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SARAH BLOCK WALLACE
District Court Judge

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DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Room 256, Denver, CO, 80202	
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 ▲
Attorneys for Plaintiff: SHUMAN, GLENN & STECKER Rusty E. Glenn (Atty. Reg. No. *****) 600 17th Street, Suite 2800 South, Denver, CO 80202 Tel.: (303) 861-3003; Fax: (303) 536-7849 Scott+Scott Attorneys at Law LLP Deborah Clark-Weintraub (*admitted pro hac vice*) Thomas L. Laughlin, IV (*admitted pro hac vice*) Emilie B. Kokmanian (*admitted pro hac vice*) Mandeep Minhas (*admitted pro hac vice*) 230 Park Ave., 17th Fl., New York, NY 10169 Tel.: (212) 223-6444; Fax: (212) 223-6334	Case Number: 2017CV31757 Division: 209

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

Plaintiff respectfully moves the Court pursuant to C.R.C.P. 23(e) for an order granting preliminary approval to the proposed settlement of this class action on the terms and conditions stated in the Stipulation of Settlement dated August 21, 2023 (the "Settlement").

C.R.C.P. 121, Section 1-15(8) Certification. On August 18, 2023, undersigned counsel conferred with Defendants' counsel. Defendants, through counsel, have informed undersigned counsel that they do not oppose the relief requested.

PRELIMINARY STATEMENT

After more than six years of hard-fought litigation, Plaintiff Oklahoma Police Pension and Retirement System ("Plaintiff") has agreed on behalf of itself and the putative Class, subject to the Court's approval, to settle all claims asserted in this Action in exchange for a non-recourse cash payment of $8,250,000. The Settlement is embodied in the Stipulation submitted herewith.[1] As explained more fully herein, Plaintiff and its counsel respectfully submit that the Settlement is fair, reasonable, and adequate and warrants preliminary approval. *See Helen G. Bonfils Found. v. Denver Post Emps. Stock Tr.*, 674 P.2d 997, 998 (Colo. Ct. App. 1983) (The standard for evaluating a proposed settlement under C.R.C.P. 23(e) as under federal law "is whether the settlement is fundamentally fair, adequate and reasonable.").[2] Plaintiff respectfully submits that the proposed Settlement represents an excellent recovery for the Settlement Class given the potential range of recovery, the risks of continued litigation, and when compared to other recently approved securities class action settlements. It was achieved through arm's length negotiations with the assistance of an experienced mediator at a stage in the proceedings at which Plaintiff and its counsel were well-informed regarding the merits of and defenses to the claims.

Because this action is a class action, it may not be dismissed or compromised without the approval of the Court after notice of the proposed compromise has been given to Settlement Class members. C.R.C.P. 23(e). Approval of a class action settlement proceeds in two stages. "In the first stage, the Court preliminarily certifies a settlement class, preliminarily approves the settlement agreement, . . . authorizes that notice be given to the class so that interested class

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[1] Unless otherwise stated, capitalized terms used herein have the meaning as in the Stipulation filed herewith.
[2] Unless otherwise indicated, citations are omitted and emphasis is added.

members may object to the fairness of the settlement." *Paulson v. McKowen*, Case No. 19-cv-02639, 2023 U.S. Dist. LEXIS 43717, at *5 (D. Colo. Mar. 15, 2023); *see Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006) ("The purpose of the preliminary approval process is to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing.").[3] In addition, at the preliminary approval stage, the Court sets a date for the second stage of the process, "a [final] fairness hearing at which it addresses (1) any timely objections to the treatment of [the] litigation as a class action, and (2) any objections to the fairness, reasonableness, or adequacy of the settlement terms." *McKowen*, 2023 U.S. Dist. LEXIS 43717, at *5.

This case is now at the first stage of the process. Accordingly, this motion asks the Court to (i) preliminarily certify the Settlement Class pursuant to C.R.C.P. 23(a) and (b)(3); (ii) grant preliminary approval to the proposed Settlement as fair, reasonable, and adequate to Settlement Class members; (iii) approve the manner and form of notice of the Settlement to be disseminated to Settlement Class members, which is consistent with that customarily used in securities class action litigation, as satisfying due process and Colorado law; and (iv) set a date for a hearing on final approval of the Settlement and related matters that will allow for the prompt conclusion of this Action and distribution of the Settlement proceeds while providing sufficient time for Settlement Class members to receive notice and present any objection or request exclusion from the Settlement Class.

