers. Following extensive negotiations, Judge Phillips made a written double-blind "Mediator's Recommendation" that the Parties settle the Action for $12.5 million based on his review and understanding of the mediation briefing and filings in the Action, discussions with counsel at the August 2021 mediation, additional post-mediation calls, and the overall negotiation process. The Mediator's Recommendation set forth the basic recommended monetary and nonmonetary terms of a settlement, and set a deadline for the Parties to accept or reject the recommendation. Both Parties accepted Judge Phillip's recommendation on September 7, 2021.

B. Preparation of Settlement Documentation and Motion for Preliminary Approval of Settlement

74. Thereafter, the Parties worked diligently to negotiate the full settlement terms set forth in the Stipulation and its exhibits as well as a confidential supplemental agreement regarding requests for exclusion ("Supplemental Agreement"),[11] and exchanged multiple drafts of these documents. During this same time, Lead Counsel requested and reviewed bids obtained from several organizations specializing in class action notice and claims administration, and conducted follow-up communications with certain of these organizations. As a result of this bidding process, Lead Counsel selected A.B. Data to serve as the Claims Administrator for the Settlement. Lead Counsel also worked closely with Lead Plaintiff's damages consultant to develop the proposed Plan of Allocation. *See infra* Part VI.

[11] The Supplemental Agreement sets forth the conditions under which OSI, on behalf of all Defendants, may terminate the Settlement in the event that requests for exclusion from the Settlement Class exceed an agreed-upon, confidential opt-out threshold. *See* Stipulation, ¶ 37(a). Pursuant to its terms (and as is typical in cases like this), the Supplemental Agreement is not being made public but may be submitted to the Court *in camera* or under seal at the Court's request.

75. On October 22, 2021, the Parties executed the Stipulation setting forth the full terms and conditions of the Settlement.

76. On October 22, 2021, Lead Plaintiff also submitted an unopposed motion for an order preliminarily approving the Settlement, certifying the Action as a class action for settlement purposes, approving the manner and form of notice to be sent to Settlement Class Members, and scheduling a hearing for final approval of the Settlement ("Preliminary Approval Motion"). ECF No. 125. Following a hearing on December 2, 2021, and Lead Counsel's supplemental submission providing additional information regarding Lead Plaintiff's consultant's calculations of the Settlement Class's estimated maximum amount of reasonably recoverable damages (ECF No. 130), the Court granted the Preliminary Approval Motion on December 30, 2021, and scheduled a final approval hearing for May 12, 2022. ECF No. 131.

IV. RISKS OF CONTINUED LITIGATION

77. The Settlement provides a near-term and certain benefit to the Settlement Class in the form of a $12,500,000 cash payment. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is a favorable result for the Settlement Class, especially given the numerous risks of further protracted litigation with no certainty of any recovery.

78. At the time the Parties reached their agreement-in-principle to resolve the Action, Lead Plaintiff and Lead Counsel had reviewed extensive materials and were well-positioned to evaluate the strengths and weaknesses of the claims alleged in the FAC. This understanding of the strengths and weakness of their case, complemented by Defendants' various legal and factual arguments advanced in seeking dismissal of the FAC and during the Parties' settlement negotiations, informed Lead Plaintiff and Lead Counsel that, while their case against Defendants had merit and was sufficient to survive a motion to dismiss, there were several factors that made the outcome of continued litigation—including, for example, overcoming Defendants' anticipated summary judgment motion and proving their claims at trial—highly uncertain.

79. As explained below, Plaintiffs faced meaningful risks with respect to proving liability, certifying a class, and recovering full damages at trial.

A. Risks of Establishing Liability

80. Had the Settlement not been reached, Plaintiffs would have faced substantial obstacles in proving liability, particularly because Defendants vigorously maintained that discovery would show that they did not mislead investors or conceal material facts regarding OSI's turnkey business or its contract with the Albanian government. As an initial matter, Defendants would have continued to argue, among other things, that: (i) they did not mislead investors regarding the Albanian contract because all of the key documents regarding the contract and OSI's partnership with ICMS were publicly available; (ii) the Albanian contract was not corrupt, was authorized by the Albanian government, and continues to generate revenues for the Company; (iii) the SEC and DOJ ultimately dropped their investigations of the Albanian contract without taking any action; and (iv) Defendants' statements were non-actionable puffery, statements of corporate optimism, and forward-looking statements immunized by the PSLRA's safe harbor. With respect to scienter, Defendants would have continued to argue, as they did throughout the Action, that there was no evidence that Defendants believed or recklessly disregarded that the Albanian contract was corruptly or improperly obtained. For example, Defendants asserted that the arrangement with ICMS was not improper because OSI was required to have a local Albanian partner and the Albanian government ultimately approved OSI's contract with full knowledge of the arrangement with ICMS. While Lead Plaintiff believed Plaintiffs had strong arguments to counter these defenses, it also recognized that were the Court at summary judgment or the jury at trial to side with Defendants on even one of their defenses, it would have severely curtailed, or eliminated entirely, the Settlement Class's ability to recover damages.

