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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE SILVERGATE CAPITAL  
CORPORATION SECURITIES  
LITIGATION

Case No. 3:22-cv-01936-JES-MSB

**PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF  
SETTLEMENT AND PLAN OF  
ALLOCATION; AND  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT**

Date: September 3, 2025

Time: 9:00 a.m.

Dept: 4B

Hon. James E. Simmons, Jr.

**NOTICE OF MOTION AND MOTION**

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

**PLEASE TAKE NOTICE** that on September 3, 2025 at 9:00 a.m., in Courtroom 4B of the Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, California 92101, before the Honorable James E. Simmons, Jr., Plaintiffs will and hereby do move, pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure, for entry of (1) a judgment granting final approval of the proposed settlement of the above-captioned securities class action; and (2) an order granting approval of the proposed plan for allocating the net settlement proceeds.

This motion is made pursuant to the Court's May 22, 2025 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 140) ("Preliminary Approval Order") and is based upon: (1) this Notice of Motion, (2) the supporting Memorandum of Points and Authorities set forth below, (3) the accompanying Joint Declaration of Jonathan D. Uslander and Carol V. Gilden and the exhibits attached thereto, (4) the Stipulation and Agreement of Settlement dated May 9, 2025 (ECF No. 139-1) filed previously with the Court, (5) the pleadings and records on file in this action, and (6) other such matters and argument as the Court may consider at the hearing of this motion.

Pursuant to the Preliminary Approval Order, any objections to the Settlement or proposed Plan of Allocation must be received by August 13, 2025. To date, no objections have been received. Proposed orders will be submitted with Plaintiffs' reply submission, which will be filed on August 27, 2025, after the deadline for objections has passed.

## **TABLE OF CONTENTS**

1		
2	MEMORANDUM OF POINTS AND AUTHORITIES.....	1
3	PRELIMINARY STATEMENT .....	1
4	ARGUMENT.....	3
5		
6	I. THE PROPOSED SETTLEMENT WARRANTS FINAL	
7	APPROVAL .....	3
8	A. Plaintiffs and Lead Counsel Have Adequately Represented	
9	the Settlement Class .....	5
10	B. The Settlement Was Reached After Arm’s-Length	
11	Negotiations with the Assistance of an Experienced	
12	Mediator and Following Substantial Discovery .....	6
13	C. The Relief That the Settlement Provides for the Settlement	
14	Class Is Adequate, Taking into Account the Costs and	
15	Risks of Further Litigation and All Other Relevant Factors.....	8
16	1. The Risks of Recovering on a Judgment and	
17	Establishing Liability and Damages Support	
18	Approval of the Settlement.....	9
19	2. The Costs and Delays of Continued Litigation	
20	Support Approval of the Settlement .....	13
21	3. All Other Factors Set Forth in Rule 23(e)(2)(C)	
22	Support Approval of the Settlement .....	13
23	D. The Settlement Treats Class Members Equitably Relative	
24	to Each Other.....	15
25	E. The Reaction of the Settlement Class to the Settlement.....	15
26	II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE	
27	AND SHOULD BE APPROVED.....	16
28	III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED.....	19
	IV. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE	
	REQUIREMENTS OF RULE 23 AND DUE PROCESS .....	19

1	CONCLUSION .....	21
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## TABLE OF AUTHORITIES

**Page(s)**

### **Cases**

<i>In re Aftermarket Auto. Lighting Prods. Antitrust Litig.</i> , 2014 WL 12591624 (C.D. Cal. Jan. 10, 2014).....	8
<i>In re Am. Equity Annuity Pracs. &amp; Sales Litig.</i> , 2014 WL 12586112 (C.D. Cal. Jan. 29, 2014).....	7
<i>Amgen Inc. v. Conn. Ret. Plans &amp; Trust Funds</i> , 568 U.S. 455 (2013) .....	6
<i>Baker v. SeaWorld Ent., Inc.</i> , 2020 WL 4260712 (S.D. Cal. July 24, 2020).....	4, 5
<i>In re Capacitors Antitrust Litig.</i> , 2020 WL 13210652 (N.D. Cal. July 10, 2020) .....	20
<i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156 (1974) .....	20
<i>Class Pls. v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....	16
<i>In re Facebook, Inc. Consumer Priv. User Profile Litig.</i> , 2023 WL 8443230 (N.D. Cal. Oct. 10, 2023).....	7
<i>In re Giant Interactive Grp., Inc. Sec. Litig.</i> , 279 F.R.D. 151 (S.D.N.Y. 2011).....	7
<i>Guevoura Fund Ltd. v. Sillerman</i> , 2019 WL 6889901 (S.D.N.Y. Dec. 18, 2019).....	7
<i>Hartless v. Clorox Co.</i> , 273 F.R.D. 630 (S.D. Cal. 2011) .....	15
<i>In re Hyundai &amp; Kia Fuel Econ. Litig.</i> , 926 F.3d 539 (9th Cir. 2019).....	4
<i>In re Immune Response Sec. Litig.</i> , 2007 WL 9777749 (S.D. Cal. Mar. 14, 2007).....	20

