DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Room 256, Denver, CO, 80202	DATE FILED: October 30, 2023 5:09 PM FILING ID: 6B8B4324DB192 CASE NUMBER: 2017CV31757
Plaintiff(s) OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated v. **Defendant(s)** JAGGED PEAK ENERGY INC., et al.	▲ COURT USE ONLY ▲
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PLAINTIFF'S MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND MEMORANDUM OF LAW IN SUPPORT THEREOF

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Pursuant to Colorado Rule of Civil Procedure ("C.R.C.P.") 23(e), Plaintiff Oklahoma Police Pension and Retirement System ("OPPRS" or the "Plaintiff"), on behalf of itself and the Settlement Class, respectfully submits this memorandum of law in support of its motion for: (1) final approval of the proposed $8,250,000 settlement (the "Settlement") of this securities class action (the "Action"); (2) approval of the proposed Plan of Allocation (the "POA"); and (3) final certification of the Settlement Class.

The terms of the Settlement are set forth in the Stipulation of Settlement dated August 21, 2023 (the "Stipulation") filed with the Court that same day.[1]

C.R.C.P. 121, Section 1-15(8) Certification. On October 26 and 30, 2023, undersigned counsel conferred with Defendants' counsel. Defendants, through counsel, have informed undersigned counsel that they do not oppose the relief sought in the motion for final approval of the class action Settlement and take no position on the relief sought in the motion for final approval of the POA.

PRELIMINARY STATEMENT

After six years of litigation, the Parties have agreed, subject to the Court's approval, to an $8,250,000 million Settlement for the benefit of the Settlement Class. As detailed herein and in the accompanying Declaration of Deborah Clark-Weintraub ("Weintraub Decl."), Plaintiff

[1] All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and the Declaration of Deborah Clark-Weintraub in Support of (i) Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (ii) Motion for an Award of Attorneys' Fees and Expenses and Plaintiff's Request for an Award for Its Representation of the Settlement Class ("Weintraub Decl."), submitted herewith. Unless otherwise indicated, citations are omitted and emphasis is added.

respectfully submits that the Settlement is fair, reasonable, and adequate and should be finally approved.

The Settlement was reached after arm's-length negotiations that were held under the auspices of a highly respected and experienced mediator, Robert M. Meyer of JAMS. Through their extensive litigation of Plaintiff's claims and Defendants' defenses, including motion practice before this Court, the Colorado Court of Appeals and the Colorado Supreme Court, commencement of discovery, consultation with an expert with respect to causation and damages issues, and the Parties' candid exchange of views in the mediation process, Plaintiff and its experienced counsel were fully informed of the strengths and weaknesses of the case at the time of Settlement. Issues of liability, negative causation, and damages in the Action were and, absent settlement, would have continued to be, hotly contested. Specifically, Defendants: (i) denied that any of the challenged statements from the Registration Statement and Prospectus (the "Offering Documents") were materially false or misleading; and (ii) disputed whether any of the losses suffered by the Settlement Class could be attributed to the alleged untrue statements and omissions identified in the Amended Complaint.

Despite these risks, the Settlement achieved by Plaintiff and Plaintiff's Counsel represents an excellent recovery as a percentage of the available damages, and provides a certain, immediate, and substantial cash recovery for the Settlement Class while eliminating the many risks of continued litigation which could have resulted in a lower recovery or no recovery at all. Considering these potential obstacles as well as the substantial time and expense that continued litigation would require, Plaintiff and Plaintiff's Counsel believe that the Settlement warrants final approval.

Plaintiff also requests that the Court approve the proposed POA of the Settlement proceeds. The POA was prepared with the assistance of Plaintiff's expert Scott D. Hakala of ValueScope, Inc., and is similar to plans approved in other securities class action cases in that it provides for the *pro rata* distribution of the Settlement Fund consistent with the statutory damages formula under the Securities Act and each Settlement Class Member's Recognized Loss. Such a POA is a fair and reasonable method for allocating the Settlement proceeds to eligible Settlement Class Members and, therefore, warrants this Court's approval.

Finally, because the requirements of C.R.C.P. 23(a) and (b)(3) are satisfied, Plaintiff and Plaintiff's Counsel respectfully request that the Court grant final certification to the Settlement Class.

In sum, for the reasons set forth herein and in the accompanying declarations and affidavits submitted herewith,[2] Plaintiff and Plaintiff's Counsel respectfully request that the Court grant final approval of the Settlement and Plan of Allocation.