81. In order to respond to Defendants' arguments, Plaintiffs, in addition to conducting significant domestic-based discovery through issuing third-party subpoenas and taking depositions, would have had to conduct extensive discovery in Albania through

letters rogatory pursuant to the Hague Convention. This process would have been time consuming for the Parties and the Court as well as prohibitively expensive, especially in light of Albania's decision to opt-out of the Hague Convention's pretrial discovery provision. *See, e.g.*, *United States v. Sedaghaty*, 2010 WL 11643383, at *5 (D. Or. Jan. 26, 2010) (acknowledging that "[l]etters rogatory are a complicated, dilatory and expensive system"). Additionally, any discovery received as a result of this complex foreign discovery processes would require detailed translations, review, and analytical assistance of Albanian-speaking attorneys.

82. The inability to obtain documents in Albania—or at least the significant difficulty and uncertainty in being able to secure those documents—posed a challenge to Lead Counsel's ability to develop the evidence needed to prevail at trial, and increased the risk that it would be unable to do so. Moreover, certain of the conduct and events surrounding the Albanian contract took place approximately 8-10 years ago which created risk that witnesses may not recall the details of the transactions, meetings, and communications at issue. Such uncertain, far-reaching, and time-consuming discovery in a foreign country added additional complexity, expense, and risk to continued litigation.

B. Risks of Establishing Loss Causation and Damages

83. Even if Plaintiffs were able to overcome Defendants' defenses to liability, they also faced Defendants' expected challenges to proving loss causation and damages, adding risk at summary judgment and trial. These risks had the real potential to diminish or negate any potential recovery entirely. Lead Counsel engaged a consultant to estimate the Settlement Class's potentially recoverable damages in the Action. Estimating aggregate damages can be challenging due to, among other things, assumptions that must be made regarding trading activity. Here, as set forth in the Declaration of Chad Coffman C.F.A. filed in connection with preliminary approval of the Settlement (ECF No. 130-1), such an estimate of potential maximum recoverable damages ranged from $121.4 million to $246 million depending on whether Plaintiffs succeeded in overcoming some of Defendants' core loss causation and damage arguments.

84. *First*, with respect to the first alleged corrective disclosure in the case—publication of a short-seller (MWR) report alleging potential FCPA violations surrounding the Albanian contract—there was risk that a jury would not find such disclosures adequately caused Settlement Class Members' losses because: (i) they were based on information in the public record and thus were not "new"; and (ii) they were mere speculation about the possibility of wrongdoing. *Grigsby v. BofI Holding, Inc.*, 979 F.3d 1198, 1202, 1208 (9th Cir. 2020) (article written by "anonymous short-seller" who "derived [his conclusions] from publicly available information" insufficient to allege a corrective disclosure) (alteration in original); *see also, e.g.*, *N.Y. Hotel Trades Council v. Impax Labs., Inc.*, 843 F. App'x 27, 31 (9th Cir. 2021) (following *Loos* and holding that "speculation" in media reports regarding "potential criminal liability" or wrongdoing "cannot form the basis of a viable loss causation theory"). Defendants would also likely argue that this alleged corrective disclosure included "confounding information" regarding a different contract in Mexico unrelated to the Albanian contract and the allegations at issue in this Action. Although Lead Plaintiff believed Plaintiffs had strong arguments to counter these defenses, there was still substantial risk at summary judgment and trial that damages would be reduced or eliminated after the submission of expert reports and testimony regarding the specific causes of the stock declines at issue.

85. *Second*, because the second alleged corrective disclosure was based on the announcement of preliminary SEC/DOJ investigations, Defendants would continue to argue that the lack of any subsequent findings of misconduct linked to that disclosure created risk under the Ninth Circuit's decision in *Loos*, 762 F.3d at 890 n.3 ("[T]he announcement of an investigation, standing alone and without any subsequent disclosure of actual wrongdoing, does not reveal to the market the pertinent truth of anything, and therefore does not qualify as a corrective disclosure."). Notably, this Court has previously relied on *Loos* to dismiss corrective disclosures based on government investigations that did not result in subsequent findings of wrongdoing. *Cowan v. Goldcorp*, 2017 WL 5495734, at *7 (C.D. Cal. Sep. 6, 2017). While Plaintiffs had substantial responses to this

argument, there was still a risk that damages could be reduced or eliminated on the merits after full discovery, expert reports, and testimony regarding loss causation and damages.

86. While Lead Plaintiff and Lead Counsel believe that Plaintiffs' claims are strong and that they would be able to develop the evidence needed to prevail at summary judgment and trial, they nonetheless recognize that if the Court or the jury were to accept any of Defendants' arguments or defenses, either at summary judgment or at trial, it would eliminate or at least dramatically limit any potential recovery. The Settlement avoids these litigation risks and guarantees the Settlement Class a favorable cash recovery. Lead Counsel and Lead Plaintiff firmly believe that settling the Action at this time is in the best interest of the Settlement Class.

