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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

INDIANA PUBLIC RETIREMENT SYSTEM, *et al.*, Plaintiffs, v. PLURALSIGHT, INC., *et al.*, Defendants.	**LEAD PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND AUTHORIZATION TO PROVIDE NOTICE OF SETTLEMENT, AND MEMORANDUM OF LAW IN SUPPORT THEREOF** Case No. 1:19-cv-00128 District Judge David Barlow Magistrate Judge Daphne A. Oberg

LEAD PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND AUTHORIZATION TO PROVIDE NOTICE OF SETTLEMENT, AND MEMORANDUM OF LAW IN SUPPORT THEREOF

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Court-appointed Lead Plaintiffs and Class Representatives Indiana Public Retirement System ("INPRS") and the Public School Teachers' Pension and Retirement Fund of Chicago ("CTPF") (collectively, "Lead Plaintiffs"), respectfully move this Court, and submit this Memorandum of Law in support of their Motion, pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, for preliminary approval of the proposed Settlement set forth in the Parties' Stipulation and Agreement of Settlement dated May 1, 2024 (the "Stipulation").[1]

I. INTRODUCTION

Lead Plaintiffs are pleased to report that, after more than four years of hard-fought litigation, they have negotiated an agreement to settle this securities class action in exchange for $20,000,000 in cash. If the Settlement is approved by the Court, it will result in a significant payment to Class Members and will resolve this class action in its entirety. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, Lead Plaintiffs now move for preliminary approval so that notice of the Settlement can be disseminated to Class Members and a hearing on final approval can be scheduled. This Motion is unopposed, and all Parties agree that it may be decided on the papers, subject to the Court's approval.

The Settlement is the product of extensive arms'-length negotiations supervised by Jed D. Melnick, a preeminent mediator of complex securities class actions. The mediation process included two full-day mediation sessions that took place approximately eight months apart and were preceded by the exchange of detailed mediation statements addressing both liability and damages issues. Only after extensive negotiation did the Parties reach agreement to settle the Action for $20,000,000 in cash.

[1] All capitalized terms not otherwise defined shall have the meanings given to them in the Stipulation, which is attached as Exhibit 1 to this Motion.

Throughout this Action, Lead Plaintiffs and Lead Counsel zealously represented Class Members' interests and, through their extensive litigation efforts, gained a thorough understanding of the strengths and weaknesses of the case. Indeed, prior to reaching the Settlement, Lead Plaintiffs had conducted an extensive investigation, including the filing of two detailed complaints. Lead Plaintiffs litigated Defendants' motion to dismiss and engaged in substantial fact discovery, which included the exchange of detailed document requests and interrogatories, production of documents, service of 21 subpoenas on third parties, and multiple contested discovery motions. Defendants conducted Rule 30(b)(6) depositions of the Lead Plaintiffs and their three investment managers, deposing eight individuals. Lead Plaintiffs also filed a motion for class certification, accompanied by an expert report on market efficiency and damages, that was granted by the Court. As a result, Lead Plaintiffs and Lead Counsel had a thorough and well-developed understanding of the merits and risks of the claims when they agreed to the Settlement.

The very significant benefit the proposed Settlement will provide to the Class is particularly meaningful when considered against the substantial risk that the Class might recover less (or even nothing) if the Action were litigated through further dispositive motions, trial, and any appeals that would likely follow – a process that could last years. There were many material risks attendant to continued litigation. As discussed in more detail below, the subject matter of this case was technical and complex, creating potential hurdles to proving the elements of falsity and scienter required to prove a securities fraud claim. Notably, following the ruling on the motion to dismiss and subsequent appeal, Lead Plaintiffs' claims had been narrowed to a single alleged misstatement regarding Pluralsight's sales force productivity and future billings growth. Lead Plaintiffs faced challenges in establishing that Pluralsight's statement was false or misleading and that the Individual Defendants knew that the statement was false or were reckless in making it. Defendants

have contended – and would have contended at summary judgment or trial – that their statement was neither false nor misleading and was supported by contemporaneous facts. Lead Plaintiffs also faced risks relating to loss causation and damages. Defendants would have contended at summary judgment and trial, supported by their economic expert's analysis, that Lead Plaintiffs could not establish a causal connection between the alleged misrepresentation about sales force productivity and future billings growth and the losses investors allegedly suffered. Considering these and numerous other risks, as well as the costs and delays of further litigation, Lead Plaintiffs and Lead Counsel believe the $20,000,000 recovery is an extremely favorable result for the Class.

Lead Plaintiffs respectfully request that this Court enter the proposed Preliminary Approval Order attached as Exhibit A to the Stipulation. The Preliminary Approval Order, among other things: (i) schedules a final hearing to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and Lead Counsel's application for attorneys' fees and expenses (the "Settlement Hearing"); (ii) preliminarily approves the Settlement as fair, reasonable, and adequate to the Class, pending the final hearing; (iii) approves the form and method of disseminating notice of the Settlement to the Class; and (iv) establishes procedures and deadlines for Class Members to submit Claim Forms for payments from the Net Settlement Fund, exclude themselves from the Class, and object to the Settlement, Plan of Allocation, and/or the requested fees and expenses. Lead Plaintiffs respectfully propose the schedule for proceeding with final approval of the Settlement set forth in Section V below.

