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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SHEET METAL WORKERS' NATIONAL
PENSION FUND and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
LOCAL NO. 710 PENSION FUND,
individually and as Lead Plaintiffs on behalf
of all others similarly situated, and

INTERNATIONAL UNION OF
OPERATING ENGINEERS PENSION
FUND OF EASTERN PENNSYLVANIA
AND DELAWARE, individually and as
Named Plaintiff, on behalf of all others
similarly situated,

Plaintiffs,

vs.

BAYER AKTIENGESELLSCHAFT,
WERNER BAUMANN, WERNER
WENNING, LIAM CONDON, JOHANNES
DIETSCH, and WOLFGANG NICKL,

Defendants.

Case No. 3:20-cv-04737-RS

CLASS ACTION

**PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF PROPOSED
CLASS ACTION SETTLEMENT AND
PLAN OF ALLOCATION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 30, 2025
Time: 1:30 p.m.
Judge: Richard Seeborg
Courtroom: 3 — 17th Floor

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1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that on October 30, 2025 at 1:30 p.m., or as soon thereafter as
3 counsel may be heard before the Honorable Richard Seeborg, United States District Judge, at the
4 United States District Court, Northern District of California, San Francisco Courthouse, 450
5 Golden Gate Avenue, Courtroom 3 – 17th Floor, San Francisco, California 94102, Plaintiffs, on
6 behalf of themselves and the other members of the certified Class, will and do hereby move,
7 pursuant to Federal Rule of Civil Procedure 23(e)(2), for entry of (1) a judgment granting final
8 approval of the proposed settlement of the above-captioned securities class action; and (2) an order
9 granting approval of the proposed plan for allocating the net settlement proceeds.¹

10 This Motion is made pursuant to the Court’s June 27, 2025 Order Preliminarily Approving
11 Settlement and Providing for Notice (ECF No. 260) (“Preliminary Approval Order”) and is based
12 upon: (1) this Notice of Motion; (2) the supporting Memorandum of Points and Authorities set
13 forth below; (3) the accompanying Declaration of Carol V. Gilden and the exhibits attached
14 thereto; (4) the Stipulation and Agreement of Settlement dated April 23, 2025, and the exhibits
15 attached thereto, filed previously with the Court (ECF No. 253-2); (5) the pleadings and records
16 on file in this action; and (6) other such matters and argument as the Court may consider at the
17 hearing of this Motion.

18 Pursuant to the Preliminary Approval Order, any objections to the Settlement or proposed
19 Plan of Allocation must be received by October 9, 2025. To date, no objections have been received.
20 A proposed Order Granting Final Approval of the Settlement and Plan of Allocation (“Final
21 Approval Order”) will be submitted with Plaintiffs’ reply submission, which will be filed on
22 October 23, 2025, after the deadline for objections has passed.

23 Defendants do not oppose the Motion, and the Parties agree that it may be decided on the
24

25

¹ Unless otherwise indicated, capitalized terms herein will have their meaning as defined in
26 the Stipulation or in the Declaration of Carol V. Gilden in Support of (I) Plaintiffs’ Motion for
27 Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for
28 Attorneys’ Fees and Litigation Expenses (the “Gilden Declaration” or “Gilden Decl.”), filed
herewith. In this memorandum, citations to “¶ ___” refer to paragraphs in the Gilden Declaration
and citations to “Ex. ___” refer to exhibits to the Gilden Declaration.

papers, should the Court conclude that a hearing is not required.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should approve the proposed Settlement of the Action as fair, reasonable, and adequate pursuant to Rule 23(e)(2).

2. Whether the Court should approve the proposed Plan of Allocation as fair and reasonable.

MEMORANDUM OF POINTS AND AUTHORITIES

In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and the certified Class, respectfully submit this memorandum of points and authorities in support of their motion for final approval of (1) the proposed Settlement resolving the Action for the payment of \$38,000,000 in cash for the benefit of the Class, and (2) the proposed Plan of Allocation of the proceeds of the Settlement. The Settlement is with all Defendants.

PRELIMINARY STATEMENT

Subject to Court approval, Plaintiffs have agreed to settle the Action in exchange for a cash payment of \$38,000,000, pursuant to the terms set forth in the Settlement Agreement. Plaintiffs respectfully submit that the Settlement is a strong recovery for the Class. As detailed in the accompanying Declaration and summarized below, the Parties reached the Settlement only after more than five years of hard-fought litigation and extensive arm's-length negotiations before a highly regarded mediator, Miles N. Ruthberg, Esq., of Phillips ADR Enterprises, P.C. (the "Mediator").² The Parties reached an agreement in principle to settle the Action for the amount that the Mediator proposed, and the Mediator has endorsed the Settlement as an outcome that is "reasonable and fair for the Class and all parties involved." Ex. 1 ¶ 16.

The Settlement also has the full support of Plaintiffs, who are sophisticated institutional

² The Gilden Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action (¶¶ 14–76); the nature of the claims asserted (¶¶ 12–13); the negotiations leading to the Settlement (¶¶ 77–81); the risks and uncertainties of continued litigation (¶¶ 88–100); and the terms of the Plan of Allocation of the Net Settlement Fund (¶¶ 108–122).

investors with significant experience serving as lead plaintiffs under the PSLRA and overseeing counsel in complex litigation, including in securities class actions. *See* Declaration of Lori Wood on behalf of Sheet Metal Workers’ National Pension Fund, Ex. 2; Declaration of Michael O’Malley on behalf of International Brotherhood of Teamsters Local No. 710 Pension Fund, Ex. 3; Declaration of John Heenan on behalf of the International Union of Operating Engineers Pension Fund of Eastern Pennsylvania and Delaware (“IUOE”), Ex. 4. Plaintiffs actively participated in the Action and the settlement negotiations and closely supervised the work of Lead Counsel throughout the litigation.