C. Risks of Obtaining Class Certification

87. Even if Plaintiffs were able to overcome Defendants' defenses to liability, it also faced risk in certifying a class. Defendants would doubtless vigorously challenge one or more of the requisite elements of Rule 23. And, as is typical in securities fraud actions, Defendants would likely argue, *inter alia*, that Plaintiffs failed to articulate a methodology for measuring damages consistent with their liability case, as required by *Comcast Inc. v. Behrend*, 569 U.S. 27 (2013); that the class could not be certified because investors were aware of the facts Plaintiffs alleged were concealed; that Plaintiffs had not established market efficiency (and, thus, class-wide reliance); that Defendants had met their burden to establish no "price impact" from the alleged misrepresentations and omissions; and that certification was inappropriate because individualized issues would predominate over issues common to the class. If Defendants prevailed on any of the arguments and defeated certification (or even succeeded in reducing the size of the class or length of the Class Period), class-wide damages would have been significantly reduced or eliminated.

D. Appellate Risks

88. In addition to the specific risks summarized above, Plaintiffs also faced the risk that, even if successful in (i) obtaining class certification, (ii) defeating summary judgment, and (iii) proving their case at trial, recovery was still far from certain given the

appellate risks inherent in complex securities fraud litigation. *See, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *38 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants after plaintiffs secured favorable jury verdict); *aff'd on other grounds*, 688 F.3d 713 (11th Cir. 2012); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 587 (S.D.N.Y. 2011) (narrowing claims based on change in law following jury finding of liability); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015) (reversing in part jury verdict for plaintiffs and ordering new trial six years after initial trial). Lead Plaintiff and Lead Counsel took these additional appellate risks into account in determining that the Settlement here was fair, reasonable, and adequate.

V. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REGARDING NOTICE TO POTENTIAL SETTLEMENT CLASS MEMBERS

89. In its Preliminary Approval Order, the Court preliminarily (i) certified the Settlement Class for purposes of settlement, (ii) appointed Lead Plaintiff ATRS as class representative for settlement purposes, and (iii) appointed Kessler Topaz as class counsel for settlement purposes. ECF No. 131 at 23. In connection with final approval of the Settlement, the Court will be asked to finally certify the Settlement Class and finally approve the appointment of ATRS as class representative for the Settlement Class and the appointment of Kessler Topaz as class counsel for the Settlement Class.

90. As required by the Court's Preliminary Approval Order, A.B. Data, working under Lead Counsel's supervision, began disseminating notice of the Settlement on January 17, 2022. Schachter Decl., ¶¶ 3-5. Specifically, A.B. Data: (i) mailed by First-Class mail a copy of the Notice, Claim Form, and Exclusion Request Form (collectively, the "Notice Packet") to potential Settlement Class Members at the addresses provided by or caused to be provided by Defendants, or who otherwise were identified through further reasonable effort; (ii) mailed a copy of the Notice Packet to the brokers and nominees ("Nominees") contained in A.B. Data's Nominee database; (iii) published the Summary Notice in *The Wall Street Journal* and transmitted it over *PR Newswire*; and

(iv) established and maintains a website, www.OSISystemsSecuritiesSettlement.com ("Settlement Website"), to provide information about the Settlement. Schachter Decl., ¶¶ 3-12.

91. The Notice contains important information about the Action and the Settlement, including, among other things, the definition of the Settlement Class, a description of the proposed Settlement, information regarding the claims asserted in the Action, and the proposed Plan. *See generally* Schachter Decl., Ex. A. The Notice also provides information for Settlement Class Members to determine whether to: (i) participate in the Settlement by completing and submitting a Claim Form; (ii) request exclusion from the Settlement Class; or (iii) object to any aspect of the Settlement, the Plan, or the Fee and Expense Application. *Id*. The Notice also informs recipients of Lead Counsel's intent to apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund, and for payment of Litigation Expenses incurred by Plaintiffs' Counsel in an amount not to exceed $200,000. *Id*.

92. In accordance with the Preliminary Approval Order, as of February 28, 2022, A.B. Data has disseminated 51,214 copies of the Notice Packet to potential Settlement Class Members and Nominees. Schachter Decl., ¶ 9. In addition, A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire* on January 24, 2022. *Id.*, ¶ 10.

93. Contemporaneously with the mailing of the Notice Packet, A.B. Data developed and currently maintains the Settlement Website to provide information concerning the Settlement and important dates and deadlines in connection therewith, as well as access to downloadable copies of the Notice, Claim Form, Exclusion Request Form, and other relevant documents, including the FAC, the Stipulation, and the Preliminary Approval Order. *Id*., ¶ 12. Copies of the Notice and Claim Form are also available on Lead Counsel's website, www.ktmc.com. Additionally, A.B. Data maintains a toll-free telephone number and interactive voice-response system to respond to inquiries regarding the Settlement. *Id*., ¶ 11. Settlement Class Members with questions regarding

the Settlement can also contact A.B. Data by sending an email to the Settlement-specific email address, info@OSISystemsSecuritiesSettlement.com. *Id.* at Ex. A.

94. As set forth above, the deadline for Settlement Class Members to file objections to the Settlement, the Plan, and/or the Fee and Expense Application, or to request exclusion from the Settlement Class, is March 28, 2022. To date, no objection to any aspect of the Settlement has been received and there has been only one request for exclusion from the Settlement Class. *Id.*, ¶ 14. Lead Counsel will file a reply on or before April 11, 2022, that will address any additional requests for exclusion and objections that may be received.

