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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION

17 In re QUALITY SYSTEMS, INC.)
18 SECURITIES LITIGATION)

No. 8:13-cv-01818-CJC-JPR

CLASS ACTION

19 _____)
20 This Document Relates To:)

21 ALL ACTIONS.)

22 LEAD PLAINTIFFS' NOTICE OF)
23 MOTION AND UNOPPOSED MOTION)
24 FOR (I) PRELIMINARY APPROVAL)
25 OF CLASS ACTION SETTLEMENT;)
26 (II) CERTIFICATION OF THE CLASS;)
27 AND (III) APPROVAL OF NOTICE TO)
28 THE CLASS, AND INCORPORATED)
MEMORANDUM OF LAW

JUDGE: Honorable Cormac J. Carney
DATE: August 13, 2018
TIME: 1:30 p.m.
DEPT: 9B

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NOTICE OF MOTION AND MOTION

Lead Plaintiffs Arkansas Teacher Retirement System (“ATRS”) and City of Miami Fire Fighters’ and Police Officers’ Retirement Trust (“Miami”) (collectively “Lead Plaintiffs”) move pursuant to Fed. R. Civ. P. 23(e) for entry of the Settling Parties’ agreed-upon Proposed Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order”), attached hereto as Exhibit 1. If entered, the Preliminary Approval Order will, among other things:

- (1) Preliminarily approve the proposed class action settlement for \$19,000,000.00, subject to notice to the Class and later consideration of final approval to resolve this Litigation in its entirety;
- (2) Certify the Class for purposes of the Settlement and appoint Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel;
- (3) Approve A.B. Data, Ltd. (“A.B. Data”) as Claims Administrator and approve the form, content and manner of the class notices to Class Members; and
- (4) Schedule a hearing, and certain deadlines related thereto, on final approval of the Settlement, proposed Plan of Allocation, and Lead Counsel’s motion for an award of attorneys’ fees and litigation expenses.

The specific terms of the proposed Settlement are set forth in the Stipulation of Settlement dated July 16, 2018 (the “Stipulation”), attached hereto as Exhibit 2.¹

¹ All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation.

MEMORANDUM OF LAW

I. PRELIMINARY STATEMENT

After more than four years of litigation, including an appeal to the Ninth Circuit, briefing on Defendants’ petition for a writ of certiorari to the Supreme Court of the United States, and significant merits discovery, and following extensive arm’s-length negotiations, the Settling Parties have reached a proposed Settlement of this securities class action in exchange for \$19,000,000.00 for the benefit of the Class.² Lead Plaintiffs now request that the Court preliminarily approve the proposed Settlement. As set forth below, the Settlement is the product of good-faith, arm’s-length negotiations between experienced counsel, including under the supervision of a respected mediator, Gregory P. Lindstrom, Esq., of Phillips ADR, who is experienced in complex securities litigation. The Settlement represents a substantial recovery that falls well within the range of possible approval and is a very good result for the Class.

Lead Plaintiffs also request certification of the Class for settlement purposes, and appointment of Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel. Additionally, Lead Plaintiffs seek approval of the form and substance of the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Expenses (“Notice”); Proof of Claim and Release form (“Proof of Claim” or “Claim Form”); and the Summary Notice of (I) Pendency of Class Action and Proposed Settlement;

² “Class” means all Persons or entities who purchased or otherwise acquired QSI common stock during the Class Period and were damaged thereby. Excluded from the Class are (a) Defendants; (b) immediate family members of the individual Defendants (as defined in 17 C.F.R. §229.404 Instructions (1)(a)(iii) and (1)(b)(ii)); (c) present or former executive officers or directors of QSI and their immediate family members (as defined in 17 C.F.R. §229.404 Instructions (1)(a)(iii) and (1)(b)(ii)); (d) any firm or entity in which any Defendant has or had a controlling interest during the Class Period; (e) any affiliates, parents, or subsidiaries of QSI; (f) all QSI plans that are covered by ERISA; and (g) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any excluded Person, in their respective capacity as such. Also excluded from the Class are those Persons who exclude themselves by submitting a request for exclusion that is accepted by the Court.

1 (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Expenses
2 (“Summary Notice”), appended as Exhibits A-1, A-2 and A-3 to the Preliminary
3 Approval Order. Lead Plaintiffs also seek the Court’s approval of A.B. Data as
4 Claims Administrator and the means and methods for disseminating notice of the
5 Settlement and a finding that such notice comports with due process and the Private
6 Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. §78u-4, *et seq.*

7 Entry of the Settling Parties’ agreed-upon proposed Preliminary Approval
8 Order, attached hereto as Exhibit 1, will begin the process of considering the proposed
9 Settlement by authorizing notice to the Class of the Settlement’s terms and conditions.
10 A final approval hearing (the “Settlement Hearing”) will then be conducted so that the
11 Settling Parties and Class Members may present evidence enabling the Court to make
12 a final determination as to whether the Settlement is fair, reasonable, and adequate.

13 Lead Plaintiffs submit that the \$19,000,000.00 proposed Settlement is a very
14 good result for the Class, particularly when considering the risk of a much lesser
15 recovery, or no recovery at all, if the case proceeded through dispositive motions and
16 trial. The Settlement was informed by a comprehensive investigation, motion practice
17 and appellate review of the sufficiency of the Amended Complaint’s allegations,
18 significant discovery by the Settling Parties, and intensive arm’s-length negotiations
19 during mediation before Mr. Lindstrom, an experienced neutral, personally attended
20 by a representative of Lead Plaintiff ATRS. For the reasons stated herein, Lead
21 Plaintiffs respectfully request that the Court grant this unopposed motion.

22 If the Court grants preliminary approval of the Settlement, notice will be given
23 to the Class, informing Members of their right to object or opt out of the Class and of
24 the date set for the final Settlement Hearing. In advance of the final Settlement
25 Hearing, Lead Plaintiffs will submit comprehensive final approval papers that set forth
26 the full record for the Court. These papers will include Lead Plaintiffs’ motion for
27 final approval of the proposed Settlement and Lead Counsel’s motion for an award of
28 attorneys’ fees and litigation expenses, along with detailed supporting declarations.

1 **II. OVERVIEW OF THE LITIGATION**

2 This securities fraud class action was commenced with the filing of an initial
3 complaint on November 19, 2013. ECF No. 1. Following briefing, and pursuant to
4 the PSLRA, on February 4, 2014, the Court appointed Miami and ATRS as Lead
5 Plaintiffs for the proposed class and approved Lead Plaintiffs’ selection of Robbins
6 Geller Rudman & Dowd LLP (“RGRD”) and Bernstein Litowitz Berger & Grossmann
7 LLP (“Bernstein Litowitz”) as Lead Counsel. ECF No. 22.