[3] "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. Ct. App. 1996).

STATEMENT OF FACTS

A. Nature of the Claims, Removal, and Proceedings in the District Court

Plaintiff filed this securities class action against Defendants[4] on May 12, 2017, alleging claims under §§11, 12(a)(2), and 15 of the Securities Act of 1933 on behalf of persons who acquired stock in or traceable to the initial public offering ("IPO") of Jagged Peak Energy Inc. ("Jagged" or the "Company"). Plaintiff alleged that the Offering Documents for the IPO contained untrue and misleading statements and omissions and violated Defendants' affirmative obligation under Item 303 of Regulation S-K to disclose "known trends or uncertainties that have or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."

On June 2, 2017, Defendants removed the Action to the United States District Court for the District of Colorado. Although Plaintiff moved to remand, proceedings were stayed in the Federal District Court pending the U.S. Supreme Court's decision in *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061 (2018), which ultimately reaffirmed the jurisdiction of state courts in Securities Act cases, at which time the case was remanded to this Court. Thereafter, Plaintiff filed its amended complaint on July 23, 2018, alleging that the Offering Documents in connection with the IPO negligently overstated Jagged's ability to increase oil and gas production by representing that the Company (i) owned prime territory in the core oil-producing window of

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[4] The Defendants are (i) Jagged; (ii) Joseph N. Jaggers, Chairman, CEO, President and a founder of Jagged and one of the selling shareholders in the Offering; (ii) Robert W. Howard, Jagged's CFO; (iii) Shonn D. Stahlecker, the Company's controller; (iv) the Board members who signed the Offering Documents; and (v) the Underwriters for the Offering – 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.

the Delaware Basin, and (ii) had a highly experienced and professional workforce capable of developing Jagged's property in an efficient and aggressive manner. In fact, however, the amended complaint alleged that (i) the production capacity of Jagged's territories was questionable because they were largely situated in untested, marginal areas of the Delaware Basin; (ii) Jagged's workforce, including its contractors were largely inexperienced in the complex horizontal drilling techniques required; and (ii) the Company was reliant on contactors who lacked both the requisite skills and also engaged in questionable business practices that increased Jagged's costs. Plaintiff alleged that when the true facts regarding Jagged emerged following the IPO through announcements of downward revisions to production estimates, higher costs, and well collapses, its stock price declined below the IPO price.

Following the filing of the amended complaint, on September 19, 2018, Defendants moved to dismiss the Action in its entirety. Defendants maintained that the Offering Documents accurately disclosed Jagged's acreage position and otherwise failed to plead any actionable material untrue statement or omission in the Offering Documents. In addition, Defendants argued that Plaintiff's Section 12(a)(2) claim was defective because Plaintiff had not adequately alleged that it acquired its Jagged shares in the IPO, and that Plaintiff had failed to allege that the Individual Defendants were statutory sellers of Jagged shares. Finally, Defendants argued that Plaintiff's Section 15 claim for control person liability must be dismissed due to the failure of the primary Section 11 and 12(a)(2) claims.

After briefing, but without holding oral argument, this Court, on July 28, 2019, issued an order denying Defendants' motion to dismiss Plaintiff's Section 12 and 15 claims, but granting Defendants' motion to dismiss Plaintiff's Section 11 claim. On July 30, 2019, Defendants filed a

motion for reconsideration, requesting that the Section 12(a)(2) and 15 claims be dismissed as well, which was granted on July 31, 2019.

B. Plaintiff Successfully Appeals the Trial Court's Dismissal Orders

Plaintiff appealed the Action's dismissal to the Colorado Court of Appeals. In a unanimous opinion issued on April 1, 2021, the Court of Appeals affirmed the dismissal as to some of the alleged untrue statements and omissions but reversed as to others. Defendants then petitioned the Colorado Supreme Court for a writ of certiorari, which was granted by the Colorado Supreme Court on December 13, 2021. After briefing and oral argument, on November 21, 2022, the Colorado Supreme Court affirmed the Court of Appeals' decision and the action was remanded to this Court.