95. As explained in the Settlement Memorandum, the Notice fairly apprises Settlement Class Members of their rights with respect to the Settlement and therefore is the best notice practicable under the circumstances and complies with the Court's Preliminary Approval Order, Rule 23, and due process. *See* Settlement Memorandum, § V.

96. In addition, in accordance with Paragraph 21 of the Stipulation, Defendants' Counsel have advised Lead Counsel that they provided notice of the Settlement pursuant to the Class Action Fairness Act of 1995 on October 29, 2021. To date, none of these officials have raised any objections or concerns regarding the Settlement.

VI. THE PLAN OF ALLOCATION

97. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, Settlement Class Members who wish to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less (a) any Taxes, (b) any Notice and Administration Costs, (c) Litigation Expenses awarded by the Court, and (d) attorneys' fees awarded by the Court) must submit a valid Claim Form with all required supporting information postmarked (if mailed), or submitted via the Settlement Website, no later than May 11, 2022.

98. The Plan of Allocation proposed by Lead Plaintiff and Lead Counsel is set forth in Appendix A to the Notice. Schachter Decl., Ex. A. If approved by the Court, the

Plan of Allocation will govern how the Net Settlement Fund will be distributed among Authorized Claimants. The Plan is designed to achieve an equitable and rational distribution of the Net Settlement Fund. However, the Plan is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial.

99. Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiff's damages consultant—Chad Coffman C.F.A., an expert financial economist, and his team at Global Economics Group LLC. The Plan of Allocation creates a framework for the equitable distribution of the Net Settlement Fund among Settlement Class Members who suffered economic losses as a result of Defendants' alleged violations of the federal securities laws. Lead Plaintiff's damages consultant developed the Plan without consideration of Plaintiffs' individual transactions.

100. In developing the Plan for this case, Lead Plaintiff's damages consultant calculated the amount of estimated alleged artificial inflation in the per share price of OSI common stock and the per bond price of OSI Bonds which allegedly were proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated alleged artificial inflation caused by Defendants' alleged misrepresentations and omissions, Lead Plaintiff's damages consultant considered the fraud-related price declines in OSI Securities following the two alleged corrective disclosures that, according to Lead Plaintiff's allegations, revealed (at least partially) the alleged truth to the market on December 6, 2017 and February 1, 2018. ECF No. 130-1 (Coffman Declaration), ¶¶ 6-8. To that end, Lead Plaintiff's damages consultant performed an event study, a widely accepted methodology used to isolate the company-specific portion of a price decline after controlling for market and industry factors. *Id.*, ¶ 7. The previously filed Coffman Declaration (ECF No. 130-1) further explains the methods used to determine the amount of estimated artificial inflation used in calculating Recognized Loss Amounts under the Plan of Allocation. *Id.*, ¶¶ 9-11.

101. As set forth in the Plan, a Claimant's Recognized Loss Amount will depend upon several factors, including whether the Claimant purchased OSI common stock or OSI Bonds, the date(s) when the Claimant purchased or acquired his, her, or its OSI Securities during the Class Period, and whether such securities were sold (and if so, when and at what price).[12] In order to have a Recognized Claim under the Plan, a Claimant must have suffered damages proximately caused by the disclosure of the relevant truth concealed by Defendants' alleged fraud. Specifically, shares of OSI Securities purchased or otherwise acquired during the relevant period (i.e., for OSI common stock, between August 21, 2013 and February 1, 2018, inclusive, and for OSI Bonds, between February 16, 2017 (after the OSI Bonds were issued) and February 1, 2018, inclusive) must have been held through at least one of the alleged corrective disclosures on December 6, 2017 and February 1, 2018, that removed alleged artificial inflation.

102. A.B. Data, as the Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim (i.e., the sum of the Claimant's Recognized Loss Amounts as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Plaintiffs' losses will be calculated in the same manner.

103. Pursuant to Paragraph 28 of the Stipulation, prior to distributing the Net Settlement Fund to Settlement Class Members who submit valid Claims, Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order, *inter alia*, approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted. In the event that any Claimant disagrees with the administrative determination as to his, her or its Claim, and seeks the Court's review of that determination, they will be given the opportunity to dispute the determination and provide additional input to the Court at that time.

[12] The calculation of a Recognized Loss Amount also takes into account the PSLRA's statutory limitation on recoverable damages. *See* Section 21D(e)(1) of the Exchange Act.

104. As set forth in the Plan, if nine (9) months after the initial distribution, there is a balance remaining in the Net Settlement Fund (whether by reason of uncashed checks, or otherwise), and if it is cost-effective to do so, Lead Counsel will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including the costs for such re-distribution, to Authorized Claimants who have cashed their initial distribution checks and would receive at least $10.00 from such re-distribution. Schachter Decl., Ex. A. Re-distributions will be repeated until it is determined that re-distribution of the funds remaining in the Net Settlement Fund would no longer be cost effective. *Id*. Thereafter, any remaining balance will be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.[13]

105. The structure of the Plan is similar to the structure of plans of allocation that have been used to apportion settlement proceeds in numerous other securities class actions. *See* Settlement Memorandum, § III. To date, in response to the mailing of over 51,200 Notices, no objections to the Plan have been filed. In sum, Lead Counsel believe that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants, and respectfully submits that the Plan should be approved by the Court.