8 On April 7, 2014, Lead Plaintiffs filed an Amended Complaint (the “Amended
9 Complaint”). ECF No. 26. The Amended Complaint generally alleged that during the
10 14-month Class Period, from May 26, 2011 through July 25, 2012, inclusive,
11 Defendants made a series of material misrepresentations concerning QSI’s current and
12 projected sales and financial performance. The Amended Complaint alleged that
13 Defendants’ misrepresentations violated Sections 10(b) and 20(a) of the Securities
14 Exchange Act of 1934 (“Exchange Act”). The Amended Complaint also alleged
15 insider trading violations under Section 10(b) of the Exchange Act and Rule 10b-5
16 against Defendant Plochocki. The Amended Complaint was based upon a thorough
17 pre-filing investigation conducted by Lead Counsel that included, among other things,
18 a review and analysis of: (i) QSI’s public filings with the SEC; (ii) research reports
19 regarding QSI and the medical practice management software industry and market by
20 securities and financial analysts; (iii) transcripts of QSI earnings conference calls and
21 presentations; (iv) economic analysis of the price movement in QSI common stock;
22 (v) information obtained from former QSI employees; and (vi) other publicly
23 available material and data.

24 On June 20, 2014, Defendants filed a motion to dismiss the Amended Complaint.
25 ECF No. 29. Following full briefing and a hearing on the motion, in October 2014, the
26 Court granted Defendants’ motion to dismiss with prejudice. ECF No. 39.

27 Thereafter, on November 17, 2014, Lead Plaintiffs filed their motion for
28 reconsideration regarding the Court’s order on Defendants’ motion to dismiss. ECF

1 No. 40. After briefing was complete, on December 23, 2014, the Court took the
2 motion under submission and on January 5, 2015, the Court denied Lead Plaintiffs’
3 motion for reconsideration. ECF No. 46.

4 On January 30, 2015, Lead Plaintiffs filed their Notice of Appeal with the Ninth
5 Circuit Court of Appeals. ECF No. 47. Following briefing from the parties, the Ninth
6 Circuit heard oral argument on December 5, 2016. On July 28, 2017, the Ninth
7 Circuit issued its opinion, reversing and remanding the case back to the District Court.
8 *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130 (9th Cir. 2017). On November 7,
9 2017, Defendants filed their Answer to the Amended Complaint (ECF No. 60) and, on
10 November 16, 2017, the Court issued a Scheduling Order (ECF No. 64) and an Order
11 Regarding Settlement Procedures, Pre-Trial Conference and Trial. ECF No. 65.

12 Following remand, the parties also promptly commenced discovery. Among
13 other things, the parties exchanged initial disclosure statements pursuant to Rule 26(f)
14 and served requests for production of documents, interrogatories, requests for
15 admissions, subpoenas *duces tecum* on various non-parties, and a notice of deposition
16 of Defendant QSI pursuant to Rule 30(b)(6). In particular, Lead Plaintiffs served 33
17 requests for production and 21 requests for admission on Defendants. Counsel for the
18 parties also engaged in numerous meet-and-confer discussions and exchanged written
19 correspondence in order to address the parties’ respective objections and to reach
20 agreement on the scope of document and deposition discovery, including negotiating
21 search terms and custodians and discussing electronically-stored information and
22 other sources of potentially relevant information. At the time of the Settlement,
23 document discovery was ongoing, and Lead Plaintiffs had obtained more than 350,000
24 pages of documents produced by Defendants and non-parties, which Lead Counsel
25 reviewed and analyzed.

26 On May 9, 2018, the parties participated in a full-day, in-person mediation
27 before Gregory P. Lindstrom, Esq., of Phillips ADR. Following the mediation, the
28 parties continued negotiations under the direction and supervision of Mr. Lindstrom.

1 The parties ultimately accepted the mediator’s “double-blind” recommendation and
2 reached an agreement in principle to settle all claims asserted in this Litigation for
3 \$19,000,000.00 in cash.

4 When settlement was reached, Defendants’ petition for a writ of certiorari to the
5 Supreme Court was pending. On May 18, 2018, pursuant to the parties’ joint
6 stipulation, the Court stayed all proceedings in the underlying litigation pending
7 submission of this motion for preliminary approval of the Settlement. ECF No. 91.
8 On June 8, 2018, the parties requested the Supreme Court defer action on the pending
9 petition for a writ of certiorari until its next scheduled conference on September 24,
10 2018, in light of the parties’ agreement to settle the Litigation.

11 In sum, Lead Plaintiffs and Lead Counsel were well-informed about the
12 strengths and weaknesses of their claims, as well as the risks of continued litigation,
13 and had a strong foundation for negotiating the Settlement.

14 **III. SETTLEMENT NEGOTIATIONS**

15 As noted above, on May 9, 2018, the parties participated in a full-day, in-person
16 mediation session before Mr. Lindstrom, an independent and highly experienced
17 neutral. Mr. Graves, the Deputy Director of Operations for ATRS, personally
18 attended the mediation and participated in all discussions and decision-making.
19 Likewise, a representative of Lead Plaintiff Miami was available by phone for
20 consultation with counsel. While the parties were unable to resolve the matter during
21 the formal mediation session, the parties continued to work with Mr. Lindstrom
22 thereafter, continued their negotiations, and ultimately accepted the mediator’s
23 settlement proposal to resolve the Litigation for \$19,000,000.00. All negotiations
24 were at arm’s-length and well-informed.

25 As set forth in detail below, the parties disagreed with respect to numerous
26 issues, including: (i) whether the alleged misstatements made or facts allegedly
27 omitted by Defendants were material, false, misleading, or actionable; (ii) whether the
28 Lead Plaintiffs could prove that Defendants acted with scienter; (iii) whether

1 Defendants' statements were protected by the PSLRA Safe Harbor; (iv) whether the
2 market price for QSI's common stock was artificially inflated during the Class Period;
3 (v) whether Defendant Plochocki's stock sales violated the federal securities laws; and
4 (vi) whether any of the alleged inflation and/or subsequent declines in QSI's stock
5 price were proximately caused by the alleged fraud. These disputed issues and related
6 points and authorities were addressed in detail during the parties' in-person mediation
7 session with Mr. Lindstrom, which concluded without resolving the matter. However,
8 the parties continued their negotiations thereafter through Mr. Lindstrom, which
9 culminated in a mediator's recommendation to settle the Litigation for \$19,000,000.00
10 that both parties accepted.

11 **IV. THE PROPOSED SETTLEMENT MERITS PRELIMINARY** 12 **APPROVAL**

13 The Ninth Circuit maintains a "strong judicial policy that favors settlements,
14 particularly where complex class action litigation is concerned." *Johnson v. General*
15 *Mills, Inc.*, 2013 WL 3213832, at *2 (C.D. Cal. June 17, 2013) (quoting *Class*
16 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)) (citations omitted);
17 *see also Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989) (noting the
18 policy of the federal courts is to encourage settlement before trial). Moreover, courts
19 should defer to "the private consensual decision of the parties to settle" and advance
20 the "overriding public interest in settling and quieting litigation." *Id.* at 1229 (quoting
21 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976) and *Rodriguez v.*
22 *W. Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

23 Federal Rule of Civil Procedure 23(e) requires court approval of any proposed
24 settlement of a class action. Judicial review of a proposed class action settlement
25 consists of a two-step process: (1) preliminary approval, and (2) a subsequent
26 settlement fairness hearing. *See, e.g., Lewis v. Green Dot Corp.*, 2017 WL 4785978,
27 at *7 (C.D. Cal. June 12, 2017). "In reviewing the proposed settlement, the Court
28 need not address whether the settlement is ideal or the best outcome, but only whether

1 the settlement is fair, adequate, free from collusion and consistent with Plaintiff's
2 fiduciary obligations to the class." *Hopson v. Hanesbrands Inc.*, 2008 WL 3385452,
3 at *2 (N.D. Cal. Aug. 8, 2008).

