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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CORY LONGO, individually and on
behalf of all others similarly situated, et
al.,

Plaintiffs,

v.

OSI SYSTEMS, INC., et al.,

Defendants.

Case No. CV 17-8841 FMO (SKx)

**ORDER RE: MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Having reviewed and considered all the briefing filed with respect to lead plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation (Dkt. 133, “Motion”) and Motion for an Award of Attorneys’ Fees and Litigation Expenses (Dkt. 134, “Fees Motion”), and the oral argument presented during the final fairness hearing held on May 12, 2022, the court concludes as follows.

BACKGROUND

On December 7, 2017, Cory Longo (“Longo”) filed this action on behalf of himself and all others similarly situated against OSI Systems, Inc. (“OSI”), Deepak Chopra (“Chopra”) and Alan Edrick (“Edrick”), asserting violations of the Securities Exchange Act and associated regulations. (See Dkt. 1, Complaint at ¶¶ 12-15, 47-61). Three related actions were filed shortly thereafter. (See Dkt. 35, Court’s Order of March 1, 2018, at 2-3). On March 1, 2018, the court consolidated the actions and appointed the Arkansas Teacher Retirement System (“ATRS”) as lead plaintiff and Kessler Topaz Metlzer & Check, LLP (“KTMC”) as lead counsel. (Id. at 16).

1 On June 13, 2019, ATRS and John A. Prokop (collectively, “plaintiffs”) filed the operative
2 First Amended Consolidated Class Action Complaint [] (“FAC”), asserting two securities claims
3 on behalf of a class of persons who purchased or acquired OSI stock and convertible notes
4 between August 21, 2013, and February 1, 2018: (1) § 10(b) of the Securities Exchange Act of
5 1934 (“Securities Exchange Act”), 15 U.S.C. §§ 78j et seq., and Rule 10b-5 promulgated
6 thereunder, 17 C.F.R. § 240.10b-5, against OSI, Chopra, Edrick, and Ajay Mehra (“Mehra”)
7 (collectively, “defendants”); and (2) § 20(a) of the Securities Exchange Act, 15 U.S.C. §§ 78t
8 et seq., against defendants Chopra, Edrick, and Mehra. (See Dkt. 76, FAC at p. 1 & ¶¶ 306-22).
9 Plaintiffs’ claims stem from allegations that defendants made materially false or misleading
10 statements about OSI’s “turnkey” business and its contract with the Albanian government for
11 equipment-based security services. (See Dkt. 131, Court’s Order of December 30, 2021
12 (“Preliminary Approval Order” or “PAO”) at 2). Plaintiffs sought damages, attorney’s fees and
13 costs, and “such equitable, injunctive or other relief that the Court may deem just and proper.”
14 (Id.).

15 After extensive motion practice, discovery, expert consultations, extensive arm’s-length
16 negotiations, and a mediation session that involved two rounds of briefing, (see Dkt. 133-1,
17 Memorandum in Support of Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of
18 Allocation (“Memo.”) at 8-9, 16-17), the parties reached a settlement in October 2021. (Dkt. 125-
19 4, Stipulation and Agreement of Settlement (“Settlement Agreement”) at 1, 3). The parties have
20 defined the settlement class as

21 all persons and entities who purchased or otherwise acquired OSI common
22 stock or 1.25% convertible senior notes due 2022 (collectively, “OSI
23 Securities”) between August 21, 2013 and February 1, 2018, inclusive
24 (“Class Period”), and were damaged thereby.

25 (Id. at ¶ 1(vv)); (Dkt. 131, PAO at 2).

1 Pursuant to the settlement, defendants will pay a gross settlement amount of \$12.5 million
 2 which will be used to pay class members, settlement administration costs, taxes,¹ and attorney's
 3 fees and costs. (Dkt. 125-4, Settlement Agreement at ¶¶ 9-10). The settlement states that lead
 4 counsel will apply for an award of attorney's fees "not to exceed 25% of the Settlement Fund," (*id.*
 5 at ¶ 16), which equates to \$3,125,000, and costs not to exceed \$200,000.² (*id.*). The claims
 6 administrator, A.B. Data, Ltd. ("A.B. Data"), shall be paid no more than \$200,000 from the gross
 7 settlement amount. (*id.* at ¶¶ 1(g), 15).