VII. LEAD COUNSEL'S FEE AND EXPENSE APPLICATION

106. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court for an award of attorneys' fees and Litigation Expenses on behalf of all Plaintiffs' Counsel. Specifically, in accordance with a retainer agreement entered into between Lead Plaintiff and Lead Counsel at the outset of the litigation, Lead Counsel is applying to the Court, on behalf of all Plaintiffs' Counsel, for a fee award of 25% of the Settlement Fund, or $3,125,000, plus interest earned at the

[13] At the appropriate time, Lead Counsel will seek the Court's approval to contribute the balance to Investor Protection Trust, a 501(c)(3) organization devoted to investor education. Plaintiffs and Lead Counsel have no relationship with this organization.

same rate as earned by the Settlement Fund. Lead Counsel also requests payment for Litigation Expenses that Plaintiffs' Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $134,863.08.[14]

107. In determining whether a requested award of attorneys' fees is fair and reasonable, courts in the Ninth Circuit are guided by the following factors articulated in *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002): (i) the results achieved; (ii) the risk of litigation; (iii) the skill required and quality of work; (iv) the contingent nature of the fee and the financial burden carried by the plaintiffs' counsel; and (v) awards made in similar cases. Based on the foregoing factors as further discussed below, as well as a lodestar cross-check, and on the additional legal authorities set forth in the accompanying Fee and Expense Memorandum filed contemporaneously herewith, Lead Counsel respectfully submits that its requested fee should be granted.

108. In its Preliminary Approval Order, the Court instructed Lead Counsel to address the attorneys' fee provision contained in the Stipulation and any "clear sailing" agreements under *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). ECF No. 131 at 7 n.4. Lead Counsel hereby confirms that there is no clear sailing agreement—implicit or otherwise—between the Parties regarding attorneys' fees and Defendants are free to oppose any aspect of Lead Counsel's request for attorneys' fees. Further, the benchmark fee percentage Lead Counsel now seeks was set forth in the retainer agreement entered into between Lead Plaintiff and Lead Counsel at the outset of the Action. And, unlike the concern raised in *Bluetooth*, here, any attorneys' fees awarded by the Court will be paid out of the common fund. *See Bluetooth*, 654 F.3d at 947 (warning of "'clear sailing' arrangement[s] providing for the payment of attorneys' fees *separate and apart* from class funds, which carries the potential of enabling a

[14] Approval of the Settlement is independent from approval of Lead Counsel's application for an award of attorneys' fees and Litigation Expenses; any determination with respect to Lead Counsel's application for an award of attorneys' fees and Litigation Expenses will not affect the Settlement, if approved.

defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class").

A. The Fee Application Is Reasonable and Warrants Approval

109. For the considerable efforts undertaken on behalf of the Settlement Class in this Action, Lead Counsel is applying for compensation from the common fund obtained on a percentage basis. As set forth in the accompanying Fee and Expense Memorandum, the percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Settlement Class in achieving the maximum recovery in the shortest amount of time under the circumstances; is supported by public policy; has been recognized as appropriate by the Supreme Court for cases of this nature; and represents the overwhelming trend in the Ninth Circuit and other circuits. *See* Fee and Expense Memorandum, § II.B.

110. Based on the result achieved for the Settlement Class, the extent and quality of work performed, awards made in similar cases, and the risks of the litigation and the contingent nature of the representation, Lead Counsel submits that a 25% fee award is justified and should be approved. ATRS approves the fee request. ECF No. 125-6 (ATRS Declaration), ¶ 10.

111. As discussed in the Fee and Expense Memorandum, a 25% fee is a fair and reasonable fee in common fund cases such as this; is below the Ninth Circuit's recognized "benchmark" of 25%; and is well within, or below, the range of the percentages typically awarded in securities class actions in this Circuit. *See* Fee and Expense Memorandum, § II.C.1. Lead Counsel respectfully submits that the work undertaken in prosecuting this case and arriving at the Settlement has been challenging. As explained above, the litigation posed unique risks that made any recovery uncertain. In the face of those risks, Plaintiffs' Counsel took this case on a contingency basis, committed resources, and litigated for nearly four years without any compensation or guarantee of success.

112. Applying a lodestar cross-check further confirms that the requested fee is reasonable. Lead Counsel entered into the Stipulation only after gathering adequate

information about the strengths and weaknesses of the Settlement Class's claims. To do so, Lead Counsel, with the assistance of the other Plaintiffs' Counsel firms, conducted an extensive investigation, including, as detailed above, reviewing and analyzing all relevant publicly available information and identifying and interviewing relevant percipient witnesses with direct knowledge of the facts alleged, several of which are cited in the FAC, and whose statements the Court found supported the inference of scienter sufficient to defeat Defendants' Third Motion to Dismiss. Lead Counsel, with the other Plaintiffs' Counsel firms' assistance, committed substantial time and resources to, among other things, filing the FAC that was sufficiently detailed to overcome the heightened pleading standard of the PSLRA; fully briefing Defendants' three motions to dismiss; conferring with experts and consultants; researching the applicable law concerning Plaintiffs' claims as well as Defendants' potential defenses and other litigation issues; pursuing discovery against Defendants and various third-parties; and engaging in hard-fought settlement negotiations with experienced defense counsel.