4 In the first step, the Court makes a preliminary evaluation of the fairness of the
5 settlement before directing that notice be given to the class. Preliminary approval is
6 appropriate if "(1) the proposed settlement appears to be the product of serious,
7 informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not
8 improperly grant preferential treatment to class representatives or segments of the
9 class, and (4) falls with[in] the range of possible approval." *Dilts v. Penske Logistics,*
10 *LLC*, 2014 WL 12515159, at *2 (S.D. Cal. July 11, 2014). To grant preliminary
11 approval of a class action settlement, the court need only find that the settlement is
12 within "the range of reasonableness" to justify providing notice of the settlement to
13 class members and scheduling a final approval hearing. *In re Tableware Antitrust*
14 *Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007).

15 Thus, at this point, the Court need not answer the ultimate question: whether the
16 Settlement is fair, reasonable, and adequate. When the Court makes that ultimate
17 determination at a later point, after Class Members have received notice and an
18 opportunity to be heard, the Court will be asked to review the following factors: "the
19 strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of
20 further litigation; the risk of maintaining class action status throughout the trial; the
21 amount offered in settlement; the extent of discovery completed and the stage of the
22 proceedings; the experience and views of counsel; the presence of a governmental
23 participant; and the reaction of the class members to the proposed settlement." *Hanlon*
24 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citing *Torrisi v. Tucson Elec.*
25 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993), quoting *Officers for Justice v. Civil Serv.*
26 *Comm'n of City and Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)).

27 Here, Lead Plaintiffs request only that the Court take the first step in the
28 settlement approval process and grant preliminary approval of the Settlement such that

1 notice of the Settlement can be sent to the Class. As summarized below, and as will
2 be detailed further in a subsequent motion for final approval of the Settlement
3 supported by detailed declarations, the factors considered by courts in granting final
4 approval of class action settlements show that this Settlement is well within the range
5 of possible approval, and therefore warrants preliminary approval.

6 **A. The Settlement Is the Result of Good Faith, Arm’s-Length**
7 **Negotiations by Well-Informed and Experienced Counsel**

8 Courts give considerable weight to the opinion of experienced and informed
9 counsel in evaluating a proposed class action settlement. *See, e.g., Nunez v. BAE Sys.*
10 *San Diego Ship Repair Inc.*, 292 F. Supp. 3d 1018, 1039 (S.D. Cal. 2017).
11 Accordingly, “a presumption of fairness, adequacy, and reasonableness may attach to
12 a class settlement reached in arms-length negotiations between experienced, capable
13 counsel after meaningful discovery.” MANUAL FOR COMPLEX LITIGATION §30.42, at
14 240 (3d ed. 1995); *see also In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir.
15 1995) (“Parties represented by competent counsel are better positioned than courts to
16 produce a settlement that fairly reflects each party’s expected outcome in the
17 litigation.”). “A settlement is presumed to be fair if reached in arms-length
18 negotiations after relevant discovery has taken place.” *Pataky v. Brigantine, Inc.*,
19 2018 WL 3020159, at *3 (S.D. Cal. June 18, 2018) (citing *Cohorst v. BRE Prop., Inc.*,
20 2011 WL 7061923, *12 (S.D. Cal. Nov. 14, 2011)); *In re Heritage Bond Litig.*, 2005
21 WL 1594403, at *9 (C.D. Cal. June 10, 2005) (“A presumption of correctness is said
22 to ‘attach to a class settlement reached in arm’s-length negotiations between
23 experienced capable counsel after meaningful discovery.’”).

24 As noted above, the Settlement was achieved only after an all-day, in-person
25 mediation session, followed by additional arm’s-length negotiations, overseen by an
26 experienced mediator. As part of those discussions, Lead Counsel and Defendants’
27 Counsel prepared and presented several submissions concerning, among other things,
28 their respective views regarding the merits of the Litigation, including the evidence

1 adduced during discovery, Defendants' defenses, and issues relating to damages.
2 After intensive back-and-forth negotiations, the parties reached an agreement in
3 principle to settle the Litigation for \$19,000,000.00 in accordance with the mediator's
4 recommendation.

5 In addition, the parties and their counsel were informed and knowledgeable
6 about the strengths and weaknesses of the case prior to reaching the agreement to
7 settle. Lead Plaintiffs had conducted an extensive investigation prior to drafting and
8 filing the Amended Complaint, which included interviews with former QSI employees
9 and a thorough review of publicly available information; had briefed Defendants'
10 motion to dismiss, Lead Plaintiffs' motion for reconsideration, Defendants' appeal to
11 the Ninth Circuit, and Defendants' petition for a writ of certiorari to the Supreme
12 Court; had consulted with their damages and loss causation expert; had reviewed and
13 analyzed over 350,000 pages of documents produced by the Defendants and third
14 parties in discovery, as well as numerous transcripts of depositions taken in related
15 litigation³; and had the benefit of the parties' mediation submissions setting forth their
16 arguments on liability, loss causation, and damages.

17 As a result, Lead Plaintiffs and Lead Counsel had a solid basis for assessing the
18 strength of the Class's claims and Defendants' defenses when they entered into the
19 Settlement. Lead Counsel have decades of experience prosecuting securities class
20 actions, as numerous courts around the country have recognized. *See* Firm Resumes,
21 previously filed as ECF No. 14-4 at 2-67 (RGRD) and ECF No. 8-1 at 15-66
22 (Bernstein Litowitz). Additionally, Lead Plaintiffs are institutional investors who
23 oversaw the Litigation and authorized the Settlement.

24 Accordingly, this Court should give considerable weight to Lead Counsel's
25 judgment that this Settlement is in the best interests of the Class, especially where the
26 settlement process was supervised by Mr. Lindstrom, an experienced mediator.

27 ³ *Hussein v. Quality Sys., Inc., et al.*, Case No. 30-2013-00679600-CU-NP-CJC
28 (Super. Ct. Cal., Cty. of Orange).

1 Courts have recognized that “[t]he assistance of an experienced mediator in the
2 settlement process confirms that the settlement is non-collusive” and “weighs in
3 favor of preliminary approval.” *Pederson v. Airport Terminal Servs.*, 2018 WL
4 2138457, at *7 (C.D. Cal. Apr. 5, 2018) (quoting *Satchell v. Fed. Express Corp.*, 2007
5 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007)); *see also Kmiec v. Powerwave Techs.*,
6 *Inc.*, 2015 WL 12914343, at *5 (C.D. Cal. Dec. 4, 2015) (same). Here, Mr. Lindstrom
7 played an active role in exploring with the Parties the relevant issues, including the
8 merits of Lead Plaintiffs’ claims and Defendants’ numerous affirmative defenses, the
9 discovery conducted to date, as well as the risks of continued litigation and
10 Defendants’ pending writ petition. Moreover, the fact that the Settlement Amount,
11 \$19,000,000.00, was recommended by the mediator and accepted “double-blind” (*i.e.*,
12 without knowing the other party’s response) by the parties further supports a finding
13 of non-collusive negotiations and reasonableness. *See, e.g., Roberti v. OSI Sys. Inc.*,
14 2015 WL 8329916, at *3 (C.D. Cal. Dec. 8, 2015) (approving settlement reached after
15 parties accepted mediator’s “double-blind Mediator’s Recommendation”).