Following these appeals, the Action was focused on two alleged misstatements: (1) that Jagged planned to "[m]aximize returns by optimizing drilling and completion techniques through the experience and expertise of [its] management and technical teams"; and (2) that Jagged's drilling plan was focused "on reducing drilling times, optimizing completions and reducing costs." Plaintiff alleged that these statements were untrue and misleading because, at the time of the IPO, management knew, but did not disclose, that Jagged's technical team was incompetent or unqualified and Jagged had awarded contracts that enriched its chief drilling contractor or were otherwise disadvantageous to Jagged resulting in substantial and ongoing additional drilling and production costs, contrary to the Offering Documents' representations that Jagged's drilling costs were falling. Plaintiff alleges that the alleged truth hidden by these untrue statements and omissions was revealed to investors in a series of announcements between March 2017 and May 2018, causing Jagged's stock price to decline.

C. Commencement of Discovery and Settlement Negotiations

Following the Colorado Supreme Court's ruling, the case was returned to this Court and a Case Management Order was entered. Pursuant to that order, the Parties served initial disclosures, Plaintiff and the Jagged Defendants served Requests for Production ("RFPs"), and the Jagged Defendants served Interrogatories on Plaintiff. After entry of the Parties' negotiated Protective Order and Protocol for Production of Electronically-stored ("ESI") Information, the Parties began producing documents identified in their initial disclosures and their responses and objections to the outstanding RFPs. In addition, the Parties met and conferred numerous times regarding their objections to the RFPs.

In the stipulated Case Management Order the Parties also agreed to engage in mediation on or before April 28, 2023. On April 18, 2023, the Parties attended a mediation session conducted by a highly experienced and respected mediator, Robert M. Meyer of JAMS ("the Mediator"). Prior to the mediation, Plaintiff and Defendants submitted and exchanged mediation statements summarizing their respective positions. While the parties did not reach an agreement to settle the action at the mediation, they continued their negotiations through the Mediator and thereafter agreed to settle the action on the terms set forth in the Stipulation, subject to the Court's approval.

D. Summary of the Proposed Settlement

The Stipulation (together with the exhibits thereto) reflects the final and binding agreement between the Parties. The Settlement will be funded by a $8,250,000 non-recourse, cash payment by or on behalf of the Defendants, which will be paid into an escrow account. The Stipulation provides that the $8,250,000 in cash, less any attorneys' fees and any expenses awarded by the Court, any payment to Plaintiff awarded by the Court for its representation of the Settlement Class,

notice and administration expenses of the Claims Administrator, and any taxes payable from the Settlement Fund (the "Net Settlement Fund"), will be distributed to Authorized Claimants (*i.e.*, Settlement Class members who file timely and valid Proofs of Claim) in accordance with the Plan of Allocation described in the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses, and Settlement Hearing (the "Notice"). The Plan of Allocation, which was drafted by Plaintiff's damages consultant, is based on Plaintiff's theory of damages and treats all claimants in a fair and equitable fashion. Each Authorized Claimant will be paid that percentage of the Net Settlement Fund that such Authorized Claimant's claim represents in relation to the total claims of all Authorized Claimants.

As set forth below, the Settlement meets the standards for preliminary approval as it falls within the range of possible approval, was the product of extensive arum's-length negotiations between experienced counsel under the auspices of a mediator, and has no obvious deficiencies. Notice should also be issued to Settlement Class Members as provided in the Stipulation because the proposed notice program is the best practicable under the circumstances and complies with due process. Finally, the Court should preliminarily certify the Settlement Class.

ARGUMENT

A. The Proposed Settlement Satisfies the Criteria for Preliminary Approval

The Colorado Supreme Court has frequently acknowledged the strong public policy favoring the settlement of legal disputes. *See Smith v. Zufelt*, 880 P.2d 1178, 1185 (Colo. 1994) ("When considering alternative consequences, we will defer to results that encourage the settlement of disputes."); *Davis v. Flatiron Materials Co.*, 182 Colo. 65, 71 (1973) ("Public policy favors the settlement of disputes, provided they are fairly reached. . . ."). This is

particularly true in complex cases such as class actions. *See Big O Tires, Inc. v. Bigfoot 4x4, Inc.*, 167 F. Supp. 2d 1216, 1229 (D. Colo. 2001) ("Particularly in complex cases the litigants should be encouraged to determine their respective rights between themselves.").