113. While I personally devoted substantial time to this case, other experienced attorneys undertook particular tasks appropriate to their levels of expertise, skill, and experience. As set forth in the accompanying Fee and Expense Declarations, Plaintiffs' Counsel devoted over 7,547 hours to the prosecution, investigation, and resolution of the Action resulting in an aggregate lodestar of $4,054,672.25.[15] The requested 25% fee, therefore, yields a *negative* "multiplier" of approximately 0.77 on Plaintiffs' Counsel's

[15] The Fee and Expense Declarations consist of: (i) the Declaration of Eli R. Greenstein on behalf of Lead Counsel Kessler Topaz ("Kessler Topaz Fee and Expense Decl."); (ii) the Declaration of Jeffrey A. Koncius on behalf of Kiesel Law LLP ("Kiesel Fee and Expense Decl."); (iii) the Declaration of Lester R. Hooker on behalf of Saxena White P.A. ("Saxena White Fee and Expense Decl."); and (iv) the Declaration of Matt Keil on behalf of Keil & Goodson P.A. ("Kiel & Goodson Fee and Expense Decl."). These declarations, collectively are referred to herein as the "Fee and Expense Declarations," set forth the names of the attorneys and professional support staff members who worked on the Action and their hourly rates, the lodestar value of the time expended by such attorneys and professional support staff, the expenses incurred by each firm, and the background and experience of the firms.

lodestar—i.e., a discount on what counsel would have earned had counsel been compensated by a paying client using counsel's current hourly billing rates. As discussed in the Fee and Expense Memorandum, when using a lodestar cross-check, courts routinely award fee requests with *positive* multipliers in securities class actions. *See* Fee and Expense Memorandum, § II.C.2.

1. The Favorable Results Achieved

114. The Settlement provides for a recovery of $12,500,000 in cash for the benefit of the Settlement Class. For the reasons set forth above and in light of the substantial risks of the litigation, Lead Counsel believes that the Settlement represents an excellent result for Settlement Class Members. Indeed, given the serious challenges that Plaintiffs faced in this case, including the formidable hurdles discussed herein, there was significant risk that there would be no recovery at all.

115. Here, the Settlement represents between 5% and 10% of the Settlement Class's maximum potential recoverable damages according to Lead Plaintiff's damages consultant (i.e., $121.4 million to $246 million). This amount is in line with the median recovery in comparable cases.[16]

116. This result is also significant when considered in view of the substantial risks and obstacles to obtaining a larger recovery (or, any recovery) were the Action to continue towards trial. Here, as a result of the Settlement, numerous Settlement Class Members will benefit and receive compensation for their losses and avoid the substantial risks to recovery in the absence of settlement.

[16] *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2020 Review and Analysis*, Cornerstone Research, Figure 5 at p. 6 (2020), http://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2020-Review-and-Analysis (reporting that for cases with estimated damages between $75 and $149 million, the median securities class action settlement amount was 5.8% of estimated damages in 2020 and 4.9% of estimated damages for years 2011 to 2019; and reporting that for cases with estimated damages between $150 and $249 million, the median securities class action settlement amount was 8.9% of estimated damages in 2020 and 3.9% of estimated damages for years 2011 to 2019).

2. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Securities Cases

117. The risks Lead Counsel faced in prosecuting this Action are highly relevant to the Court's consideration of an award of attorneys' fees, as well as its approval of the Settlement. Here, Defendants adamantly deny any wrongdoing and, if the Action had continued, Defendants would have aggressively litigated their defenses through a class certification motion, summary judgment, trial, and post-trial appeals. As detailed in Part IV above, Lead Counsel and Plaintiffs faced significant risks to proving Defendants' liability and the Settlement Class's full amount of damages at trial.

118. These case-specific litigation risks are in addition to the risks accompanying securities litigation generally, such as the fact that the Action is governed by stringent PSLRA requirements and case law interpreting the federal securities laws, and was undertaken on a contingent-fee basis. From the outset, Lead Counsel understood that this would be a complex, expensive, and potentially lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and financial expenditures that vigorous prosecution of the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources (in terms of attorney and support-staff time) were dedicated to prosecuting the Action, and that funds were available to compensate vendors and consultants and to cover the considerable out-of-pocket costs that a case like this typically demands. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an hourly, ongoing basis. Lead Counsel alone has dedicated over 6,000 hours in prosecuting this Action for the benefit of the Settlement Class, yet has received no compensation for its efforts.

119. Here, Lead Counsel also fully bore the risk that no recovery would be achieved. Lead Counsel is aware that despite the most vigorous and competent efforts, a

law firm's success in contingent litigation such as this is never guaranteed.[17] Moreover, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to persuade sophisticated defendants to engage in serious settlement negotiations at meaningful levels. Lead Counsel is aware of many hard-fought lawsuits in which, because of the discovery of facts unknown when the case commenced, or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by a plaintiff's counsel produced no fee for counsel. *See* Fee and Expense Memorandum, § II.D.4.