16 **B. The Substantial Benefits for the Class, Weighted Against**
17 **the Litigation Risks, Support Preliminary Approval**

18 Defendants have agreed to settle this Litigation for \$19,000,000.00 in cash. This
19 substantial recovery provides a significant and immediate benefit to the Class, especially
20 in light of the risks posed by continued litigation. While Lead Plaintiffs were prepared
21 to continue litigating and eventually go to trial in their case against Defendants, and
22 remain confident in their ability to ultimately prove their claims, further litigation and a
23 trial is always a risky proposition. *See, e.g., Salazar v. Midwest Servicing Grp., Inc.*,
24 2018 WL 3031503, at *6 (C.D. Cal. June 4, 2018) (a settlement agreement’s
25 “elimination of risk, delay, and further expenses weighs in favor of approval”). Indeed,
26 complex securities fraud class actions such as this one present myriad risks that plaintiffs
27 must overcome in order to ultimately secure a recovery. *See, e.g., In re Oracle Corp.*
28 *Sec. Litig.*, 627 F.3d 376, 395 (9th Cir. 2010) (affirming summary judgment in favor of

1 defendants where plaintiff failed to establish a triable issue on loss causation); *In re*
2 *Scientific Atlanta, Inc. Sec. Litig.*, 754 F. Supp. 2d 1339, 1376 (N.D. Ga. 2010) (granting
3 summary judgment where plaintiffs failed to “disentangle” fraud- and non-fraud-related
4 causes of losses); *In re Neopharm, Inc. Sec. Litig.*, 705 F. Supp. 2d 946, 966 (N.D. Ill.
5 2010) (granting partial summary judgment where plaintiffs failed to prove material
6 falsity or scienter); *In re Zonagen, Inc. Sec. Litig.*, 322 F. Supp. 2d 764, 783 (S.D. Tex.
7 2003) (granting summary judgment where plaintiffs failed to establish loss causation).
8 While plaintiffs must prove all elements of their claims to prevail, defendants need only
9 succeed on one defense to potentially defeat the entire action. *See, e.g., In re REMEC*
10 *Inc. Sec. Litig.*, 702 F. Supp. 2d 1202, 1275 (S.D. Cal. 2010) (granting summary
11 judgment and dismissing action with prejudice, finding “[b]ecause loss causation is an
12 element Plaintiffs must prove to succeed on either of their two causes of action,
13 dismissal of both claims is appropriate”); *In re Williams Sec. Litig.*, 496 F. Supp. 2d
14 1195, 1295 (N.D. Okla. 2007), *aff’d sub nom. In re Williams Sec. Litig.-WCG Subclass*,
15 558 F.3d 1130 (10th Cir. 2009) (“Because summary judgment is appropriate on the
16 issues of loss causation and damages, plaintiffs cannot establish the essential elements of
17 their §10(b) and Rule 10b–5 claim and therefore cannot prevail on their claims against
18 any of the defendants.”).

19 Although Lead Plaintiffs and their counsel believe their case to be strong, they
20 acknowledge that Defendants advanced several formidable arguments disputing
21 liability and damages. Moreover, Defendants continued to challenge the sufficiency
22 of Lead Plaintiffs’ Amended Complaint. Here, the Court granted with prejudice
23 Defendants’ motion to dismiss the Amended Complaint. *In re Quality Sys., Inc. Sec.*
24 *Litig.*, 60 F. Supp. 3d 1095, 1098 (C.D. Cal. 2014), *rev’d and remanded*, 865 F.3d
25 1130 (9th Cir. 2017). Lead Plaintiffs appealed that decision and, on July 28, 2017, the
26 Ninth Circuit Court of Appeals issued an opinion, reversing and remanding the case to
27 this Court. *Quality Sys.*, 865 F.3d at 1136. However, on January 26, 2018,
28 Defendants filed their petition for a writ of certiorari to the Supreme Court. On

1 March 26, 2018, Lead Plaintiffs filed their opposition to Defendants’ petition and, on
2 April 10, 2018, Defendants filed their reply. Accordingly, at the time the Settlement
3 was reached, Defendants’ petition remained pending, adding to the risk of further
4 delay, erosion, or termination of the Litigation altogether.

5 Defendants raised numerous merits-based challenges disputing the falsity and
6 materiality of their alleged misstatements. Defendants maintained that at least seven of
7 the alleged misstatements were “free-standing” forward-looking statements protected
8 by the PSLRA safe harbor and, therefore, not actionable under the Ninth Circuit’s
9 decision. *Quality Sys.*, 865 F.3d 1130. Additionally, Defendants challenged whether
10 certain other alleged misstatements had a “price impact” – *i.e.*, inflated QSI’s stock
11 price under the Supreme Court’s decision in *Halliburton Co. v. Erica P. John Fund,*
12 *Inc.*, 134 S. Ct. 2398, 2416 (2014) (“Price impact is [] an essential precondition for any
13 Rule 10b-5 class action.”). Defendants further argued that the evidence would not
14 support a finding that the alleged misstatements were made with the requisite scienter –
15 “intentionally or with deliberate recklessness.” *Zucco Partners, LLC v. Digimarc*
16 *Corp.*, 552 F.3d 981, 991 (9th Cir. 2009). Finally, even if Lead Plaintiffs established
17 liability, the parties would have also hotly contested loss causation and damages.
18 Defendants would continue to argue that the alleged corrective disclosures on May 7,
19 May 8, May 10, and July 26, 2012, were not “corrective” because they did not reveal
20 that any alleged misstatement was false and misleading when made. Each of these
21 issues would have been heavily contested if the Litigation continued and each presented
22 significant obstacles to Lead Plaintiffs’ success at summary judgment or trial. *See, e.g.*,
23 *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *13 (C.D. Cal. Nov. 23, 2013) (“The fact
24 that this issue, which is at the heart of plaintiffs’ case, would have been the subject of
25 competing expert testimony suggests that plaintiffs’ ability to prove liability was
26 somewhat unclear; this favors a finding that the settlement is fair.”).

27 Moreover, Lead Plaintiffs would need to prevail on all matters at class
28 certification, summary judgment and pretrial motions, trial, and subsequent appeals, a

1 process that could possibly extend for years. Settlement is favored where, as here, the
2 case is “complex and likely to be expensive and lengthy to try” and presents
3 numerous risks beyond the “inherent risks of litigation.” *Low v. Trump Univ., LLC*,
4 246 F. Supp. 3d 1295, 1301 (S.D. Cal. 2017) (quoting *Rodriguez*, 563 F.3d at 966 and
5 *Torrisi*, 8 F.3d at 1376).