FACTUAL AND PROCEDURAL STATEMENT

Plaintiff respectfully refers the Court to the accompanying Weintraub Declaration for a detailed discussion of the background and procedural history of the Action, the extensive efforts undertaken by Plaintiff and Plaintiff's Counsel during the Action, the risks of continued litigation, and the benefits of the Settlement. *See* Weintraub Decl., ¶¶15-57.

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[2] In addition to the Weintraub Decl., this motion is supported by the Affidavit of Ginger Sigler on behalf of Plaintiff Oklahoma Police Pension and Retirement System in Support (i) Plaintiff's Motion for Final Settlement Approval of Class Action Settlement and Plan of Allocation**,** and (ii) Motion for Award of Attorneys' Fees and Expenses and Plaintiff's Request for an Award for Its Representation of the Settlement Class, dated October 26, 2023 ("OPPRS Aff.") and the Affidavit of Ann Cavanaugh Regarding Notice Dissemination, Publication, and Requests for Exclusion and Objections Received to Date, dated October 27, 2023 (the "Cavanaugh Aff.").

ARGUMENT

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

The standard for approving a settlement under C.R.C.P. 23(e) "is whether the settlement is fundamentally fair, adequate and reasonable." *Helen G. Bonfils Found. v. Denver Post Emps. Stock Tr.*, 674 P.2d 997, 998 (Colo. App. 1983). In evaluating the fairness, adequacy and reasonableness of class action settlements, "courts agree on a nonexclusive list of factors which should be considered . . . [*i.e.,*] the strength of the plaintiff's case; risk and expense of further litigation; amount of the settlement; extent of discovery completed; experience and views of counsel; and reaction of interested parties to the settlement." *Thomas v. Rahmani-Azar*, 217 P.3d 945, 948-49 (Colo. App. 2009); *see also Helen G. Bonfils Found.*, 674 P.2d at 998. As detailed herein, each of these factors strongly favors final approval of the proposed Settlement.

The strength of Plaintiff's case and the risk and expense of further litigation: As detailed in the Weintraub Decl. (¶¶41-44), while Plaintiff strongly believes in the strength of its case, a successful outcome was not assured had the litigation continued, and litigating these claims through trial and inevitable appeals would have required years of additional, expensive litigation. Although the Action ultimately survived Defendants' motion to dismiss, it did so only in part and only after nearly six years of litigation. After initially being dismissed in their entirety by this Court, Plaintiff's allegations were substantially narrowed by the Court of Appeals in a decision affirmed by the Colorado Supreme Court. Of the eight alleged misstatements identified in the

Offering Documents,[3] only two survived the Parties' years' long battle over the sufficiency of the pleadings. Defendants strenuously argued that the surviving misstatements, which concerned Jagged's purported "focus on reducing drilling times, optimizing completions and reducing costs" and its ability to "[m]aximize returns by optimizing drilling and completion techniques through the experience and expertise of [its] management and technical teams," were neither material when read in context nor misleading given the qualifications and decades of experience of Jagged's management and technical teams and financial data purporting to show that at the time of the IPO, drilling, and completion costs were decreasing while gas production was increasing. Discovery with respect to these issues, which was underway when the Settlement was reached, would have been complex and highly technical and have required the assistance of financial and industry experts.

In addition, the risk of establishing damages and overcoming Defendants' affirmative defense of "negative causation" was a primary concern and would have come down to an unpredictable "battle of the experts" as is the case in most securities and complex class actions.

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[3] The Court of Appeals held that Plaintiff had not sufficiently alleged a violation with respect to several forward-looking statements. *Okla. Police Pension & Ret. Sys. v. Jagged Peak Energy Inc.*, No. 19CA1718, 2021 Colo. App. LEXIS 460, at *26-30 (Colo. Ct. App., Apr. 1, 2021), *aff'd*, 2022 CO 54 (Colo. 2022) (holding that mixed statements of historical fact and belief concerning quality of Jagged's acreage in the Delaware Basin was not actionable because Plaintiff had not alleged the factual portion of the statement was false and, to the extent the statement was predictive, it was accompanied by cautionary language and protected by the bespeaks caution doctrine); *id*. at *35-40 (holding that headings in the "Competitive Strengths" and "Business Overview" sections of the Offering Documents referencing the experience and expertise of Jagged's management and a sentence stating that Jagged planned to "leverag[e] [its] management team's extensive experience and technical expertise" were not actionable because Plaintiff had not plausibly alleged that at the time of the Offering, several members of senior management, including Defendant Jaggers, were likely to leave and Defendants knew it); *id*. at *44-45 (holding that statement that Jagged expected to allocate approximately $527 million of its capital budget to drilling costs was not actionable because Plaintiff failed to allege that Jagged knew it would not meet this estimate).

