IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE NEUSTAR, INC. SECURITIES LITIGATION	Case No. 14-CV-00885 JCC TRJ

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF NET SETTLEMENT FUND, AND FOR FINAL CLASS CERTIFICATION

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Preliminary Statement

Pursuant to Rules 23(a), (b)(3) and (e) of the Federal Rules of Civil Procedure, Lead Plaintiff Indiana Public Retirement System ("Lead Plaintiff" or "INPRS"),[1] on behalf of the proposed Settlement Class, respectfully submits this memorandum of law in support of its motion for final approval of the proposed Settlement of this class action, approval of the Plan of Allocation of the Net Settlement Fund, and final certification of the Settlement Class.

The Settlement, which was negotiated on an informed basis and under the direct supervision of a qualified mediator, provides for the gross payment of Two Million Six Hundred Twenty-Five Thousand Dollars in cash ($2,625,000.00) for the benefit of the Settlement Class. The Settlement represents an excellent result in light of the risks, costs and duration of continued litigation—in particular, the significant risk that the U.S. Court of Appeals for the Fourth Circuit would affirm this Court's opinion dismissing the Complaint. Even if the Parties were to proceed with the appeal and the Fourth Circuit were to reverse, success following summary judgment and at trial would not be assured, and any future recovery would be offset by mounting litigation costs. The Settlement, however, provides cash relief to the Settlement Class now. Lead Plaintiff accordingly submits that the Settlement is fair, reasonable, and adequate and should be approved.

The Court's Preliminary Approval Order and the Pre-Hearing Notice Program

Following a hearing held on September 17, 2015 (the "Preliminary Approval Hearing"), the Court preliminarily approved the Settlement, granted preliminary class certification, and ordered dissemination of the Notice (defined below) to the Settlement Class. *See* Preliminary Approval Order, ECF No. 53 (Sept. 22, 2015). The Court also issued a detailed Memorandum

[1] Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated as of July 28, 2015 (ECF No. 48-2, the "Settlement Agreement").

Opinion explaining the Court's reasoning. *In re Neustar, Inc. Sec. Litig.*, No. 14 CV 885 (JCC/TRJ), 2015 WL 5674798 (E.D. Va. Sept. 23, 2015) (Cacheris, J.); ECF No. 54.

Pursuant to and in compliance with the Preliminary Approval Order, beginning on October 6, 2015, A.B. Data, Ltd. ("A.B. Data"), the Court-appointed Claims Administrator, caused the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and Proof of Claim and Release form (together, the "Notice Packet") to be mailed to all Settlement Class Members who could be identified with reasonable effort. *See* Ex. 2 (Affidavit of Adam D. Walter of A.B. Data) ¶¶ 2-9.[2] A total of 31,297 Notice Packets have been mailed as of October 28, 2015. *Id.* ¶ 9.

On or about October 6, 2015, the Notice and Proof of Claim and Release form were posted on the case-dedicated website established by A.B. Data for purposes of this Settlement, *id.* ¶ 13, as well as the website of Lead Counsel. Counsel Decl. ¶¶ 9-10. Accordingly, the Notice and Proof of Claim were made publicly available 22 days before the deadline for Settlement Class Members to object or opt-out of the Action, and 43 days before the Settlement Hearing.

The Notice provides means by which Settlement Class Members or other interested persons can call, e-mail, or write to A.B. Data or Lead Counsel with inquiries. As of October 6, 2015, the toll-free telephone line staffed by A.B. Data has received 78 calls from potential Settlement Class Members and other interested persons. Ex. 2 ¶¶ 11-12.

[2] Citations to "Ex. ___" herein refer to exhibits annexed to the accompanying Declaration of David J. Goldsmith in Support of (I) Lead Plaintiff's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation of Net Settlement Fund, and for Final Class Certification and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Counsel Decl." or "Counsel Declaration").

Also on October 20, 2015, the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Summary Notice") was published in *Investor's Business Daily* and over *PR Newswire*, a national business-oriented wire service. *Id.* ¶ 10 and Exs. B and C thereto.