That work was extensive, complex, and time-intensive. During the course of the litigation, Plaintiffs, among other things: (i) drafted two detailed amended complaints; (ii) defeated two motions to dismiss; (iii) moved successfully for class certification; (iv) researched, drafted, propounded, and responded to voluminous and complex document requests, interrogatories, and requests for admission; (v) reviewed approximately 32,185 documents (roughly 200,000 pages) produced by Defendants, including a subset of documents written in German, and approximately 4,953 documents produced by twenty-eight third parties; (vi) served forty-seven subpoenas; (vii) took eleven fact depositions; (viii) litigated numerous discovery disputes; (ix) consulted with experts in the fields of due diligence, mergers and acquisitions, extraterritoriality, and loss causation and damages; (x) took or defended seven depositions related to class certification, including depositions of three of Plaintiffs’ Rule 30(b)(6) representatives and of four experts; (xi) served and analyzed 20 expert reports, between class certification and expert discovery; (xii) took four and defended six expert depositions; (xiii) drafted four detailed mediation statements; and (ix) participated in two arm’s-length full-day mediations as well as numerous informal discussions with a highly respected mediator. At the time of the settlement, the Parties had completed a three-year fact discovery period and nearly all of expert discovery and were beginning to prepare for summary judgment and *Daubert* motion briefing. *See* ¶¶ 70, 76.

Plaintiffs’ thorough and vigorous work gave them a comprehensive understanding of the strengths and weaknesses of their claims. While Plaintiffs maintain that their claims are meritorious and strong, continued litigation and trial would pose considerable risk to the Class’s

1 recovery, as discussed below and in the Gilden Declaration. Throughout the litigation, Defendants
2 vehemently disputed scienter, loss causation, and damages, and challenged the materiality and
3 falsity of the alleged misstatements, in addition to arguing that Plaintiffs' and the class's
4 transactions were extraterritorial and therefore not covered by the Exchange Act. At summary
5 judgment and trial, Defendants would likely rely on the extensive discovery record to continue to
6 argue, for example, that investors did not interpret the alleged misstatements as providing an
7 implied assurance about the scope of Bayer's due diligence on the Roundup Litigation, and that
8 the statements that did address due diligence provided only that Bayer had conducted "customary"
9 diligence. Defendants would also put forward highly qualified experts on each of these issues and
10 would need to prevail only on one core defense to defeat the entire Action. Plaintiffs would also
11 face the risk that the Class would be decertified before trial or on appeal. The Settlement avoids
12 these risks, as well as the additional time and expense that continuing to litigate the case would
13 require, by securing a significant and immediate benefit.

14 In addition, the Parties have agreed to a Plan of Allocation for the distribution of the
15 proceeds of the Settlement. Lead Counsel developed the Plan with the assistance of Plaintiffs'
16 damages expert and is a fair and reasonable method for distributing the Net Settlement Fund.

17 Based on these considerations and the relevant factors discussed below, Plaintiffs submit
18 that the Settlement is fair, reasonable, and adequate and satisfies all the standards for final approval
19 under Rule 23 and the Plan of Allocation is a fair and reasonable method for allocating the Net
20 Settlement Fund to Class Members who submit valid and timely Claim Forms. Accordingly,
21 Plaintiffs respectfully request that the Court enter (1) a judgment granting final approval of the
22 Settlement; and (2) an order granting approval of the Plan of Allocation.

23 PRELIMINARY APPROVAL AND NOTICE

24 On June 27, 2025, the Court entered an order preliminarily approving the Settlement and
25 approving the proposed forms and methods of providing notice to Class Members. ECF No. 260.
26 Beginning on July 21, 2025, the Court-appointed Claims Administrator A.B. Data, Ltd. ("A.B.
27 Data") caused the Notice Packet to be mailed by first-class mail or by email to potential Class
28 Members, pursuant to the Preliminary Approval Order. As detailed in the Mailing Declaration,

1 A.B. Data has mailed or emailed a total of 223,953 Notice Packets to Class Members or Nominees.
2 Declaration of Adam D. Walter (“Mailing Declaration” or “Mailing Decl.”), Ex. 5 ¶ 9. Also on
3 July 21, 2025, A.B. Data published the Claim Form and long-form Settlement Notice on the
4 website it created for the Action, www.BayerADRSecuritiesLitigation.com. *Id.* The Case Website
5 also provides downloadable copies of relevant case documents and information about important
6 dates and deadlines, including for lodging objections or requesting to opt back into the class. On
7 July 21, 2025, A.B. Data published the Summary Notice in *The Wall Street Journal* and transmitted
8 it over *PR Newswire*. *Id.* ¶ 11.

9 The Notice is written in plain language and sets out the essential terms of the Settlement.
10 The Notice informs potential Class Members of, among other things, their right to object to any
11 aspect of the Settlement, the procedure for submitting Claim Forms, and for any potential Class
12 Members who opted out of the Settlement in connection with the Class Notice, the procedure for
13 opting back into the Settlement. This information is also published on Cohen Milstein’s Case
14 Website.

15 To date, Lead Counsel has not received any objections to the Settlement or Plan of
16 Allocation. The deadline to object to the Settlement is October 9, 2025, so Plaintiffs will address
17 any objections that may arise in their reply papers, which are due by October 23, 2025.

18 ARGUMENT

19 I. THE SETTLEMENT WARRANTS FINAL APPROVAL

20 The Ninth Circuit recognizes a “strong judicial policy that favors settlement[.]” of disputed
21 claims among private litigants. *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008);
22 *see also Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“This circuit has long
23 deferred to the private consensual decision of the parties.” (citation omitted)). This policy is
24 particularly strong where, as here, “complex class action litigation is concerned.” *In re Hyundai &*
25 *Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019).

26 Federal Rule of Civil Procedure 23(e) provides the standard for judicial approval of any
27 compromise or settlement of class action claims. A court should approve a class action settlement
28 if it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To make that determination, Rule

23(e) instructs courts to consider whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including the timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The Ninth Circuit has identified eight factors relevant to approval of a settlement in addition to the four articulated in Rule 23(e)(2). *See* Fed. R. Civ. P. 23 Advisory Committee Notes to 2018 Amendments, Subdivision (e)(2) (explaining that the Rule 23(e)(2) are not intended to “displace” any court-adopted analysis but “rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal”). The Ninth Circuit's factors include:

(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *see also, e.g., In re Splunk, Inc. Sec. Litig.*, 2024 WL 923777, at *3 (N.D. Cal. Mar. 4, 2024) (acknowledging *Hanlon* factors and applying same). “District courts may consider some or all of these factors.” *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th Cir. 2020) (citing *Rodriguez*, 563 F.3d at 963).³

The Court found at the preliminary approval stage that it would “likely be able to finally

³ The Court need not consider the seventh *Hanlon* factor because no government entity participated in the Action. *See, e.g., Karl v. Zimmer Biomet Holdings, Inc.*, 2022 WL 658970, at *3 (N.D. Cal. Mar. 4, 2022) (deeming the factor “neutral” where there was no governmental participant); *Harris v. Vector Mktg. Corp.*, 2011 WL 1627973, at *16 (N.D. Cal. Apr. 29, 2011) (finding the factor “inapplicable”).

