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NOTICE OF MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 23, 2016 at 1:30 p.m., Lead Plaintiffs Arkansas Teacher Retirement System and Baltimore County Employees' Retirement System, on behalf of themselves and all members of the proposed Settlement Class, will move this Court for orders: (1) granting final approval of the proposed Settlement of the Action; and (2) approving the proposed Plan of Allocation for the net proceeds of the Settlement.

This motion is supported by the following memorandum of points and authorities and the accompanying Declaration of Jonathan Gardner and the exhibits attached thereto.

Pursuant to local rule, proposed orders are being submitted herewith, however updated proposed orders will be submitted with Lead Plaintiffs' reply submission on or before June 9, 2016, after the deadlines for requesting exclusion and objecting have passed.

STATEMENT OF ISSUES TO BE DECIDED

(1) Whether the Court should grant final approval to the proposed class action Settlement and Plan of Allocation; and

(2) Whether the Court should finally certify the Settlement Class, for purposes of the Settlement only.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Lead Plaintiffs Arkansas Teacher Retirement System (“ATRS”) and Baltimore County
3 Employees’ Retirement System (“BCERS”), as Court-appointed lead plaintiffs (“Lead
4 Plaintiffs”) respectfully submit this memorandum of points and authorities in support of their
5 motion for (i) final approval of the proposed settlement (the “Settlement”) of the above-
6 captioned class action; (ii) final approval of the proposed Plan of Allocation; and (iii) final
7 certification of the Settlement Class for purposes of this Settlement only.¹

8 **PRELIMINARY STATEMENT**

9 As detailed in the Stipulation, Vocera Communications, Inc. (“Vocera” or the
10 “Company”), Robert J. Zollars, Brent D. Lang, and William R. Zerella (collectively, the
11 “Individual Defendants” and, with Vocera, the “Defendants”) have agreed to pay or caused to be
12 paid \$9 million to secure a settlement of the claims in this proposed class action settlement (the
13 “Settlement”). This recovery is a favorable result for the Settlement Class and avoids the risks
14 and expenses of continued litigation, including the risk of recovering less than the Settlement
15 Amount, or no recovery at all.

16 As described below and in the accompanying Gardner Declaration², Lead Plaintiffs
17 faced, and would continue to face, vigorous opposition from Defendants with respect to the legal
18 and factual bases of Lead Plaintiffs’ claims. In particular, had the Settlement not been reached,
19 Lead Plaintiffs would have faced considerable hurdles in proving falsity, scienter, loss causation,
20 and establishing the Settlement Class’s full amount of damages at trial.

21
22 ¹ All capitalized terms not otherwise defined herein shall have the same meanings set forth
23 and defined in the Stipulation and Agreement of Settlement, dated as of January 14, 2016 (the
“Stipulation”, ECF No. 186-1).

24 ² The Declaration of Jonathan Gardner in Support of Lead Plaintiffs’ Motion for Final
25 Approval of Proposed Class Action Settlement and Plan of Allocation and Lead Counsel’s
26 Motion for an Award of Attorneys’ Fees and Payment of Expenses (“Gardner Declaration” or
“Gardner Decl.”) contains a detailed description of the allegations and claims, the procedural
history of the Action, and the events that led to the Settlement, among other matters.

27 All exhibits referenced herein are annexed to the Gardner Declaration. For clarity,
28 citations to exhibits that themselves have attached exhibits will be referenced as “Ex. ___ - ___.”
The first numerical reference refers to the designation of the entire exhibit attached to the
Gardner Declaration and the second numerical reference refers to the exhibit designation within
the exhibit itself.

1 As set forth in detail in the Gardner Declaration, an agreement to settle this Action was
2 reached only after more than two years of litigation, which included, *inter alia*: (i) the review
3 and analysis of publicly available information concerning Vocera; (ii) interviews of 23 former
4 Vocera employees and other persons with relevant knowledge (four of whom provided
5 information as confidential witnesses that was included in the complaint); (iii) preparation of a
6 detailed Consolidated Amended Class Action Complaint (“Complaint”); (iv) successful
7 opposition, at least in part, of Defendants’ comprehensive motion to dismiss; (v) formal
8 discovery, involving, among other things, the review of approximately 771,000 pages of
9 documents from Defendants and non-parties; and (vi) participation in mediation efforts, which
10 included the exchange of comprehensive mediation statements and a full-day mediation session
11 with the assistance of an experienced mediator.