See, *e.g.*, *In re Flag Telecom Holdings*, No. 02-CV-3400, 2010 U.S. Dist. LEXIS 119702, at *53-54 (S.D.N.Y. Nov. 5, 2010)[4] ("'[C]alculation of damages is a 'complicated and uncertain process, typically involving conflicting expert opinion' about the difference between the purchase price and the stock's 'true' value absent the alleged fraud.' . . . Undoubtedly, . . . establishing the amount of damages at trial would have resulted in a 'battle of experts.' The jury's verdict with respect to damages would thus depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable."); *see also City of Providence v. Aeropostale, Inc.*, No. 11-cv-7132, 2014 U.S. Dist. LEXIS 64517, at *24 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015); *In re N.M. Nat. Gas Antitrust Litig.*, 607 F. Supp. 1491, 1505 (D. Colo. 1984) ("We note that the damage calculations were complex and could not have been easily explained to a lay jury. In addition, as is commonly the case, a determination of damages would have involved a battle of opposing experts, each establishing an amount that might be accepted by the jury."). Although a plaintiff alleging violations of Sections 11 and 12(a)(2) of the Securities Act has no obligation to plead or prove loss causation because the Securities Act creates a presumption that any diminution in the value of an offered security between the offer date and complaint date is due to the alleged untrue statements and omissions in the offering documents, *see Fed. Housing Fin. Agency v. Nomura Holding Am., Inc.*, 873 F.3d 85, 154 (2d Cir. 2017), the statute provides Defendants with an affirmative defense of "negative causation." *See* 15 U.S.C. §§77k(e); 77l(b). That is, Defendants are able to rebut this presumption by proving that circumstances concealed by the alleged untrue statements and omissions were not

[4] "Because C.R.C.P. 23 is virtually identical to Fed. R. Civ. P. 23, cases applying the federal rule are instructive. . . ." *Higley v. Kidder, Peabody & Co.*, 920 P.2d 884, 889 (Colo. App. 1996).

"the cause of the actual loss suffered." *Nomura*, 873 F.3d at 154; s*ee also Akerman v. Oryx Commc'ns Inc.*, 810 F.2d 336, 341 (2d Cir. 1987).

Here, Defendants maintained that, even assuming Plaintiff could show the two remaining alleged misstatements were in fact untrue and material, none of the alleged "corrective disclosures" identified in the Amended Complaint revealed the "truth" purportedly concealed by these alleged misstatements, and that the evidence would show that the decrease in Jagged's stock price was the result of other market and industry factors. As explained below, there was significant risk that potential damages could be substantially reduced by Defendants' negative causation arguments and there was no assurance that an award of damages greater than the proposed Settlement could have been obtained if the litigation had continued.

The Settlement Amount: The proposed $8,250,000 Settlement is reasonable when considering the range of outcomes that Plaintiff would have faced had the case gone to trial. Plaintiff's expert estimated that the Settlement Class' maximum theoretically recoverable statutory damages in the Action applying Section 11(e)'s statutory damages formula were $108 million. However, even after giving Plaintiff the benefit of every arguable corrective disclosure, Dr. Hakala estimated that reasonably recoverable damages in light of Defendants' anticipated negative causation arguments could be less than half of this amount – $53 million. The proposed $8.25 million Settlement, which represents approximately 7.6% of the Settlement Class' estimated maximum statutory damages and 15.5% of Plaintiff's expert's "best case" estimate of reasonably recoverable damages after taking account of Defendants' "negative causation" arguments, is highly favorable when compared to the recoveries in similar securities cases, which are typically below the percentages here. Weintraub Decl., ¶46; *see Voulgaris v. Array Biophrama*, No. 17-cv-

02789, 2021 U.S. Dist. LEXIS 249646, at *21-22 (D. Colo. Dec. 3, 2021), *aff'd*, 60 F.4th 1259 (10th Cir. 2023) ("Courts routinely approve class action settlements representing similar or lower percentages of potentially recoverable damages."); *In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, No. 02 MDL 1484, 2007 U.S. Dist. LEXIS 9450, at *33 (S.D.N.Y. Jan. 31, 2007) (recovery of approximately 6.25% was "at the higher end of the range of reasonableness of recovery in class action[] securities litigation."); *Hicks v. Stanley*, No. 01 Civ. 10071, 2005 U.S. Dist. LEXIS 24890, at *19 (S.D.N.Y. Oct. 19, 2005) (settlement representing 3.8% of plaintiff's damage calculation was "within the range of reasonableness.").