1	<i>In re Immune Response Sec. Litig.</i> ,	
2	497 F. Supp. 2d 1166 (S.D. Cal. 2007) .....	17
3	<i>In re ImmunityBio, Inc. Sec. Litig.</i> ,	
4	2025 WL 834767 (S.D. Cal. Mar. 17, 2025).....	15
5	<i>Lemieux v. EZ Lube, Inc.</i> ,	
6	2014 WL 12102167 (S.D. Cal. June 25, 2014) .....	20
7	<i>In re Lithium Ion Batteries Antitrust Litig.</i> ,	
8	2017 WL 6728701 (N.D. Cal. Dec. 22, 2017) .....	20
9	<i>Littlejohn v. Copland</i> ,	
10	819 F. App'x 491 (9th Cir. 2020).....	15
11	<i>In re NASDAQ Market-Makers Antitrust Litig.</i> ,	
12	187 F.R.D. 465 (S.D.N.Y. 1998).....	8
13	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
14	221 F.R.D. 523 (C.D. Cal. 2004).....	9
15	<i>Nunez v. BAE Sys. San Diego Ship Repair Inc.</i> ,	
16	292 F. Supp. 3d 1018 (S.D. Cal. 2017) .....	9, 15
17	<i>In re Omnivision Techs., Inc.</i> ,	
18	559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	16
19	<i>In re Oracle Sec. Litig.</i> ,	
20	1994 WL 502054 (N.D. Cal. June 18, 1994) .....	16
21	<i>Pan v. Qualcomm Inc.</i> ,	
22	2017 WL 3252212 (S.D. Cal. July 31, 2017).....	5
23	<i>Pearlstein v. Blackberry Ltd.</i> ,	
24	2022 WL 4554858 (S.D.N.Y. Sept. 29, 2022).....	7
25	<i>Rieckborn v. Velti PLC</i> ,	
26	2015 WL 468329 (N.D. Cal. Feb. 3, 2015).....	16
27	<i>In re Signet Jewelers Ltd. Sec. Litig.</i> ,	
28	2020 WL 4196468 (S.D.N.Y. July 21, 2020).....	7
	<i>In re Silvergate Capital Corp.</i> ,	
	No. 1:24-bk-12158-KBO (Bankr. D. Del. Apr. 22, 2025) .....	10

1	<i>In re Splunk Inc. Sec. Litig.</i> ,	
2	2024 WL 923777 (N.D. Cal. Mar. 4, 2024) .....	15
3	<i>Staton v. Boeing Co.</i> ,	
4	327 F.3d 938 (9th Cir. 2003) .....	5, 6, 8, 15
5	<i>Torretto v. Donnelley Fin. Sols., Inc.</i> ,	
6	2023 WL 123201 (S.D.N.Y. Jan. 5, 2023) .....	8
7	<i>Vinh Nguyen v. Radient Pharm. Corp.</i> ,	
8	2014 WL 1802293 (C.D. Cal. May 6, 2014) .....	8
9	<i>In re Wells Fargo &amp; Co. S'holder Derivative Litig.</i> ,	
10	445 F. Supp. 3d 508 (N.D. Cal. 2020) .....	8
11	<b>Statutes</b>	
12	11 U.S.C. § 510(b) .....	10
13	15 U.S.C. § 78u-4(a)(7) .....	20
14	<b>Other Authorities</b>	
15	Fed. R. Civ. P. 23 .....	<i>passim</i>

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Indiana  
3 Public Retirement System, Boston Retirement System, Public School Teachers'  
4 Pension & Retirement Fund of Chicago, International Union of Operating Engineers,  
5 Local No. 793, Members Pension Benefit Trust of Ontario, UMC Benefit Board, Inc.  
6 and Wespath Institutional Investments LLC, both as administrative trustees of the  
7 Wespath Funds Trust (collectively, "Lead Plaintiffs"); and Bucks County Employees  
8 Retirement Fund ("Bucks County," and collectively with the Lead Plaintiffs,  
9 "Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully submit  
10 this memorandum of law in support of their motion for final approval of: (1) the  
11 proposed settlement resolving the Action for the payment of \$37,500,000.00 in cash  
12 for the benefit of the Settlement Class (the "Settlement"), and (2) the proposed plan  
13 of allocation of the proceeds of the Settlement (the "Plan of Allocation").<sup>1</sup>

14 **PRELIMINARY STATEMENT**

15 Subject to Court approval, Plaintiffs have agreed to settle the Action in  
16 exchange for a cash payment of \$37,500,000. Plaintiffs respectfully submit that the  
17 proposed Settlement is not only a strong recovery for the Settlement Class, but is fair,  
18 reasonable, and adequate and satisfies all the standards for final approval under Rule  
19 23 of the Federal Rules of Civil Procedure. As detailed in the accompanying Joint  
20 Declaration and summarized below, the Settlement was reached only after more than  
21 two years of hard-fought litigation and vigorous arm's-length negotiations before the  
22

23 <sup>1</sup> Unless otherwise noted, capitalized terms have the meanings ascribed to them in the  
24 Stipulation and Agreement of Settlement dated May 9, 2025 (ECF No. 139-1) (the  
25 "Stipulation"), or in the Joint Declaration of Jonathan D. Uslander and Carol V. Gilden  
26 in Support of (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of  
27 Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation  
28 Expenses (the "Joint Declaration" or "Joint Decl."), filed herewith. In this  
memorandum, citations to "¶ \_\_\_\_" refer to paragraphs in the Joint Declaration and  
citations to "Ex. \_\_\_\_" refer to exhibits to the Joint Declaration. Throughout, citations  
and internal quotation marks are omitted.



1 Honorable Layn Phillips, a former federal judge and premier mediator, conducted  
2 amid the ongoing bankruptcy proceedings of the primary corporate Defendant.<sup>2</sup> The  
3 Parties reached an agreement in principle to settle the Action for the amount Judge  
4 Phillips had proposed.

5 The Settlement has the full support of the Court-appointed Lead Plaintiffs, who  
6 are sophisticated institutional investors that actively participated in the Action and  
7 closely supervised the work of Lead Counsel. Further, although the deadline to object  
8 to the Settlement or request exclusion has not yet passed, to date, no Settlement Class  
9 Members have objected to the Settlement and just one opt-out has been received.<sup>3</sup>

10 The Settlement is particularly favorable given the substantial risks of continued  
11 litigation which, as discussed below, include risks relating to (i) Defendants' ability  
12 to pay; and (ii) establishing liability and damages. Silvergate Capital Corporation's  
13 bankruptcy and limits on available directors' and officers' insurance led to significant  
14 ability-to-pay risks here. The Settlement resolves these risks favorably by ensuring  
15 that the Settlement Class will receive essentially all of the remaining \$27.5 million in  
16 insurance, as well as more than \$5 million indirectly from Silvergate's bankruptcy  
17 estate, a rare source of recovery in a securities class action with a bankrupt issuer; and  
18 (c) an additional \$4.68 million from the Underwriter Defendants. As to other  
19 significant risks of establishing liability and damages, those issues would be litigated  
20 over many years. At the time the Settlement was reached, the motions to dismiss had  
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22 <sup>2</sup> The Joint Declaration is an integral part of this submission and, for the sake of  
23 brevity in this memorandum, the Court is respectfully referred to it for a detailed  
24 description of, among other things: the history of the Action (¶¶ 9-45); the nature of  
25 the claims asserted (¶¶ 18-19); the negotiations leading to the Settlement (¶¶ 29-30;  
26 ¶¶ 35-36); the risks and uncertainties of continued litigation (¶¶ 46-60); and the terms  
of the Plan of Allocation of the Settlement proceeds (¶¶ 68-85).