ARGUMENT

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

A. Standards for Approval of Class Action Settlements

Rule 23(e) provides that a class action may be settled only with the approval of the Court, and only on a finding, after reasonable notice and a hearing, that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see In re MicroStrategy Inc. Sec. Litig.*, 150 F. Supp. 2d 896, 903-04 (E.D. Va. 2001) ("Simply put, the Court must assess whether the settlement here is both fair and adequate under the circumstances.").

As a policy matter, courts favor the settlement of disputed claims, particularly in complex class actions. *See Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 08cv1310 (AJT/JFA), 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) ("[T]here is an overriding public interest in favor of settlement, particularly in class action suits."); *South Carolina Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) ("The voluntary resolution of litigation through settlement is strongly favored by the courts.").

The Fourth Circuit determines whether a proposed settlement meets the requirements of Rule 23 by considering two elements: "fairness," which focuses on whether the proposed settlement was negotiated at arm's-length (procedural fairness); and "adequacy," which focuses on whether the consideration provided to class members is sufficient (substantive fairness). *In re*

Jiffy Lube Sec. Litig., 927 F.2d 155, 158-59 (4th Cir. 1991); *see also In re MicroStrategy Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001) (noting Fourth Circuit in *Jiffy Lube* "adopted a bifurcated analysis, separating the inquiry into a settlement's 'fairness' from the inquiry into a settlement's 'adequacy'"); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009).

B. Each of the *Jiffy Lube* Factors Supports Approval of the Proposed Settlement

1. The Settlement Is Fair

In determining whether a proposed settlement is fair, district courts within this Circuit consider four factors: "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of securities class action litigation." *Jiffy Lube*, 927 F.2d at 158-59; *see also MicroStrategy*, 148 F. Supp. 2d at 664; *Mills*, 265 F.R.D. at 255.

(a) There Is No Trace of Collusion Among the Parties, and Lead Plaintiff Entered Into the Settlement With a Solid Grasp of the Merits and Value of the Claims

"Looking to the first factor, the Court considers whether the case has progressed far enough to dispel any wariness of 'possible collusion among the settling parties.'" *Neustar*, 2015 WL 5674798, at *10 (quoting *Mills*, 265 F.R.D. at 254). "Like the first factor, the second factor—evaluating the extent of discovery that has been conducted—enables the Court to ensure that the case is well-enough developed for Class Counsel and Lead Plaintiffs alike to appreciate the full landscape of their case when agreeing to enter into this Settlement." *Mills*, 265 F.R.D. at 254. No minimum or definitive amount of discovery must be undertaken, however. *See Jiffy Lube*, 927 F.2d at 159.

As this Court correctly noted in its Opinion granting preliminary approval, "[s]ince the initial complaint was filed, Lead Plaintiff has filed an amended complaint, argued at the motion to dismiss stage, noticed an appeal, and engaged Defendants in settlement mediation. These adversarial encounters dispel any apprehension of collusion between the parties." *Neustar*, 2015 WL 5674798, at *10. Nothing has occurred since to cast doubt on this conclusion.

Regarding the extent of discovery, Lead Counsel's investigative efforts before and after the Complaint was filed ensured that Lead Plaintiff was sufficiently informed of the strengths and weaknesses of the claims and defenses in this case. In preparing the Amended Complaint, Lead Counsel reviewed not only all of Neustar's relevant SEC filings, press releases, and other public statements, but also the entire, voluminous public record filed with the Federal Communications Commission ("FCC") concerning the bidding and selection process for the next Local Number Portability Administrator ("LNPA").[3] Lead Counsel reviewed all available media reports concerning the bidding and selection process, including all of the reports published by *The Capitol Forum.* (Indeed, Lead Counsel purchased an expensive subscription to *The Capitol Forum* to ensure continuing access to all of its Neustar and LNPA reporting.) Lead Counsel also had numerous communications with staff at *The Capitol Forum* in an effort to learn additional nonpublic facts about Neustar and the bidding process and to put its reporting into context. Lead Counsel had also consulted with a damages and causation expert and reviewed various data and other information concerning Neustar stock. Further, Lead Counsel's in-house investigators

[3] *In re Telcordia Techs., Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Admin.; Petition of Telcordia Techs., Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Admin., and to End the NAPM LLC's Interim Role in Number Portability Admin. Contract Mgmt.; Telephone Number Portability,* WC Dkt. Nos. 07-149 & 09-109, CC Dkt. No. 95-116 (F.C.C.).

spoke with 21 former Neustar employees, and conducted an in-person follow-up interview of two of them in Northern California.