The standards for preliminary approval of a class action settlement are not as stringent as they are for final approval. *In re Molycorp., Inc. Sec. Litig.*, No. 12-cv-00292-RM-KMT, 2017 U.S. Dist. LEXIS 215174, at *9-10 (D. Colo. Feb. 15, 2017). "Preliminary approval of a class action settlement, in contrast to final approval, is at most a determination that there is . . . 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *Id.* at *9. Thus, if a proposed settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval" it should be preliminarily approved. *Rhodes v. Olson Assocs., P.C.*, 308 F.R.D. 664, 666 (D. Colo. 2015). Applying these standards, the proposed Settlement here should be preliminarily approved.

1. The Settlement Is the Result of Adversarial Litigation and Arm's-Length Negotiations Under the Auspices of an Experienced Mediator

The procedural history of this case demonstrates an arm's-length, adversarial relationship among the Parties. Indeed, the Parties contested the adequacy of the pleadings all the way to the Colorado Supreme Court in proceedings that took more than four years to complete. Thereafter, the Parties began the discovery process and engaged in numerous, contentious meet and confer discussions over the proper scope of discovery.

Settlement discussions were equally hard-fought and occurred under the auspices of an experienced and well-respected mediator, Robert A. Meyer. The Parties were only able to reach agreement after beginning the discovery process, consulting with experts on damages and

causation, exchanging mediation briefs, participating in an in-person mediation with the Mediator, and having full and frank discussions with the Mediator concerning the merits and risks of the action. Importantly, a presumption of fairness, adequacy, and reasonableness attaches when a proposed Settlement, as here, is the product of arm's length negotiations under the auspices of an experienced mediator. *Molycorp*, 2017 U.S. Dist. LEXIS 215174, at *13-14. "Utilization of an experienced mediator during the settlement negotiations supports a finding that the settlement is reasonable, was reached without collusion and should therefore be approved." *Id*. at *13.

Finally, it is important to recognize that both Plaintiff's Counsel and Defense Counsel are highly experienced in securities class action litigation. As such, they are well versed in the issues involved in litigating a securities class action, and fully capable of determining the strengths and weaknesses of a particular case. *See Molycorp*, 2017 U.S. Dist. LEXIS 215174, at *14 ("[T]he Court may give weight to [experienced counsel's] favorable judgment as to the fairness and reasonableness of the proposed settlement."). In sum, the history of this litigation, the participation of the Mediator, and the informed decision-making of experienced counsel all militate in favor of finding that the Settlement is the product of non-collusive negotiations.

2. The Settlement Has No Obvious Deficiencies and Falls Within the Range of Possible Approval

"[A] settlement falls within the 'range of possible approval,' if there is a conceivable basis for presuming that the standard applied for final approval – fairness, adequacy, and reasonableness – will be satisfied." *In re NFL Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014). Colorado courts have agreed on the following non-exhaustive list of factors in evaluating whether a class action settlement is fair, reasonable, and adequate: "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 (Colo. Ct. App. 2009).

Although the reaction of Settlement Class members cannot be determined until notice is provided, the remaining factors support a finding that the proposed Settlement is within the range of possible approval and therefore warrants preliminary approval.

The strength of the plaintiff's case and risk and expense of further litigation: Plaintiff faced substantial risks in establishing liability and damages. The motion to dismiss process left Plaintiff with just two discrete misstatements out of the many Plaintiff had challenged as untrue and misleading and Defendants strenuously argued that neither statement was false or material. Those misstatements concerned Jagged's purported "focus on reducing drilling times, optimizing completions and reducing costs" and ability to "[m]aximize returns by optimizing drilling and completion techniques through the experience and expertise of [its] management and technical teams." The Court of Appeals held that Plaintiff had plausibly alleged that these statements were materially untrue and misleading citing the amended complaint's allegations that at the time of the IPO, "management knew, but did not disclose, that Jagged's technical team was incompetent or unqualified and Jagged had awarded contracts that enriched its chief drilling contractor or were otherwise disadvantageous to Jagged" resulting in "'substantial and ongoing additional drilling and production costs,' contrary to representations that [Jagged's] drilling costs were falling."