27 <sup>3</sup> See Ex. 8, at ¶ 15. The deadline to object or opt-out is August 13, 2025. Plaintiffs  
28 will address all requests for exclusion and any objections received in their reply  
papers, which will be filed on August 27, 2025.

not yet been resolved (and the resolution of the motions might have narrowed Plaintiffs' claims). Thereafter, Plaintiffs would have had to prevail on a contested motion for class certification, at summary judgment, and at trial. Even if Plaintiffs ultimately prevailed at trial, they still faced likely appeals—a process that could extend for years and might lead to a smaller recovery, or no recovery at all. As noted above, given the Company's ongoing bankruptcy proceedings and wasting insurance, any further prolonged litigation created very substantial risks of non-recovery, even if Plaintiffs were successful on the merits.

Given the very significant risks of continued litigation and the range of potential outcomes at trial and on appeal, Plaintiffs and Lead Counsel strongly believe that the \$37.5 million Settlement represents a highly favorable result for the Settlement Class. Given these considerations and the other factors discussed below, Plaintiffs respectfully submit that the Settlement is fair, reasonable, and adequate and warrants final approval by the Court.

Additionally, Plaintiffs request that the Court approve the Plan of Allocation, which was set forth in the Notice mailed to potential Settlement Class Members. The Plan of Allocation, which Lead Counsel developed in consultation with Plaintiffs' damages expert, provides a reasonable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on damages they suffered on purchases of Silvergate Capital Stock that were attributable to the alleged violations of federal securities laws.

## ARGUMENT

## I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or settlement of class-action claims. *See* Fed. R. Civ. P. 23(e). A class-action settlement should be approved if the court finds it “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2).

1 The Ninth Circuit has recognized that public policy favors the settlement of  
2 disputed claims among private litigants, particularly in class actions. *See In re*  
3 *Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (*en banc*) (there  
4 is a “strong judicial policy that favors settlements, particularly where complex class  
5 action litigation is concerned”). In ruling on motions for final approval of a class  
6 settlement, courts examine the negotiating process leading to the settlement and the  
7 settlement’s substantive terms. *E.g., Baker v. SeaWorld Ent., Inc.*, 2020 WL 4260712,  
8 at \*6 (S.D. Cal. July 24, 2020).

9 Rule 23(e)(2), as amended on December 1, 2018, provides that the Court should  
10 determine whether a proposed settlement is “fair, reasonable, and adequate” after  
11 considering whether:

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

24 Fed. R. Civ. P. 23(e)(2). As discussed below, all of these factors strongly support  
25 approval of the Settlement here.

26 The Ninth Circuit has identified additional factors relevant to approval of a  
27 settlement, including: (1) the strength of the case; (2) the risk, expense, complexity,  
28 and likely duration of further litigation and the risk of maintaining class action status  
throughout the trial; (3) the stage of the proceedings (investigation, discovery and  
research completed); (4) the settlement amount; (5) whether the class has been fairly  
and adequately represented during settlement negotiations; and (6) the reaction of the

1 class to the Settlement Agreement. *Baker*, 2020 WL 4260712, at \*5 (citing *Staton v.*  
2 *Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003)). The Advisory Committee Notes to  
3 the 2018 amendments to the Federal Rules of Civil Procedure indicate that the four  
4 factors set forth in Rule 23(e)(2) are not intended to “displace” any factor previously  
5 adopted by the Court of Appeals, but “rather to focus the court and the lawyers on the  
6 core concerns of procedure and substance that should guide the decision whether to  
7 approve the proposal.” Fed. R. Civ. P. 23(e)(2) (Advisory Committee Notes, 2018  
8 Amendments).

9 Accordingly, Plaintiffs will discuss the fairness, reasonableness, and adequacy  
10 of the Settlement principally in relation to the four factors set forth in Rule 23(e)(2),  
11 but will also discuss the application of relevant, non-duplicative *Staton* factors. *See*  
12 *Baker*, 2020 WL 4260712, at \*5 (“The Court need only consider some of these  
13 factors—namely, those designed to protect absentees.”).

14 **A. Plaintiffs and Lead Counsel Have Adequately Represented the**  
15 **Settlement Class**

16 In determining whether to approve a class-action settlement, courts consider  
17 whether “the class representatives and class counsel have adequately represented the  
18 class.” Fed. R. Civ. P. 23(e)(2)(A); *see Pan v. Qualcomm Inc.*, 2017 WL 3252212, at  
19 \*5 (S.D. Cal. July 31, 2017) (adequacy inquiry asks whether there is any conflict of  
20 interest between the named representatives and the proposed Settlement Class  
21 members or any “reason to believe that the named representatives and Class Counsel  
22 have ... failed to vigorously investigate and litigate” the case). Here, Plaintiffs and  
23 Lead Counsel adequately represented the Settlement Class.

24 First, there is no antagonism or conflict between Plaintiffs and the proposed  
25 Settlement Class. Both Plaintiffs and Settlement Class Members purchased Silvergate  
26 Capital Stock during the Class Period and in the 2021 Offerings and were injured by  
27 the same allegedly false and misleading statements. If Plaintiffs were to prove their  
28 claims at trial, they would also prove the Settlement Class’s claims. *See Amgen Inc.*

1 *v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460 (2013) (the investor class “will  
2 prevail or fail in unison” because claims are based on common misrepresentations  
3 and omissions).