1 approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the Class.”
2 ECF No. 260 ¶ 2. The Court should now finally approve the Settlement as fair, reasonable, and
3 adequate because it satisfies each of the Rule 23(e)(2) and Ninth Circuit factors.

4 **A. Plaintiffs and Lead Counsel Have Adequately Represented the Class**

5 In determining whether to approve a class action settlement, courts consider whether “the
6 class representatives and class counsel have adequately represented the class.” Fed. R. Civ. P.
7 23(e)(2)(A). “[A]dequacy of representation . . . requires that two questions be addressed: (a) do
8 the named plaintiffs and their counsel have any conflicts of interest with other class members and
9 (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the
10 class?” *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18, 2018) (quoting
11 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000)). Here, Plaintiffs and Lead
12 Counsel adequately represented the Settlement Class.

13 First, Plaintiffs and Lead Counsel share the interests of the other class members. Plaintiffs’
14 claims are based on the same alleged conduct by Defendants as all other Class Members and are
15 typical of all other Class Members. If Plaintiffs were to prove their claims at trial, they would also
16 prove the Class’s claims. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460
17 (2013) (the investor class “will prevail or fail in unison” because claims are based on common
18 misrepresentations and omissions”). As the Court found in its order certifying the Class, Plaintiffs
19 and Lead Counsel were “adequate to represent the class” because “Plaintiffs have all purchased
20 Bayer ADRs and have an adequate stake in seeing this case to resolution.” ECF No. 175 at 12. *see*
21 *also, e.g., In re Stable Road Acquisition Corp.*, 2024 WL 3643393, at *6 (N.D. Cal. Apr. 23, 2024)
22 (finding lead plaintiff adequately represented the class where plaintiff’s claims were typical of and
23 coextensive with the class’s claims with no antagonistic interests).

24 Second, Plaintiffs and Lead Counsel have adequately represented the Class by vigorously
25 prosecuting the Action and negotiating the Settlement. As discussed in further depth in the Gilden
26 Declaration, since their appointment, Plaintiffs and Lead Counsel have, among other things:
27 (i) conducted an extensive investigation of the Action’s claims and defenses; (ii) drafted two
28 detailed amended complaints; (iii) defeated two motions to dismiss; (iv) successfully moved for

1 class certification; (v) engaged in extensive, complex, and cross-border fact and expert discovery;
2 (vi) litigated multiple discovery disputes; (vii) worked closely with experts in the fields of due
3 diligence, mergers and acquisitions, extraterritoriality, and loss causation and damages; and
4 (viii) exchanged extensive mediation briefing. *See generally* Gilden Decl. This zealous
5 prosecution of the Action gave Plaintiffs and Lead Counsel “sufficient information to make an
6 informed decision about settlement,” *Hefler*, 2018 WL 6619983, at *6, which they did after two
7 full-day mediations and numerous informal discussions with Ruthberg, an experienced mediator.
8 The Settlement aligns with outcomes in similar cases, as discussed in Plaintiffs’ preliminary
9 approval motion, ECF No. 253 at 21–22; ECF No. 253-4 at 34–36, which “further indicat[es] that
10 counsel ‘had an adequate information base’ when negotiating the settlement,” *Hefler*, 2018 WL
11 6619983, at *6 (quoting Fed. R. Civ. P. 23 Advisory Committee Notes to 2018 Amendments,
12 Subdivision (e)(2)(A)–(B)). Lead Counsel have “continued to represent the Class’s interests by
13 diligently complying with the notice plan and other settlement procedures.” *Id.*

14 Lead Plaintiffs and additional Plaintiff IUOE worked closely with and oversaw the work
15 of Lead Counsel throughout the litigation. Plaintiffs are sophisticated institutional investors and
16 are familiar with the obligations of serving as lead plaintiffs and class representatives under the
17 PSLRA and overseeing counsel in complex litigation, including in securities class actions. *See*,
18 *e.g.*, ECF No. 23 at 14–15. As discussed further in their declarations (Exs. 2–4), Plaintiffs’
19 representatives played active roles in this Action by regularly communicating with Lead Counsel,
20 reviewing material court filings and decisions, gathering and producing relevant documents in
21 response to Defendants’ discovery requests, and preparing and sitting for Rule 30(b)(6) depositions
22 in connection with Plaintiffs’ class certification motion. Plaintiffs’ representatives also
23 participated in the formal mediation sessions as well as numerous informal conversations with
24 Lead Counsel and the Mediator during the course of their efforts to mediate and negotiate the
25 Settlement. *Id.* Plaintiffs agreed to the Settlement based on their informed understanding of the
26 facts of the case and merits of the claims.

27 Moreover, Lead Counsel “has significant experience in securities litigation and a
28 successful track record of representing investors in cases of this kind.” *In re Volkswagen “Clean*

Diesel” *Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) (finding settlement procedurally fair partly on this basis). Due to their extensive prosecution of the Action and others like it (*see generally* Gilden Decl.), Lead Counsel had an informed view of the strengths and weaknesses of Plaintiff’s claims and of the risks of continuing to prosecute them. On this basis, Lead Counsel determined that the Settlement was fair, reasonable, and adequate. *See SEB Inv. Mgmt. AB v. Symantec Corp.*, 2022 WL 409702, at *7 (N.D. Cal. Feb. 10, 2022) (“Class counsel . . . is experienced in securities litigation so their support behind the settlement carries weight.”); *In re NVIDIA Corp. Deriv. Litig.*, 2008 WL 5382544, at *4 (N.D. Cal. Dec. 22, 2008) (“[S]ignificant weight should be attributed to counsel’s belief that settlement is in the best interest of those affected by the settlement.”).

Accordingly, Plaintiffs and Lead Counsel have adequately represented the Class. This factor supports final approval of the Settlement.