120. The U.S. Supreme Court and numerous other courts have repeatedly recognized that the public has a strong interest in having experienced and able counsel enforce the federal securities laws through private actions. *See, e.g.*, *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action"). Vigorous private enforcement of the federal securities laws can only occur if private investors can obtain some parity in representation with that available to large corporate defendants. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action as well as the economics involved.

121. Here, Plaintiffs' Counsel's efforts in the face of substantial risks and uncertainties have resulted in a significant and guaranteed recovery for the benefit of the Settlement Class. In these circumstances, and in consideration of Plaintiffs' Counsel's

[17] For example, there are many appellate decisions affirming summary judgment for defendants showing that surviving a motion to dismiss is not a guarantee of recovery. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Sci.-Atlanta, Inc.*, 489 F. App'x 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig.*, 669 F.3d 68 (1st Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l, Inc. Sec. Litig.*, 14 F. App'x 714 (8th Cir. 2001).

hard work and the very favorable result achieved, Lead Counsel submits that the requested fee of 25% of the Settlement Fund should be approved.

3. The Skill and Quality of Plaintiffs' Counsel's Representation and the Lodestar Cross-Check

122. Here, Plaintiffs' Counsel's collective skill and diligence supports the requested fee. In particular, as its résumé demonstrates, Kessler Topaz is an experienced and skilled firm in the securities litigation field and has a successful track record in these actions throughout the country. *See* Kessler Topaz Fee and Expense Decl., Ex. C. The other Plaintiffs' Counsel firms are also highly experienced in complex litigation. *See* Kiesel Fee and Expense Decl., Ex. C; Saxena White Fee and Expense Decl., Ex. C; and Keil & Goodson Fee and Expense Decl., Ex. B. The substantial result achieved for the Settlement Class here reflects the superior quality of Plaintiffs' Counsel's representation.

123. Lead Counsel and the other Plaintiffs' Counsel firms devoted significant efforts to the investigation, prosecution, and resolution of this Action. As more fully described above, these efforts included: (i) conducting an exhaustive investigation into the Settlement Class's claims; (ii) researching and preparing two detailed complaints; (iii) opposing three motions to dismiss; (iv) serving document requests and interrogatories on Defendants, as well as subpoenas on third parties, and engaging in numerous meet and confers regarding the scope of the discovery requested and objections thereto; (v) reviewing a large portion of the approximately 46,600 pages of documents produced during discovery; (vi) responding to Defendants' document requests and interrogatories; (vii) consulting with experts and consultants; and (viii) preparing for and engaged in settlement negotiations with Defendants, including formal mediation and extensive settlement briefing. *See supra* paragraphs 18-73. Plaintiffs' Counsel's efforts were driven and focused on advancing the litigation to achieve the most successful outcome for the Settlement Class, whether through settlement or trial, as efficiently as possible.

124. The time Plaintiffs' Counsel devoted to this Action is set forth in the Fee and Expense Declarations submitted herewith. Included with the Fee and Expense

Declarations are schedules that summarize the time expended by the attorneys and professional support staff employees at each firm, as well as the firm's expenses ("Fee and Expense Schedules"). The Fee and Expense Schedules report the amount of time spent by each attorney and professional support staff employee who worked on the Action and their resulting "lodestar," i.e., their hours multiplied by their hourly rates.

125. The hourly rates of Plaintiffs' Counsel here range from $775 per hour to $1,280 per hour for partners, $385 per hour to $690 per hour for other attorneys, $225 per hour to $305 per hour for paralegals, and $250 per hour to $500 per hour for in-house investigators. *See* Kessler Topaz Fee and Expense Decl., Ex. A; Keisel Fee and Expense Decl., Ex. A; Saxena White Fee and Expense Decl., Ex. A; and Keil & Goodson Fee and Expense Decl., Ex. A. These hourly rates are reasonable for this type of complex litigation. *See* Fee and Expense Memorandum, § II.C.2.

126. In total, from the inception of this Action through December 30, 2021, Plaintiffs' Counsel expended over 7,547 hours on the investigation, prosecution, and resolution of the claims against Defendants for a total lodestar of $4,054,672.25.[18] As noted above, pursuant to a lodestar "cross-check," Lead Counsel's 25% fee request, if awarded, would yield a *negative* lodestar multiplier of approximately 0.77 on Plaintiffs' Counsel's lodestar.

127. The quality of the work performed by Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Defendants in this case were represented by experienced counsel from the nationally prominent defense firm, Latham & Watkins, LLP. This firm vigorously and ably defended

[18] Since December 30, 2021, Lead Counsel has spent an additional 100+ hours working with A.B. Data on providing notice to the Settlement Class and preparing its submission in support of final approval of the Settlement. Lead Counsel will continue to perform legal work on behalf of the Settlement Class should the Court approve the Settlement. Additional resources will be expended assisting Settlement Class Members with their Claims and related inquiries and working with the Claims Administrator, to ensure the smooth progression of claims processing. No additional legal fees will be sought for this work.

the Action for nearly four years. In the face of this formidable defense, Plaintiffs' Counsel were nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle the Action on terms that are favorable to the Settlement Class.