6 The Settlement balances the risks, costs, and delay inherent in complex cases
7 evenly with respect to all parties. Thus, the benefits created by the Settlement weigh
8 heavily in favor of granting the motion for preliminary approval. Lead Plaintiffs
9 respectfully submit that, considering the risks of continued litigation and the time and
10 expense which would be incurred to prosecute the Litigation through a trial, the
11 \$19,000,000.00 Settlement represents a meaningful recovery that is in the best
12 interests of the Class.

13 **C. The Stage of the Proceedings at Which the Settlement Was**
14 **Achieved Supports Preliminary Approval**

15 The stage of the proceedings also supports preliminary approval of the
16 Settlement. As will be further detailed in Lead Plaintiffs’ final approval papers and
17 supporting declarations, Lead Plaintiffs’ decision to enter into the Settlement was based
18 on their thorough understanding of the strengths and weaknesses of their claims and
19 Defendants’ defenses. This understanding was based on Lead Counsel’s diligent
20 prosecution of the Litigation, which included, among other things: (i) drafting the
21 consolidated complaints subject to the heightened pleading standards of the PSLRA;
22 (ii) conducting an extensive factual investigation, including identifying, contacting and
23 interviewing percipient witnesses with direct knowledge of the facts; (iii) consulting
24 with experts; (iv) opposing Defendants’ motion to dismiss; (v) successfully appealing
25 the Court’s decision granting Defendants’ motion to dismiss with prejudice;
26 (vi) opposing Defendants’ writ petition; (vii) conducting extensive fact discovery,
27 which included seeking and obtaining over 350,000 pages of documents from
28 Defendants and various third parties, as well as preparing for a Rule 30(b)(6) deposition

1 of QSI; (viii) drafting interrogatories and requests for admission; and (ix) preparing for
 2 and participating in a mediation session before a mediator with experience in securities
 3 class actions and additional settlement negotiations. There can be no question that, at
 4 the time the Settlement was reached, Lead Plaintiffs and their counsel had a clear view
 5 of the strengths and weaknesses of the claims and defenses.

6 Lead Plaintiffs respectfully submit that this is a very good result that further
 7 supports the fairness, reasonableness, and adequacy of the Settlement, especially
 8 given that Lead Plaintiffs still faced significant hurdles in the prosecution of this
 9 Litigation. The Settlement's \$19,000,000.00 cash recovery is well within the range of
 10 reasonableness, compares very favorably against other securities class action
 11 settlements in recent years,⁴ and achieves the certainty of a substantial recovery to the
 12 Class. Thus, preliminary approval is warranted.

13 **V. CERTIFICATION OF THE CLASS FOR PURPOSES OF THE**
 14 **SETTLEMENT IS APPROPRIATE**

15 Under the terms of the Stipulation, Defendants have agreed, for the sole purpose
 16 of settlement and without adjudication of the merits, to certification of the Class. As
 17 this Court has recognized, "class actions are an effective way to pursue shareholders'
 18 actions for securities fraud" and "[t]he availability of the class action to redress such
 19 frauds has been consistently upheld, in large part because of the substantial role that
 20 the deterrent effect of class actions plays in accomplishing the objectives of the
 21 securities laws.'" *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 642 (C.D. Cal.

22 ⁴ For example, a study of such settlements by NERA Economic Consulting, a
 23 firm that frequently provides damages expertise to defendants in securities cases,
 24 reported that since the passage of the PSLRA, between January 1996 and December
 25 2016, median settlement amounts in securities class actions ranged from \$3.7 million
 26 to \$12.3 million. See Stefan Boetrich and Svetlana Starykh, *Recent Trends in*
 27 *Securities Class Action Litigation: 2016 Full-Year Review*, at 31 (NERA Jan. 2017).
 28 A recent study by Cornerstone Research reported that approximately 80 percent of
 post-PSLRA settlements have settled for under \$25 million. See Laarni T. Bulan,
 Ellen M. Ryan and Lauren E. Simmons, *Securities Class Action Settlements: 2017*
Review and Analysis, at 5 (Cornerstone Research 2018). Within the Ninth Circuit
 specifically, Cornerstone Research reported that between 2008 and 2017, the median
 securities class action settlement amount was \$8 million. *Id.* at 20.

1 2009) (quoting *Blackie v. Barrack*, 524 F.2d 891, 903 (9th Cir. 1975)).

2 A settlement class, like other certified classes, must satisfy all of the
3 requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and
4 (4) adequacy of representation, and one of the three requirements of Rule 23(b).
5 *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). Lead Plaintiffs submit that the
6 Class satisfies each of the requirements as set forth below.

7 **A. The Requirements of Rule 23(a) Are Met**

8 **1. Numerosity Is Established**

9 The numerosity requirement is met where the party seeking certification shows
10 the class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ.
11 P. 23(a)(1). This does not mean that joinder is impossible, but rather “only that the
12 court must find that the difficulty or inconvenience of joining all members of the class
13 makes class litigation desirable.” *McCulloch v. Baker Hughes Inteq Drilling Fluids,*
14 *Inc.*, 2017 WL 2257130, at *7 (E.D. Cal. May 23, 2017). “No exact numerical cut-off
15 is required; rather, the specific facts of each case must be considered.” *Cooper*, 254
16 F.R.D. at 634 (citing *Gen. Tel. Co. of N.W., Inc. v. Equal Emp. Opportunity Comm’n*,
17 446 U.S. 318, 330 (1980)). “As a general matter, courts have found that numerosity is
18 satisfied when class size exceeds 40 members.” *Moore v. Ulta Salon, Cosmetics &*
19 *Fragrance, Inc.*, 311 F.R.D. 590, 602-03 (C.D. Cal. 2015); *see also Tait v. BSH Home*
20 *Appliances Corp.*, 289 F.R.D. 466, 473 (C.D. Cal. 2012) (same). Also, numerosity “is
21 generally assumed to have been met in class action suits involving nationally traded
22 securities.” *Brown v. China Integrated Energy Inc.*, 2015 WL 12720322, at *14 (C.D.
23 Cal. Feb. 17, 2015) (citations omitted) (alterations in original).

24 Here, the Class meets the numerosity requirement of Rule 23(a)(1). QSI’s
25 common stock traded globally on the NASDAQ at all times during the Class Period
26 under the symbol “QSII.” There were approximately 57 million to 59 million shares
27 of QSI common stock outstanding during the Class Period, with more than 375
28 institutional investors reporting holdings in QSI. In addition, QSI had an average

1 weekly trading volume of 2.9 million shares during the Class Period. Thus, the
2 Members of the Class are so numerous that their joinder would be impracticable.
3 “District courts have consistently found a proposed class to be sufficiently numerous
4 in securities fraud cases where ‘several million shares of stock were purchased during
5 the class period.’” *In re Intuitive Surgical Sec. Litig.*, 2016 WL 7425926, at *4 (N.D.
6 Cal. Dec. 22, 2016) (citation omitted), *reconsideration denied*, 2017 WL 4355072
7 (N.D. Cal. Sept. 29, 2017) (proposed class sufficiently numerous where defendant had
8 between 39 million and 40 million shares of outstanding stock during the class
9 period). Accordingly, the numerosity requirement is met here.