After the Complaint was filed, and through preparation for the mediation held on May 19, 2015, Lead Counsel continued to followed the proceedings before the FCC. Lead Counsel observed the FCC's March 26, 2015 Open Meeting in which the FCC approved the NANC's recommendation to select Telcordia as the next LNPA, and reviewed the FCC's 94-page Order issued the next day (the "FCC Order"). Lead Counsel also had its expert prepare a robust and sophisticated market efficiency, loss causation and damages analysis for settlement purposes. *See* Counsel Decl. ¶¶ 55-56.

These investigative efforts support approval of the Settlement. *See Jiffy Lube*, 927 F.2d at 159 (affirming approval of settlement reached at early stage in litigation and prior to any formal discovery); *MicroStrategy*, 148 F. Supp. 2d at 664-65 ("plaintiffs have conducted sufficient informal discovery and investigation to. . . evaluate [fairly] the merits of Defendants' positions during settlement negotiations") (internal citation omitted).

(b) The Settlement Is the Product of Arm's-Length Negotiations Facilitated By an Informed and Experienced Mediator

The third *Jiffy Lube* fairness factor asks the Court to evaluate the conditions and circumstances surrounding the settlement negotiations between counsel. *See Mills*, 265 F.R.D. at 255. "The objective of this factor is to ensure that 'counsel entered into settlement negotiations on behalf of their clients after becoming fully informed of all pertinent factual and legal issues in the case.'" *Id*. (quoting *Stone*, 749 F. Supp. at 1424); *see also MicroStrategy*, 148 F. Supp. 2d at 665 ("Counsel for both sides of this lawsuit participated in numerous meetings and extensive and intensive discussions extending over a period of months, with plaintiffs' lead counsel pressing their belief in the strength of their case on the merits.").

Here, the Settlement is the product of informed arm's-length negotiations. The Parties were first directed to participate in a mediation conference before a Senior Resident Circuit Mediator for the Court of Appeals. After two conferences with the Circuit Mediator, the Parties agreed to proceed before a private mediator. On May 19, 2015, Lead Counsel and Defendants' Counsel participated in a day-long mediation session before Bruce A. Friedman, Esq., a neutral affiliated with Judicial Arbitration and Mediation Services (JAMS). Prior to the mediation, the Parties submitted comprehensive mediation statements to Mr. Friedman. Lead Plaintiff also submitted a confidential loss causation and damages report. During the mediation, the Parties made detailed presentations that focused on their positions regarding liability and damages. *See* Counsel Decl. ¶¶ 44-48.

At the culmination of the day-long mediation session, Lead Counsel and Defendants' Counsel, on behalf of their respective clients who participated in person, reached an agreement-in-principle to settle the case. *Id*. ¶ 49. INPRS itself believes the Settlement is procedurally fair and endorses its approval by the Court. Ex. 3 (Declaration of Thomas Perkins), ¶ 4. The circumstances of the settlement negotiations strongly support a finding of fairness. *See Mills*, 265 F.R.D. at 255 (noting that the settlement was the product of a series of dealings between counsel for the parties who participated in lengthy mediation sessions before a mediator).

(c) Lead Counsel Is Experienced in Securities Class Action Litigation

"The final *Jiffy Lube* 'fairness' factor looks to the experience of Class Counsel in this particular field of law." *Mills*, 265 F.R.D. at 255. It is respectfully submitted that Labaton Sucharow LLP is among the nation's preeminent law firms in this area of practice and has served as lead or co-lead counsel on behalf of institutional investors in numerous class actions since the enactment of the PSLRA. *See Neustar*, 2015 WL 5674798, at *11 (noting that Lead Counsel is

"sufficiently experienced in this field of law to adequately represent the interests of class members" and its counsel are "affiliated with national law firms recognized for their experience in securities litigation and class representation"). The same is true of Liaison Counsel.