4. Lead Plaintiff's Endorsement of the Fee Request and the Reaction of the Settlement Class to Date

128. Lead Plaintiff ATRS is a sophisticated public pension fund that closely supervised and monitored both the prosecution and the settlement of this Action. Lead Plaintiff has evaluated Lead Counsel's fee request and believes it to be fair and reasonable. Moreover, Lead Plaintiff has concluded that the requested fee has been earned based on the efforts of Lead Counsel and the favorable recovery obtained for the Settlement Class in a case that involved serious risk. ECF No. 125-6 (ATRS Declaration), ¶ 10. Accordingly, Lead Plaintiff's endorsement of Lead Counsel's fee request further demonstrates its reasonableness and this endorsement should be given meaningful weight in the Court's consideration of the fee award.

129. In addition, as set forth above, Notices have been disseminated to over 51,200 potential Settlement Class Members and Nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over *PR Newswire*. *See* Schachter Decl., ¶¶ 9-10. The Notice informed recipients that Lead Counsel would be seeking fees, on behalf of Plaintiffs' Counsel, in an amount not to exceed 25% of the Settlement Fund. The deadline to object to the fee request is March 28, 2022. To date, no Settlement Class Member has objected.

130. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it for nearly four years without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the

representation, Lead Counsel respectfully submit that a fee award of 25% is fair and reasonable, and is amply supported by fee awards granted in other comparable cases.[19]

B. Lead Counsel's Request for Litigation Expenses Warrants Approval

131. Lead Counsel also seeks payment from the Settlement Fund of $134,863.08 in Litigation Expenses that were reasonably incurred by Plaintiffs' Counsel in connection with commencing, litigating, and settling the claims asserted in this Action.

132. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses and, even in the event of a recovery, would not recover any of their out-of-pocket expenditures until such time as the Action might be successfully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced by them to prosecute the Action. Accordingly, Plaintiffs' Counsel were motivated to and did take appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the case.

133. Plaintiffs' Counsel's Litigation Expenses, as attested to in the respective firm Fee and Expense Declarations, are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials, and provide an accurate accounting of the expenses incurred in this Action. The Litigation Expenses are summarized in Exhibit B to each Fee and Expense Declaration,[20] which identifies each category of expense, e.g., expert/consultant fees, online legal and factual research, travel costs, reproduction costs, mediation, as well as the amount incurred for each category. These expense items are submitted separately by Plaintiffs' Counsel, and are not duplicated in the firms' hourly rates.

[19] *See* Fee and Expense Memorandum, § II.C.1.

[20] Plaintiffs' Counsel Keil & Goodson P.A. is not seeking payment of Litigation Expenses.

134. Of the total amount of Litigation Expenses, $68,280.50, or approximately 51%, was expended on experts and consultants. As discussed above, the retention of these experts and consultants was necessary and reasonable in order to develop the allegations in the complaints and analyze loss causation, price impact, and the Settlement Class's estimated damages for OSI Securities. *See supra* paragraphs 21, 99.

135. Another substantial Litigation Expense was incurred for online legal and factual research. The online research conducted by Plaintiffs' Counsel was necessary to their factual investigation of the claims, the preparation of the complaints, responding to Defendants' motions to dismiss, and addressing the Parties' various informal discovery disputes. The charges for online legal and factual research together amounted to $26,223.50, or approximately 19% of Plaintiffs' Counsel's total Litigation Expenses. These are the amounts that were charged to Plaintiffs' Counsel by their vendors; Plaintiffs' Counsel do not impose any surcharges or otherwise make any profit from these services.

136. Lead Plaintiff's share of the mediation costs paid to Phillips ADR for the services of Judge Phillips was $27,731.04 (i.e., approximately 21% of Plaintiffs' Counsel's total expenses).

137. The other expenses for which Plaintiffs' Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, costs of out-of-town travel, document hosting and management costs, printing and copying costs (in-house and through outside vendors), and postage and delivery expenses.

138. All of the Litigation Expenses incurred by Plaintiffs' Counsel were necessary to the successful litigation of this Action, and have been deemed reasonable by Lead Plaintiff. ECF No. 125-6 (ATRS Declaration), ¶ 10.

139. The Notice informs potential Settlement Class Members that Lead Counsel would seek payment of Litigation Expenses in an amount not to exceed $200,000. The total amount of Litigation Expenses requested, $134,863.08, is substantially below the

$200,000 that Settlement Class Members were advised could be sought. To date, no objection has been raised as to the maximum amount of Litigation Expenses set forth in the Notice.

140. Given the complex nature of the Action, the expenses incurred by Plaintiffs' Counsel were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the Litigation Expenses should be awarded in full from the Settlement Fund.

VIII. CONCLUSION

141. For all the reasons set forth above, Lead Counsel respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested attorneys' fees in the amount of 25% of the Settlement Fund should be approved as fair and reasonable, and the request for payment of Plaintiffs' Counsel's Litigation Expenses in the total amount of $134,863.08 is reasonable and should also be approved.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Executed on February 28, 2022, in San Francisco, California.

/s/ Eli R. Greenstein
ELI R. GREENSTEIN