10 **2. Commonality Is Established**

11 Rule 23(a)(2) requires a showing that there are “questions of law or fact
12 common to the class.” Fed. R. Civ. P. 23(a)(2). Sufficient commonality exists where
13 class members “suffered the same injury” and their claims “depend upon a common
14 contention” that is capable of class-wide resolution. *Wal-Mart Stores, Inc. v. Dukes*,
15 564 U.S. 338, 350 (2011). “This does not, however, mean that every question of law
16 or fact must be common to the class: all Rule 23(a)(2) requires is ‘a single significant
17 question of law or fact.’” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th
18 Cir. 2013) (quoting *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir.
19 2012)) (emphases in original). “Commonality, like numerosity, is a prerequisite
20 which plaintiffs generally, and which Plaintiffs here, satisfy very easily.” *In re*
21 *VeriSign, Inc. Sec. Litig.*, 2005 WL 7877645, at *5 (N.D. Cal. Jan. 13, 2005).

22 Here, Class Members have suffered a common injury—losses on their
23 investments in QSI common stock—and their claims depend upon numerous common
24 issues capable of class-wide resolution, including: (i) whether Defendants’ alleged
25 misrepresentations and omissions violated the Exchange Act; (ii) whether Defendants’
26 alleged misrepresentations and omissions were materially false and misleading;
27 (iii) whether Defendants acted knowingly or recklessly (*i.e.*, with scienter);
28 (iv) whether the individual Defendants controlled QSI and its violations of the

1 securities laws; (v) whether the market price of QSI's common stock was artificially
2 inflated as a result of Defendants' alleged misrepresentations and omissions;
3 (vi) whether Defendants' misrepresentations and omissions caused Class Members to
4 suffer a compensable loss; and (vii) whether the Members of the Class have sustained
5 damages, and the proper measure of damages.

6 These issues provide more than sufficient commonality. *See, e.g., Brown*, 2015
7 WL 12720322, at *14 (plaintiffs' allegations that defendant company "made various
8 misstatements in its SEC filings, Registration Statement, press releases, and public
9 statements" are "enough to satisfy the commonality requirement"); *In re Juniper*
10 *Networks, Inc. Sec. Litig.*, 264 F.R.D. 584, 588 (N.D. Cal. 2009) ("Repeated
11 misrepresentations by a company to its stockholders satisfy the commonality
12 requirement of Rule 23(a)(2)."); *Cooper*, 254 F.R.D. at 635 (allegations that defendants
13 violated the Exchange Act, knowingly misrepresented material facts, and caused the
14 defendant company's stock price to be artificially inflated were "common questions"
15 that "form the core of a case for securities fraud" and are "extremely similar to
16 questions of law and fact that other courts have found to be common in previous
17 securities fraud cases"). Accordingly, Lead Plaintiffs have established commonality.

18 **3. Typicality Is Established**

19 Rule 23(a)(3) requires that the proposed class representative's claims be
20 "typical" of the claims of the class. *Brown*, 2015 WL 12720322, at *4. "[T]he Ninth
21 Circuit does not require the named Plaintiffs' injuries to be 'identical with those of the
22 other class members, [but] only that the unnamed class members have injuries similar
23 to those of the named plaintiffs and that the injuries result from the same injurious
24 conduct.'" *Id.* (quoting *Cooper*, 254 F.R.D. at 635). "The purpose of the typicality
25 requirement is to 'assure that the interest of the named representative aligns with the
26 interests of the class.'" *Intuitive Surgical*, 2016 WL 7435926, at *5 (quoting *Hanon v.*
27 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

28

1 Here, Lead Plaintiffs’ claims are “typical” of other Class Members’ claims
2 because they arise out of the same alleged conduct and, like other Members of the
3 Class, they all allege that they purchased QSI common stock during the Class Period
4 at artificially inflated prices due to Defendants’ material misstatements and omissions
5 regarding QSI’s current and prospective sales and financial condition, and were
6 damaged when the truth emerged. Thus, both the Lead Plaintiffs and the Class assert
7 the same legal claims, which relate to the adequacy of such public statements and will
8 rely on the same facts and legal theories to establish liability. *In re Emulex Corp. Sec.*
9 *Litig.*, 210 F.R.D. 717, 719 (C.D. Cal. 2002) (class representative’s claims are typical
10 where they arise from the same conduct and are based on the same legal theory as
11 other class members). Accordingly, the typicality requirement is established.

12 4. The Lead Plaintiffs and Lead Counsel Are Adequate

13 Under Rule 23(a)(4), Lead Plaintiffs must “fairly and adequately protect the
14 interests of the class.” Fed. R. Civ. P. 23(a)(4). “Under Ninth Circuit precedent,
15 adequacy depends on the resolution of two questions: (1) whether ‘the named
16 plaintiffs and their counsel have any conflicts of interest with other class members,’
17 and (2) whether ‘the named plaintiffs and their counsel [will] prosecute the action
18 vigorously on behalf of the class.’” *Brown*, 2015 WL 12720322, at *15 (quoting
19 *Hanlon*, 150 F.3d at 1020). There is “considerable overlap” between the adequacy and
20 typicality requirements of Rule 23(a). *Cooper*, 254 F.R.D. at 636; *see also In re*
21 *LendingClub Sec. Litig.*, 282 F. Supp. 3d 1171, 1182 (9th Cir. 2017) (Rule 23(a)(4)’s
22 requirement is “modest.”).

23 Lead Plaintiffs and Lead Counsel readily satisfy adequacy. First, based upon
24 their purchases of QSI common stock during the Class Period and the losses suffered as
25 a result of Defendants’ misconduct, Lead Plaintiffs’ interests are directly aligned with—
26 rather than “antagonistic” to—the interests of other Class Members, who were injured
27 by the same alleged materially false and misleading statements and omissions as Lead
28 Plaintiffs. Second, there is no evidence of conflicts of interest between Lead Plaintiffs

1 and the Class. *See Juniper Networks*, 264 F.R.D. at 590 (finding that lead plaintiffs
2 were adequate representatives because there was no evidence of conflicts of interest
3 between the lead plaintiffs and the class). Moreover, Lead Plaintiffs are pension funds,
4 overseeing millions of dollars in assets under management belonging to retired public
5 servants, and are precisely the type of institutional investors that Congress sought to
6 ensure served in leadership roles in securities class actions when enacting the PSLRA.
7 *See* H.R. Rep. No. 104-369, at 34 (1995) (Conf. Rep.), as reprinted in 1995
8 U.S.C.C.A.N. 730, 733. Finally, as institutional investors, Lead Plaintiffs are aware of
9 and understand the fiduciary obligations they owe to the Class, and have faithfully
10 executed those duties to date in their supervision and direction of this Litigation.

11 Lead Plaintiffs have also retained experienced counsel, receive regular status
12 updates from their lawyers, and participate in strategic decisions. As discussed above,
13 Lead Plaintiffs' selected counsel – Bernstein Litowitz and RGRD – are qualified and
14 experienced, who have a demonstrated record of vigorously prosecuting this
15 Litigation, and satisfy the requirements of Rule 23(g). By the time the Settlement was
16 reached, Lead Counsel were informed of the strengths and weaknesses of Lead
17 Plaintiffs' claims through their investigation prior to filing the Amended Complaint,
18 briefing related to the sufficiency of the Amended Complaint, and reviewing and
19 analyzing significant discovery. They applied this knowledge to engage in a rigorous
20 negotiation process. Lead Counsel are skilled and experienced litigators who were
21 able to develop the case and convince Defendants and their insurers to settle on terms
22 favorable to the Class. Thus, the adequacy requirement is satisfied.