While the Court of Appeals was required to accept these allegations as true at the pleading stage, Defendants argued that discovery would disprove them. In this regard, Defendants emphasized the decades of experience and expertise of Jagged's technical teams and cited financial data purporting to show that drilling and completion costs were, in fact, decreasing at the time of

the IPO. Moreover, Defendants argued that Plaintiff would not be able to show that these two discrete statements were material when read in context together with the other factual disclosures with respect to these topics contained in the IPO prospectus.

There was also substantial risk in establishing damages and overcoming Defendants' negative causation defense. Here, as in most securities class action cases, these issues would be the subject of a "battle of experts." *See*, *e.g.*, *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) ("Undoubtedly, the Parties' competing expert testimony on damages would inevitably reduce the trial of these issues to a risky 'battle of the experts' and the 'jury's verdict with respect to damages would depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable.'"). While the Securities Act creates a presumption that any decline in a stock's value was caused by the misstatements and omissions in the offering documents, *see Fed. Housing Fin. Agency v. Nomura Holding Am., Inc.*, 873 F.3d 85, 154 (2d Cir. 2017), Defendants can attempt to rebut this presumption by proving that circumstances concealed by the alleged misstatements and omissions did not cause the losses. *Id*. Here, Defendants argued that, even assuming Plaintiff could show the two remaining alleged misstatements were in fact untrue, the amended complaint did not identify any post-IPO disclosures that "corrected" these alleged untruths and any declines in Jagged's stock price were caused instead by market and industry factors. Thus, there was no assurance that an award of damages greater than the proposed Settlement could be obtained through continued litigation, which would be protracted and expensive.

The amount of the Settlement: The proposed $8,250,000 Settlement is reasonable in light of the range of outcomes that Plaintiff would have faced if the case went to trial. As noted above, although Section 11(e) of 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, the statute affords Defendants an affirmative defense of "negative causation" that precludes recovery of losses that are not attributable to the alleged untrue statements and omissions. *See* 15. U.S.C. §77k(e).

Here, Plaintiff's expert, Scott D. Hakala of ValueScope, Inc., calculated presumptive statutory damages, without accounting for any measure of negative causation, of $108 million. However, Plaintiff's expert's calculation of damages tied to arguable corrective disclosures, which Defendants argued was the relevant calculation, were significantly less than this, an estimated $53 million even after giving Plaintiff the benefit of every arguable corrective disclosure. Thus, the proposed $8,250,000 Settlement represents between 7.6% and 15.5% of the possible range of recovery estimated by Plaintiff's expert. "Courts routinely approve class action settlements representing similar or lower percentages of potentially recoverable damages." *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). Indeed, according to the most recent annual survey and analysis of securities class action settlements published by NERA Economic Consulting, the median settlement value as a percentage of NERA-defined possible losses[5] in securities class action cases with between $50 million and $99 million in possible losses filed and settled during

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[5] NERA-Defined Investor Losses is a proprietary variable constructed by NERA assuming that investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. *See* 2022 NERA Study at 17.

the period December 2011-December 2022 was just 3.8%. *See* J. McIntosh, S. Starykh, and E. Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review*, at 17 (attached hereto as Exhibit C) (hereinafter, the "2022 NERA Study").

Of course, Defendants argued that most, if not all, of the post-IPO disclosures deemed corrective by Plaintiff's expert were unrelated to the truths purportedly hidden by the alleged untrue statements and omissions, and maintained that damages were zero. To the extent Defendants' arguments were successful at trial, Plaintiff and Settlement Class members could have recovered less than the Settlement Amount or even nothing at all.