II. RELEVANT BACKGROUND

A. The Commencement and Nature of the Action

On August 13, 2019, a class action complaint was filed in the U.S. District Court for the Southern District of New York, styled *City of Birmingham Firemen's and Policemen's*

Supplemental Pension Sys. v. Pluralsight, Inc., *et al.*, No. 1:19-cv-07563-AKH, alleging violations of the federal securities laws. ECF No. 1. On September 27, 2019, Defendants moved to transfer the case to the U.S. District Court for the District of Utah. ECF No. 17. On October 24, 2019, the Honorable Alvin K. Hellerstein issued an order granting Defendants' motion to transfer and denying without prejudice the pending motions for appointment of lead plaintiff and lead counsel. ECF No. 49. This Action was transferred to the District of Utah (the "Court") on October 31, 2019, and ultimately assigned to the Honorable Jill N. Parrish on March 4, 2020. ECF Nos. 51, 78. On March 3, 2020, Lead Plaintiffs re-filed a motion for appointment of lead plaintiff and lead counsel. ECF No. 76. The Court granted the motion on March 25, 2020, appointing INPRS and CTPF as Lead Plaintiffs and approving Lead Plaintiffs' selection of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") as Lead Counsel and Clyde, Snow & Sessions, P.C. ("Clyde Snow") as liaison counsel for the putative class. ECF No. 87.

On June 9, 2020, Lead Plaintiffs filed a Corrected Amended Complaint (the "CAC") alleging violations of Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 (the "Exchange Act"), and U.S. Securities and Exchange Commission Rule 10b-5 promulgated thereunder, as well as violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act") in connection with Pluralsight's $456 million secondary public offering on March 7, 2019 (the "SPO"). ECF No. 94. In addition to Pluralsight, Aaron Skonnard, and James Budge, the CAC named as defendants the signatories to the registration statement filed in connection with the SPO, namely Gary Crittenden, Scott Dorsey, Arne Duncan, Ryan Hinkle, Leah Johnson, Timothy Maudlin, Frederick Onion, Brad Rencher, Bonita Stewart, and Karenann Terrell (the "Signer Defendants"); and the SPO's co-lead underwriters, Morgan Stanley & Co. LLC and J.P. Morgan Securities LLC (the "Underwriter Defendants"). Among other things, the CAC alleged

that Defendants made false and misleading statements and omissions to investors about Pluralsight's sales force productivity and future billings growth, which caused the price of Pluralsight common stock to be artificially inflated during the Class Period and caused damages to investors when they ultimately learned the truth about Defendants' alleged prior misrepresentations.

On August 14, 2020, Defendants, together with the Signer Defendants, filed a motion to dismiss the CAC ("Defendants' Motion to Dismiss") (ECF No. 111) as well as a request for judicial notice (ECF No. 113). Additionally, the Underwriter Defendants filed a joinder in Defendants' Motion to Dismiss (ECF No. 114). On October 16, 2020, Lead Plaintiffs filed their memorandum of law in opposition to Defendants' Motion to Dismiss and the Underwriters' Joinder (ECF No. 119). On November 17, 2020, Defendants filed a reply memorandum of law in further support of the Motion to Dismiss (ECF No. 122).

On March 22, 2021, the Court held a hearing on Defendants' Motion to Dismiss and requests for judicial notice, and the Underwriter Defendants' Joinder in Defendants' Motion to Dismiss. ECF No. 134. On March 31, 2021, the Court issued orders granting Defendants' Motion to Dismiss, along with the Underwriters' Joinder, and Defendants' requests for judicial notice. ECF Nos. 136, 137.

On April 28, 2021, Lead Plaintiffs filed a notice of appeal of the Court's order of dismissal to the U.S. Court of Appeals for the Tenth Circuit. ECF No. 140. Subsequently, in response to the Parties' motion and an order of the Court of Appeals, the Court clarified that its dismissal was with prejudice, and entered final judgment. ECF Nos. 146-55. Plaintiffs-Appellants filed their opening brief in the Court of Appeals on September 3, 2021. On September 10, 2021, a group of professors, scholars, financial economists, and former federal securities regulators filed a motion for leave to

file a brief of *amici curiae*. Defendants opposed this motion on September 17, 2021, and the Court of Appeals provisionally granted the motion on September 23, 2021. Defendants-Appellees filed their response brief in the Court of Appeals on November 3, 2021. Plaintiffs-Appellants filed their reply on December 8, 2021. The Court of Appeals held oral argument on March 23, 2022. On August 23, 2022, the Court of Appeals issued an opinion reversing in part the District Court's order of dismissal and remanding for further proceedings.

On September 19, 2022, the Action was reassigned to the Honorable David Barlow. ECF No. 159. Lead Plaintiffs filed a Second Amended Complaint ("SAC") on November 4, 2022, alleging claims against only Pluralsight, Skonnard, and Budge. ECF No. 173. Defendants filed their answer on December 9, 2022. ECF No. 174.