23 **B. The Requirements of Rule 23(b)(3) Are Met**

24 A party seeking class certification must also satisfy one of the three subparts of
25 Rule 23(b). Pursuant to Rule 23(b)(3), the Court must consider: (1) whether questions of
26 law or fact common to class members predominate over questions affecting only
27 individual members; and (2) whether a class action is superior to other available methods
28 for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

1 **1. Common Questions Predominate**

2 The predominance inquiry of Rule 23(b)(3) asks whether “questions of law or
3 fact common to class members predominate over any questions affecting only
4 individual members.” Fed. R. Civ. P. 23(b)(3). “[T]he predominance inquiry focuses
5 on ‘whether proposed classes are sufficiently cohesive to warrant adjudication by
6 representation.’” *Hatamian v. Advanced Micro Devices, Inc.*, 2016 WL 1042502, at
7 *3 (N.D. Cal. Mar. 16, 2016) (citation omitted). For a class to be sufficiently
8 cohesive, the common questions must “present a significant aspect of the case” and be
9 capable of resolution “for all members of the class in a single adjudication.” *Brown*,
10 2015 WL 12720322, at *15. “That the defendant might attempt to pick off the
11 occasional class member here or there through individualized rebuttal does not cause
12 individual questions to predominate.” *Halliburton*, 134 S. Ct. at 2412. Finally, the
13 predominance requirement is “readily met” in securities class actions. *Amchem*, 521
14 U.S. at 625; *see also Cooper*, 254 F.R.D. at 632 (“As the Ninth Circuit has so aptly
15 stated, securities cases fit Rule 23 ‘like a glove.’”).

16 Here, the common questions identified in §V.A.2. above clearly predominate
17 over individual questions because Defendants’ alleged fraudulent statements and
18 omissions affected all Class Members in the same manner (*i.e.*, through public
19 statements made to the market and documents publicly filed with the United States
20 Securities and Exchange Commission (“SEC”). To establish liability under Section
21 10(b), Lead Plaintiffs must show: “(1) a material misrepresentation or omission of
22 fact; (2) scienter; (3) a connection with the purchase or sale of a security;
23 (4) transaction and loss causation [“transaction causation” being used interchangeably
24 with “reliance”]; and (5) economic loss (damages).” *Cooper*, 254 F.R.D. at 638.
25 Virtually all of these elements involve common questions of law and fact that
26 predominate over individualized issues. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*,
27 568 U.S. 455, 468 (2013) (materiality); *Erica P. John Fund, Inc. v. Halliburton Co.*,
28 563 U.S. 804, 812 (2011) (loss causation); *Cooper*, 254 F.R.D. at 640 (all elements).

1 Indeed, “when ‘a common nucleus of misrepresentations, material omissions and
2 market manipulations [exists], the common questions predominate over any
3 differences between individual class members with respect to damages, causation or
4 reliance.’” *Cooper*, 254 F.R.D. at 639-40 (citation omitted).

5 In securities fraud class actions, predominance is usually satisfied because the
6 plaintiffs are entitled to rely upon a class-wide presumption of reliance on defendants’
7 misstatements pursuant to the “fraud-on-the-market” doctrine (“FOTM”). The FOTM
8 “holds that ‘the market price of shares traded on well-developed markets reflects all
9 publicly available information, and, hence, any material misrepresentations.’”
10 *Halliburton*, 134 S. Ct. at 2408 (affirming and quoting *Basic Inc. v. Levinson*, 485
11 U.S. 224, 246-47 (1988)). Accordingly, whenever an “investor buys or sells stock at
12 the market price, his ‘reliance on any public material misrepresentations . . . may be
13 presumed for purposes of a Rule 10b-5 action.’” *Id.* (quoting *Basic*, 485 U.S. at 247).

14 Here, the Court can presume that QSI’s common stock traded in an efficient
15 market because it traded on the NASDAQ, “‘one of the two largest stock exchanges in
16 the United States, the largest electronic-equity securities trading market in the United
17 States, and one of the largest stock exchanges in the world.’” *Smilovits v. First Solar,*
18 *Inc.*, 295 F.R.D. 423, 430 (D. Ariz. 2013) (quoting *Lumen v. Anderson*, 280 F.R.D. 451,
19 459 (W.D. Mo. 2012)). Indeed, “federal courts are unanimous in their agreement that a
20 listing on the NASDAQ or a similar national market is a good indicator of efficiency.”
21 *Todd v. STAAR Surgical Co.*, 2017 WL 821662, at *6 (C.D. Cal. Jan. 5, 2017).

22 Moreover, Lead Plaintiffs further submit there are no significant—let alone
23 predominant—individual issues in this case. Indeed, Lead Plaintiffs submit that it is
24 difficult to discern any liability issues not common to all Class Members. Where, as
25 here, Class Members are subject to the same alleged misrepresentations and
26 omissions, and it is alleged that Defendants’ misrepresentations were part of a
27 common course of conduct, common questions predominate. If Lead Plaintiffs and
28 each Class Member were to bring individual actions, they would each be required to

1 prove the same wrongdoing by Defendants in order to establish liability.

2 **2. A Class Action Is a Superior Method of Adjudicating**
3 **Lead Plaintiffs' Claims**

4 The class action device is also the superior method for resolving the claims in
5 this Litigation. Courts have long recognized that the class action is not only a superior
6 method, but also may be the only feasible method to fairly and efficiently adjudicate a
7 controversy involving a large number of purchasers of securities injured by violations
8 of the securities law. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985)
9 (noting that “most of the plaintiffs would have no realistic day in court if a class action
10 were not available”). “District courts have consistently recognized that the common
11 liability issues involved in securities fraud cases are ideally suited for resolution by
12 way of a class action.” *Cooper*, 254 F.R.D. at 641. “If united by a common core of
13 facts, and a presumption of reliance on an efficient market, class actions are the
14 superior way to litigate a case alleging violations of securities fraud.” *Vinh Nguyen v.*
15 *Radiant Pharms. Corp.*, 287 F.R.D. 563, 575 (C.D. Cal. 2012).

16 Superiority under Rule 23(b)(3) turns on the following four factors: “(1) the
17 class members’ interests in individually controlling a separate action; (2) the extent
18 and nature of litigation concerning the controversy already begun by or against class
19 members; (3) the desirability of concentrating the litigation in the particular forum;
20 and (4) the manageability of a class action.” *Juniper Networks*, 264 F.R.D. at 592.
21 This Litigation readily satisfies these factors. Resolving the claims of all Class
22 Members through a class action is far superior to adjudicating numerous individual
23 suits for the many investors who purchased QSI common stock. With regard to the
24 first two superiority factors, the expense and burden of litigating each individual claim
25 compared to the potential recovery makes it unlikely that many individuals will
26 attempt to bring such claims. *Todd*, 2017 WL 821662, at *11. Nor are Lead Plaintiffs
27 aware of any other securities fraud actions under the Exchange Act currently pending
28 against Defendants related to the Amended Complaint’s allegations—indicating that

1 individuals have a minimal interest in commencing separate actions. Moreover,
2 concentrating the Litigation in this forum is appropriate because QSI maintains its
3 headquarters in this district. *Hatamian*, 2016 WL 1042502, at *10. Finally, with
4 respect to managing the Litigation, “this factor involves the same considerations as
5 Rule 23(b)(3)’s predominance requirement,” and is satisfied for the reasons set forth
6 above. *Id.* A class action is therefore superior here.