12 In light of Lead Plaintiffs’ informed assessment of the strengths and weaknesses of the
13 claims and defenses asserted and the risks and delays associated with continued litigation and
14 trial, Lead Plaintiffs and Lead Counsel believe the Settlement is fair, reasonable, and adequate.
15 Accordingly, Lead Plaintiffs respectfully request that the Court grant final approval of the
16 Settlement. In addition, the Plan of Allocation, which was developed with the assistance of Lead
17 Plaintiffs’ consulting damages expert, is a fair and reasonable method for distributing the Net
18 Settlement Fund and should also be approved by the Court. Lastly, Lead Plaintiffs request that
19 the Court finally certify, for settlement purposes only, the Settlement Class.

20 **PRELIMINARY APPROVAL AND THE NOTICE PROGRAM**

21 On March 4, 2016, the Court entered an order preliminarily approving the Settlement (the
22 “Preliminary Approval Order”) (ECF No. 198). Pursuant to and in compliance with the
23 Preliminary Approval Order, through records maintained by Vocera’s transfer agent, information
24 gathered from brokerage firms and requests made by individuals and brokerage firms, beginning
25 on March 18, 2016, Garden City Group, LLC (“GCG”), the Court-appointed Claims
26 Administrator, caused the Notice and Proof of Claim and Release form (together, the “Claim
27 Packet”) to be mailed to potential Settlement Class Members. *See* Ex. 4 ¶¶2-6. A total of 19,847
28 Claim Packets were mailed as of May 18, 2016. *Id.* ¶6. On April 1, 2016, the Summary Notice

1 was published in *Investor's Business Daily* and was issued over *PR Newswire*. *Id.* ¶8 and Exs. C
2 and D attached thereto. On March 18, 2016, the Notice and Proof of Claim were posted on the
3 case-dedicated website established by GCG for purposes of this Settlement. *Id.* ¶9.

4 The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the
5 Parties, the course of the litigation, the terms of the Settlement, the attorneys' fees and expense
6 request, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be
7 excluded from the Settlement Class. *See generally* Ex. 4-A. The Notice also gave the deadlines
8 for objecting or seeking exclusion from the Settlement Class and advised potential Settlement
9 Class Members of the scheduled Settlement Hearing before this Court. *Id.* at 7-8. The Notice
10 specifically notified Settlement Class Members that Lead Counsel's request for attorneys' fees
11 would not exceed 25% of the Settlement Fund and its request for payment of expenses would not
12 exceed \$450,000, plus interest at the same rate as earned by the Settlement Fund. *Id.* at 2, 6.

13 The Ninth Circuit has held that notice must be "reasonably calculated, under all the
14 circumstances, to apprise interested parties of the pendency of the action and afford them an
15 opportunity to present their objections." *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338,
16 1351 (9th Cir. 1980) (citation omitted). Lead Plaintiffs respectfully submit that the notice
17 program utilized here readily meets this standard. *See, e.g., Nat'l Rural Telcomms. Coop. v.*
18 *DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (finding notice sufficient when, as here, it
19 described the background of the case and the terms of the proposed settlement, and provided
20 class members with "clear instructions about to how object").

21 To date, the Settlement Class's reaction to the proposed Settlement has been positive.
22 While the date (June 2, 2016) to opt-out from or object to the Settlement has not yet passed, to
23 date there have been no requests for exclusion and no objections to the proposed Settlement and
24 Plan of Allocation.³

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28 ³ As noted below, Lead Plaintiffs will file reply papers on or before June 9, 2016
responding to requests for exclusion or objections, if any. Lead Plaintiffs' reply papers will also
report on the number of class members who have submitted claims to date.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE UNDER THE APPLICABLE STANDARD AND SHOULD BE APPROVED

A. The Standard for Final Approval of Class Action Settlements

Strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). It is well established in the Ninth Circuit that “voluntary conciliation and settlement are the preferred means of dispute resolution.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Indeed, “there is an overriding public interest in settling and quieting litigations,” and this is “particularly true in class action suits.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). Class-action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. Settlements of complex cases such as this one greatly contribute to the efficient utilization of scarce judicial resources and achieve the speedy resolution of claims. *See, e.g., Garner v. State Farm Mut. Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) (“Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain and substantial recovery for the Plaintiff class.”) (citation and internal quotation marks omitted).