B. The Settlement Was Reached After Arm’s-Length Negotiations with the Assistance of an Experienced Mediator and Following Substantial Fact and Expert Discovery

In weighing approval of a class action settlement, courts also consider whether the settlement “was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). “Courts have afforded a presumption of fairness and reasonableness . . . where th[e settlement a]greement was the product of non-collusive, arms’ length negotiations conducted by capable and experienced counsel.” *In re Netflix Privacy Litig.*, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013). Additionally, in considering this factor, courts recognize that “[t]he assistance of an experienced neutral mediator during the settlement process supports [a] conclusion that [a settlement a]greement is non-collusive.” *Chavez v. Converse, Inc.*, 2020 WL 4047863, at *2 (N.D. Cal. July 8, 2020); *see also Cheng Jiangchen v. Rentech, Inc.*, 2019 WL 5173771, at *6 (C.D. Cal. Oct. 10, 2019) (finding that “the Settlement [was] the product of serious, informed, non-collusive negotiations performed at arms-length” where the parties attended “‘an all-day, in-person’ [private mediation] session that included ‘hard-fought negotiations’” after engaging in “vigorous[]” litigation).

As explained above and in the Gilden Declaration, the Parties reached a settlement only

1 after two formal, full-day mediations, held five months apart.⁴ The mediations included the
2 exchange of robust mediation statements and were followed by additional informal negotiations
3 with the assistance of the Mediator. During the mediation sessions, Lead Counsel and Defendants’
4 Counsel—a well-regarded law firm with deep expertise in defense of securities class actions—
5 vigorously asserted arguments about liability and damages. After the second mediation, unable to
6 bridge the gap between their respective settlement positions, the Parties continued to engage in
7 negotiations through multiple one-on-one discussions with the Mediator, who ultimately issued a
8 \$38 million Mediator’s Proposal to resolve all of Plaintiffs’ claims. The Parties ultimately accepted
9 the Mediator’s proposal following further discussion and consideration. The Mediator has since
10 endorsed the Settlement “in all respects” and agrees that the Settlement “was in the best interests
11 of the Parties that they avoid the burdens and risks associated with taking a case of this size and
12 complexity to trial.” Ex. 1 ¶ 16.

13 Throughout this process, Plaintiffs were actively involved, attending the mediations
14 remotely and/or in person and participating in numerous telephone calls with Lead Counsel,
15 including a call with Lead Plaintiffs, the Mediator and Lead Counsel. At all times, the negotiations
16 were adversarial and at arm’s length, and were conducted by capable and experienced counsel with
17 the assistance of an experienced, neutral mediator. Accordingly, this factor favors final approval
18 of the Settlement.

19 This Rule 23(e)(2) factor, as well as the “adequate representation” factor discussed above,
20 “overlap[s] with certain *Hanlon* factors, such as the non-collusive nature of negotiations, the extent
21 of discovery completed, and the stage of proceedings.” *In re Extreme Networks, Inc. Sec. Litig.*,
22 2019 WL 3290770, at *7 (N.D. Cal. July 22, 2019). The Settlement has none of the indicia of
23 possible collusion identified by the Ninth Circuit, such as a “clear-sailing” fee agreement or a
24 provision that would allow settlement proceeds to revert to Defendants. *See In re Bluetooth*
25

26 ⁴ “A breakdown in settlement negotiations can tend to display the negotiation’s arms-length
27 and non-collusive nature.” *Hunichen v. Atonomi LLC*, 2021 WL 5854964, at *6 (W.D. Wash.
28 Nov. 12, 2021) (citation omitted), *report and recommendation adopted*, 2022 WL 4131590
(W.D. Wash. Sept. 12, 2022).

1 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). As discussed in Plaintiffs’
2 preliminary approval motion, the Settlement is not a claims-made settlement and there is no
3 reversion. ECF No. 253 at 8; *see also* Stipulation (“Stip.”), ECF No. 253-2 at 25 ¶ 17.

4 Additionally, the extent of discovery and stage of the proceedings also favor final approval.
5 “[E]xtensive review of discovery materials indicates [that Lead Counsel] had sufficient
6 information to make an informed decision about the Settlement . . . [which] favors approving the
7 Settlement.” *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2016
8 WL 6248426, at *14 (N.D. Cal. Oct. 25, 2016). Here, Plaintiffs took extensive discovery that
9 enabled them and Lead Counsel to evaluate comprehensively the strength of their claims and the
10 risks of continued litigation. Before settling, Plaintiffs completed fact discovery, which included
11 propounding numerous document requests to Defendants, serving 47 subpoenas, reviewing over
12 200,000 pages of documents, and deposing 11 fact witnesses, among other things. The Parties also
13 nearly completed expert discovery—only one expert deposition remained after the exchange of 13
14 expert reports and six other expert depositions—and were preparing to brief summary judgment
15 and *Daubert* motions when the Settlement was reached. In addition to discovery, Plaintiffs briefed
16 numerous successful dispositive motions and prepared for and participated in two mediations.

17 The advanced stage of this Action, including the near-completion of discovery, gave
18 Plaintiffs and Lead Counsel sufficient familiarity with the facts of the case to allow them to “make
19 an informed decision regarding the merits of the Settlement.” *In re Omnivision Techs., Inc.*, 559
20 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008); *see also, e.g., Volkswagen*, 2016 WL 6248426, at *13–14
21 (finding that these factors supported final approval at an earlier stage of litigation than in this
22 Action). These *Hanlon* factors therefore support final approval of the Settlement.

23 **C. The Relief Provided by the Settlement Is Adequate, Taking into Account the**
24 **Costs and Risks of Further Litigation and All Other Relevant Factors**

25 As part of the Rule 23(e)(2) analysis, courts also consider whether “the relief provided for
26 the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal” as well
27 as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This Rule 23(e)(2) factor encompasses at
28 least three of the additional *Hanlon* factors: “the strength of the case”; “the risk, expense,

complexity, and likely duration of further litigation and the risk of maintaining class action status throughout the trial”; and “the settlement amount.” *Hanlon*, 150 F.3d at 1027.

The \$38 million Settlement Amount is an excellent recovery for the Class. The Settlement recovers over 9% of the potential \$417,000,000 maximum damages amount, as estimated by Plaintiffs’ damages expert. Courts regularly approve settlements with equal or lower percentage recoveries. *See, e.g., Omnivision*, 559 F. Supp. 2d at 1042 (finding a 9% recovery a “substantial achievement on behalf of the class”); *In re Aqua Metals, Inc. Sec. Litig.*, 2022 WL 612804, at *6 (N.D. Cal. Mar. 3, 2022) (approving settlement that recovered approximately 7.3% of likely recoverable damages, which was “in line with comparable class action settlements”); *Hunt v. Bloom Energy Corp.*, 2024 WL 1995840, at *6 (N.D. Cal. May 6, 2024) (approving settlement recovering 5.2% of estimated damages); *see also* Cornerstone Research, *Securities Class Action Settlements: 2024 Review and Analysis* 21 (2024), <https://www.cornerstone.com/wp-content/uploads/2025/03/Securities-Class-Action-Settlements-2024-Review-and-Analysis.pdf> (last visited Aug. 19, 2025) (2024 median and average settlements of securities class actions as a percentage of calculated total statutory damages were 7.1% and 8.0%, respectively).