The extent of discovery completed and experience and views of counsel: At the time the Settlement was reached, the Parties had exchanged initial disclosures and had begun the discovery process. Plaintiff had produced 5,541 pages in response to Defendants' RFPs, which sought, among other things, the production of documents relating to Plaintiff's purchases and sales of Jagged shares, including its investment strategies, as well as documents relating to its decision to bring this action, including the bases for the allegations contained in the emended complaint. For their part, the Jagged Defendants and the Underwriter Defendants produced 35,249 and 29,498 pages of documents, respectively, in response to Plaintiff's RFPs, including: (i) documents relating to the experience and qualifications of members of the Company's management and technical teams; (ii) certain internal financial data at or around the time of the IPO with respect to well completions and production, revenue and adjusted EBITDAX; (iii) agreements with certain of Jagged's contractors; (iv) Board minutes and materials concerning the IPO; (v) underwriter agreements, audit reports and reserve reports; and (vi) certain deal files of certain of the Underwriter Defendants, including the three Lead Underwriters – J.P. Morgan Securities LLC,

Citigroup Global Markets Inc., and Credit Suisse Securities (USA) LLC. In addition, as discussed above, in connection with the mediation, Plaintiff's counsel engaged an expert on causation and damages to evaluate these issues in connection with the mediation. Thus, by the time the Settlement was reached, Plaintiff and its highly experienced counsel were knowledgeable with respect to the merits and risks of the litigation and believe that the proposed Settlement is fair, reasonable and adequate in light of the risks, expense and delay of continued litigation. Notably, courts have held that "the recommendation of a settlement by experienced plaintiff[s''] counsel is entitled to great weight." *O'Dowd v. Anthem, Inc.*, No. 14-cv-02787, 2019 U.S. Dist. LEXIS 153610, at *41 (D. Colo. Sept. 9, 2019) (quoting *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 288-89 (D. Colo. 1997)).

3. The Settlement Does Not Improperly Grant Preferential Treatment to Class Representatives Or Segments of the Class

The proposed Settlement does not unreasonably benefit the Plaintiff or any segment of the Class. The Plan of Allocation developed by Plaintiff's expert on causation and damages is based on the statutory damages formula for calculating damages for violations of Section 11(e) of the Securities Act[6] and uses allocation methodologies routinely applied in securities cases of this type. In this regard, Plaintiff alleges that the price of Jagged shares declined 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. Thus, the

[6] Section 11(e) of the Securities Act provides that damages for violations of Section 11 shall be calculated pursuant to the following formula: The difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought.

Plan of Allocation provides that the Recognized Loss per share is ***the lesser of***: (i) the inflation per share on the date of purchase minus the inflation per share on the date of sale; and (ii)(a) the purchase price (not to exceed $15) minus the sale price if sold before May 13, 2017; or (ii)(b) the purchase price (not to exceed $15) minus the greater of (a) the sale price or (b) $11.73 per share if sold on or after May 13, 2017.[7]

Each Authorized Claimant will share in the Net Settlement Fund on a pro rata basis and receive an amount equivalent to his/her/its Recognized Claim[8] divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount of the Net Settlement Fund. As a result, the proposed distribution of the Net Settlement Fund does not unreasonably benefit Plaintiff or any segment of the Class.

B. The Court Should Preliminarily Approve the Settlement Class

Pursuant to the terms of the Stipulation, the Parties have stipulated to certification of the following Settlement Class for settlement purposes only:

> All Persons who purchased or otherwise acquired Jagged common stock in or traceable to Jagged's IPO 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 Class will be any Persons who timely and validly seek exclusion from the Class or whose request for exclusion is accepted by the Court.

Therefore, it is necessary for the Court to consider, at the preliminary approval stage, whether certification of the Settlement Class appears appropriate.

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[7] Section 11(e) contains two important loss limitation rules that Plaintiff's expert incorporated into the Plan of Allocation. First, in applying the statutory damages formula, the purchase price cannot exceed the offering price, here, $15. Second, in the event shares are sold after the date suit is brought, the sale price cannot exceed "the value" of the shares on the date suit is brought, here, $11.73 as calculated by Plaintiff's expert.

[8] A Claimant's "Recognized Claim" under the Plan of Allocation shall be the sum of his, her, or its Recognized Loss amounts for their Eligible Shares.

This case satisfies all requirements for certification of a class. Indeed, it is well-settled 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. Ct. App. 2002).