B. Fact Discovery

Lead Plaintiffs and Defendants subsequently embarked on discovery, serving detailed document requests and sets of interrogatories on one another. Lead Plaintiffs also served 16 document subpoenas on third parties, and Defendants served third-party deposition and document subpoenas on five parties. Extensive disputes followed, accompanied by lengthy negotiations concerning responses and objections. Additionally, extensive negotiations took place regarding the protective order and electronic discovery protocol for the case, which were submitted to and entered by the Court on May 1, 2023 and May 22, 2023, respectively. ECF Nos. 183, 188. Defendants and third parties subsequently made productions of documents to Lead Plaintiffs in connection with ongoing and detailed negotiations. Lead Plaintiffs similarly produced documents to Defendants and served interrogatory responses in connection with lengthy negotiations. Defendants also conducted Rule 30(b)(6) depositions of the Lead Plaintiffs and their three investment managers, deposing eight individuals. In connection with discovery, the Parties

exchanged numerous, detailed letters concerning discovery issues and disputes and engaged in numerous meet and confer conferences.

Although the Parties were able to resolve many of their disputes, several were raised to the Court, and the Court conducted a hearing on those disputes. Specifically, over the course of July 2023 to September 2023, the Parties filed a series of discovery motions with the Court. On July 26, 2023, Lead Plaintiffs filed a Short-Form Discovery Motion to Compel Defendants to Produce Documents from the Requested Time Period ("Discovery Period Motion"), ECF No. 201, and on August 2, 2023, Defendants filed their opposition to the Discovery Period Motion, ECF No. 205. On August 14, 2023, Defendants filed a Short-Form Discovery Motion to Compel Lead Plaintiffs to Produce (certain) Documents Responsive to Defendants' First Set of Requests for Production ("Defendants' Discovery Motion"), ECF No. 210, and on August 21, 2023, Lead Plaintiffs filed their opposition to Defendants' Discovery Motion, ECF No. 216. Finally, on September 18, 2023, Lead Plaintiffs filed a Short-Form Discovery Motion to Compel Defendants to Produce Audit-Related Documents, ECF No. 225 ("Audit Documents Motion"), and on September 25, 2023, Defendants filed their opposition to the Audit Documents Motion, ECF No. 236. On October 4, 2023, the Court held a hearing on the Discovery Period Motion, Defendants' Discovery Motion, and the Audit Documents Motion, denying the Audit Documents Motion without prejudice after the Parties reached an agreement during the hearing and taking the remaining two motions under advisement. ECF No. 241. On October 13, 2023, after extensive negotiation between the parties, Defendants withdrew the Defendants' Discovery Motion, ECF No. 248. On October 12, 2023, Defendants filed a Motion for Protective Order and a Motion to Quash Lead Plaintiffs' nonparty subpoena to The Cadence Group, ECF Nos. 246, 247, and on October 19, 2023, Lead Plaintiffs filed their opposition to Defendants' Motion for Protective Order, ECF No. 249. On October 26,

2023, after extensive negotiations between the Parties, Defendants withdrew their Motion for Protective Order and Motion to Quash. ECF Nos. 250-51. On February 8, 2024, the Court issued a memorandum decision and order granting Lead Plaintiffs' Discovery Period Motion. ECF No. 259.

C. Class Certification

While discovery was ongoing, Lead Plaintiffs filed their motion for class certification (the "Class Certification Motion") on March 3, 2023. ECF No. 177. On August 14, 2023, Defendants filed their response to Lead Plaintiffs' Class Certification Motion (ECF No. 213), and on September 13, 2023, Lead Plaintiffs filed their reply memorandum of law in further support of the Class Certification Motion (ECF No. 223).

On December 27, 2023, the Court entered its Memorandum Decision and Order granting Lead Plaintiffs' Class Certification Motion (the "Class Certification Order"). ECF No. 252. The Class Certification Order certified the Class as defined under ¶ 1(h) below; appointed INPRS and CTPF as Class Representatives; and appointed Cohen Milstein as Class Counsel and Clyde Snow as Liaison Class Counsel in the Action. The Class Certification Order also directed the Parties to meet and confer regarding the form and manner of notice to the Class and submit their proposal for notice to the Class for Court approval within 60 days.

On January 24, 2024, Defendants filed a motion to amend/correct an aspect of the Court's Class Certification Order. ECF No. 255. Lead Plaintiffs opposed this motion on February 9, 2024. ECF No. 260. Defendants filed a reply in further support of their motion on February 23, 2024. ECF No. 264.

Pursuant to the Class Certification Order, Lead Counsel negotiated with Defendants on the form and manner of notice. The parties reached agreement on the class notices, and on February

26, 2024, Lead Plaintiffs filed an unopposed motion to approve the form and manner of notice to the Class. ECF No. 265. The Court entered an order granting this motion on March 12, 2024. ECF No. 266.

D. The Mediation/ Settlement Process

During the course of the litigation, the parties engaged in two separate mediations, which took place approximately eight months apart. In April 2023, the Parties agreed to engage in a private mediation in an attempt to resolve the Action and retained Jed D. Melnick, Esq., of Judicial Arbitration and Mediation Services, Inc. ("JAMS") to act as mediator (the "Mediator"). On May 31, 2023, Lead Counsel, along with Lead Plaintiffs, Defendants' Counsel, a representative of Pluralsight, and Defendants' insurers participated in a full-day mediation session before the Mediator. In advance of that session, the Parties submitted detailed mediation statements to the Mediator, together with numerous supporting exhibits, which addressed both liability and damages issues. After extensive negotiation, that mediation session ended without resolution.