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of the compromise of claims brought on a class basis. The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement is “fundamentally fair, adequate, and reasonable.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F. 3d 454, 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 997 (N.D. Cal. 2015) (J. Chen) (same). In making this determination, courts in the Ninth Circuit consider and balance a number of factors, including:

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

1 governmental participant; and (8) the reaction of class members to the proposed
2 settlement.⁴

3 *See Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76 (9th Cir. 2004) (citing *Hanlon*,
4 150 F.3d at 1026); *Officers for Justice*, 688 F.2d at 625 (same); *In re TracFone*, 112 F. Supp. 3d
5 at 998 (J.Chen) (same). Courts have also considered “the role taken by the lead plaintiff in [the
6 settlement] process, a factor somewhat unique to the PSLRA.” *In re Portal Software, Inc. Sec.*
7 *Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007) (internal
8 citation omitted). Not all of these factors will apply to every class action settlement and, under
9 certain circumstances, one factor alone may prove determinative in finding sufficient grounds for
10 court approval. *See Torrasi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

11 The determination of whether a settlement is fair, adequate and reasonable is committed
12 to the Court’s sound discretion. *See Mego*, 213 F.3d at 458 (“Review of the district court’s
13 decision to approve a class action settlement is extremely limited.”) (citing *Linney v. Cellular*
14 *Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998)). In applying the pertinent factors, the Court
15 need not reach conclusions about the merits of the case, in part because the Court will be called
16 upon to decide the merits if the action proceeds. *See Officers for Justice*, 688 F.2d at 625
17 (“[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
18 merits. . . . [I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and
19 expensive litigation that induce consensual settlements.”). The Court’s discretion in assessing
20 the fairness of the settlement is also circumscribed by “the strong judicial policy that favors
21 settlements, particularly where complex class action litigation is concerned.” *Linney v. Cellular*
22 *Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quoting *Officers for Justice*, 688 F.2d at
23 626); *Class Plaintiffs*, 955 F.2d at 1276 (same).

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27 ⁴ With respect to the seventh factor, there was no governmental investigation that assisted
28 with the investigation or prosecution of the Action. As to the eighth factor, Settlement Class
Members have until June 2, 2016 to request exclusion from the Settlement Class or object to the
matters to be considered during the Settlement Hearing. Lead Plaintiffs will file a reply brief
responding to any objections and addressing exclusion requests no later than June 9, 2016.

1 **B. Application of the Ninth Circuit’s Criteria Supports Final Approval of the**
2 **Settlement**

3 **1. The Strength of Lead Plaintiffs’ Case and Risks Associated with**
4 **Continued Litigation**

5 To determine whether the proposed Settlement is fair, reasonable and adequate, the Court
6 must balance the continuing risks of litigation against the benefits afforded to class members and
7 the immediacy and certainty of a substantial recovery. *See Mego*, 213 F.3d at 458. Although
8 Lead Plaintiffs believe that the case against Defendants is strong, that confidence must be
9 tempered by the fact that the Settlement is beneficial and that every case involves significant risk
10 of no recovery, particularly in a complex case such as the one at bar. There is no question that
11 Lead Plaintiffs would have confronted a number of challenges, including: establishing that
12 Defendants’ statements and omissions were false and misleading at the time they were made,
13 proving that Defendants acted with scienter, and proving loss causation as well as the appropriate
14 calculation of damages – each of which could have barred a recovery at trial. *See ATLAS v.*
15 *Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *3
16 (S.D. Cal. Nov. 4, 2009) (approving settlement where “litigating the complex securities fraud
17 class action to completion would have resulted in substantial delay and expense”).

18 **(a) Falsity Defenses**

19 Lead Plaintiffs faced substantial risks in proving that Defendants’ statements and alleged
20 omissions were false and misleading at the time that they were made or occurred. Gardner Decl.
21 ¶¶72-76. Defendants would likely argue that the statements contained in Vocera’s earnings calls,
22 releases, offering materials, and 10-K, including Vocera’s forecasts and guidance, and the
23 statements underlying those forecasts, such as predictions of growth and performance and the
24 anticipated effects of the ACA, are protected from liability by the PSLRA “safe harbor.” *Id.* ¶73.
25 If the protection applied, Lead Plaintiffs would have to prove Defendants’ actual knowledge to
26 overcome the defense. Defendants would also argue that this is not a restatement case and at no
27 time did Lead Plaintiffs allege that Vocera adjusted its financial results or backtracked on its
28 historical accounts. *Id.* ¶74. Accordingly, Lead Plaintiffs would face a challenge in rebutting
29 Defendants’ argument that the misstatements could not have been false or misleading when

1 made. Defendants would also likely argue that Lead Plaintiffs' claim that Defendants misled the
2 market by improperly accelerating backlog to meet public guidance in order to maintain the
3 appearance of a healthy company is unsupported by any evidence or a meaningful pattern, and,
4 in any event, accelerating the Company's backlog is valid and consistent with normal industry
5 practice. *Id.* ¶¶75-76. While Lead Plaintiffs believe they would be successful at summary
6 judgment or a trial, they also recognize there were hurdles to proving the falsity of the alleged
7 misstatements. *See Destefano v. Zynga*, No. 12-cv-04007-JSC, 2016 WL 537946, at *10 (N.D.
8 Cal. Feb. 11, 2016) (approving settlement and noting that the risks of proving liability weigh in
9 favor of approval where proving the falsity of the alleged misstatements will be difficult).