4 Second, Plaintiffs and Lead Counsel have adequately represented the Settlement  
5 Class in both their vigorous prosecution of the Action and in the negotiation and  
6 achievement of the Settlement, especially in light of an ongoing bankruptcy  
7 proceeding, in which the funds available to make whole Silvergate Capital investors  
8 were limited and, indeed, would be exhausted as to the Settlement Class’s claims  
9 given that they, like common stockholders, are lowest in priority. In addition, Court-  
10 appointed Lead Counsel are highly qualified and experienced in securities litigation,  
11 as set forth in their firm resumes (*see* Exs. 9A-3 and 9B-3), and have successfully  
12 conducted the litigation against skilled opposing counsel.

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

16 In weighing approval of a class-action settlement, courts also consider whether  
17 the settlement “was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). Courts  
18 have traditionally considered other related circumstances in determining the  
19 settlement’s “procedural” fairness, including: (i) counsel’s understanding of the  
20 strengths and weaknesses of the case based on factors such as “the stage of the  
21 proceedings and the amount of discovery completed”<sup>4</sup>; (ii) the absence of any indicia  
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28 <sup>4</sup> *See Staton*, 327 F.3d at 959 (first and third factors).

1 of collusion<sup>5</sup>; and (iii) the involvement of a mediator.<sup>6</sup> All of these circumstances  
2 strongly support approval of the Settlement here.

3 Prior to settling, the Parties engaged in extensive arm's-length settlement  
4 negotiations overseen by an independent mediator, former Judge Layn Phillips,  
5 including the exchange of detailed mediation statements, through two mediation  
6 sessions that took place seven months apart and that included extended discussions  
7 and negotiations over several months following the sessions. Following the second  
8 mediation, Judge Phillips issued a mediator's recommendation proposing that the case  
9 be settled for \$37.5 million. After further discussion among the Parties, the Parties  
10 reached an agreement in principle to settle the Action for the amount Judge Phillips  
11 had proposed. ¶¶ 35-36. That the Settlement was reached only after these extensive  
12 arm's-length negotiations with Judge Phillips is indicative of its fairness. *See, e.g.,*  
13 *Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at \*7 (S.D.N.Y. Sept. 29, 2022)  
14 (approving a settlement, in part, because it was facilitated by the "extensive mediation  
15 efforts" of a "highly regarded mediator," Judge Phillips); *In re Signet Jewelers Ltd.*  
16 *Sec. Litig.*, 2020 WL 4196468, at \*3 (S.D.N.Y. July 21, 2020) (approving a settlement  
17 following mediation before, and a mediator's proposal by, Judge Phillips); *Guevoura*  
18 *Fund Ltd. v. Sillerman*, 2019 WL 6889901, at \*2 (S.D.N.Y. Dec. 18, 2019) (approving  
19 a settlement after an all-day mediation with Judge Phillips); *In re Giant Interactive*  
20 *Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (finding that a settlement  
21 "was the product of prolonged, arms-length negotiation . . . facilitated by a respected  
22 mediator," Judge Phillips); *see generally Torretto v. Donnelley Fin. Sols., Inc.*, 2023

23  
24 \_\_\_\_\_  
25 <sup>5</sup> *In re Am. Equity Annuity Pracs. & Sales Litig.*, 2014 WL 12586112, at \*4 (C.D. Cal.  
26 Jan. 29, 2014) ("The Court finds that the Settlement was not the product of collusion  
or any other indicia of unfairness ...").

27 <sup>6</sup> *In re Facebook, Inc. Consumer Priv. User Profile Litig.*, 2023 WL 8443230, at \*3  
28 (N.D. Cal. Oct. 10, 2023) ("Courts often intone that the involvement of a mediator  
cuts in favor of a conclusion that the settlement is reasonable.")



1 WL 123201, at \*2 (S.D.N.Y. Jan. 5, 2023) (noting that “the involvement of a mediator  
2 in the Parties’ negotiations . . . further supports the finding that the Settlement was  
3 negotiated at arm’s-length”).

4 In addition, Lead Counsel, who are highly experienced in securities class-action  
5 litigation, strongly believe that the Settlement is in the Settlement Class’s best  
6 interest—an opinion that is entitled to “great weight.” *In re Aftermarket Auto.*  
7 *Lighting Prods. Antitrust Litig.*, 2014 WL 12591624, at \*4 (C.D. Cal. Jan. 10, 2014)  
8 (“‘[g]reat weight’ should be accorded counsel’s determination that the instant  
9 settlements are in the best interest of the class”); *accord In re NASDAQ Market-*  
10 *Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (courts consistently  
11 give “‘great weight’ . . . to the recommendations of counsel, who are most closely  
12 acquainted with the facts of the underlying litigation”).

13 Finally, each of the Plaintiffs, all sophisticated institutional investors that  
14 actively supervised this litigation and its settlement, also strongly endorse the  
15 Settlement. *See* Exs. 2-6 (Declarations of Plaintiffs). The presumption of reasonableness  
16 is enhanced where “not one sophisticated institutional investor objected to the  
17 Proposed Settlement.” *In re Wells Fargo & Co. S’holder Derivative Litig.*, 445 F.  
18 Supp. 3d 508, 518 (N.D. Cal. 2020).

19 **C. The Relief That the Settlement Provides for the Settlement Class Is**  
20 **Adequate, Taking into Account the Costs and Risks of Further**  
21 **Litigation and All Other Relevant Factors**

22 In determining whether a class action settlement is “fair, reasonable, and  
23 adequate,” courts also consider whether “the relief provided for the class is adequate,  
24 taking into account . . . the costs, risks, and delay of trial and appeal” as well as other  
25 relevant factors. Fed. R. Civ. P. 23(e)(2)(C).<sup>7</sup>

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26  
27 <sup>7</sup> This Rule 23(e)(2)(C) factor encompasses at least three of the six factors of the  
28 traditional *Staton* analysis. *See Staton*, 327 F.3d at 959 (“(1) the strength of the case;

1 The “substantial risk and a strong likelihood of protracted and contentious  
2 litigation ... weigh[] in favor of the settlement being fair, reasonable, and adequate.”  
3 *Nunez v. BAE Sys. San Diego Ship Repair Inc.*, 292 F. Supp. 3d 1018, 1038 (S.D. Cal.  
4 2017); *see also Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,  
5 527 (C.D. Cal. 2004) (“Avoiding such a trial and the subsequent appeals in this  
6 complex case strongly militates in favor of settlement rather than further protracted  
7 and uncertain litigation.”). This case is no exception.