To be certified, a class must meet the requirements of Rule 23(a) and one of the three subsections of C.R.C.P. 23(b)(3). *Id.* at 808. C.R.C.P. 23(a) requires that the Court find that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. In addition, here, Plaintiff is seeking certification of the Settlement Class under subsection (b)(3), which requires that the Court find that the questions of law or fact common to the members of the 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. As set forth below, the action clearly satisfies each of the requirements for the certification.

1. The Settlement Class Is Sufficiently Numerous to Warrant Certification

C.R.C.P. 23(a)(1) requires the class to be so large that joinder of all members is impracticable. Here, Jagged issued over thirty-one million shares in the IPO. Thus, the purchasers of Jagged common stock in or traceable to the Offering, and hence Settlement Class members, likely number in the hundreds, if not the thousands, making joinder impracticable. The numerosity requirement is easily satisfied here. *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). Indeed,

"[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).

2. There Are Substantial Common Questions of Law and Fact

Even a single common question of law or fact will satisfy C.R.C.P. 23(a)(2)'s commonality requirement. *See Patipan Nakkhumpun v. Taylor*, No. 12-cv-01038, 2015 U.S. Dist. LEXIS 149850, at *11 (D. Colo. Nov. 3, 2015). Here, there are numerous questions of law and fact common to the Settlement Class including: (i) whether the provisions of the Securities Act were violated as alleged in the amended complaint; (ii) whether the Offering Documents contained untrue statements and omissions that misled investors; (iii) and whether the revelation of the truth hidden by the alleged untrue statements and omissions resulted in a decline in the price of Jagged shares issued in or traceable to the IPO. *See Maxar*, 2021 U.S. Dist. LEXIS 132621, at *6. Further, in the settlement context, additional common questions include whether the proposed Settlement is fair, reasonable and adequate and should be approved. Thus, the commonality requirement is easily satisfied.

3. Plaintiff's Claims Are Typical of Other Settlement Class Members

"The 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 Oppemheimer Richester 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). Here, Plaintiff's claims are typical of the claims of other Settlement Class members because like other Settlement Class members, Plaintiff purchased shares of Jagged common stock in or traceable to the Company's IPO, which was conducted with Offering Documents that contained material untrue statements and omissions

and was damaged when Jagged's share price declined following the IPO as the truth hidden by those untrue statements and omissions became known. *See Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *17. Thus, the typicality requirement is satisfied here.

4. Plaintiff and Its Counsel Have Adequately Represented the Settlement Class

To satisfy the adequacy requirement, Plaintiff must show that it has no conflicting interests with the class it seeks to represent and is represented by competent counsel. *See Kuhn v. State Dep't of Revenue*, 817 P.2d 101, 106 (Colo. 1991). Here, Plaintiff has prosecuted the action, negotiated with Defendants, and obtained a Settlement representing a significant percentage of the losses alleged suffered by the Settlement Class. "There is also nothing in the record to suggest that Plaintiff[] ha[d] antagonistic interests; rather, Plaintiff[']s interest in obtaining the largest-possible recovery was aligned with all Settlement Class Members." *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *16-17. Moreover, Plaintiff's Counsel are highly qualified with extensive experience in the prosecution of securities class actions. "These facts support adequacy." *See Maxar*, 2021 U.S. Dist. LEXIS 132621, at *7.

5. The Predominance and Superiority Requirements Are Satisfied

Under C.R.C.P. 23(b)(3), a class may be certified if a court funds that common questions of law or fact predominate over individual questions, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Toothman*, 80 P.3d at 808. Here, the proposed Settlement Class satisfies the requirements of C.R.C.P. 23(b)(3) in that, as described above, the questions of law and fact common to the members of the Settlement Class clearly predominate over any questions affecting individual members. *See Maxar*, 2021 U.S. Dist. LEXIS 132621, at *8. "Further, settlement through the mechanism of a class action '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' and 'because [individual] recovery for these claims is likely too small to provide an incentive for individual class members to adjudicate individual claims.'" *Molycorp*, 2017 U.S. Dist. LEXIS 215174, at *25 (quoting *In re Crocs*, 306 F.R.D. 672, 689 (D. Colo. 2014)).