Lead Counsel accordingly submits that its view that the Settlement is fair and an excellent result for the Settlement Class is entitled to due consideration by the Court. *See Mills*, 265 F.R.D. at 255 (giving weight to views of experienced class counsel); *MicroStrategy*, 148 F. Supp. 2d at 665 (same).

2. The Settlement Is Adequate

In determining adequacy, courts within the Fourth Circuit consider the following factors: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Jiffy Lube*, 927 F.2d at 159.

(a) Lead Plaintiff Faced a Substantial Risk That the Fourth Circuit Would Affirm the Court's Opinion Dismissing the Complaint

The "first and second *Jiffy Lube* factors . . . compel the Court to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case." *Mills*, 265 F.R.D. at 256. Securities cases are 'notably difficult and notoriously uncertain.'" *Id*. at 255 (citing *Stone*, 749 F. Supp. at 1426). The Settlement Class would face an uphill battle before the Fourth Circuit. This is because this Court dismissed the Complaint on four independent grounds—loss causation, scienter, immaterial "puffery," and inactionable forward-looking statements—and the Court of Appeals potentially could affirm on any one of them. *See In re Neustar Sec. Litig*., 83 F. Supp.

3d 671, 679-86 (E.D. Va. 2015) (Cacheris, J.); *Neustar*, 2015 WL 5674798, at *11 ("Any one of these deficiencies would have been sufficient for the Court to dismiss the complaint.").

(i) Risks of Affirmance on Loss Causation

This Court appears to have viewed loss causation as the most important issue on Defendants' motion to dismiss. *See Neustar*, 83 F. Supp. 3d at 679 ("The Court turns first to loss causation, as this case presents a question as to whether there has been a realization of any loss."). Loss causation requires proof of a "causal connection between the material misrepresentation and the [economic] loss" investors suffered. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342 (2005).

In moving to dismiss, Defendants argued, among other things, that Lead Plaintiff cannot show loss causation with respect to the June 9, 2014 stock drop (confirming the inadvertent disclosure that the NANC had recommended Telcordia to replace Neustar as the LNPA) because the FCC had not yet acted on the NANC's recommendation of Telcordia. In particular, Defendants contended that any risk that Neustar would lose the NPAC Contracts to Telcordia had not yet materialized, and might never materialize. Counsel Decl. ¶ 30. The Court dismissed the Complaint on loss causation on that very basis—that the NANC's recommendation of Telcordia was not a final determination by the FCC. *See Neustar*, 83 F. Supp. 3d at 679-80. The Court cited a November 7, 2014 press release issued by the FCC that invited public comment on Neustar's February 2014 petition to compel the NAPM to allow additional bids, as support for its holding that there was a chance that Neustar may be awarded the contract. *See id*.

On appeal, Lead Plaintiff would argue that the FCC Order, which unanimously approved the NANC's recommendation during its Open Meeting on March 26, 2015, forecloses any argument that Lead Plaintiff cannot show loss causation. Lead Plaintiff would also argue that the

stock price increases on March 26 and 27 and the FCC Order support the allegations that the NANC recommendation and ensuing stock drop was a curative event that reflected the materialization of previously undisclosed risk and corrected the market price.[4] Additionally, Lead Plaintiff would argue that the FCC press release that the Court relied on should not have been considered by the Court as it was neither integral to, nor explicitly relied on, in the Complaint. *See Zak v. Chelsea Therapeutics Int'l, Ltd*., 780 F.3d 597, 607-08 (4th Cir. 2015) (reversing dismissal of securities fraud class action complaint where district court improperly considered and incorrectly interpreted publicly available documents that defendants attached to motion to dismiss).