The Settlement is also unquestionably better than another distinct possibility – no recovery for the Settlement Class. Defendants maintained that none of the post-IPO disclosures deemed corrective by Plaintiff's expert were related to the truths purportedly hidden by the alleged untrue statements and omissions and claimed that damages were zero. The risk of no recovery for the class in complex cases of this type is very real. In numerous hard-fought lawsuits, plaintiffs and the class ultimately received no recovery – despite years of hard work and interim success – due to the discovery of facts unknown when the case started, changes in the law while the case was pending, or a decision of a judge, jury, or court of appeals after a full trial. *See*, *e.g.*, *In re Tesla Inc.*, No. 18-cv-04865, 2023 U.S. Dist. LEXIS 103682 (N.D. Cal. June 14, 2023) (jury verdict for defendants on all claims); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (overturning jury verdict of $81 million for plaintiffs against an accounting firm on loss causation and entering judgment for defendants); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1235 (10th Cir. 1996) (overturning securities fraud class action jury verdict for plaintiffs on the basis of an intervening 1994 Supreme Court opinion). To the extent Defendants' arguments were successful

at trial, Plaintiff and Settlement Class Members could have recovered less than the Settlement Amount, if at all. In contrast, the proposed Settlement provides Settlement Class Members with a certain, above-average recovery with respect to their estimated maximum and reasonably recoverable damages. Accordingly, this factor supports final approval of the proposed Settlement.

The extent of discovery completed: The Parties were engaged in discovery at the time the Settlement was reached. Specifically, the Parties had exchanged initial disclosures and served requests for production and responses and objections thereto and had engaged in numerous, contentious meet and confer discussions over the proper scope of discovery. At the time the Settlement was reached, Defendants had produced tens of thousands of pages of documents. *See* Weintraub Decl., ¶48. In addition, in connection with the mediation, Plaintiff's Counsel retained an expert on causation and damages to assist them in evaluating these issues, and the Parties exchanged detailed mediation briefs and candidly exchanged their views as to the respective strengths and weaknesses of the claims and defenses in the Action. Hence, by the time the Parties agreed to the Settlement, Plaintiff and its Counsel "possessed sufficient knowledge to enable them to engage in meaningful and informed negotiations" and assess the Settlement's fairness, reasonableness and adequacy in light of the risks, costs and uncertainties of continued litigation. *Thomas*, 217 P.3d at 950.

The experience and views of Counsel*:* Courts have held that "[c]ounsel's judgment that the settlement is fair, reasonable, and adequate is entitled to substantial weight." *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *29-30; *see also Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288-89 (D. Colo. 1997) ("[T]he recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight."). Here, Plaintiff was advised by competent and highly

experienced counsel in securities class action litigation familiar with the underlying facts of the case who concluded that the Settlement was fair, reasonable, and adequate, particularly when contrasted against the fact that continued litigation would have been risky, costly and lengthy. *See* Weintraub Decl., ¶¶51, 76-78. This factor also weighs in favor of the proposed Settlement. *See Thomas*, 217 P.3d at 950 (plaintiff "was represented by competent counsel, familiar with the underlying facts, who recommended the settlement.").

The reaction of Settlement Class Members*:* Confirming the fairness of the proposed Settlement is the fact that, to date,[5] Settlement Class Members have reacted positively to it. *See Shaw v. Interthinx, Inc.*, No. 13-cv-01229, 2015 U.S. Dist. LEXIS 52783, at *11 (D. Colo. Apr. 21, 2015) (lack of objection from class members constituted a "positive" reaction). As of the date of this filing, there have been no objections to the Settlement following the mailing of 17,049 copies of the Notice to potential Settlement Class Members and Nominee Holders beginning on September 13, 2023, and the publication of the Summary Notice on September 27, 2023. *See* Cavanaugh Aff., ¶¶5-11, 16.

In sum, the Settlement readily meets each of the factors that Colorado courts evaluate in connection with a motion for final approval thereby supporting a finding that the proposed Settlement is fair, reasonable, and adequate and final approval should be granted.

[5] As the deadline for objections and exclusions had not yet passed, if any timely objections are subsequently received by the deadline of November 13, 2023, Plaintiff will address them in its reply brief in support of final approval due on December 8, 2023.