Nearly eight months later, in January 2024, the Parties agreed to conduct a second private mediation session with Mr. Melnick in an attempt to resolve the Action. On March 8, 2024, Lead Counsel, along with Lead Plaintiffs, Defendants' Counsel, a representative of Pluralsight, and Defendants' insurers participated in a full-day mediation session before the Mediator. In advance of that session, the Parties submitted detailed mediation statements to the Mediator, together with supporting exhibits, which addressed both liability and damages issues.

Ultimately, after extensive negotiation, the Parties reached agreement on the Settlement Amount, namely $20,000,000 in cash. The Parties thereafter negotiated a term sheet to memorialize their agreement-in-principle to settle the Action, which was executed by the Parties on March 12, 2024 (the "Term Sheet"). The Term Sheet set forth, among other things, the Parties'

agreement to settle and release all claims against Defendants in the Action in return for payment of the Settlement Amount, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

E. Terms of the Settlement

The Stipulation provides that Pluralsight will pay or cause to be paid $20,000,000 in cash (the "Settlement Amount") into the Escrow Account within thirty (30) days after the later of: (i) the Court having entered an order preliminarily approving the Settlement, and (ii) Pluralsight and/or its insurers having received customary written instructions for payment of the Settlement Amount by check or wire into the Escrow Account and a Form W-9 for the Escrow Account. Stipulation ¶ 7. The Settlement Amount, plus accrued interest, after the deduction of attorneys' fees and Litigation Expenses awarded by the Court, Taxes, Notice and Administration Costs, and any other costs or fees approved by the Court (the "Net Settlement Fund"), will be distributed among Authorized Claimants in accordance with a plan of allocation to be approved by the Court. *Id.* ¶ 9. If the Settlement receives the Court's final approval, Class Members will release the "Released Plaintiffs' Claims" in exchange for the Settlement Amount. *Id.* ¶ 4. The release's scope is reasonable as it is limited to claims that *both* were or could have been asserted by Lead Plaintiffs in the Action *and* that arise out of, are based upon, or relate to either the allegations set forth in the complaints filed in the Action or the purchase or other acquisition of Pluralsight common stock during the Class Period. *Id.* at ¶ 1(nn).

III. ARGUMENT

The Tenth Circuit has recognized that "[t]he inveterate policy of the law is to encourage, promote, and sustain the compromise and settlement of disputed claims.'" *Am. Home Assurance Co. v. Cessna Aircraft Co.*, 551 F.2d 804, 808 (10th Cir. 1977); *see also Giles v. The Inflatable*

Store, Inc., No. 07-cv-00401-PAB-KLM, 2009 WL 801729, at *5 (D. Colo. Mar. 24, 2009) ("[T]he law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation.") (quotations omitted).

This policy has even more force in complex class actions such as this one, "where substantial judicial resources can be conserved by avoiding formal litigation." *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1007 (D. Colo. 2014); *see also Or. Labs. Emps. Pension Tr. Fund v. Maxar Techs. Inc.*, No. 19-cv-0124-WJM-SKC, 2024 WL 98387, at *4 (D. Colo. Jan. 1, 2024) ("The presumption in favor of voluntary settlement agreements is especially strong in class actions.") (internal quotations omitted).

Under Federal Rule of Civil Procedure 23(e), Court approval of a proposed class action settlement is a well-established, two-step process. First, the Court determines whether to grant preliminary approval of the Settlement and allow notice of the Settlement to be disseminated to class members. *See* Fed. R. Civ. P. 23(e)(1). Second, following notice, the Court determines whether to approve the Settlement at a final approval hearing. *See* Fed. R. Civ. P. 23(e)(2). At this preliminary stage, in contrast to the final approval stage, the Court's task is simply "to determine whether there is any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing." *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006); *see also In re Crocs, Inc. Sec. Litig.*, Nos. 07-cv-02351-PAB-KLM, *et al.*, 2013 WL 4547404, at *3 (D. Colo. Aug. 28, 2013) ("Preliminary approval of a class action settlement, in contrast to final approval, is at most a determination that there is … 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness.").

The Federal Rules of Civil Procedure provide that a court should grant preliminary approval based on a finding that it "will likely be able" to (i) finally approve the Settlement under

Rule 23(e)(2), and (ii) certify the class for purposes of the settlement. *See* Fed. R. Civ. P. 23(e)(1)(B). Here, the Court has already certified the Class. ECF No. 252. In considering final approval of the Settlement, Rule 23(e)(2) provides that the Court consider whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).[2] Lead Plaintiffs respectfully submit that, because these factors are satisfied here, final approval of the Settlement is "likely" and preliminary approval is appropriate.