Defendants would likely contend that the Court's reasoning on loss causation was correct, and that Lead Plaintiff failed to identify any concealed risk. Defendants would likely argue that the only risk at issue was the potential loss of the NPAC Contract, and that such risk was not hidden from shareholders. Defendants would likely point out, for example, that Neustar's 2012 Form 10-K Annual Report cautioned that the NAPM had initiated a selection process for the administration of NPAC services, that will be significant competition as a result of this process, and that Neustar may not win this competitive procurement if another provider offers to provide the same or similar services at a lower cost. Defendants also would likely contend that the March 2015 stock price movements cannot change the Court's conclusion that the January and June 2014 events were not materializations of a concealed risk that Neustar

[4] Lead Plaintiff would ask the Court of Appeals to take judicial notice of the FCC Open Meeting and the FCC Order, as well as the March 26 and 27, 2015 stock price movements, all of which are matters of government or public record and post-date the Court's opinion. *See Harris v. Norfolk S. Ry. Co.*, No. 13-1975, 2015 WL 1936843, at *11 n.8 (4th Cir. Apr. 30, 2015) (taking judicial notice of "commonly known facts" for first time on appeal). Lead Plaintiff could not assume, however, that the Court of Appeals would do so.

would lose the NPAC contracts. Lead Plaintiff faced a risk that the Fourth Circuit would affirm on loss causation grounds alone.

(ii) Risks of Affirmance on Immaterial "Puffery"

Proving a Section 10(b) violation "is a heavy burden, for it is always true that plaintiffs' risks of establishing liability are significant where fraud is alleged. Elements such as scienter, materiality of misrepresentation and reliance by the class members often present significant barriers to recovery in securities fraud litigation." *MicroStrategy*, 148 F. Supp. 2d at 666 (citation omitted).

This Court held that with regard to Defendants' alleged false and misleading statements of confidence in Neustar's competitive position in the LNPA selection process, "all of the statements at issue related to Neustar and its officers' confidence in its position in the market" and that these "'loosely optimistic' statements are vague enough that no reasonable investor would find them dispositive in the total mix of information available in deciding what stocks to purchase." *Neustar*, 83 F. Supp. 3d at 680. On appeal, Lead Plaintiff would argue that securing renewal of the NPAC Contract was a specific project of utmost importance to Neustar, for which Neustar had to submit highly complex written submissions and satisfy the FCC's objective criteria, and that, therefore, statements of confidence regarding a very specific goal are entirely different than generalized corporate boosterism. *See, e.g.*, *Carlucci v. Han*, 886 F. Supp. 2d 497, 521-22 (E.D. Va. 2012) (Cacheris, J.) (finding a misrepresentation concerning business negotiations potentially actionable because it related to possible events contingent on the actions of a third party) (citing *Dunn v. Borta*, 369 F.3d 421, 431 (4th Cir. 2004)).

Defendants have argued, however, and would likely argue on appeal, that courts have repeatedly dismissed claims based on corporate expressions of confidence, or the belief that a company's long track record would distinguish it from the competition, that were nearly identical

to the statements at issue here. *See, e.g.*, *Boca Raton Firefighters & Police Pension Fund v. Bahash*, 506 F. App'x 32, 37 (2d Cir. 2012) ("[T]he integrity, reliability, and credibility of [the defendant] has enabled us to compete successfully . . . and we are confident it will be so in the future.") (internal quotation marks omitted). Defendants would also point to decisions where, in their view, courts have found puffery where statements did concern a specific project. *See, e.g.*, *Hillson Partners Ltd. P'ship v. Adage, Inc.*, 42 F.3d 204, 213 (4th Cir. 1994) (finding statements were puffery even though they "refer[red] to specific, ongoing projects, not general financial projections"). Lead Plaintiff faced a risk that the Fourth Circuit would affirm on the puffery issue alone.

(iii) Risks of Affirmance on Inactionable Forward-Looking Statements

A forward-looking statement is subject to the PSLRA safe harbor when it is identified as such and is accompanied by "meaningful cautionary language identifying important factors that could cause actual results to differ materially from those in the forward-looking statements," or the plaintiff fails to prove that the statement was false. 15 U.S.C. § 78u-5(c)(1)(A)-(B). This Court found that the statements at issue are forward-looking, as they concern the '"plan and objectives of management for future operations,' namely, Neustar's objective of being awarded the new NPAC contracts and continuing as LNPA after June 2015." *Neustar*, 83 F. Supp. 3d at 682 (internal quotation omitted).