7 Further, certification of the Class for settlement purposes is the superior method
8 for resolving the claims of Lead Plaintiffs and the Class. Without the settlement class
9 device, Defendants could not obtain a class-wide release, and therefore would have had
10 little, if any, incentive to agree to the Stipulation. Moreover, certification of the Class
11 for settlement purposes will allow the Settlement to be administered in an organized and
12 efficient manner. In light of the foregoing, all of the requirements of Rules 23 are
13 satisfied, and thus, the Court should certify this Class for purposes of the Settlement.

14 **VI. NOTICE TO THE CLASS IS WARRANTED**

15 As outlined in the agreed-upon proposed Preliminary Approval Order, Lead
16 Counsel will cause the Claims Administrator to notify Class Members of the Settlement
17 by mailing the Notice and Claim Form to all Class Members who can be identified with
18 reasonable effort. The Notice will advise Class Members of: (i) the pendency of the
19 class action; (ii) the essential terms of the Settlement; and (iii) information regarding
20 Lead Counsel’s motion for attorneys’ fees and litigation expenses. The Notice will also
21 provide specifics on the date, time and place of the Settlement Hearing and set forth the
22 procedures, as well as deadlines, for opting out of the Class, for objecting to the
23 Settlement, the proposed Plan of Allocation and/or the motion for attorneys’ fees and
24 litigation expenses, and for submitting a Claim Form. The proposed Preliminary
25 Approval Order also requires Lead Counsel to cause the Summary Notice to be
26 published once in *The Wall Street Journal* and once over a national newswire service.
27 Lead Counsel will also cause a copy of the Notice and Claim Form to be readily
28 available on the Settlement website created specifically for this Settlement.

1 The form and manner of providing notice to the Class satisfy the requirements
 2 of due process, Rule 23, and the PSLRA, 15 U.S.C. §78u-4(a)(7). The Notice and
 3 Summary Notice “explain in easily understood language the nature of the action,
 4 definition of the class, class claims, issues and defenses, ability to appear through
 5 individual counsel, procedure to request exclusion, and binding nature of a class
 6 judgment.” *Sandoval v. Tharaldson Employee Mgmt., Inc.*, 2010 WL 2486346, at *11
 7 (C.D. Cal. June 15, 2010); *see also Rodriguez*, 563 F.3d at 962 (“Notice is satisfactory
 8 if it ‘generally describes the terms of the settlement in sufficient detail to alert those
 9 with adverse viewpoints to investigate and to come forward and be heard.’”) (citation
 10 omitted). The manner of providing notice, which includes individual notice by mail to
 11 all Class Members who can be reasonably identified, represents the best notice
 12 practicable under the circumstances and satisfies the requirements of due process and
 13 Rule 23. *See, e.g., In re MGM Mirage Sec. Litig.*, 708 F. App’x 894, 896 (9th Cir.
 14 2017) (combination of mailing and publication “provided ‘the best practicable notice
 15 under the circumstances’”).

16 So that Notice may be provided to the Class, the Court should approve A.B.
 17 Data as Claims Administrator as provided in paragraph 8 of the Preliminary Approval
 18 Order. A.B. Data has extensive experience administering class action settlements and
 19 is well-qualified to serve as Claims Administrator for the Settlement.

20 **VII. PROPOSED SCHEDULE OF SETTLEMENT EVENTS**

21 Lead Plaintiffs respectfully submit the following procedural schedule for the
 22 Court’s review and approval, which summarizes the deadlines in the proposed
 23 Preliminary Approval Order. The dates set forth in the right-hand column are potential
 24 dates in the event that preliminary approval is granted on or before July 23, 2018.

<u>Event</u>	<u>Proposed Deadline</u>	<u>Potential Date</u>
Deadline to commence mailing the Notice and Claim Form to potential Class Members, which date shall be the “Notice Date” (<i>See Preliminary Approval Order ¶10</i>)	Not later than 15 business days after entry of Preliminary Approval Order	Aug. 13, 2018

<u>Event</u>	<u>Proposed Deadline</u>	<u>Potential Date</u>
Deadline for publishing the Summary Notice (See Preliminary Approval Order ¶11)	Not later than 7 calendar days after the Notice Date	Aug. 20, 2018
Deadline for filing of papers in support of final approval of the Settlement, Plan of Allocation, and Lead Counsel’s application for attorneys’ fees and expenses (See Preliminary Approval Order ¶21)	35 calendar days prior to the Settlement Hearing	Sept. 26, 2018
Deadline for receipt of exclusion requests or objections (See Preliminary Approval Order ¶¶17, 19)	21 calendar days prior to the Settlement Hearing	Oct. 10, 2018
Deadline for submission of reply papers in support of final approval and attorneys’ fees and expenses (See Preliminary Approval Order ¶21)	7 calendar days prior to the Settlement Hearing	Oct. 24, 2018
Settlement Hearing (See Preliminary Approval Order ¶2) (to be entered by the Court)	At least 100 days after entry of the Preliminary Approval Order, or at the Court’s earliest convenience thereafter	Oct. 31, 2018
Deadline for Submitting Claim Forms (See Preliminary Approval Order ¶14(a))	120 calendar days after the Notice Date	Dec. 11, 2018

VIII. CONCLUSION

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court enter the Settling Parties’ agreed-upon form of proposed Preliminary Approval Order, attached hereto as Exhibit 1: (a) certifying the proposed Class for settlement purposes; (b) holding that the manner and form of notice set forth in the Preliminary Approval Order satisfies due process and is the best notice practicable under the circumstances; (c) setting a date for the Settlement Hearing and establishing the deadlines set forth in the Preliminary Approval Order; (d) appointing A.B. Data as Claims Administrator; and (e) appointing Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel.

DATED: July 16, 2018

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP

s/ Robert R. Henssler Jr.

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CERTIFICATE PURSUANT TO LOCAL RULE 5-4.3.4

I, Robert R. Henssler Jr., am the ECF User whose identification and password are being used to file Lead Plaintiffs’ Notice of Motion and Unopposed Motion for (I) Preliminary Approval of Class Action Settlement; (II) Certification of the Class; and (III) Approval of Notice to the Class, and Incorporated Memorandum of Law. In compliance with Local Rule 5-4.3.4(a)(2), I hereby attest that David R. Stickney has concurred in this filing.

DATED: July 16, 2018

s/ ROBERT R. HENSSLER JR.
ROBERT R. HENSSLER JR

Mailing Information for a Case 8:13-cv-01818-CJC-JPR In re Quality Systems, Inc. Securities Litigation

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Manual Notice List

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