10 **(b) Scienter Defenses**

11 Even if Defendants' statements and alleged omissions were found by a jury to have been
12 false, Defendants cannot be liable under the Securities Exchange Act of 1934 (the "Exchange
13 Act") for such falsity, unless Defendants acted with scienter—*i.e.*, knowledge of such falsity, or
14 reckless disregard for whether the statements were true or false. Here, Defendants would have
15 denied that Lead Plaintiffs could prove that there was an intentional or severely reckless
16 violation of the Exchange Act. Gardner Decl. ¶¶77-80. In particular, Defendants would have
17 argued that the testimony of confidential witnesses could not prove a single specific fact
18 suggesting Defendants' knowledge of or participation in any sort of fraudulent activity. *Id.* ¶78.
19 Additionally, Defendants would argue that Lead Plaintiffs cannot rely on the stock sales of
20 Zollars and Lang during the Class Period, to further prove scienter, given that although Zollars
21 and Lang sold shares during the Class Period, these sales only represented 23% and 46% of their
22 respective holdings, and that such amounts are not indicative of scienter. *Id.* ¶80. Defendants
23 would also argue that the sales by Zollars and Lang occurred in connection with the September
24 7, 2012 secondary public offering ("SPO") and partial release of the lock-up in late 2012 and are
25 therefore not suspicious in timing given that it is only natural they would want to sell some
26 shares and diversify once the lock-up expired. *Id.*

1 (c) Loss Causation and Disaggregation Defenses

2 Another risk in continuing the litigation is the difficulty of proving loss causation and
3 damages, which would be hotly contested by Defendants at summary judgment, in pretrial
4 *Daubert* motions, and at trial. The United States Supreme Court has confirmed that the law
5 requires that “a plaintiff prove that the defendant’s misrepresentation (or other fraudulent
6 conduct) proximately caused the plaintiff’s economic loss.” *Dura Pharms., Inc. v. Broudo*, 544
7 U.S. 336, 346 (2005). Principally, Defendants would likely have asserted that any potential
8 investment losses suffered by Lead Plaintiffs and the Settlement Class were not caused by the
9 disclosure of any alleged fraud. In that regard, and as set forth in great detail in the Gardner
10 Declaration (*see* ¶¶82-84), Defendants were expected to argue that nothing in the alleged
11 disclosures of February 27, 2013 or May 2, 2013 tied the Company’s disappointing results to any
12 sort of improprieties concerning Vocera’s backlog practices, and that any impact of the ACA or
13 the BCA could not have been anticipated. With respect to the BCA, Defendants would argue
14 that it was not until December 2012 that Congress appeared deadlocked and automatic budget
15 cuts did not begin in earnest until March 2013. *Id.* ¶83. If this position prevailed, the class
16 claims would have been dismissed entirely. *See Zynga*, 2016 WL 537946, at *10 (approving
17 settlement and noting the particular challenges of proving loss causation).

18 The issue of disaggregation would also be hotly contested. As set forth in the Gardner
19 Declaration, Lead Plaintiffs’ consulting damages expert estimated that the Settlement Class
20 sustained maximum aggregate damages between the range of approximately \$100 million to
21 \$225 million, assuming that 100% of the two alleged stock drops were proven to relate to
22 revelations of the alleged fraud.⁵ The range in estimate is also a function of when the “locked-
23 up” shares from Vocera’s March 28, 2012 IPO (“IPO”) and the SPO are assumed to have begun
24 trading. Gardner Decl. ¶¶8, 87. Defendants would have likely asserted that, at most, assuming
25 that the declines following both alleged corrective disclosures could be attributed in their entirety
26 to information that should have been revealed earlier, maximum potential damages were

27 _____
28 ⁵ If only the May 2, 2013 disclosure were established at trial, Lead Plaintiffs’ expert estimated maximum aggregate damages in the range of approximately \$80 million to \$170 million. Gardner Decl. ¶87.

1 approximately \$145 million. *Id.* ¶85. However, this number, according to Defendants, vastly
2 overstates the potentially recoverable damages given the strong evidence against loss causation,
3 and given that only a portion, if any, of the stock price declines on February 28, 2013 and May 3,
4 2013 could be attributed to corrective information. *Id.* For instance, Defendants would likely
5 argue that the majority of the price decline on February 28, 2013 related to information unrelated
6 to the alleged fraud, and that with respect to the May 2, 2013 disclosure, Defendants would
7 likely focus on the fact that the Company also announced a substantial reduction in its full year
8 guidance, and therefore, most, if not all, of the price decline was unrelated to the alleged fraud.
9 Defendants also may have argued that if the February 27, 2013 announcement fully disclosed
10 issues related to the BCA and backlog, then none of the May 3, 2013 decline could also be
11 attributed to those issues, which would have substantially decreased overall damages. *Id.* ¶86.