The Court also found that the statements were accompanied by meaningful cautionary language. For example, as described by the Court, Neustar's 2012 Form 10-K stated that the NAPM contracts "represent in the aggregate a substantial portion of our revenue, are not exclusive, and could be terminated or modified in ways unfavorable to us. These contracts are due to expire in June 2015 and we may not win a competitive procurement." *Id*. Lead Plaintiff

would argue on appeal that the concealed risk was not that Neustar might not prevail, but that Neustar might lose the NPAC Contract due to Defendants' own high-bid strategy and undisclosed reckless conduct. Therefore, the disclosures in the Form 10-K did not warn of the actual risks. *See, e.g.*, *Yanek v. Staar Surgical Co.*, 388 F. Supp. 2d 1110, 1123 (C.D. Cal. 2005) (warning that FDA approval process is "never certain" and that noncompliance with regulatory requirements can lead to "denial or withdrawal of pre-marketing approvals" did not meaningfully address specific risks related to defendants' FDA new drug application). Lead Plaintiff would also argue that Defendants softened the cautionary language during the Class Period when they knew that the risks to the NPAC Contract renewal were increasing. For example, Defendants changed the language in February 2014 to the less candid "[t]hese contracts are due to expire in June 2015 and are currently subject to a competitive proposal process." Additionally, Lead Plaintiff would argue that the Court's conclusion regarding cautionary language is belied by the sharp stock drops following the January and June 2014 curative disclosures.

The Court also found that Lead Plaintiff failed to allege facts showing that Defendants knew the statements were false. *See Neustar*, 83 F. Supp. 3d at 682-83. For example, Lead Plaintiff argued, and would continue to argue on appeal, that Neustar submitted the October Revised BAFO because it knew it had been underbid by Telcordia's September bid and that statements about its confidence in its proposal were therefore false. The Court disagreed and held that "statements of confidence are best characterized as opinions." *Neustar*, 83 F. Supp. 3d at 683.

On appeal, Lead Plaintiff would argue that the Supreme Court recently rejected this position in articulating the standard for assessing opinions in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S. Ct. 1318 (2015). In *Omnicare*, which arose

in the context of a Section 11 claim under the Securities Act of 1933, the Supreme Court held that a statement of opinion may be actionable either because it was not believed by the speaker *or* because it lacked a reasonable basis in fact. *Id*. Lead Plaintiff would argue that Defendants' assurances did not "fairly align" with the information in their possession at the time (*id*. at 1329) and the Complaint would meet *Omnicare*'s standards that Defendants either did not believe their statements or their statements lacked a reasonable basis in fact. For example, Lead Plaintiff would argue that Defendants' persistent efforts to have the October Revised BAFO considered while trying to keep it under wraps demonstrates how, contrary to Defendants' statements, Defendants lacked faith in their bidding position and that Defendants' conduct behind the scenes was inconsistent with a 17-year incumbent bidder that was legitimately confident in its competitive standing and well-positioned to continue as LNPA.

Defendants would likely argue that *Omnicare* did not address the applicability of the PSLRA's safe harbor for forward-looking statements, and that this Court's ruling that the challenged statements were opinions was merely an "additional" basis for holding them nonactionable beyond the fact that they were forward-looking. Lead Plaintiff faced a risk that the Fourth Circuit would affirm on the safe-harbor issue alone.

(iv) Risks of Affirmance on Scienter

The Court held that Lead Plaintiff failed to make the requisite showing of scienter, relying principally on the allegations of facts reported in *The Capitol Forum*. *See Neustar*, 83 F. Supp. 3d at 685. In particular, the Court stated that "[t]he October BAFO presents a close[] question" and depends on the reliability of the facts reported by *The Capitol Forum*. *Id*. The Court also questioned the timing of *The Capitol Forum* reports in March 2014, noting that they were well after the brief window in September and October 2013 in which Neustar would have learned of the confidential bid and then prepare a lower bid. *Id*. The Court also found that the

facts reported by *The Capitol Forum* were not corroborated by other allegations in the Complaint. *Id*. Additionally, the Court found that it was not necessarily the case that pricing was the determinative factor in awarding the contract to Telcordia. *Id*. at 686.