8 As discussed in detail in the Joint Declaration and below, continued litigation  
9 of the Action presented significant risks that Plaintiffs would be unable to recover any  
10 amount substantially larger than (or even as large as) the Settlement, given  
11 Silvergate’s bankruptcy and the limits and wasting nature of Silvergate’s D&O  
12 Insurance. ¶¶ 47-53. There were also risks that Plaintiffs would be unable to establish  
13 falsity and materiality, scienter, loss causation, or damages. ¶¶ 54-58. In addition,  
14 continuing the litigation through trial and appeals would result in extended delays  
15 before any recovery could be achieved. ¶¶ 59-60. The Settlement, which provides a  
16 \$37.5 million cash payment for the benefit of the Settlement Class now, avoids these  
17 significant risks and delays.

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

20 While Plaintiffs and Lead Counsel believe that the claims asserted against  
21 Defendants in the Action are meritorious, they recognize that this Action presented  
22 several substantial risks to recovery and to establishing both liability and damages.

23 (1) Risks of Ability to Pay

24 As to Defendants’ ability to pay, and as noted in the Joint Declaration,  
25 Silvergate Capital and two of its affiliates (collectively, the “Debtors”) filed for  
26

27  
28 (2) the risk, expense, complexity, and likely duration of further litigation and the risk  
of maintaining class action status throughout the trial; ... (4) the settlement amount”).



Chapter 11 bankruptcy protection in September 2024, while the motions to dismiss the Complaint in this Action were still being litigated. ¶¶ 31-32. The notice of bankruptcy automatically stayed all litigation against Silvergate Capital and created significant hurdles for the Settlement Class to obtaining any substantial recovery in this litigation. The Debtors' filings in the Bankruptcy Court have made clear that, if litigation were to proceed, there likely would not be sufficient funds available in the Debtors' estate to allow payment from the estate to members of the Settlement Class. ¶ 48. Securities law claims based on purchases or other acquisitions of common stock are subordinated to the claims of the Debtors' other creditors and preferred shareholders, and are treated as on par with the claims of common stockholders, *see* 11 U.S.C. § 510(b), and the Debtor's filings concerning the available assets of the estate compared to its liabilities showed that the common stockholders would not be able to recover in the bankruptcy. ¶ 48.

Moreover, the amount of available directors' and officers' insurance was limited and was being continuously diminished as a result of defense costs in this Action, other civil litigation, and government investigations. *Id.*

In light of these concerns, the \$37.5 million Settlement reflects a highly favorable outcome for the Settlement Class. First, the \$27.5 million D&O Insurance Contribution constitutes essentially all of the Silvergate Defendants' remaining available insurance. *See* Rule 9019 Motion at 21, *In re Silvergate Capital Corp.*, No. 1:24-bk-12158-KBO (Bankr. D. Del. Apr. 22, 2025), ECF No. 664 ("The Proposed Securities Litigation Settlement contemplated a total settlement amount of \$37.5 million, of which \$27.5 million would be paid *from all remaining D&O insurance proceeds*") (emphasis added); *id.* at 11 ("Approximately \$27.5 million in insurance currently remains available under the D&O Policies."). Second, the Settlement Class will also receive an additional \$5,320,000 payment indirectly from Silvergate Capital's estate by way of the Preferred Equity Holder Contribution. The holders of Silvergate Capital's preferred equity were actively involved in the settlement

1 negotiations for the Action (through their counsel).<sup>8</sup> Here, the preferred equity holders  
2 have agreed to allow \$5,320,000 from the funds that would otherwise be distributed  
3 to them in the bankruptcy to be paid to the Settlement Class in order to permit a global  
4 settlement that would also resolve the significant indemnity claims against the estate  
5 and the complex legal issues associated therewith, which would materially reduce  
6 legal costs of the estate. ¶ 51. Because securities class action claims are subordinated  
7 in bankruptcy, this type of monetary contribution to a settlement from an insolvent  
8 debtor is not common and represents a favorable outcome for the Settlement Class.  
9 ¶ 52.

10 Finally, the Underwriter Defendants have also agreed to contribute an  
11 additional \$4,680,000 to the Settlement. Plaintiffs and Lead Counsel believe that the  
12 proposed Settlement is the best result that could realistically be achieved under these  
13 circumstances. ¶ 53.

#### 14 (2) Risks of Establishing Liability and Damages

15 In addition to the above considerations, the Action also presented several  
16 substantial risks to establishing liability. Plaintiffs would have faced substantial risks  
17 in establishing each of the required elements of falsity, scienter, loss causation, and  
18 damages.

19 ***First***, Plaintiffs faced challenges at trial in establishing that each misstatement  
20 was false and misleading. Plaintiffs alleged that, from 2019 through 2023, Defendants  
21 repeatedly assured investors and the public that Silvergate Capital had instituted  
22 adequate due diligence procedures for the customers it chose to onboard. However,  
23 Defendants maintained that the Complaint included accounts of unreliable former  
24 employees, and that the FTX fraud could not retroactively establish that Silvergate

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25  
26 <sup>8</sup> The preferred equity holders are the “fulcrum” stakeholders in Silvergate’s  
27 bankruptcy—that is, the group in priority order under the bankruptcy that is expected  
28 to receive the estate’s last available dollars—and thus have the most direct interest in  
how the estate is managed in order to maximize that recovery.

1 Capital had failed to perform adequate due diligence. In support of this argument,  
2 Plaintiffs anticipate that Defendants would pursue discovery and seek to establish that  
3 the frauds perpetrated by FTX and other bank customers were unique, unforeseeable,  
4 and undetectable. ¶ 55.

5 **Second**, with respect to scienter for the Exchange Act claims, Defendants  
6 contended that they did not act with fraudulent intent. Specifically, the Exchange Act  
7 Defendants argued that, even if they were aware of some shortcomings in Silvergate's  
8 due diligence protocols, it was not plausible that they would deliberately perform no  
9 due diligence for the sake of allowing any entity wanting to use their banking services  
10 to do so. ¶ 56.