12 Resolution of these damages issues would no doubt involve the testimony of expert
13 witnesses and the Parties would end up in a “battle of the experts” where it would be impossible
14 to predict with any certainty which arguments would find favor with a jury. *See, e.g., Nguyen v.*
15 *Radiant Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *2 (C.D.
16 Cal. May 6, 2014) (approving settlement in securities case where “[p]roving and calculating
17 damages required a complex analysis, requiring the jury to parse divergent positions of expert
18 witnesses in a complex area of the law” and “[t]he outcome of that analysis is inherently difficult
19 to predict and risky”) (citation omitted); *In re Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735,
20 744 (S.D.N.Y 1985), *aff’d*, 798 F.2d 735, 744-45 (2d Cir. 1986) (approving settlement where “it
21 is virtually impossible to predict with any certainty which testimony would be credited, and
22 ultimately, which damages would be found to have been caused by actionable, rather than the
23 myriad nonactionable factors such as general market conditions”). The outcome could well have
24 depended on whose testifying expert the jury believed or even whether the jury was able to
25 follow the economic theories used by the experts. The Settlement eliminates the risk that the
26 jury might award less than the amount of the Settlement or nothing at all to the Settlement Class.

27 In sum, as a result of the availability to Defendants of the various defenses described,
28 *supra* and in the Gardner Declaration, it is possible that, even if a court or a jury were to find that

1 Defendants knowingly made misleading statements, Settlement Class Members would recover
2 no damages, or damages in an amount smaller than the amount of the Settlement.

3 **2. The Expense and Likely Duration of Further Litigation**

4 Final approval is also supported by the expense and likely duration of continued
5 litigation. *See Torrissi*, 8 F.3d at 1376 (“the cost, complexity and time of fully litigation the case
6 all suggest that this settlement was fair”). “In most situations, unless the settlement is clearly
7 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with
8 uncertain results.” *Nat’l Rural Telecomm. Coop*, 221 F.R.D. at 526. Here, the expense and
9 duration of preparing and trying the case before a jury and the subsequent motion practice on a
10 likely appeal of the Court’s decision on the motion to dismiss, class certification, summary
11 judgment, post-trial motions, and a jury verdict would be significant. Barring a settlement, there
12 is no question that this case would be litigated for years, taking a considerable amount of court
13 time and costing millions of additional dollars, with the possibility that the end result would be
14 no better for the class, and might even be worse. *See Zynga*, 2016 WL 537946, at *10
15 (“continuing litigation would not only be costly – representing expenses that would take away
16 from any ultimate classwide recovery – but would also delay resolution and recovery for
17 Settlement Class Members”); *cf Glickenhau & Co., et al. v. Household Int’l, Inc., et al.*, 787
18 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of \$2.46 billion after 13 years of
19 litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp., Inc. v.*
20 *First Derivative Traders*, 564 U.S. 135 (2011)).

21 The Settlement, therefore, provides sizeable and tangible relief to the Settlement Class
22 now, without subjecting Settlement Class Members to the risks, duration and expense of
23 continuing litigation. This factor weighs strongly in favor of final approval of the Settlement

24 **3. The Risk of Maintaining Class-Action Status Through Trial**

25 While Lead Plaintiffs are confident that they would have prevailed on their motion for
26 class certification, which was pending at the time the Parties agreed to settle, the outcome of
27 such a contested motion was far from certain. Even if Lead Plaintiffs prevailed, there is no doubt
28 that Defendants would have filed a Rule 23(f) petition for an interlocutory appeal of the decision.

1 Even if Lead Plaintiffs defeated a Rule 23(f) petition, under Rule 23(c)(1)(C), a Court's prior
2 grant of certification "may be altered or amended before final judgment." It is possible,
3 therefore, that the class could be decertified or modified if the litigation were to continue. *See In*
4 *re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) (noting that even if a
5 class is certified, "there is no guarantee the certification would survive through trial, as
6 Defendants might have sought decertification or modification of the class").

7 **4. The Amount Offered in the Settlement**

8 In evaluating the fairness of a settlement, a fundamental question is how the value of the
9 settlement compares to the amount the class potentially could recover at trial, discounted for risk,
10 delay and expense. In this regard, "[i]t is well-settled law that a cash settlement amounting to
11 only a fraction of the potential recovery does not per se render the settlement inadequate or
12 unfair." *Mego*, 213 F.3d at 459 (citation omitted). Indeed, "[t]here is a range of reasonableness
13 with respect to a settlement – a range which recognizes the uncertainties of law and fact in any
14 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
15 completion[.]" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005).