The Settlement is also adequate because it provides the Class with a certain and immediate recovery that continued litigation would put at risk. Although Plaintiffs believe that their claims are strong, “[s]ecurities actions in particular are often long, hard-fought, complicated, and extremely difficult to win.” *Extreme Networks*, 2019 WL 3290770, at *8; *see also Redwen v. Sino Clean Energy, Inc.*, 2013 WL 12129279, at *5 (C.D. Cal. Mar. 13, 2013) (“[S]ecurities class actions present hurdles to proving liability that are difficult for plaintiffs to clear.”). This case is no exception.

1. The Risks of Recovering on a Judgment and Establishing Liability and Damages Support Approval of the Settlement

As discussed in detail in the Gilden Declaration and below, continued prosecution of the Action presented numerous risks to establishing liability and damages and, therefore, to securing any recovery for the Class. “Approval of a class settlement is appropriate when ‘there are significant barriers plaintiffs must overcome in making their case.’” *Splunk Inc.*, 2024 WL 923777,

at *5 (quoting *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010)). The Settlement provides a significant, immediate, and “adequate” relief for the Class that avoids these “significant barriers.” *Id.*

Specifically, Defendants strenuously asserted various arguments disputing the falsity and materiality of the alleged misstatements, as well as the required elements of scienter, loss causation, and damages.⁵ Defendants were certain to continue to propound these arguments through summary judgment, trial, post-trial motions, and appeals.

Falsity and Materiality. Defendants would have argued that the record does not support Plaintiffs’ contention that investors interpreted Defendants’ statements from before the verdict in the first Roundup trial as providing an implied assurance that Bayer had performed an investigation of Monsanto’s internal documents and correspondence concerning the legal risks inherent to the Roundup Litigation. Rather, Defendants would contend, these statements did not refer to the legal risks at all. For the other statements, Defendants would argue that they were not false or misleading but rather statements of opinion that Bayer had conducted “customary” and “appropriate” due diligence.

Defendants retained an expert witness to testify against Plaintiffs’ experts on these issues, and signaled to Plaintiffs that they would move to exclude Plaintiffs’ experts. Even if Plaintiffs defeated Defendants’ *Daubert* motions, “[t]he fact that th[ese] issue[s], which [are] at the heart of [P]laintiffs’ case, would have been the subject of competing expert testimony” at trial “suggests that plaintiffs’ ability to prove liability was somewhat unclear; this favors a finding that the settlement is fair.” *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *13 (C.D. Cal. Nov. 23, 2013) (citing *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007)).

Scienter. Defendants would also likely argue that Plaintiffs would not be able to prove scienter because the Individual Defendants testified that they had no direct knowledge of Bayer’s due diligence on the Roundup Litigation, had no experience in the customs and practices of merger

⁵ Defendants also vigorously asserted several affirmative defenses, including that Plaintiffs’ and Class members’ transactions in Bayer ADRs were structured so as to be extraterritorial and beyond the reach of U.S. federal securities laws.

1 due diligence on U.S. litigation, and their statements were reviewed by the Company’s lawyers.

2 **Loss Causation.** Defendants would also challenge Plaintiffs’ theory of loss causation,
3 disputing that the market did not discover the alleged deficiencies in Bayer’s due diligence until
4 Monsanto began losing jury trials in Roundup Litigation cases in mid-2018. Instead, Defendants
5 would contend, information about the extent of Bayer’s due diligence into the Roundup Litigation
6 had become public long before the jury verdicts—through, for example, the public release of
7 internal Monsanto documents in March 2017. Defendants might also have questioned the legal
8 basis for Plaintiffs’ loss causation theory, taking the position that the Ninth Circuit has never
9 adopted the materialization-of-the-risk theory. During expert discovery, Defendants put forward
10 an expert to rebut Plaintiffs’ expert’s loss causation methodologies, which would make a favorable
11 jury verdict for Plaintiffs uncertain. *Weeks*, 2013 WL 6531177, at *13.

12 **Damages.** Defendants’ expert also lodged several credible challenges to Plaintiffs’
13 damages expert’s damages calculation. Plaintiffs’ damages expert estimated that based on a
14 standard constant-dollar out-of-pocket damages methodology, Plaintiffs’ maximum possible
15 damages in the case was approximately \$417 million. Defendants would continue to argue,
16 however, that Plaintiffs’ damages expert’s methodology was unreliable and inappropriate because,
17 among other reasons, it relied on implausible assumptions and improperly omitted the price impact
18 of certain events. Defendants also would also argue that a significant percentage of the Class
19 suffered no actual out-of-pocket loss because they acquired Bayer ADRs in exchange for equally
20 valued Bayer stock. Rather than Plaintiffs’ expert’s estimate of \$417 million, Defendants planned
21 to assert that the total damages if liability were otherwise proven was instead \$24.5 million.
22 Defendants’ proposed damages amount would represent a significantly smaller recovery for
23 Plaintiffs—assuming that Plaintiffs could prove liability in the first place.

24 Proving and calculating damages at trial would require the jury to undertake a complex
25 analysis of the contrasting damages methodologies presented in a “battle of the experts,” the
26 outcome of which is “inherently difficult to predict and risky.” *Nguyen v. Radiant Pharms. Corp.*,
27 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014). The “risks inherent in a ‘battle of the experts’
28 of complex economic theories in a jury trial” favor final approval of the settlement. *Extreme*

1 *Networks*, 2019 WL 3290770, at *8.

2 Defendants' aggressive, multifaceted attack on Plaintiffs' case would be challenging to
3 overcome at trial, particularly because Plaintiffs would have to prove all elements of their claims
4 to prevail while Defendants would only need to prove one core defense to defeat the entire Action.
5 Plaintiffs would also face the additional risk that the Class would be decertified, or the Class Period
6 shortened, before trial or on appeal. *See Aqua Metals*, 2022 WL 612804, at *6 ("class certification
7 orders are 'inherently tentative'" (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160
8 (1982))); *Rodriguez*, 563 F.3d at 966 ("A district court may decertify a class at any time.");
9 *Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *6 (N.D. Cal. July 15, 2022) ("[T]here is
10 always a risk of decertification—especially when . . . Plaintiffs must overcome causation and
11 damages defenses."). Potential decertification is an "inescapable and weighty risk that weighs in
12 favor of a settlement." *In re Google Location History Litig.*, 2024 WL 1975462, at *6 (N.D. Cal.
13 May 3, 2024).