11 With respect to the Securities Act claims against the Underwriter Defendants  
12 and Silvergate's directors, while there was no scienter requirement as to these claims,  
13 the set of alleged misstatements contained in the Offering Materials was substantially  
14 narrower than the misstatements at issue for the Exchange Act claims. The Securities  
15 Act Defendants strenuously argued that the statements in the Offering Materials about  
16 Silvergate's customer diligence procedures were either too general to be actionable  
17 or could not be shown to be false when made. To succeed on these claims, Plaintiffs  
18 would likely have had to establish that Silvergate essentially did not have any  
19 customer diligence practices at all, which might have been difficult to establish. Even  
20 then, the Securities Act Defendants could assert a due diligence defense to liability,  
21 creating additional risks for Plaintiffs. Accordingly, there were substantial risks to  
22 success on the Securities Act claims. ¶ 57.

23 **Third**, Plaintiffs faced risks in proving price impact, loss causation, and  
24 damages. The Parties' disputes concerning the amount of the Company's stock price  
25 drops attributable to the alleged fraud (versus other confounding factors, *i.e.*, negative  
26 causation) would be a hotly contested issue at class certification, summary judgment,  
27 and trial, with Plaintiffs and Defendants providing dueling expert testimony.  
28 Defendants were expected to argue that Plaintiffs could not appropriately

1 disaggregate the impact of information that was not related to the alleged false and  
2 misleading statements and omissions on the price declines at issue. This dispute would  
3 have led to “battles-of-the-experts” that would create significant uncertainty and risks  
4 to recovery. ¶ 58.

5 **2. The Costs and Delays of Continued Litigation Support Approval of**  
6 **the Settlement**

7 The substantial additional costs, including significant expert and trial-related  
8 expenses that would be required by further litigation and would ultimately have  
9 reduced the Settlement Class’s recovery, and the additional delays that would be  
10 required before any recovery could be obtained through litigation, also strongly  
11 support approval of the Settlement.

12 Absent the Settlement, attaining a recovery for the Settlement Class would have  
13 required, among other things: (i) obtaining class certification; (ii) defeating  
14 Defendants’ motions for summary judgment; (iii) overcoming *Daubert* motions and  
15 motions *in limine*; (iv) prevailing at trial; and (v) defeating any post-trial motions.  
16 Finally, whatever the outcome at trial, it is virtually certain that appeals would be  
17 taken from any verdict for Plaintiffs.

18 The foregoing would pose risks for the Settlement Class and delay the  
19 Settlement Class’s ability to recover—assuming, of course, that Plaintiffs were  
20 ultimately successful on all their claims. In contrast to this lengthy and uncertain  
21 litigation, the Settlement provides an immediate, significant, and certain recovery of  
22 \$37.5 million for members of the Settlement Class.

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

25 Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided  
26 for the class is adequate in light of “the effectiveness of any proposed method of  
27 distributing relief to the class, including the method of processing class-member  
28 claims”; “the terms of any proposed award of attorney’s fees, including timing of

1 payment”; and “any agreement required to be identified under Rule 23(e)(3).” Fed. R.  
2 Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors also supports approval of the  
3 Settlement or is neutral and does not suggest any basis for inadequacy of the  
4 Settlement.

5 First, the procedures for processing Settlement Class Members’ claims and  
6 distributing the proceeds of the Settlement to eligible claimants are well-established  
7 and effective methods that have been widely used in securities class-action litigation.  
8 The Settlement’s proceeds will be distributed to class members who submit eligible  
9 Claim Forms with required documentation to the Court-appointed Claims  
10 Administrator, JND Legal Administration (“JND”). JND, an independent company  
11 with extensive experience handling securities class action administration, will review  
12 and process the claims under Lead Counsel’s supervision, provide claimants with an  
13 opportunity to cure any deficiencies in their claims or request review of the denial of  
14 their claims by the Court, and then mail or wire claimants their *pro rata* shares of the  
15 Net Settlement Fund upon approval of the Court.<sup>9</sup> This type of claims processing is  
16 standard in securities class actions and has long been used and found to be effective.  
17 Such claims filing and processing is necessary because neither Plaintiffs nor Silvergate  
18 Capital possesses individual investors’ trading data that would allow the Parties to  
19 create a “claims-free” process to distribute Settlement funds.

20 Second, the relief provided for the Settlement Class in the Settlement is also  
21 adequate when the terms of the proposed award of attorneys’ fees is taken into  
22 account. As discussed in the accompanying Fee Memorandum, the proposed  
23 attorneys’ fees of 17% of the Settlement Fund, to be paid upon approval by the Court,  
24 are fair and reasonable in light of, among other things, the efforts of Lead Counsel  
25 and the risks in the litigation.

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26  
27 <sup>9</sup> The Settlement is not a claims-made settlement. If the Settlement is approved,  
28 Defendants will have no right to the return of any portion of the Settlement based on  
the number or value of claims submitted. *See* Stipulation ¶ 16.

1 Lastly, the amended Rule 23 asks the Court to consider the fairness of the  
2 proposed settlement in light of any agreements required to be identified under Rule  
3 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, the only such agreement (other  
4 than the Stipulation itself) is the Parties’ confidential Supplemental Agreement,  
5 which sets forth the conditions under which Silvergate Capital would be able to  
6 terminate the Settlement if the number of Settlement Class Members who request  
7 exclusion from the Settlement Class reaches a certain threshold. This type of  
8 agreement is “common in securities fraud actions and does not weigh against  
9 preliminary approval.” *In re ImmunityBio, Inc. Sec. Litig.*, 2025 WL 834767, at \*12  
10 (S.D. Cal. Mar. 17, 2025); *see also In re Splunk Inc. Sec. Litig.*, 2024 WL 923777, at  
11 \*6 (N.D. Cal. Mar. 4, 2024) (“The existence of a termination option triggered by the  
12 number of class members who opt out of the settlement does not by itself render the  
13 settlement unfair.”).