A. Lead Plaintiffs and Lead Counsel Adequately Represented the Class

In weighing approval, courts consider whether "the class representatives and class counsel have adequately represented the class," which involves an inquiry into any conflicts between Lead Plaintiffs and the Class and the ability of Lead Plaintiffs and Lead Counsel to conduct the litigation. Fed. R. Civ. P. 23(e)(2)(A); s*ee also Rutter & Wilbanks Corp.*, 314 F.3d 1187-88 ("Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?"); *Cotte v. CVI SGP Acquisition Tr.*, No.

[2] In connection with final approval, the Court will also be asked to consider the Tenth Circuit's long-standing approval factors, many of which overlap with the Rule 23(e)(2) factors: "(1) whether the proposed Settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the Settlement is fair and reasonable." *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002); *see also* Fed. R. Civ. P. 23(e)(2) advisory committee note to 2018 amendment (noting that the Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the Court of Appeals). These factors are, likewise, satisfied here.

2:21-cv-00299-JNP-DAO, 2023 WL 1472428, at *7 (D. Utah Feb. 2, 2023) (noting that courts have "analyzed the adequacy of representation [under Rule 23(e)(2)(A)] by evaluating adequacy under Rule 23(a)(4)").

Here, as this Court already determined when it certified the Class, there is no antagonism or conflict between Lead Plaintiffs and the Class. Lead Plaintiffs, like the other Class Members, purchased shares of Pluralsight Class A common stock during the Class Period, and were injured by the same alleged misstatement. *Martinez v. Reams*, No. 20-cv-00977-PAB-SKC, 2020 WL 7319081, at *6 (D. Colo. Dec. 11, 2020) (finding adequate representation where "there is nothing in the record or proposed settlement agreement that raises obvious concerns regarding interclass conflicts"); *see also Peace Officers' Annuity & Benefit Fund of Ga. v. DaVita Inc.*, No. 17-cv-0304-WJM-NRN, 2021 WL 1387110, at *4-5 (D. Colo. Apr. 13, 2021) (noting that "Lead Plaintiffs are institutional investors of the type favored by Congress when passing the PSLRA" and finding that "Plaintiffs' interest in obtaining the largest-possible recovery in this class action was firmly aligned with all class members").

Moreover, Lead Plaintiffs and Lead Counsel have vigorously represented the Class both by prosecuting the Action since its inception (as set forth herein) and by negotiating a favorable $20 million Settlement. Lead Counsel also note that they are well qualified and highly experienced in securities class action litigation and have recovered hundreds of millions of dollars for investors. Last year, as co-lead counsel in a securities fraud class action against Wells Fargo, Cohen Milstein obtained approval of a $1 billion settlement – the 17th largest in U.S. history. *In re Wells Fargo & Co. Sec. Litig.*, No. 1:20-cv-04494-JLR-SN (S.D.N.Y.) (ECF No. 207). Cohen Milstein was also named as a 2023 Securities Practice Group of the Year. Law360, *Law360 Names Practice Groups*

of the Year (Jan. 21, 2024), https://www.law360.com/articles/1781974/law360-names-practice-groups-of-the-year; *see also* Cohen Milstein firm resume, ECF No. 178-3.[3]

B. The Settlement Was Reached Through Arms'-Length Negotiations

The Settlement here is the product of fair, honest, and vigorous negotiations between experienced and informed counsel under the supervision of a highly experienced mediator. As noted above, settlement negotiations were supervised by Jed Melnick of JAMS. JAMS is "the world's largest private alternative dispute resolution (ADR) provider." *About Us*, JAMS, https://www.jamsadr.com/about (last visited Apr. 19, 2024). Mr. Melnick "has resolved over one thousand disputes, with an aggregate value in the billions of dollars," *Jed D. Melnick, Esq.*, JAMS, https://www.jamsadr.com/melnick (last visited Apr. 19, 2024). Courts in this Circuit and elsewhere have held that the involvement of an experienced mediator strongly supports the fairness of a proposed settlement, and that Mr. Melnick in particular is "a highly qualified mediator" who possesses considerable expertise in mediating complex cases such as this one. *See* Order Preliminarily Approving Settlement and Providing for Notice, *In re Myriad Genetics, Inc. Sec. Litig.,* No. 2:19-cv-00707-JNP-DBP, ECF No. 285 (D. Utah Aug. 25, 2023) (finding "probative that the Settlement was negotiated at arm's length under the oversight of experienced mediators")[4]; *In re 3D Sys. Sec. Litig.*, No. 21-cv-1920-NGG-TAM, 2024 WL 50909, at *2 & n.2 (E.D.N.Y. Jan.

[3] Other of Cohen Milstein's achievements include a $275 million settlement in a mortgage-backed securities class action against the Royal Bank of Scotland (*N. J. Carpenters Health Fund v. The Royal Bank of Scotland Grp., plc*, No. 08-cv-05310-KPF-HBP (S.D.N.Y.)); $335 million in settlements in a class action against Residential Accredit Loans, Inc. and various investment banks (*N. J. Carpenters Health Fund v. Residential Cap., LLC*, No. 08-cv-8781-KPF-DCF ((S.D.N.Y.)); and a $90 million settlement in a class action involving MF Global (*Rubin v. MF Global, Ltd.*, No. 08-cv-2233-VM (S.D.N.Y.)).