14 Ultimately, while Plaintiffs maintain that their case is strong, the uncertainty of recovery
15 due to these significant risks cautions against proceeding to litigate the case and supports
16 approving the Settlement. *See Moore v. Verizon Commc'ns Inc.*, 2013 WL 4610764, at *6 (N.D.
17 Cal. Aug. 28, 2013) (finding that the strength of plaintiff's case favored settlement because
18 plaintiff admitted that it would face hurdles in establishing class certification, liability, and
19 damages); *Splunk*, 2024 WL 923777, at *5 (same).

20 **2. The Costs and Delays of Continued Litigation Support Approval of** 21 **the Settlement**

22 Continuing to litigate this Action would require substantial additional costs and
23 significantly delay any recovery for the Class. Absent the Settlement, obtaining a recovery for the
24 Class would require, among other things: (i) litigating the motion to substitute Plaintiff's due
25 diligence expert, which was pending when the Parties filed the Notice of Settlement; (ii) defeating
26 Defendants' motions for summary judgment; (iii) overcoming *Daubert* motions that Defendants
27 have already signaled they would file; (iv) briefing and responding to motions *in limine*;
28 (v) prevailing at trial; and (v) defeating any post-trial motions. Additionally, regardless of the

outcome at trial, it is near certain that the Action would be appealed, given that the case has been vigorously litigated for over five years. *See Rodriguez*, 563 F.3d at 966 (“[i]nevitable appeals would likely prolong the litigation, and any recovery by class members, for years,” which “favor[ed] the settlement”).

The foregoing would impose significant costs on the Class—including increased attorneys’ fees and litigation expenses—and delay the Class’s ability to recover—assuming that Plaintiffs would ultimately prevail on all their claims. The Settlement, “which offers an immediate and certain award for a large number of potential class members, appears a much better option.” *Omnivision*, 559 F. Supp. 2d at 1042. “Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *In re LinkedIn User Priv. Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015). Final approval is preferable here, where the Settlement is plainly adequate.

3. All Other Factors Set Forth in Rule 23(e)(2)(C) Support Approval of the Settlement

Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided for the class is adequate in light of “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims”; “the terms of any proposed award of attorney’s fees, including timing of payment”; and “any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C)(ii)–(iv). Each of these factors further supports approval of the Settlement or is neutral to the analysis.

First, the proposed methods for processing Class Members’ claims and distributing the proceeds of the Settlement to Authorized Claimants are reasonable and effective procedures that have been used widely in securities class action litigation. The Net Settlement Fund will be distributed to Class Members who submit eligible Claim Forms with required documentation to the Court-appointed Claims Administrator A.B. Data, an independent company with extensive experience handling class action settlement administration, including in securities actions. The Court previously appointed A.B. Data to disseminate the Class Notice. A.B. Data will process the Claim Forms under Lead Counsel’s supervision, provide claimants with an opportunity to cure

1 any deficiencies in their claims or request review of the denial of their claims by the Court, and
2 then mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund after Court
3 approval. This type of claims processing is “standard in securities class action settlements” and
4 “has been long found to be effective, as well as necessary,” because neither Plaintiffs nor
5 Defendants “possess the individual investor trading data required for a claims-free process to
6 distribute the Net Settlement Fund.” *Stable Road*, 2024 WL 3643393, at *7 (approving settlement
7 with a near-identical distribution process).

8 Second, the relief provided for the Class is also adequate when considering the terms of
9 the proposed award of attorneys’ fees. As discussed further in the accompanying Motion for
10 Attorneys’ Fees, the proposed attorneys’ fees of 27% of the Settlement Fund, to be paid upon
11 approval by the Court (Stip. ¶ 20), are fair and reasonable in light of, among other things, the
12 efforts of Lead Counsel, the successful result achieved for the Class, and the risks in the litigation.
13 This fee request is consistent with those in many other securities cases, in which courts have
14 approved attorneys’ fee awards that exceed the 25% “benchmark” because of “the circumstances
15 of [the] case.” *In re Apple Inc. Device Perf. Litig.*, 2023 WL 2090981, at *12 (N.D. Cal. Feb. 17,
16 2023); *see also, e.g.*, Order Granting Motion for Attorneys’ Fees and Litigation Expenses ¶ 5,
17 *Boston Ret. Sys. v. Uber Techs., Inc.*, No. 3:19-cv-06361 (N.D. Cal. Dec. 4, 2024) (Seeborg, J.),
18 ECF No. 481 (approving fee award of 29% of the settlement fund); *Mego Fin.*, 213 F.3d at 463
19 (33.3%); *Omnivision*, 559 F. Supp. 2d at 1047 (28%); *In re Nuvelo, Inc. Sec. Litig.*, 2011 WL
20 2650592, at *3 (N.D. Cal. July 6, 2011) (30%); *In re CV Therapeutics, Inc. Sec. Litig.*, 2007 WL
21 1033478, at *1 (N.D. Cal. Apr. 4, 2007) (30%). Additionally, approval of the proposed attorneys’
22 fees award is separate from approval of the Settlement, and the Settlement may not be terminated
23 based on any ruling with respect to attorneys’ fees. Stip. ¶ 23.

24 Finally, the only other agreement entered into by the Parties is a standard Supplemental
25 Agreement that allowed Defendants to terminate the Settlement if a specific, agreed-upon number
26 of Class Members opted out of the Settlement. *Id.* ¶ 46. However, because the Preliminary
27 Approval Order declined to reopen the opt out period (ECF No. 260 ¶ 12), the Supplemental
28

Agreement is moot.⁶

D. The Settlement Treats Class Members Equitably Relative to Each Other

The Settlement treats all Class Members equitably. As discussed below, pursuant to the Plan of Allocation, Authorized Claimants will receive their *pro rata* shares of the recovery based on their Recognized Losses in Bayer ADRs. Plaintiffs will receive the same level of *pro rata* recovery (as calculated under the Plan of Allocation) as all other Class Members. *See* ECF No. 253-2 at 80–85. Courts have found similar plans that award *pro rata* shares to each class member to be fair and reasonable. *See, e.g., Extreme Networks*, 2019 WL 3290770, at *8 (approving plan of allocation using *pro rata* basis of distribution); Order Approving Plan of Allocation, *Uber Techs.*, ECF No. 482 (same).