II. THE POA IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED

"Approval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to the approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 692 (D. Colo. 2014). Further, "'[a]s a general rule, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable, . . . particularly if recommended by experienced and competent class counsel." *Id.* The proposed POA was set forth in full in the Notice sent to Settlement Class Members (*see* Cavanaugh Aff., Ex. A, Notice at 3-6) and was developed by Plaintiff's damages expert, using allocation methodologies routinely applied in securities cases of this type. *See* Weintraub Decl. ¶¶58-64. Specifically, the POA provides for the *pro rata* distribution of Settlement proceeds and is based on the decline in value of Jagged's shares that occurred following the IPO as the truth hidden by the alleged untrue statements and omissions in the Offering Documents was revealed to investors in a series of announcements between March 2017 and May 2018 (which, in turn, reduced the amount of artificial inflation in the stock price alleged to have been caused by the untrue statements and omissions at issue). *Id.*, ¶61. Importantly, the POA applies in the same manner to all Settlement Class Members (*Id.*, ¶62) thereby providing for a fair, reasonable and adequate distribution of the proceeds among Settlement Class Members who submit valid claims. *See Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *22-23 ("[POA] treats members equitably relative to each other . . . [for] each . . . [m]ember that submits a [p]roof of [c]laim will . . . obtain their *pro rata* share of the [n]et [s]ettlement [f]und."); *Peace Officers' Annuity & Ben. Fund of Ga. V. Davita Inc.*, No. 17-cv-0304, 2021 U.S. Dist. LEXIS 71038, at *14 (D. Colo. Apr. 13, 2021) ("[POA] . . . treats all class

members equally [as] [t]he settlement fund will be allocated to authorized claimants on a *pro rata* basis.").

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED

For purposes of Settlement only, Plaintiff seeks final certification of the Settlement Class. Courts have recognized that "class treatment is particularly appropriate for proceedings involving alleged violations of securities laws" and C.R.C.P. 23 "should be construed liberally to achieve that end." *Toothman v. Freeborn & Peters*, 80 P.3d 804, 809 (Colo. App. 2002).

This Court preliminarily certified the Settlement Class in the Amended Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement ("Preliminary Approval Order") dated August 23, 2023, and nothing has changed to alter the appropriateness of that determination. The requirements of C.R.C.P. 23(a), (b)(3) and (e) having been met (as detailed below), the Court should grant final certification of the Settlement Class.

The Settlement Class is so numerous it warrants certification: Jagged issued over 31.5M shares in its IPO. As a result, the purchasers of Jagged common stock in or traceable to the IPO range in the hundreds, if not thousands, thereby making joinder impracticable as required by C.R.C.P. 23(a)(1). *See Or. Laborers Emps. Pension Tr. Fund. v. Maxar Techs.*, No. 19-cv-0124, 2021 U.S. Dist. LEXIS 132621, at *5-6 (D. Colo. July 16, 2021); *In re Crocs, Inc.*, 306 F.R.D. at 686. In fact, "[c]ourts generally assume that the numerosity requirement is met in cases involving nationally traded securities." *In re Ribozyme Pharms., Inc. Sec. Litig.*, 205 F.R.D. 572, 577 (D. Colo. 2001).

Questions of law and fact are common to the Settlement Class: C.R.C.P. 23(a)(2) requires a showing that "'there are questions of law or fact common to the class.'" *In re Crocs, Inc.*, 306 F.R.D. at 686. "Even one common issue of law or fact will suffice to establish Rules 23's commonality requirement." *Id.* As the claims here arise out of a common set of alleged misstatements and omissions in the Offering Documents pursuant to which the shares purchased by Settlement Class Members were issued, C.R.C.P. 23(a)(2)'s commonality requirement is easily satisfied. *Id*. ("[W]hether the[] material omissions and misrepresentations occurred is a factual and legal question that is common to the entire class and is capable of class wide resolution. . . . Accordingly, the Court finds that the proposed Settlement Class satisfies the commonality requirement.").

Plaintiff's claims are typical of the claims of the Settlement Class: C.R.C.P. 23(a)(3)'s "typicality requirement is satisfied if the claims of the named plaintiff and class members are 'based on the same legal or remedial theory.'" *In re Oppenheimer Rochester Funds Grp. Sec. Litig.*, 318 F.R.D. 435, 444 (D. Colo. 2015), *appeal denied sub nom. Downes v. Rivera*, No. 15-705, 2015 U.S. App. LEXIS 21395 (10th Cir. 2015). Plaintiff's "positions need not be identical to those of the other class members. . . . Rather, . . . Plaintiff['s] claims must arise out of the same alleged course of conduct and must be based on the same theories as those of the putative class members." *Patterson v. BP Am. Prod. Co.*, 240 P.3d 456, 464 (Colo. App. 2010), *aff'd*, 263 P.3d 103 (Colo. 2011). Here, Plaintiff – like the other Settlement Class Members – purchased shares of Jagged common stock in or traceable to the IPO which was conducted with Offering Documents that allegedly contained material untrue statements and omissions and was damaged when

Jagged's share price declined once the truth was revealed post-IPO. *See Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *17. As such, the typicality requirement is satisfied.