16 The proposed \$9 million Settlement is well within the range of reasonableness in light of
17 the best possible recovery at trial and the risks of continued litigation. As noted above,
18 according to analyses prepared by Lead Plaintiffs' consulting damages expert, the Settlement
19 Class sustained maximum aggregate damages in the range of approximately \$100 million to
20 \$225 million, assuming that 100% of the two alleged stock drops were related to revelations of
21 the alleged fraud, with \$100 million being the more realistic maximum valuation.⁶ The \$9
22 million Settlement thus represents approximately 4% to 9% of this maximum estimated damages
23 amount. *See Gardner Decl.* ¶¶8-9.

24 Under either analysis, the percentages fall well within the range of approval, and courts
25 have generally approved settlements in cases since the passage of the Private Securities
26

27 ⁶ As noted earlier, if only the May 2, 2013 disclosure were established at trial, Lead
28 Plaintiffs' expert estimated maximum aggregate damages in the range of approximately \$80
million to \$170 million, in which case the Settlement Amount would represent 5% to 11% of
estimated damages. *Gardner Decl.* ¶87.

1 Litigation Reform Act of 1995 (“PSLRA”), that recover a comparable or far smaller percentage
2 of maximum damages. *See McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG-
3 JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a \$12 million settlement
4 recovering 7% of estimated damages was fair and adequate); *Omnivision*, 559 F. Supp. 2d at
5 1042 (\$13.75 million settlement yielding 6% of potential damages after deducting fees and costs
6 was “higher than the median percentage of investor losses recovered in recent shareholder class
7 action settlements”) (citation omitted); *Int’l Brotherhood of Elec. Workers Local 697 Pension*
8 *Fund v. Int’l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D.
9 Nev. Oct. 19, 2012) (approving \$12.5 million settlement recovering about 3.5% of the maximum
10 damages that plaintiffs believe could be recovered at trial and noting that the amount is within
11 the median recovery in securities class actions settled in the last few years).

12 Moreover, the Settlement is above the median reported settlement amount in 2015, which
13 was \$6.1 million. *See Gardner Decl.* ¶7; Ex. 3 at 6.

14 Therefore, the Settlement is a favorable result that falls well within the range of
15 reasonableness.

16 **5. The Extent of Discovery Completed and the Stage of the Proceedings**

17 The stage of the proceedings and the amount of discovery completed are also factors
18 courts consider in determining the fairness, reasonableness and adequacy of a settlement. *See*
19 *Mego*, 213 F.3d at 459. When the Parties agreed to the Settlement, Lead Plaintiffs had litigated
20 the motions to dismiss the Complaint, moved for class certification, and were in the process of
21 merits discovery.

22 Merits discovery involved, among other things, serving document requests on Defendants
23 and subpoenas on non-parties; numerous meet and confer sessions with Defendants as to the
24 scope and manner of Defendants’ document production; the review and analysis of
25 approximately 771,000 pages of core documents produced by Defendants and non-parties; and
26 one 30(b)(6) deposition taken by Lead Counsel of the Company’s current CEO. *Gardner Decl.*
27 ¶¶41-51, 55. Additionally, Lead Counsel defended two 30(b)(6) depositions of Lead Plaintiffs.
28 *Id.* ¶¶52-54.

1 In connection with class certification, Lead Plaintiffs filed an expert report on market
2 efficiency in support of their July 15, 2015 motion for class certification, as well as a rebuttal
3 expert report. *Id.* ¶¶56-59, 61.

4 The above is in addition to the informal discovery conducted by Lead Counsel prior to
5 filing the Complaint, which involved, among other things, review and analysis of: press releases,
6 news articles, and other public statements issued by or concerning Defendants, research reports
7 issued by financial analysts concerning the Company, industry specific legislation, including the
8 ACA and BCA, and internal Vocera documents provided by two former Vocera employees; as
9 well as locating and contacting dozens of former Vocera employees and other witnesses with
10 relevant knowledge, with the accounts of four former employees included in the Complaint as
11 confidential witness accounts. *Id.* ¶¶20-24.

12 Furthermore, the Parties engaged in a mediation session before an experienced mediator
13 that was preceded by the exchange of mediation statements and numerous exhibits detailing the
14 Parties' respective positions and supporting evidence. *Id.* ¶¶62-63.