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

16 The proposed Settlement treats members of the Settlement Class equitably  
17 relative to one another. As discussed below, pursuant to the Plan of Allocation,  
18 eligible claimants approved for payment by the Court will receive their *pro rata* shares  
19 of the recovery based on their transactions in Silvergate Capital common stock.  
20 Plaintiffs will receive the same level of *pro rata* recovery (as calculated under the  
21 Plan of Allocation) as all other Settlement Class Members.

22 **E. The Reaction of the Settlement Class to the Settlement**

23 One factor set forth in *Staton* but not included in Rule 23(e)(2) is the reaction  
24 of the class to the proposed Settlement. *See, e.g., Littlejohn v. Copland*, 819 F. App’x  
25 491, 493 (9th Cir. 2020); *Nunez*, 292 F. Supp. 3d at 1040-54; *Hartless v. Clorox Co.*,  
26 273 F.R.D. 630, 641 (S.D. Cal. 2011). In accordance with the Preliminary Approval  
27 Order and discussed in greater detail below, *see infra* 19-20, JND disseminated the  
28 Notice and Claim Form to potential Settlement Class Members and nominees via



1 mail, as well as caused the Summary Notice to be transmitted over the *PR Newswire*  
2 and published in *The Wall Street Journal*. See Declaration of Luiggy Segura  
3 Regarding the Mailing of Notice and Claim Form and the Publication of the  
4 Summary Notice (Ex. 8), at ¶¶ 3-12. The Notice set out the essential terms of the  
5 Settlement and informed potential Settlement Class Members of, among other things,  
6 their right to opt out of the Settlement Class or object to any aspect of the Settlement,  
7 as well as the procedure for submitting Claim Forms.

8 Although the August 13, 2025, deadline set by the Court for Settlement Class  
9 Members to object to the Settlement has not yet passed, to date, no objections to the  
10 Settlement or the Plan of Allocation have been received. ¶ 67. Plaintiffs will file reply  
11 papers by August 27, 2025, addressing any objections that may be received.

12 \* \* \* \*

13 In sum, all of the factors to be considered under Rule 23(e)(2) support a finding  
14 that the Settlement is fair, reasonable, and adequate.

15 **II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND**  
16 **SHOULD BE APPROVED**

17 A plan for allocating settlement proceeds should be approved if it is fair,  
18 reasonable, and adequate. See *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,  
19 1045 (N.D. Cal. 2008) (“Approval of a plan of allocation of settlement proceeds in a  
20 class action ... is governed by the same standards of review applicable to approval of  
21 the settlement as a whole: the plan must be fair, reasonable and adequate.”) (citing  
22 *Class Pls. v. City of Seattle*, 955 F.2d 1268, 1284-85 (9th Cir. 1992)). “[A]n allocation  
23 formula need only have a reasonable, rational basis, particularly if recommended by  
24 experienced and competent counsel.” *Rieckborn v. Velti PLC*, 2015 WL 468329, at  
25 \*8 (N.D. Cal. Feb. 3, 2015) (quoting *Vinh Nguyen v. Radiant Pharm. Corp.*, 2014 WL  
26 1802293, at \*5 (C.D. Cal. May 6, 2014)).

27 Generally, “[a] plan of allocation that reimburses class members based on the  
28 extent of their injuries is generally reasonable.” *In re Oracle Sec. Litig.*, 1994 WL

1 502054, at \*1 (N.D. Cal. June 18, 1994). Courts give great weight to the opinion of  
2 experienced counsel. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174  
3 (S.D. Cal. 2007) (“Where ‘[b]oth Parties are represented by experienced counsel,’ the  
4 recommendation of experienced counsel to adopt the terms of the proposed settlement  
5 ‘is entitled to great deal of weight.’”) (internal citations omitted).

6 Here, the proposed Plan of Allocation, which was developed by Lead Counsel  
7 in consultation with Plaintiffs’ damages expert, Chad Coffman, a financial economist,  
8 initially of Global Economics Group LLC and later of Peregrine Economics LLP,  
9 provides a fair and reasonable method to allocate the Net Settlement Fund among  
10 Settlement Class Members who submit valid Claim Forms based on the losses they  
11 suffered and the types of legal claims they could assert.

12 The Net Settlement Fund will be allocated into an “Exchange Act Fund”  
13 (comprised of the \$27.5 million D&O Insurance Contribution and \$5.32 million  
14 Preferred Equity Holder Contribution, less proportional fees and expenses), and a  
15 “Securities Act Fund” (comprised of the \$4.68 million Underwriter Defendants  
16 Contribution, less proportional fees and expenses). ¶ 70. The Exchange Act Fund will  
17 be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of  
18 each Claimant’s Exchange Act Recognized Losses and the Securities Act Fund will  
19 be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of  
20 their Securities Act Recognized Losses. ¶ 72. If a Claimant has a claim under both the  
21 Exchange Act and Securities Act for the same purchase of Silvergate Capital Stock,  
22 they will be able to recover in both the Exchange Act Fund and Securities Act Fund  
23 for that purchase. ¶ 73.

24 To allow for calculation of Exchange Act Recognized Losses, Plaintiffs’ expert  
25 calculated the amount of estimated artificial inflation in the price of Silvergate Capital  
26 Stock during the Class Period that was proximately caused by Defendants’ false and  
27 misleading statements by considering the price changes in Silvergate Capital Stock in  
28 reaction to the alleged corrective disclosures, adjusting for price changes attributable



1 to market and industry factors. ¶ 75. Under the Plan of Allocation, an “Exchange Act  
2 Recognized Loss” will be calculated for each purchase or acquisition of Silvergate  
3 Capital Stock during the Class Period that is listed in the Claim Form and for which  
4 adequate documentation is provided. ¶ 74. In general, the Exchange Act Recognized  
5 Loss Amount will be the lesser of: (a) the difference between the amount of alleged  
6 artificial inflation in Silvergate Capital Stock at the time of purchase or acquisition  
7 and the time of sale, or (b) the difference between the purchase price and the sale price  
8 for the shares. ¶ 76. Claimants who purchased and sold all their shares before the first  
9 alleged corrective disclosure, or who purchased and sold all their shares between two  
10 consecutive dates on which artificial inflation was allegedly removed from the price  
11 of the stock (that is, they did not hold the shares over a date where artificial inflation  
12 was allegedly removed from the stock price), will have no Exchange Act Recognized  
13 Loss under the Plan of Allocation with respect to those transactions because the level  
14 of artificial inflation is the same between the corrective disclosures, and any loss  
15 suffered on those sales would not be the result of the alleged misstatements. ¶ 76. The  
16 Plan of Allocation also applies the PSLRA’s damages limitation to the calculation of  
17 Exchange Act Recognized Losses. ¶ 77.