8 On December 30, 2021, the court granted preliminary approval of the settlement, appointed
 9 A.B. Data as the settlement administrator, and directed A.B. Data to provide notice to class
 10 members. (See Dkt. 131, PAO at 23-24). Thereafter, A.B. Data implemented the notice program
 11 approved by the court. (See Dkt. 133-2, Declaration of Eric Schachter Regarding: (a) Mailing of
 12 the Notice, Claim Form, and Exclusion Request Form; (a) Publication of the Summary Notice; and
 13 (c) Report on Requests for Exclusion Received to Date ("Schachter Decl.") at ¶¶ 2-7); (Dkt. 133-3,
 14 Exh. A, (Class Notice)). Notice packets were sent to 51,214 potential class members and
 15 nominees, (see Dkt. 133-2, Schachter Decl. at ¶ 9), a summary notice was published in the Wall
 16 Street Journal and PR Newswire, the press release distribution service. (See id. at ¶ 10). A.B.
 17 Data established a case-specific toll-free telephone number that class members could call and
 18 listen to answers to frequently asked questions or speak with a live operator. (See id. at ¶ 11).
 19 Finally, A.B. Data established a website where potential class members could view information

20
 21 ¹ The payment of taxes includes "(i) all federal, state, and/or local taxes of any kind (including
 22 any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the
 23 expenses and costs incurred by Lead Counsel in connection with determining the amount of, and
 paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax
 attorneys and accountants)." (Dkt. 125-4, Settlement Agreement at ¶ 1(aaa)).

24 ² Lead counsel states that "there is no clear sailing agreement – implicit or otherwise –
 25 between the Parties regarding attorneys' fees and Defendants are free to oppose any aspect of
 26 Lead Counsel's request for attorneys' fees." (Dkt. 135, Declaration of Eli R. Greenstein in Support
 27 of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead
 28 Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Greenstein Decl.")
 at ¶ 108); (see Dkt. 134-1, Memorandum in Support of Lead Counsel's Motion for an Award of
 Attorneys' Fees and Litigation Expenses ("Fees Memo") at 8); (Dkt. 139, Defendants' Brief in
 Support of Lead Plaintiffs' Motion ¶ at 2).

1 about the case. (See id. at ¶ 12). As of April 11, 2022, AB had received 14 requests for exclusion
 2 and no objections. (See Dkt. 138-1, Supplemental Declaration of Eric Schachter (“Supp.
 3 Schachter Decl.”) at ¶ 7); (Dkt. 145-1, Supplemental Declaration of Eric Schachter [] (“Second
 4 Supp. Schachter Decl.”) at ¶ 3).

5 **LEGAL STANDARD**

6 Federal Rule of Civil Procedure 23³ provides that “[t]he claims, issues, or defenses of a
 7 certified class . . . may be settled . . . only with the court’s approval.” Fed. R. Civ. P. 23(e).
 8 “Courts reviewing class action settlements must ensure that unnamed class members are
 9 protected from unjust or unfair settlements affecting their rights, while also accounting for the
 10 strong judicial policy that favors settlements, particularly where complex class action litigation is
 11 concerned.” Campbell v. Facebook, Inc., 951 F.3d 1106, 1121 (9th Cir. 2020) (internal quotation
 12 and alteration marks omitted). A “district court has a fiduciary duty to look after the interests of
 13 . . . absent class members[.]” Allen v. Bedolla, 787 F.3d 1218, 1223 (9th Cir. 2015), and must
 14 examine the settlement for “overall fairness[.]” In re Hyundai and Kia Fuel Economy Litig. (“In re
 15 Hyundai”), 926 F.3d 539, 569 (9th Cir. 2019) (en banc). The court may not “delete, modify or
 16 substitute certain provisions.” Id. (internal quotation marks omitted). “[T]he settlement must stand
 17 or fall as a whole.” Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F., 688 F.2d 615,
 18 630 (9th Cir. 1982).

19 Approval of a class action settlement requires the court to conduct a two-step inquiry. First,
 20 the court must determine whether the notice requirements of Rule 23(c)(2)(B) have been satisfied.
 21 Second, it must conduct a hearing to determine whether the settlement agreement is “fair,
 22 reasonable, and adequate[.]” Fed. R. Civ. P. 23(e)(2). In determining whether a settlement is fair,
 23 reasonable, and adequate, the court must consider whether:

- 24 (A) the class representatives and class counsel have adequately represented
- 25 the class; (B) the proposal was negotiated at arm’s length; (C) the relief
- 26 provided for the class is adequate, taking into account: (i) the costs, risks,
- 27

28 ³ All further “Rule” references are to the Federal Rules of Civil Procedure.

1 and delay of trial and appeal; (ii) the effectiveness of any proposed method
2 of distributing relief to the class, including the method of processing
3 class-member claims; (iii) the terms of any proposed award of attorney's
4 fees, including timing of payment; and (iv) any agreement required to be
5 identified under Rule 23(e)(3); and (D) the proposal treats class members
6 equitably relative to each other.

7 Id.; McKinney-Drobnis v. Oreshack, 16 F.4th 594, 607 (9th Cir. 2021) (“In 2018, Congress
8 amended Rule 23(e)(2) to provide specific factors for a district court to consider in determining
9 whether a settlement is ‘fair, reasonable, and adequate.’”).