Lead Plaintiff would argue that the Court should have found that the sources in *The Capitol Forum* reports are reliable given that much of *The Capitol Forum's* reporting is directly corroborated by Lead Plaintiff's estimation of the difference between Neustar's and Telcordia's bids. As alleged in the Complaint, this corroboration is based on limited public information, Telcordia's own allegations made to and investigated by the FCC, and other FCC filings including comments filed by third parties. Likewise, Lead Plaintiff would argue that *The Capitol Forum* is corroborated by common sense—the only rational explanation for the submission of the revised October bid is that Neustar was attempting to underbid its sole competing bidder, Telcordia.

Defendants would contend that the Court correctly found *The Capitol Report* to be unreliable, arguing that the reporting is subject to the pleading standards for "confidential witness" allegations and thus require a plaintiff to "describe the sources with sufficient particularity to support the probability that a person in the position occupied by the source would possess the information alleged." *Teachers Ret. Sys. of La. v. Hunter*, 477 F.3d 162, 174 (4th Cir. 2007). Defendants would contend that Lead Plaintiff cannot provide that "sufficient particularity" because Lead Plaintiff does not know who the speaker was, nor can Lead Plaintiff point to any authority holding that this rule does not apply where the quote appears in print. Defendants would also likely contend that the fact that the FCC has now stated that price was in fact the deciding factor—in a decision the FCC made more than one year after the statements at issue—shows, at best, that Neustar's confidence in its bid may have been misguided, but not that

it was non-existent. Lead Plaintiff faced a risk that the Fourth Circuit would affirm on scienter alone.

In sum, while Lead Plaintiff believes it has substantial arguments on appeal, given that Lead Plaintiff would have to persuade the Fourth Circuit that this Court erred on ***all*** of the grounds on which the Court dismissed the Complaint, the risk of an affirmance strongly supports approval of the Settlement. INPRS believes the Settlement is substantively fair (as well as procedurally fair) and endorses its approval by the Court. Ex. 3 (Declaration of Thomas Perkins), ¶ 4. *See MicroStrategy*, 148 F. Supp. 2d at 667 ("[T]he old adage, 'a bird in hand is worth two in the bush' applies with particular force in this case.").[5]

(b) Further Proceedings in This Court, if Any, Would Be Risky, Lengthy and Expensive

The third *Jiffy Lube* adequacy factor considers the substantial time and expense litigation of this type would entail absent settlement. *See Mills*, 265 F.R.D. at 256. "This factor is based on a sound policy of conserving the resources of the Court and the certainty that unnecessary and unwarranted expenditures of resources and time benefit[s] all parties." *Id.*

As discussed above, success on appeal is far from assured. And even if the Court of Appeals were to reverse, the Parties would engage in class certification, fact and expert discovery, summary judgment proceedings, and potentially trial, all at significant cost for all involved and years of effort. *See Neustar*, 2015 WL 5674798, at *11. Indeed, even if Lead

[5] It is worth noting that the chances of prevailing on an appeal in the Fourth Circuit generally are not in Lead Plaintiff's—or any private civil plaintiff's—favor. For the 12-month period ending December 31, 2014, only ***7.7%*** of private civil appeals terminated on the merits in the Fourth Circuit were reversals. *See Statistical Tables for the Federal Judiciary, Table B-5, U.S. Courts of Appeals—Decisions in Cases Terminated on the Merits, by Circuit and Nature of Proceeding, During the 12-Month Period Ending December 31, 2014,* Ex. 4, at 2. This 7.7% figure excludes criminal appeals, U.S. and private prisoner petitions, other U.S. civil appeals, bankruptcy appeals, administrative appeals, and original proceedings.

Plaintiffs prevailed on appeal and in this Court on summary judgment, a jury could still find for Neustar. The Settlement, however, eliminates all of this risk and provides certain, measurable relief to the Settlement Class now.