15 In short, Lead Plaintiffs had a full understanding of the likelihood of success and the
16 potential recovery at trial at the time the Settlement was agreed to. *See Zynga*, 2016 WL 537946,
17 at *12 (noting that the extent of discovery completed and stage of proceedings supports final
18 approval of settlement where plaintiffs engaged in a pre-filing investigation, opposed defendants'
19 motions to dismiss and a motion for reconsideration, worked with consultants, propounded and
20 responded to some discovery, and prepared and participated in mediation session); *Portal*
21 *Software*, 2007 WL 4171201, at *4 (“The settlement reflects three and a half years of completed
22 work including pre-filing investigation, locating and interviewing over twenty-one witnesses, . . .
23 and plaintiff’s analysis of defendants’ motion for summary judgment . . . As a result, the true
24 value of the class’s claims were well known.”); *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-
25 09405-CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement
26 where record established that “all counsel had ample information and opportunity to assess the
27 strengths and weaknesses of their claims and defenses”); *Redwen v. Sino Clean Energy, Inc.*, No.
28 11-3936, 2013 U.S. Dist. LEXIS 100275, at *22 (C.D. Cal. July 9, 2013) (settlement approved

1 when, as here, “the parties have spent a significant amount of time considering the issues and
2 facts in this case and are in a position to determine whether settlement is a viable alternative”).
3 This factor supports final approval of the Settlement.

4 **6. The Experience and Views of Counsel**

5 Experienced counsel, negotiating at arm’s-length, have weighed the factors discussed
6 above and endorse the Settlement. As courts have stated, the views of the attorneys actively
7 conducting the litigation and who are most closely acquainted with the facts of the underlying
8 litigation, are entitled to “great weight.” *Nat’l Rural Telecomm.*, 221 F.R.D. at 528; *see also*
9 *Zynga*, 2016 WL 537946, at *13 (“A district court is entitled to give consideration to the opinion
10 of competent counsel that the settlement is fair, reasonable, and adequate.”) (internal quotation
11 omitted).

12 Lead Counsel firmly believes that the Settlement is fair, adequate and reasonable, and
13 particularly so in view of the risks, burdens and expense of continued litigation. Further, it is
14 respectfully submitted that plaintiffs’ counsel are experienced and able lawyers in this area of
15 practice (*see* Gardner Decl. ¶121 and Exs. 5-H and 6-E) and “[t]here is nothing to counter the
16 presumption that Lead Counsel’s recommendation is reasonable.” *Omnivision*, 559 F. Supp. 2d
17 at 1043. Accordingly, this factor strongly favors approval of the Settlement.

18 **7. The Settlement is Not the Product of Collusion**

19 Another factor is whether there is any evidence that the settlement is the result of
20 collusion. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011);
21 *see also Mego*, 213 F.3d at 458. “The involvement of experienced class action counsel and the
22 fact that the settlement agreement was reached in arm’s length negotiations, after relevant
23 discovery had taken place create a presumption that the agreement is fair.” *Linney v. Cellular*
24 *Alaska P’Ship*, No. C 96-3008 DLJ, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), *aff’d*, 151
25 F.3d 1234 (9th Cir. 1998). The presumption is entirely proper here. The Settlement is the
26 product of extensive and informed arm’s-length negotiations with the assistance of United States
27 District Court Judge Layn R. Phillips (Ret.) (“Judge Phillips”), a well-respected and highly
28 experienced mediator. *See Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 WL 1114010,

1 at *4 (N.D. Cal. Apr. 13, 2007) (“[t]he assistance of an experienced mediator in the settlement
 2 process confirms that the settlement is non-collusive”); *ATLAS v. Accredited Home Lenders*
 3 *Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *3 (S.D. Cal. Nov. 4, 2009)
 4 (“The settlement negotiations were also fair. They were closely supervised by the Honorable
 5 Layn Phillips (Ret.) and conducted at arm’s length by experienced and competent counsel.”); *see*
 6 *also In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008)
 7 (speaking of Judge Phillips, “the Court and the parties have had the added benefit of the insight
 8 and considerable talents of a former federal judge who is one of the most prominent and highly
 9 skilled mediators of complex actions”).

10 Finally, the recommendation of Lead Plaintiffs, sophisticated institutional investors, also
 11 supports the fairness of the Settlement. *See* Exs. 1 ¶5 and 2 ¶5. Courts generally give weight to
 12 the lead plaintiffs in evaluating the process of the settlement as well as its substantive fairness.
 13 *See Portal Software*, 2007 WL 4171201, at *5 (“[F]actor (10), the role taken by the lead plaintiff
 14 in the settlement process, supports settlement because lead plaintiff was intimately involved in
 15 the settlement negotiations.”).

16 Accordingly, this factor, like the others discussed above, strongly favors approval of the
 17 Settlement. Lead Plaintiffs respectfully submit that the Settlement is fundamentally fair,
 18 adequate and reasonable and should be approved.