C. The Proposed Notice Plan Adequately Informs the Settlement Class and Should Be Approved

"[N]otice must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)). The proposed Notice here provides detailed information about the Settlement, including: (i) a comprehensive summary of its terms; (ii) Plaintiff's Counsel's intent to request attorneys' fees, reimbursement of litigation expenses, and an incentive award for Plaintiff; and (iii) detailed information about the Released Claims. In addition, the Notice provides information about the final fairness hearing, including the date of the hearing and the rights of Class members to exclude themselves from the Settlement Class or to object to the Settlement and/or to Plaintiff's Counsel's request for an award of attorneys' fees and expenses and an incentive award for Plaintiff. The proposed Notice also informs Settlement Class members who wish to receive a recovery that they must file a Proof of Claim in order to do so. This is appropriate because their Claims and potential recovery are dependent on their transactions in Jagged common stock, and neither Defendants nor Plaintiff possess that data.

Plaintiff proposes to provide notice of the Settlement: (i) by first-class mailing (and email, if provided) of the long-form Notice, addressed to all Settlement Class members who can reasonably be identified and located; and (ii) by publication of the Summary Notice in *Investor's Business Daily* and its transmission on the internet over *PR Newswire*. The Notice will also be posted on the case settlement website established by the Claims Administrator. Courts regularly find that the foregoing provides the best notice practicable in securities class action cases. *See*, *e.g.*, *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *13-14.

Finally, the Court should appoint A.B. Data, Ltd. as the Claims Administrator.

D. The Proposed Schedule of Events

The Parties respectfully propose that the Court should set the following deadlines for the events necessary in advance of the Final Settlement Hearing:

Event	Time for Compliance
Deadline for mailing the Notice and Proof of Claim and Release form to Settlement Class Member	Twenty-one (21) calendar days after entry of the Preliminary Approval Order (the "Notice Date")
Deadline for publishing the Summary Notice	Fourteen (14) calendar days after the Notice Date
Deadline for Settlement Class Members to submit objections or exclusion requests	Sixty (60) calendar days after the Notice Date
Deadline for Settlement Class members to submit Proof of Claim and Release forms	Ninety (90) calendar days after the Notice Date
Filing of memoranda in support of approval of the Settlement and Plan of Allocation and in support of Fee and Expense Application	Fourteen (14) calendar days before the deadline for objections to the Settlement
Filing of Reply Memoranda	Seven (7) calendar days before the Settlement Hearing
Settlement Hearing	At least 100 calendar days after the date the Preliminary Approval Order is entered at the Court's convenience

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that the Court enter the Notice Order: (1) granting preliminary approval of the Settlement; (2) preliminarily certifying the Settlement Class; (3) approving the form and manner of Notice and directing its dissemination; (4) setting a deadline for Settlement Class members to submit objections to the Settlement, Plan of Allocation, Plaintiff's Counsel's application for a Fee and Expense Award and/or Plaintiff's Request for an incentive award for its representation of the Settlement Class; (5) setting a deadline by which Settlement Class members may request exclusion from the Settlement Class; (6) setting a deadline for Settlement Class members to submit a completed Proof of Claim and Release form; and (7) scheduling a time for the Settlement Hearing.

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SHUMAN, GLENN & STECKER
/s/ Rusty E. Glenn
Rusty E. Glenn
600 17th Street, Suite 2800 South
Denver, CO 80202
Telephone: (303) 861-3003
Facsimile: (303) 536-7849
Email: rusty@shumanlawfirm.com

SHUMAN, GLENN & STECKER
Kip B. Shuman
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (303) 861-3003
Facsimile: (303) 536-7849
Email: kip@shumanlawfirm.com

SCOTT+SCOTT ATTORNEYS AT LAW LLP
Deborah Clark-Weintraub
Thomas L. Laughlin, IV
Donald A. Broggi
Emilie B. Kokmanian
Mandeep S. Minhas

The Helmsley Building
230 Park Avenue, 17th Fl.
New York, N.Y. 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
Emails: dweintraub@scott-scott.com
tlaughlin@scott-scott.com
dbroggi@scott-scott.com
ekokmanian@scott-scott.com
mminhas@scott-scott.com