18 Claimants who purchased Silvergate Capital Stock in or traceable to one of the  
19 2021 Offerings will also be potentially eligible for a Securities Act Recognized Loss  
20 for those shares under the Plan. ¶¶ 78-80. The Securities Act Recognized Loss will  
21 generally be calculated using the measure of damages in Section 11 of the Securities  
22 Act, 15 U.S.C. § 77k(e), except that no recovery will be permitted for shares sold  
23 before November 9, 2022 because Plaintiffs believe that Defendants would likely  
24 succeed in establishing a defense of negative causation with respect to those shares.  
25 ¶ 79.

26 All shares of Silvergate Capital common stock purchased directly in one of the  
27 three secondary offerings of common stock that occurred in 2021 are potentially  
28 eligible for a Securities Act Recognized Loss. ¶ 80. For shares of common stock that

1 were not directly purchased in an Offering, only claimants who can establish through  
2 documentation that the specific shares that the claimant purchased were issued in one  
3 of the Offerings at issue will be eligible for a Securities Act Recognized Loss. *Id.* In  
4 contrast, all shares of Silvergate Capital Preferred Stock—either purchased directly  
5 in the initial offering of that security in July 2021 or purchased in the open market  
6 through May 11, 2023—are potentially eligible for a Securities Act Recognized Loss,  
7 because purchasers of the Preferred Stock can automatically trace their shares to the  
8 Offering because only shares of Preferred Stock issued in the Offering were traded  
9 during this period. ¶ 80.

10 Lead Counsel believe that the Plan of Allocation provides a fair and reasonable  
11 method to equitably allocate the Net Settlement Fund among Settlement Class  
12 Members who suffered losses as a result of the conduct alleged in the Action. ¶ 85.  
13 Moreover, to date, no objections to the proposed Plan of Allocation have been  
14 received. *Id.*

### 15 **III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED**

16 In connection with the Settlement, the Parties have stipulated to the certification  
17 of the Settlement Class. As set forth in Plaintiffs’ motion for preliminary approval of  
18 the Settlement, the Settlement Class satisfies all the requirements of Rules 23(a) and  
19 (b)(3) of the Federal Rules of Civil Procedure. *See* ECF No. 139-3 at 12-18. None of  
20 the facts regarding certification of the Settlement Class have changed since submitting  
21 the motion for preliminary approval, and there has been no objection to certification.  
22 Accordingly, Plaintiffs respectfully request that the Court certify the Settlement Class  
23 under Rules 23(a) and (b)(3) for the reasons set forth in their earlier motion. *See id.*

### 24 **IV. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE** 25 **REQUIREMENTS OF RULE 23 AND DUE PROCESS**

26 The Notice to the Settlement Class satisfied the requirements of Rule  
27 23(c)(2)(B), which requires “the best notice that is practicable under the  
28 circumstances, including individual notice to all members who can be identified

1 through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle &*  
2 *Jacquelin*, 417 U.S. 156, 173-75 (1974). The Notice also satisfied Rule 23(e)(1),  
3 which requires that notice of a settlement be “reasonable”—*i.e.*, it must be  
4 “reasonably calculated to apprise Settlement Class Members of the pendency of this  
5 Action and their right to object to or exclude themselves from the Settlement Class.”  
6 *Lemieux v. EZ Lube, Inc.*, 2014 WL 12102167, at \*3 (S.D. Cal. June 25, 2014).

7 Both the substance of the Notice and the method of its dissemination to potential  
8 members of the Settlement Class satisfied these standards. The Court-approved  
9 Notice includes all the information required by Federal Rule of Civil Procedure  
10 23(c)(2)(B), the PSLRA, 15 U.S.C. § 78u-4(a)(7), and S.D. Cal. Local Rules. JND,  
11 the Court-approved Claims Administrator, began mailing copies of the Notice Packet  
12 to potential Class Members on June 16, 2025, and, as of July 29, 2025, had  
13 disseminated over 208,000 copies of the Notice Packet to potential Settlement Class  
14 Members and nominees. *See Segura Decl.* (Ex. 8) ¶¶ 3-7, 11. In addition, JND caused  
15 the Summary Notice to be transmitted over the *PR Newswire* and published in *The*  
16 *Wall Street Journal* on July 8, 2025. *See id.* ¶ 12. Copies of the Notice, Claim Form,  
17 and Stipulation were made available on JND’s settlement website beginning on June  
18 13, 2025, and copies of the Notice and Claim Form were also available on Lead  
19 Counsel’s websites. *See Segura Decl.* ¶ 13; *Joint Decl.* ¶ 66. This combination of  
20 individual mail to all Settlement Class Members who could be identified with  
21 reasonable effort, supplemented by notice in an appropriate, widely circulated  
22 publication, transmitted over the newswire, and set forth on internet websites, was  
23 “the best notice . . . practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B);  
24 *see, e.g., In re Capacitors Antitrust Litig.*, 2020 WL 13210652, at \*2 (N.D. Cal. July  
25 10, 2020); *In re Lithium Ion Batteries Antitrust Litig.*, 2017 WL 6728701, at \*2 (N.D.  
26 Cal. Dec. 22, 2017); *In re Immune Response Sec. Litig.*, 2007 WL 9777749, at \*5  
27 (S.D. Cal. Mar. 14, 2007).

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate.

Dated: July 30, 2025

Respectfully submitted,

/s/ Carol V. Gilden

/s/ Jonathan D. Uslaner

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