19 **II. THE PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND IS FAIR,**
 20 **ADEQUATE AND REASONABLE AND SHOULD BE APPROVED**

21 The standard of approval of a plan of allocation in a class action under Rule 23 of the
 22 Federal Rules of Civil Procedure is the same as the standard applicable to the settlement as a
 23 whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs*, 955 F.2d at 1284;
 24 *Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only have a reasonable basis,
 25 particularly if recommended by experienced class counsel. *In re Heritage Bond Litig.*, No. 02-
 26 ML-1475, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005). Here, Lead Counsel prepared
 27 the Plan of Allocation after careful consideration and with the assistance of a consulting damages
 28 expert. Gardner Decl. ¶¶91-95. The Plan of Allocation was fully described in the Notice. *See*
 Ex. 4-A at 9-12. A total of 19,847 copies of the Notice have been mailed to potential Settlement

1 Class Members and, as of the filing of this motion, no Settlement Class Member has filed an
2 objection to it. Ex. 4 ¶¶6, 15.

3 “[A] plan of allocation . . . fairly treats class members by awarding a pro rata share to
4 every Authorized Claimant, even as it sensibly makes interclass distinctions based upon, inter
5 alia, the relative strengths and weaknesses of class members’ individual claims and the timing of
6 purchases of the securities at issue.” *Redwen*, 2013 U.S. Dist. LEXIS 100275, at *29 (citation
7 and internal quotation marks omitted). Here, the Plan of Allocation provides for distribution of
8 the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on “Recognized
9 Loss” formulas tied to liability and damages. These formulas consider the amount of alleged
10 artificial inflation in the prices of Vocera publicly traded common stock and/or call options (or
11 deflation in the prices of put options), as quantified by Lead Plaintiffs’ expert. *See* Ex. 4-A at 9-
12 12. Lead Plaintiffs’ consulting damages expert analyzed the movement in the prices of Vocera
13 securities and took into account the portion of the price drops attributable to the alleged fraud.
14 Gardner Decl. ¶93. Claimants will be eligible for a payment based on when they purchased,
15 held, or sold their Vocera securities.

16 Accordingly, for all of the reasons set forth herein and in the Gardner Declaration, the
17 Plan of Allocation is fair, reasonable and adequate and should be approved.

18 **III. THE COURT SHOULD GRANT FINAL CLASS CERTIFICATION FOR** 19 **SETTLEMENT PURPOSES**

20 In presenting the proposed Settlement to the Court for preliminary approval, Lead
21 Plaintiffs requested that the Court preliminarily certify the Settlement Class for settlement
22 purposes so that notice of the proposed Settlement, the final approval hearing and the rights of
23 Settlement Class Members to request exclusion, object, or submit proofs of claim could be
24 issued. In its Preliminary Approval Order, entered on March 4, 2016, this Court preliminarily
25 certified the Settlement Class. ECF No. 198.

26 Nothing has changed to alter the propriety of the Court’s certification and no potential
27 Settlement Class Member has objected to class certification. Accordingly, and for all the reasons
28 stated in Lead Plaintiffs’ Notice of Unopposed Motion and Unopposed Motion for Preliminary
Approval of Proposed Class Action Settlement and Memorandum of Points and Authorities in

1 Support Thereof (ECF No. 185), incorporated herein by reference, Lead Plaintiffs now request
2 that the Court: (i) finally certify the Settlement Class for purposes of carrying out the Settlement
3 pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) appoint Lead Plaintiffs as Class Representatives;
4 and (iii) appoint Lead Counsel as Class Counsel. *See, e.g., Boring v. Bed Bath & Beyond*, No.
5 12-cv-05259-JST, 2014 WL 2967474, at *2 (N.D. Cal. June 30, 2014) (“For the reasons
6 discussed in the Court’s Preliminary Approval Order, the Court finds that the requirements for
7 certification of the conditionally certified settlement class have been met, and that the
8 appointment of . . . Class Representative and . . . Class Counsel is proper.”).

9 **CONCLUSION**

10 For the foregoing reasons, Lead Plaintiffs respectfully requests that the Court: (i) grant
11 final approval of the Settlement; (ii) approve the Plan of Allocation as fair, reasonable and
12 adequate; (iii) find that notice to the Settlement Class was provided as required and to the
13 satisfaction of due process and the PSLRA; (iv) finally certify the Settlement Class; and
14 (v) appoint Lead Plaintiffs as Class Representatives and Lead Counsel as Class Counsel.

15 Dated: May 19, 2016

Respectfully submitted,

LABATON SUCHAROW LLP

17 /s/ Jonathan Gardner

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 19, 2016

/s/ Jonathan Gardner
JONATHAN GARDNER

1 **Mailing Information for a Case 3:13-cv-03567-EMC**

2 ***Brado v. Vocera Communications Inc et al***

3 **Electronic Mail Notice List**

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Manual Notice List

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(No manual recipients)