Plaintiff and Plaintiff's Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members:

C.R.C.P. 23(a)(4) requires the "'[r]esolution of two questions . . . : (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002). When Plaintiff shows it has no "interests conflicting with those [it] has sought to advance" and "the interests of that class have been competently urged at each level of the proceeding, . . . the test of [adequate representation] is met." *Kuhn v. State, Dep't of Revenue*, 817 P.2d 101, 106 (Colo. 1991). Here, Plaintiff suffered the same injury as the proposed Settlement Class, prosecuted the Action with the same interests and objectives as the Settlement Class and obtained a Settlement representing a significant percentage of the Settlement Class' reasonably recoverable damages. These facts support adequacy. *See In re Crocs, Inc.*, 306 F.R.D. at 688; *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *16-17.

Common questions of law or fact predominate over individual questions and class resolution is superior to other methods for the fair and efficient adjudication of the controversy: C.R.C.P. 23(b)(3) requires a determination that: (1) "'proof at trial will be predominantly common to the class [rather than] primarily individualized'"; and (2) the class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Patterson v. BP Am. Prod. Co*., 360 P.3d 211, 226 (Colo. App. 2015). Here, the numerous questions of law and fact

common to the Settlement Class Members clearly predominate over any questions affecting individual members. *See In re Crocs, Inc.*, 306 F.R.D. at 689 ("[P]redominance . . . is a 'test readily met in . . . securities fraud'"). Further, "class action settlement is a superior method for resolving this dispute . . . [as] it avoids duplicative litigation, saving both plaintiffs and defendants significant time and legal costs to adjudicate common legal and factual issues." *Id.* "In addition, settlement is appropriate because recovery for these claims is likely too small to provide an incentive for individual class members to adjudicate individual claims." *Id.* The requirements of C.R.C.P. 23(b)(3) are, therefore, satisfied.

The Notice plan provided the best notice practicable under the circumstances:

Finally, C.R.C.P. 23(e), read in conjunction with subparagraph (c)(2)(b), requires that the "best notice practicable under the circumstances" be given to all members of the class, including "to all members who can be identified through reasonable effort." This Court previously held that:

> The form and content of the Notice and the Summary Notice, and the method set forth therein of notifying the Settlement Class of the Settlement and its terms and conditions, [met] the requirements of [C.R.C.P.] 23, due process, and all other applicable laws and constitute the best notice practicable under the circumstances and due and sufficient and sufficient notice to all persons and entities entitled thereto and are reasonably calculated under the circumstances to describe the terms and effects of the Settlement and to apprise the members of the Settlement Class of their right to object to the proposed Settlement and to exclude themselves from the Settlement Class.

Preliminary Approval Order, ¶12. The Notice and Summary Notice were disseminated and published in accordance with the plan approved in the Preliminary Approval Order. *See* Cavanaugh Aff., ¶¶5-13. Accordingly, the requirement of C.R.C.P. 23(e) and due process have been satisfied. *See Nakkhumpun v. Taylor*, No. 12-cv-01038, 2016 U.S. Dist. LEXIS 203072, at *10-11 (D. Colo. June 13, 2016).

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court enter the Proposed Final Order and Judgment granting final approval of the Settlement and certifying the Settlement Class (for ease of reference, attached hereto as Exhibit 1)[6] as well as the Proposed Final Order and Judgment approving the POA (attached hereto as Exhibit 2).

Dated: October 30, 2023

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[6] The Proposed Final Order and Judgment is also attached as Exhibit B to the Preliminary Approval Order.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2023, the foregoing document was served on the following counsel by the Colorado Court E-Filing System:

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/s/ Rusty E. Glenn

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EXHIBIT 1

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	Case No.: 2017CV31757 Division: 209
Plaintiff(s) OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated v. **Defendant(s)** JAGGED PEAK ENERGY INC., et al.	