[4] *See also In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 679, 690 (D. Colo. 2014) (citing the parties' mediation before an experienced mediator in support of preliminary approval of a proposed settlement); *In re Molycorp, Inc. Sec. Litig.*, No. 12-cv-00292-RM-KMT, 2017 WL 4333997, at *4 (D. Colo. Feb. 15, 2017) (same).

4, 2024) (finding courts have found Mr. Melnick to be "a highly qualified mediator") (citing cases).[5] At the time the Settlement was reached, Lead Plaintiffs and Lead Counsel were knowledgeable about the strengths and weaknesses of the case, having intensely litigated this Action for more than four years. Indeed, Lead Plaintiffs achieved this Settlement only after, among other things, (i) conducting an extensive investigation that included a detailed review and analysis of the public record, including Pluralsight's regulatory filings and other public statements; (ii) preparing and filing a detailed 148-page CAC; (iii) opposing Defendants' motion to dismiss the CAC and successfully appealing the Court's dismissal order to the Tenth Circuit; (iv) filing a 70-page SAC; (v) obtaining certification of the Class, including by working with an expert on market efficiency and damages; and (vi) conducting substantial discovery, including the exchange of detailed document requests and interrogatories, production of documents, service of 21 subpoenas on third parties, multiple contested discovery motions, consultations with e-discovery experts, and Rule 30(b)(6) depositions of the Lead Plaintiffs and their three investment managers.

In addition, Lead Counsel, a nationwide leader in securities class actions that has a thorough understanding of the factual and legal issues in the Action, supports the Settlement. Courts have consistently given "'great weight' … to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998); *see also O'Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-NYW, 2019 WL 4279123, at *14 (D. Colo. Sept. 9, 2019) ("the recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight."). Moreover, Lead

[5] *See Fulton Cnty. Emps.' Ret. Sys. on Behalf of Goldman Sachs Grp. Inc. v. Blankfein*, No. 19-cv-1562-VSB, 2022 WL 4292894, at *3 (S.D.N.Y. Sept. 16, 2022) (observing that Mr. Melnick was a "highly experienced" mediator); *In re China Med. Corp. Sec. Litig.*, No. 8:11-1061-JLS-ANX, 2014 WL 12581781, at *5 (C.D. Cal. Jan. 7, 2014) (finding that "Mr. Melnick's involvement in the settlement supports the argument that it is non-collusive").

Plaintiffs – who are experienced, sophisticated institutional investors – have endorsed the Settlement. *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05-MDL-01695-CM, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) ("[U]nder the PSLRA, a settlement reached … under the supervision and with the endorsement of a sophisticated institutional investor … is 'entitled to an even greater presumption of reasonableness …. Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement.'") (citation omitted).

The fact that the Settlement is the product of an arm's-length negotiation overseen by an experienced mediator, has been approved by sophisticated lead plaintiffs appointed pursuant to the PSLRA, with guidance and input from experienced and informed counsel, demonstrates that the process by which the Settlement was reached is procedurally fair. It is, therefore, presumptively fair, reasonable, and adequate.

C. The Settlement's Terms Are Adequate and Equitable

Rules 23(e)(2)(C) and 23(e)(2)(D) direct the Court to evaluate whether "the relief provided for the class is adequate" and "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(C)-(D). The Settlement satisfies all four of the factors courts consider when assessing adequacy of relief, and it also treats members equitably vis-à-vis each other.

1. The Settlement Provides Substantial Relief, Especially in Light of the Costs, Risks, and Delay of Further Litigation

In assessing the Settlement, the Court should balance the benefits of the certain recovery for the Class against the risks of continued litigation. As noted above, the proposed Settlement – $20 million in cash – is an excellent result for Class Members, especially considering the significant risks of continued litigation. *See Cotte*, 2023 WL 1472428, at *6 (finding "[t]he value of immediate relief to the class outweighs the possibility of future relief").

Although Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit, they recognize the substantial risks that the Class could recover far less (or even nothing) if litigation were to continue to trial. In particular, Lead Plaintiffs and Lead Counsel recognized that there were substantial risks to proving Defendants' liability, including the required elements of falsity, scienter, loss causation, and damages.

As to falsity and scienter, Defendants had asserted, and would continue to assert, that their statement regarding the number of Pluralsight's quota-bearing sales representatives was not false or, even if false, was not made recklessly, much less intentionally. Defendants argued, for instance, that determining the number of quota-bearing sales representatives was a time-consuming, manual process that involved significant judgment and discretion about how the number should be calculated, and which often resulted in multiple different numbers at any given time. Further, Defendants also argued that documents and testimony would show that Defendants reasonably believed that the statement that Pluralsight had "about 250" quota-bearing sales representatives was accurate when made and that Defendants reasonably believed at the time that Pluralsight would continue to achieve historical billings growth. Lead Plaintiffs faced additional risks associated with proving loss causation, as Defendants would continue to argue that the stock price decline on the alleged corrective disclosure date could not be connected to the fraud alleged. In particular, Defendants would argue that any damages attributable to the statement that Pluralsight had "about 250" quota-bearing sales representatives would need to be disaggregated from damages attributable to a host of other "sales execution" challenges that were revealed to the market on July 31, 2019. If successful, Defendants' arguments would significantly limit recoverable damages in the case, if not eliminate damages entirely.