As discussed in the accompanying Motion for Attorneys’ Fees, Plaintiffs request reimbursement of their reasonable costs and expenses directly related to their participation in the Action. Reimbursement would not constitute preferential treatment, as such awards are explicitly contemplated by the PSLRA as supplemental to Plaintiffs’ *pro rata* recovery. *See* 15 U.S.C. § 78u-4(a).

E. The Reaction of the Class to the Settlement

“A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.” *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014). In accordance with the Preliminary Approval Order and discussed in greater detail below, A.B. Data disseminated the Notice and Claim Form to potential Class Members and nominees via mail and email and caused the Summary Notice to be transmitted over *PR Newswire* and published in *The Wall Street Journal*. *See* Ex. 5 ¶¶ 5–11. The Notice provided the essential terms of the Settlement and informed potential Class Members of, among other things,

⁶ Even if the Supplemental Agreement were not moot, it would not undermine the fairness or reasonableness of the Settlement. “This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the [s]ettlement.” *Stable Road*, 2024 WL 3643393, at *7 (quoting *Christine Asia Co., Ltd. v. Ma*, 2019 WL 5257534, at *1 (S.D.N.Y. Oct. 16, 2019)); *see also In re Carrier IQ, Inc. Consumer Privacy Litig.*, 2016 WL 4474366, at *5 (N.D. Cal. Aug. 25, 2016) (“[O]pt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest.”).

1 their right to object to any aspect of the Settlement as well as the procedure for submitting Claim
2 Forms. To date, A.B. Data has received 3,015 claims, of which 2,509 include Bayer ADRs and
3 506 are ineligible. *Id.* ¶ 9.

4 Lead Counsel has received no objections to the Settlement or the Plan of Allocation.
5 However, the October 9, 2025 deadline set by the Court for Class Members to object to the
6 Settlement has not yet passed. Plaintiffs will therefore address any objections that may be received
7 in their reply papers, due by October 23, 2025.⁷

8 **II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE** 9 **APPROVED**

10 In addition to seeking final approval of the Settlement, Plaintiffs also seek final approval
11 of the Plan of Allocation. A plan for allocating settlement proceeds should be approved if it is fair,
12 reasonable, and adequate, “the same standard[] of review applicable to approval of the settlement
13 as a whole.” *Omnivision*, 559 F. Supp. 2d at 1045 (citing *Class Pls. v. City of Seattle*, 955 F.2d
14 1268, 1284–85 (9th Cir. 1992)). “[A]n allocation formula need only have a reasonable, rational
15 basis, particularly if recommended by experienced and competent counsel.” *Rieckborn v. Velti*
16 *PLC*, 2015 WL 468329, at *8 (N.D. Cal. Feb. 3, 2015) (quoting *Nguyen*, 2014 WL 1802293, at
17 *5). “[A] plan of allocation that reimburses class members based on the extent of their injuries is
18 generally reasonable.” *Id.* (quoting *In re Oracle Sec. Litig.*, 1994 WL 502054, at *1 (N.D. Cal.
19 June 18, 1994)).

20 The proposed Plan of Allocation provides a fair, reasonable, and adequate method for
21 equitably allocating the Net Settlement Fund among Class Members who submit valid and timely
22 Claims Forms. Lead Counsel developed the Plan in consultation with Plaintiffs’ damages expert,
23

24 ⁷ The Notice also informed potential Class Members of their right to opt back into the
25 Settlement. After the Court granted Plaintiffs’ motion for class certification, Plaintiffs worked
26 with A.B. Data to disseminate Class Notices, which summarized the Action and provided
27 potential Class Members the opportunity to request exclusion from the Class. *See* ECF No. 200.
28 Only 11 requests for exclusion from the Class were received. In light of the extensive Class
Notice program, Plaintiffs submitted, and the Court agreed, that a second opportunity to request
exclusion was not necessary, as discussed above. ECF No. 253 at 14; ECF No. 260 ¶ 12. As a
result, the maximum number of requests to opt out of the Settlement is 11. Class Members who
previously opted out of the Class have until October 9, 2025 to opt back in.

1 Chad Coffman, a financial economist, initially of Global Economics Group LLC and later of
2 Peregrine Economics LLP. ¶ 106. The Plan provides that the Net Settlement Fund will be allocated
3 to Authorized Claimants on a *pro rata* basis based on the relative size of their recognized losses.
4 ECF No. 253-2 at 80 ¶¶ 1, 4. However, if the prorated payment to any Authorized Claimant
5 calculates to less than \$10.00, it will not be included in the calculation and no distribution will be
6 made to that Authorized Claimant. *Id.* ¶ 4.

7 To determine Authorized Claimants' Recognized Losses, Plaintiffs' expert calculated the
8 amount of estimated artificial inflation in the price of Bayer ADRs during the Class Period that
9 was proximately caused by Defendants' false and misleading statements by considering the price
10 changes in Bayer ADRs in reaction to the alleged corrective disclosures, adjusting for price
11 changes attributable to market and industry factors. ¶ 110. The Plan of Allocation provides that a
12 Recognized Loss will be calculated for each purchase or acquisition of Bayer ADRs during the
13 Class Period that is listed in the Claim Form and for which adequate documentation is provided.
14 ECF No. 253-2 at 81 ¶ 6(1). In general, the Recognized Loss Amount will be the lesser of: (a) the
15 difference between the amount of alleged artificial inflation in Bayer ADRs at the time of purchase
16 or acquisition and the time of sale, or (b) the difference between the purchase price and the sale
17 price for the ADRs. Claimants who purchased and sold all their shares before the first alleged
18 corrective disclosure will have no Recognized Loss under the Plan of Allocation with respect to
19 those transactions because the level of artificial inflation is the same between the corrective
20 disclosures and any loss suffered on those sales would not be the result of the alleged
21 misstatements. *See id.* ¶ 6(2). The Plan of Allocation also applies the PSLRA's damages limitation
22 to the calculation of Recognized Losses. *Id.* at 81 n.6.