DATE FILED: October 30, 2023 5:09 PM
FILING ID: 6B8B4324DB192
CASE NUMBER: 2017CV31757

[PROPOSED] FINAL ORDER AND JUDGMENT

WHEREAS, on August 21, 2023, Oklahoma Police Pension and Retirement System (the "Plaintiff") on behalf of itself and all members of the putative Settlement Class, and Jagged Peak Energy, Inc., Joseph N. Jaggers, Robert W. Howard, Shonn D. Stahlecker, Charles D. Davison, S. Wil Vanloh, Jr., Blake A. Webster, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Goldman, Sachs & Co., RBC Capital Markets, LLC, Wells Fargo Securities, LLC, UBS Securities LLC, Keybanc Capital Markets Inc., ABN AMRO Securities (USA) LLC, Fifth Third Securities, Inc., Petrie Partners Securities, LLC, Tudor, Pickering, Holt & Co. Securities, Inc., BMO Capital Markets Corp., Deutsche Bank Securities Inc., Evercore Group L.L.C., and Scotia Capital (USA) Inc. (collectively, the "Defendants") entered into the Stipulation and Agreement of Settlement (the "Stipulation") in the Action; and

WHEREAS, on _____, 2023, the Court entered its Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the "Preliminary Approval Order"), which preliminarily approved the Settlement and the form and manner of Notice of the Settlement to the Settlement Class, and said Notice has been made, and the Settlement Hearing having been held;

NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings herein, and a Settlement Hearing having been held after Notice to the Settlement Class to determine if the Settlement is fair, reasonable, and adequate and whether Judgment should be entered in the Action, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The provisions of the Stipulation, including definitions of terms used therein, are hereby incorporated by reference as though fully set forth herein.

2. This Court has jurisdiction over the subject matter of the Action and over all of the Parties and all Settlement Class Member for purposes of the Settlements.

3. The Court finds, pursuant to Colorado Rule of Civil Procedure 23, that:

i. The Settlement Class is so numerous that joinder of all members is impracticable;

ii. There are questions of law and fact common to the Settlement Class;

iii. The claims of Plaintiff are typical of the claims of the Settlement Class;

iv. Plaintiff and Plaintiff's Counsel have fairly and adequately protected the interests of the Settlement Class; and

v. The questions of law or fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

vi. Hereby finally certifies the Action as a class action pursuant to Colorado Rule of Civil Procedure 23 (in connection with the Settlement only) on behalf of the Settlement Class consisting of all persons and entities who purchased or otherwise acquired common stock in or traceable to the initial

public offering of Jagged Peak Energy, Inc. on January 27, 2017. Excluded from the Settlement Class are Defendants, Defendants' Counsel, and the Defendants' Released Parties, *provided, however*, that any Investment Vehicle shall not be excluded from the Settlement Class. Also excluded from the Settlement Class are those Persons who timely and validly sought exclusion from the Settlement Class or whose request for exclusion is accepted by the Court as reflected in Exhibit A hereto. Plaintiff is hereby certified as the Settlement Class Representative and Plaintiff's Counsel are certified as Settlement Class Counsel.

4. The Court finds that the mailing of the Notice and Proof of Claim Form and publication of the Summary Notice: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Class Counsel's request for an award of attorney's fees and payment of expenses incurred in connection with the prosecution of the Action, of Plaintiff's request for compensation for its efforts prosecuting the Action on behalf of the Class, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Colorado Rules of Civil Procedure as well as the United States Constitution (including the Due Process Clause).

5. The Settlement, as set forth in the Stipulation, is, in all respects, fair, reasonable, and adequate and shall be consummated in accordance with the terms and conditions of the

Stipulation. The Settlement is the result of arm's-length negotiations between experienced counsel representing the interests of Class Representative, the Settlement Class, and Defendants. The Action settled only after, among other things: (i) a mediation was conducted by an experienced mediator who was familiar with the Action; (ii) the exchange between the Parties of detailed mediation statements before the mediation that highlighted the factual and legal issues in dispute; (iii) an investigation by Plaintiff's Counsel, which included, among other things, a review of Jagged's press releases, filings with the U.S. Securities and Exchange Commission, analyst reports, media reports, and interviews of confidential witnesses; (iv) the drafting of two detailed complaints; (v) motion practice directed to the amended complaint, including appeals to the Colorado Court of Appeals and the Colorado Supreme Court; and (vi) discovery. Accordingly, both Plaintiff and Defendants were well-positioned to evaluate the settlement value of the Action. The Stipulation has been entered into in good faith and is not collusive. If the Settlement had not been achieved, both Plaintiff and Defendants faced the expense, risk, and uncertainty of extended litigation.

6. The Amended Class Action Complaint and Jury Demand filed on July 23, 2018, and all claims contained therein are hereby dismissed in their entirety, with prejudice, and without costs to any Party, except as otherwise provided in the Stipulation.

7. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Colorado Rules of Civil Procedure.

8. Upon the Effective Date, Class Representative and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed

to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendants' Parties, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendants' Parties.

9. Upon the Effective Date, Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff's Parties, and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff's Parties.

10. Notwithstanding paragraphs 8 and 9 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. All Settlement Class Members, whether or not the Settlement Class Member executes and delivers a Proof of Claim Form, are bound by this Judgment, including, without limitation, the release of claims provided for herein.