On all of these issues, Lead Plaintiffs would have to prevail at several stages – at summary judgment and at trial, and if it prevailed on those, then on the appeals that would likely follow and could take years. The Settlement avoids these risks and provides a prompt and certain benefit to the Class now.

2. Other Factors Established by Rule 23(e)(2)(C) Support Approval

Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims"; "the terms of any proposed award of attorney's fees, including timing of payment"; and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors supports preliminary approval here.

First, the procedures for processing Class Members' claims and distributing the proceeds of the Settlement to eligible claimants are well-established, effective methods widely used in securities class action litigation. The Settlement proceeds will be distributed to Class Members who submit eligible Claim Forms with required documentation to Strategic Claims Services ("SCS" or the "Claims Administrator").[6] SCS will review and process the Claims, will provide Claimants with an opportunity to cure any deficiencies in their Claims or request the Court's review, and will then mail or wire eligible Claimants their *pro rata* share of the Net Settlement Fund (as calculated under the Plan of Allocation) upon the Court's approval. This is the standard method in securities class actions and has long been found effective. *See, e.g.*, Stipulation and

[6] SCS is a well-known claims administrator with substantial experience in administering securities class action settlements. *See, e.g.*, *Hardy v. Embark Tech., Inc.*, No. 3:22-cv-02090-JSC, 2023 WL 6276728, at *3 (N.D. Cal. Sept. 26, 2023) (approving and appointing SCS as Settlement Administrator, noting that "SCS has extensive experience providing notice in securities class action settlements").

Agreement of Settlement at 37-43, *In re Myriad Genetics, Inc. Sec. Litig.*, No. 2:19-cv-00707-JNP-DBP (D. Utah Aug. 3, 2023), ECF No. 283-1; Stipulation and Agreement of Settlement at 22-29, *In re Vivint Solar, Inc. Sec. Litig.*, No. 2:20-cv-919-JNP-CMR (D. Utah Nov. 10, 2021), ECF No. 87-2; Stipulation and Agreement of Settlement at 21-26, *In re Nu Skin Enters., Inc., Sec. Litig.*, No. 2:14-cv-00033-JNP-BCW (D. Utah May 20, 2016), ECF No. 134-1.

Second, the Settlement's relief for the Class is also adequate when accounting for the proposed attorneys' fees to be paid upon award by the Court.[7] The Notice provides that Lead Counsel will apply for an award of attorneys' fees in an amount not to exceed 20% of the Settlement Fund, plus payment of Litigation Expenses (including requested PSLRA awards to Lead Plaintiffs) in an amount not to exceed $350,000. A proposed attorneys' fee of up to 20% is reasonable in light of the work performed by Plaintiffs' Counsel, and is well within the range of percentage fees that are regularly awarded in securities class actions and other class actions in this Circuit. *See, e.g.*, *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1263-64 (10th Cir. 2023) (upholding district court's award of 33% fees and noting that "awards across a range of percentages may be reasonable"); *Peace Officers' Annuity and Benefit Fund of Ga.*, 2021 WL 2981970, at *3 ("Courts in the Tenth Circuit have noted that the typical fee award in complex cases is around one third of the common fund.") (quotations omitted).

[7] By granting preliminary approval, the Court does not in any way pass upon the reasonableness of any subsequent fee or expense application, which will be decided at the Settlement Hearing. Lead Counsel's fee and expense application will be fully briefed and justified upon filing of a formal motion pursuant to the schedule set by the Preliminary Approval Order. Lead Counsel's fee and expense application will posted on the case website, www.pluralsightsecuritieslitigation.com, where Class Members can review the motion papers, and Class Members will have an opportunity to file any objections to the fee request before the Settlement Hearing, where the Court will decide what that fee should be.

Lastly, Rule 23 asks the Court to consider the fairness of the proposed settlement in light of any agreements required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). In addition to the Stipulation (which subsumes and supersedes the Term Sheet), the only other agreement entered into by the Parties regarding the Settlement is a confidential Supplemental Agreement regarding requests for exclusion, or opt-outs, from the Class. *See* Stipulation ¶ 38(b).[8] This agreement provides that Pluralsight will have the right to terminate the Settlement if timely and valid opt-outs exceed the threshold set in the Supplemental Agreement. These are the only agreements between the Parties relevant to the Settlement.

D. The Settlement Treats Class Members Equitably Relative to Each Other

Rule 23(e)(2)(D) directs the Court to evaluate whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, too, the Court can readily find the Settlement will earn approval. The proposed Plan of Allocation (the "Plan," set forth in full in Appendix A to the Notice) treats Class Members "equitably relative to each other" based on their transactions in Pluralsight common stock.