23 The Plan of Allocation provides recovery only for publicly traded Bayer ADRs. *Id.* at 82
24 ¶ 11. Option contracts to purchase or sell Bayer ADRs are not securities eligible to participate in
25 the Settlement; however, Bayer ADRs purchased or sold through the exercise of an option are
26 eligible to participate. *Id.* The purchase/sale date and price of such shares are the exercise date and
27 price of the option. *Id.*

28 If the sum total amount of Recognized Claims of all Authorized Claimants who are entitled

to receive settlement proceeds is greater than the Net Settlement Fund, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.* at 82–83 ¶ 13. If the Net Settlement Fund exceeds the sum total amount of Recognized Claims, the excess amount will be distributed *pro rata* to all Authorized Claimants. *Id.* at 83 ¶ 14. After such distribution, any balance that remains in the Net Settlement Fund that is not feasible or economical to reallocate, after payment of fees, taxes, and expenses, will be contributed to the Council for Institutional Investors (“CII”),⁸ or such other organization approved by the Court. *Id.* ¶ 15.

Based on the above and the additional provisions detailed in the Plan, Lead Counsel believe that the Plan of Allocation provides a fair, reasonable, and adequate method to allocate the Net Settlement Fund equitably among the Class Members who suffered losses because of the conduct alleged in the Action. To date, Plaintiffs have received no objections to the proposed Plan of Allocation. ¶ 119.

III. NOTICE TO THE CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

Rule 23 requires “the best notice” to Class Members “that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also id.* 23(e)(1) (requiring notice of a settlement to be made in “a reasonable manner”); *Dudum v. Carter’s Retail, Inc.*, 2016 WL 7033750, at *3 (N.D. Cal. Dec. 2, 2016). Notice must also satisfy due process requirements by being “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Eisen v.*

⁸ As explained in Plaintiffs’ Motion for Preliminary Approval (ECF No. 253 at 15 n.3), CII is a nonprofit, nonpartisan association of benefit funds, foundations, and endowments that seeks to educate its members, policymakers, and the public about corporate governance, shareowner rights, and related investment issues. *See, e.g.*, Order Granting Plan of Allocation, *Uber Techs.*, ECF No. 482 (granting plan of allocation that designates CII as *cy pres* recipient in securities class action); Order Authorizing Distribution of Net Settlement Fund to Authorized Claimants and Related Relief, *Vancouver Alumni Asset Holdings Inc. v. Daimler AG*, No. 2:16-cv-02942 (C.D. Cal. Mar. 13, 2023), ECF No. 346 (same).

1 *Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974) (quoting *Mullane v. Cent. Hanover Bank & Tr.*
2 *Co.*, 339 U.S. 306, 314 (1950)).

3 Both the substance of the Notice and the method of its dissemination to potential Class
4 Members satisfied these standards. The Court-approved Notice includes all the information
5 required by Federal Rule of Civil Procedure 23(c)(2)(B), the PSLRA, and the Northern District of
6 California Procedural Guidance for Class Action Settlements. A.B. Data, the Court-approved
7 Claims Administrator, began mailing or emailing copies of the Notice Packet to potential Class
8 Members on July 21, 2025 and, as of September 18, 2025, had disseminated over 223,953,278,976
9 copies of the Notice Packet to potential Class Members and nominees. *See* Ex. 5 ¶ 9.⁹ A.B. Data
10 published copies of the Notice, Claim Form, Stipulation, and other pertinent case filings on the
11 Case Website, www.BayerADRSecuritiesLitigation.com, on July 21, 2025, and copies of the
12 Notice and Claim Form were also available on Plaintiffs' Counsel's websites. *See id.* ¶ 13. In
13 addition, A.B. Data caused the Summary Notice to be transmitted over *PR Newswire* and published
14 in *The Wall Street Journal* on July 21, 2025. *Id.* ¶ 11. A.B. Data also maintained a toll-free
15 telephone number for potential Class Members to call to learn about the Settlement. *Id.* ¶ 12.

16 Mailing Notice Packets to all Class Members who could be identified with reasonable
17 effort, supplemented by notice in an appropriate, widely circulated publication, transmitted over
18 the newswire, and published on internet websites, was "the best notice . . . practicable under the
19 circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, Final Order and Judgment ¶ 3, *Uber Techs.*,
20 ECF No. 480 (finding that dissemination of notice pursuant to similar notice plan satisfied the
21 notice requirements of Rule 23, the Due Process Clause, and the PSLRA); *Hunt*, 2024 WL
22 1995840, at *4 (same); *Destefano v. Zynga*, 2016 WL 537946, at *7 (N.D. Cal. Feb. 11, 2016)
23 (same).

24 CONCLUSION

25 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval
26 of the proposed Settlement and the Plan of Allocation for distribution of the Net Settlement Fund.

27
28 ⁹ To date, 1,030 Notice Packets were returned to A.B. Data as undeliverable. Ex. 5 ¶ 10.

1 Dated: September 25, 2025

2 Respectfully submitted,

3 /s/ Carol V. Gilden

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APPENDIX A

United States District Court for the Northern District of California Procedural Guidance for Class Action Settlements – Final Approval

Procedural Guidance	Where Guidance Is Addressed
1) Class Members' Response	
The motion for final approval should include information about:	
a) The number of undeliverable class notices and claim packets;	Motion at 21 n.7; Mailing Decl. ¶ 10
b) The number of class members who submitted valid claims;	Motion at 18; Mailing Decl. ¶ 9
c) The number of class members who opted out; and	Motion at 19 n.6
d) The number of class members who objected to or commented on the settlement.	Motion at 5, 19
In addition, the motion for final approval should respond to any objections.	Motion at 5, 19
2) Attorneys' Fees	
All requests for approval must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed. Counsel should be prepared to submit copies of detailed billing records if the court orders.	Exs. 6A, 6B, 7A, 7B
Regardless of when they are filed, requests for attorneys' fees must be noticed for the same date as the final approval hearing. If the plaintiffs choose to file two separate motions, they should not repeat the case history and background facts in both motions. The motion for attorneys' fees should refer to the history and facts set out in the motion for final approval.	<i>See generally</i> Motion for Attorneys' Fees
3) Service Awards	
All requests for service awards must be supported by evidence of the value provided by the proposed awardees, the risks they undertook in participating, the time they spent on the litigation, and any other justifications for the awards.	Exs. 2–4
4) Electronic Versions	
Electronic versions (Microsoft Word or Word Perfect) of all proposed orders and judgments should be submitted to the presiding judge's Proposed Order (PO) email address at the time they are filed.	To be done upon filing