12. All Settlement Class Members who have not objected to the Settlement in the manner provided in the Notice are deemed to have waived any objections by appeal, collateral attack, or otherwise. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

13. All Settlement Class Members who have failed to properly submit requests for exclusion from the Settlement Class are bound by the terms and conditions of the Stipulation and this Judgment.

14. This Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action to enforce this Judgment and the Stipulation, and in particular:

(a) Do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants with respect to the truth of any allegation or other assertion by Plaintiff and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault, or wrongdoing of Defendants or any Person whatsoever;

(b) do not constitute and shall not be construed as or received in evidence as an admission, concession, or presumption against Plaintiff or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

15. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

16. If the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases delivered in connection with this Judgment shall be null and void to the extent provided by and in accordance with the Stipulation, and the Parties shall be deemed to have reverted to their respective litigation positions in the Action immediately prior to June 23, 2023.

17. Without further order of the Court, the Parties may agree in writing to such amendments, modifications, and expansions of the Stipulation and reasonable extensions of time to carry out any of the provisions of the Stipulation, provided that such amendments, modifications, expansions, and extensions do not materially alter the rights of the Settlement Class Members or the Released Defendants' Parties and Released Plaintiff's Parties under the Stipulation.

18. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (i) implementation of the Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (ii) hearing and determining applications for attorneys' fees, costs, interest, and payment of expenses in the Action; and (iii) all Parties for the purpose of construing, enforcing, and administering the Settlement and this Judgment;.

Dated this ____ day of _____, 2023.

BY THE COURT:

_____

SARAH B. WALLACE
District Court Judge

EXHIBIT 2

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[PROPOSED] ORDER APPROVING THE PLAN OF ALLOCATION

WHEREAS, the Court is advised that the Parties, through their counsel, have agreed, subject to Court approval following Notice to the Settlement Class and a hearing, to settle and dismiss with prejudice the Action upon the terms and conditions set forth in the Stipulation of Settlement, dated August 21, 2023 (the "Stipulation" or "Settlement");[1] and

WHEREAS, on August 23, 2022, the Court entered its Amended Order Granting Plaintiff's Unopposed Motion for Preliminarily Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the "Preliminary Approval Order"), which preliminarily approved the Settlement and approved the form and

[1] As used herein, the term "Parties" collectively means Plaintiff Oklahoma Police Pension and Retirement System ("OPPRS" or "Plaintiff"), on behalf of itself and the Settlement Class, and Defendants Jagged Peak Energy Inc. ("Jagged" or the "Company), Joseph N. Jaggers, Robert W. Howard, Shonn D. Stahlecker, Charles D. Davison, S. Wil Vanloh, Jr., Blake A. Webster, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Goldman, Sachs & Co., RBC Capital Markets, LLC, Wells Fargo Securities, LLC, UBS Securities LLC, Keybanc Capital Markets Inc., ABN AMRO Securities (USA) LLC, Fifth Third Securities, Inc., Petrie Partners Securities, LLC, Tudor, Pickering, Holt & Co. Securities, Inc., BMO Capital Markets Corp., Deutsche Bank Securities Inc., Evercore Group L.L.C., and Scotia Capital (USA) Inc. (collectively, "Defendants").

manner of Notice to the Settlement Class of the Settlement, and said Notice has been disseminated, and the Settlement Fairness Hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that the Plan of Allocation is fair and reasonable, and a Settlement Fairness Hearing having been held after Notice to the Settlement Class to determine, among other things, if the Plan of Allocation is fair and reasonable, IT IS ORDERED, ADJUGED, AND DECREED that:

1. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein, and all capitalized terms used, but not defined herein shall have the same meaning as those set forth in the Stipulation.

2. The Court hereby finds and concludes that due and adequate notice was directed to all Persons who are Settlement Class Members, advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons who are Settlement Class Members to be heard with respect to the Plan of Allocation. There were _____ objections to the Plan of Allocation.

3. The Court hereby finds and concludes that the Plan of Allocation set forth in the Notice approved by the Court (*see* the Preliminary Approval Order) and disseminated to Settlement Class Members (*see* Affidavit of Ann Cavanaugh, ¶¶5-11, 13), provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members, with due consideration having been given to administrative convenience and necessity.

4. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair and reasonable to the Settlement Class, and the Court hereby

approves the Plan of Allocation and directs the Claims Administrator to administer the Settlement in accordance with the Stipulation.

Dated this ____ day of _____, 2023.

BY THE COURT:

_____
SARAH B. WALLACE
District Court Judge