The Plan of Allocation is consistent with plans of allocation regularly approved by courts in securities class actions. *See, e.g.*, *Or. Labs. Emps. Pension Tr. Fund*, 2024 WL 98387, at *5 (approving plan allocating fund "to authorized claimants on a *pro rata* basis based on the relative size of their recognized claims"). The Plan provides for distribution of the Net Settlement Fund to Class Members demonstrating a loss on their transactions in Pluralsight common stock. The formula to apportion the Net Settlement Fund among Class Members is based on the estimated

[8] As is customary and standard in securities class actions, the Supplemental Agreement is not made public to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging the threshold to extract individual settlements. At the Court's request, it will be filed *in camera*.

amount of artificial price inflation in Pluralsight common stock during the Class Period that was allegedly caused by Defendants' misconduct. Once the Claims Administrator has processed all submitted claims it will make distributions to eligible Class Members, until additional re-distributions are no longer cost effective. At such time, any remaining balance will be contributed to a non-sectarian, not-for-profit, 501(c)(3) organization selected by Lead Counsel.

IV. THE COURT SHOULD APPROVE THE PROPOSED FORM OF NOTICE AND PLAN FOR PROVIDING NOTICE TO THE CLASS

Lead Plaintiffs respectfully submit that the Court should approve the form and content of the proposed Notice and Summary Notice. *See* Stipulation, Exs. A-1 and A-3. The Notice is written in plain language and clearly sets out the relevant information and answers to most questions that Class Members will have. Consistent with Rule 23(e), the Notice apprises Class Members of the terms of the Settlement and the options available to them. The Notice also satisfies the requirements imposed by the PSLRA, *see* 15 U.S.C. § 78u-4, in that it, *inter alia*, states the amount of the Settlement on an absolute and per-share basis; states the maximum amount of attorneys' fees and Litigation Expenses that Lead Counsel will seek; provides the names, address, and telephone number of Lead Counsel who will be available to answer questions from Class Members; and provides a brief statement explaining the reasons why the Parties are proposing the Settlement. *Id.* The Notice will also disclose the date, time, and location of the Settlement Hearing and the procedures and deadlines for the submission of Claim Forms, and objections to any aspect of the Settlement, the Plan of Allocation, and/or the requested attorneys' fees and expenses.

The proposed method for disseminating notice, which is set forth in the Preliminary Approval Order submitted herewith, also readily meets the standards under the Federal Rules and due process. Federal Rule 23(e)(1) requires the court to "direct notice in a reasonable manner to all class members who would be bound" by a proposed settlement. Fed. R. Civ. P. 23(e)(1).

If this Motion is granted, SCS will mail the Notice and Claim Form (the "Notice Packet") to all identified potential Class Members. SCS will also cause the Summary Notice, which summarizes the nature of the Action and the proposed Settlement and explains how to obtain the more detailed Notice, to be published once in the *Wall Street Journal* and transmitted once over the *PR Newswire*, a national wire service, and will publish the Notice Packet on the case website, www.pluralsightsecuritieslitigation.com.

The proposed plan for providing notice is the same method used in numerous other securities class actions. Courts routinely find that comparable notice programs represent the best notice practicable in the circumstances and satisfy the requirements of due process and Rule 23. *See, e.g.*, Preliminary Approval Order, *In re Myriad Genetics*, ECF No. 285. The proposed notice procedures should be approved.

V. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Lead Plaintiffs (with Defendants' consent) respectfully propose the schedule for proceeding with final approval of the Settlement outlined below. Lead Plaintiffs propose that the Court schedule the Settlement Hearing for approximately 100 days from the date of entry of the Preliminary Approval Order (*e.g.*, on or around August 23, 2024, assuming the Preliminary Approval Order is entered within the next two weeks) in order to accommodate the time required by the Class Act Fairness Act ("CAFA") to mail the CAFA notice and enter the judgment finally approving the Settlement. Please note that the Court need only enter the date of the Settlement Hearing at ¶ 3 of the proposed Preliminary Approval Order, as all other dates/deadlines referenced below will be set based on either (a) the date of entry of the Preliminary Approval Order or (b) the date chosen by the Court for the Settlement Hearing.

Event	**Proposed Timing**
Deadline for mailing the Notice and Claim Form to Class Members (which date shall be the "Notice Date") (Preliminary Approval Order ¶ 5(b))	No later than 15 business days after entry of Preliminary Approval Order
Deadline for publishing the Summary Notice (Preliminary Approval Order ¶ 5(d))	No later than 10 business days after the Notice Date
Deadline for filing of papers in support of final approval of the Settlement, Plan of Allocation, and Lead Counsel's motion for attorneys' fees and expenses (Preliminary Approval Order ¶ 27)	35 calendar days before the date set for the Settlement Hearing
Deadline for receipt of requests for exclusion or objections (Preliminary Approval Order ¶¶ 12, 16)	21 calendar days before the date set for the Settlement Hearing
Deadline for filing reply papers (Preliminary Approval Order ¶ 27)	7 calendar days before the Settlement Hearing
Settlement Hearing (Preliminary Approval Order ¶ 3)	105 calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter
Postmark deadline for submitting Claim Forms (Preliminary Approval Order ¶ 9)	120 calendar days after the Notice Date

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court (i) preliminarily approve the proposed Settlement; (ii) approve the proposed form and manner of notice to Class Members; and (iii) schedule a date and time for the Settlement Hearing to consider final approval of the Settlement and related matters.

Dated: May 1, 2024

Respectfully submitted,

By: */s/Carol V. Gilden*

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