(c) Neustar's Ability to Pay Is No Obstacle to Approval

Defendants' ability to pay is another *Jiffy Lube* factor that the Court may consider. Although Neustar could likely satisfy a judgment far greater than the amount it will pay in this Settlement, "a defendant is not required to empty its coffers before a settlement can be found adequate." *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM), 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014) (citation omitted). Neustar's "financial circumstances do not ameliorate the force of the other [relevant] factors, which lead to the conclusion that the settlement is fair, reasonable and adequate." *Id.*

(d) The Reaction of the Settlement Class to Date Supports Approval

The reaction of the Settlement Class to the proposed Settlement, to date, also supports final approval. The reaction of class members to a proposed settlement "as expressed directly or by failure to object" is also "a proper consideration for the trial court." *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). A low number of objections or opt-outs in comparison to the size of the settlement class evidences the fairness of the proposed settlement. *See Mills*, 265 F.R.D. at 257-58 (noting that the lack of any objections to the settlement and the small number of opt-outs strongly compels a finding of adequacy).

The Notice, mailed to almost 31,300 potential members of the Settlement Class, set forth the terms of the Settlement in detail. Ex. 2-A at 1, 2-5. The Notice also informed Settlement Class Members of their right to object to the Settlement, their right to seek exclusion from the Settlement Class, and the procedures for doing so. *Id*. at 5-6. The deadline for filing objections

or seeking exclusion is November 12, 2015. No objections or requests for exclusion have been received to date.[6]

II. THE PROPOSED PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

Approval of a plan of allocation of settlement proceeds is governed by the same standards of fairness and reasonableness applicable to the settlement as a whole. *See MicroStrategy*, 148 F. Supp. 2d at 668 ("To warrant approval, the plan of allocation also must meet the standards by which the partial settlement was scrutinized—namely, it must be fair and adequate."). "The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis." *Mills*, 265 F.R.D. at 258.

Here, the Plan of Allocation, which was developed in consultation with Lead Plaintiff's damages expert and is consistent with Lead Plaintiff's allegations, provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on a formula tied to liability and damages. In developing the Plan, Lead Plaintiff's expert considered the amount of artificial inflation present in Neustar's common stock throughout the Class Period that was caused by the alleged fraud. The expert's analysis included studying the price declines associated with Neustar's allegedly corrective disclosures, adjusted to eliminate the effects attributable to general market or industry conditions. *See* Counsel Decl. ¶ 58.

Calculation of the recovery for each Recognized Claim will depend upon several factors, including the timing of the Authorized Claimant's purchases of Neustar stock during the Class Period and sales during the Class Period, if any. *Id*. ¶ 59; Ex. 2-A at 7-8. As recognized in the

[6] If any objections or requests for exclusion from the Settlement Class are received, Lead Plaintiff will respond in reply submissions due on November 25, 2015.

Plan of Allocation, Lead Plaintiff alleges that corrective information released to the market on January 30, 2014 and June 9, 2014 impacted the price of publicly traded Neustar common stock and removed the alleged artificial inflation from the stock price. Additionally, Lead Plaintiff believes that the merits of the claims became stronger as of October 30, 2014, the first date on which Defendants made allegedly false and misleading statements after Neustar submitted the October Revised BAFO. *Id*.

Accordingly, the proposed Plan of Allocation fairly and rationally allocates the Net Settlement Fund among Authorized Claimants, and should be approved.

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

The Court previously granted preliminary certification to the Settlement Class under Rules 23(a) and (b)(3). *See* Preliminary Approval Order, ¶¶ 2-4; *Neustar*, 2015 WL 5674798, at *3-9. Because nothing has occurred since then to cast doubt on the propriety of class certification for settlement purposes, and no objections have been received to date, the Court should grant final class certification.

Conclusion

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court enter the proposed Final Judgment and Order of Dismissal and proposed Order Approving Plan of Allocation of Net Settlement Fund.

Proposed orders will be submitted with Lead Plaintiff's reply papers, after the deadlines for objecting and seeking exclusion have passed.

Dated: October 29, 2015

Respectfully submitted,

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Lead Counsel for Lead Plaintiff Indiana Public Retirement System and the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF.

/s/ Elizabeth A. Aniskevich
Elizabeth A. Aniskevich