10 Whether the settlement agreement is negotiated prior to or after class certification, the
11 court must apply a “higher level of scrutiny for evidence of collusion or other conflicts of interest[.]”
12 In re Bluetooth Headset Prod. Liab. Litig. (“Bluetooth”), 654 F.3d 935, 946 (9th Cir. 2011); see
13 McKinney-Drobnis, 16 F.4th at 608 (same); Briseno v. Henderson, 998 F.3d 1014, 1022 (9th Cir.
14 2021) (“Under the newly revised Rule 23(e)(2), courts should apply the Bluetooth factors even for
15 post-class certification settlements.”) (formatting omitted); id. at 1025 (holding that “courts must
16 apply Bluetooth’s heightened scrutiny to post-class certification settlements in assessing whether
17 the division of funds between the class members and their counsel is fair and ‘adequate.’”) (citing
18 Fed. R. Civ. P. 23(e)(2)(C)). Courts should look for signs of collusion, subtle or otherwise,
19 including “(1) when counsel receive a disproportionate distribution of the settlement, or when the
20 class receives no monetary distribution but class counsel are amply rewarded[.]” “(2) when the
21 parties negotiate a ‘clear sailing’ arrangement[.]”⁴ and “(3) when the parties arrange for fees not
22 awarded to revert to defendants rather than be added to the class fund[.]” Bluetooth, 654 F.3d
23 at 947 (internal quotation marks and citations omitted); Campbell, 951 F.3d at 1125 (same).

24
25 ⁴ The Ninth Circuit defines a “clear sailing” agreement as one “providing for the payment of
26 attorneys’ fees separate and apart from class funds,” Bluetooth, 654 F.3d at 947, and also as one
27 where “the defendant agrees not to oppose a petition for a fee award up to a specified maximum
28 value.” Id. at 940 n. 6; Roes, 1-2 v. SFBSC Management, LLC, 944 F.3d 1035, 1049 (9th Cir.
2019) (defining a clear sailing agreement as “an arrangement where defendant will not object to
a certain fee request by class counsel”).

DISCUSSION

I. FINAL APPROVAL OF CLASS SETTLEMENT.

A. Class Certification.

As noted above, the court previously certified a Rule 23 California Class. (See Dkt. 131, PAO at 8-15, 23). Because circumstances have not changed, the court hereby affirms its order certifying the class for settlement purposes under Rule 23(e). See, e.g., Gonzalez v. BMC West, LLC, 2018 WL 6318832, *5 (C.D. Cal. 2018) (“In its Preliminary Approval Minute Order, the Court certified the Settlement Class in this matter under Rules 23(a) and 23(b)(3). Accordingly, the Court need not find anew that the settlement class meets the certification requirements of Rule 23(a) and (b).”) (internal quotation marks and citation omitted).

B. Rule 23(c) Notice Requirements.

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), which require the “best notice that is practicable under the circumstances, including individual notice” of particular information. See Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

Here, after undertaking the required examination, the court approved the form of the class notice and notification procedures. (See Dkt. 131, PAO at 20-22). As noted above, the notice program was implemented by A.B. Data. (See Dkt. 133-2, Schachter Decl. at ¶¶ 2-12); (Dkt. 133-3, Exh. A, (Class Notice)); (Dkt. 133-4, Exh. B, (Publication Notice)); (Dkt. 133-5, Exh. C, (Summary Notice)). Based on the record and its prior findings, the court finds that the Class Notice, (see Dkt. 133-3, Exh. A), and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members’ right to exclude themselves from the action, and their right to object to the proposed settlement. See Fed. R. Civ. P. 23(c)(2)(B).

1 C. Whether the Class Settlement is Fair, Adequate and Reasonable.⁵

2 1. **Adequate Representation and Arm’s-Length Negotiations.**

3 Rule 23(e)(2) requires the court to consider whether “the class representatives and class
4 counsel have adequately represented the class” and whether the settlement “was negotiated at
5 arm’s length[.]” Fed. R. Civ. P. 23(e)(2)(A)-(B); see McKinney-Drobnis, 16 F.4th at 607. Here,
6 the court previously addressed the adequacy of counsel and the arm’s-length negotiations factors
7 in connection with preliminary approval. (Dkt. 131, PAO at 10-11, 15-16). With respect to the
8 latter factor, the court noted that the parties engaged in formal discovery, litigated two motions to
9 dismiss, and exchanged detailed mediation briefing addressing liability and damages issues
10 before agreeing to the mediator’s settlement recommendation. (Id. at 15). The court concluded,
11 based on the record in this case, that the “parties thoroughly investigated and considered their
12 own and the opposing parties’ positions” and “had a sound basis for measuring the terms of the
13 settlement[.]” (Id. at 16). Based on the record before the court and the court’s previous findings,
14 the court finds these factors weigh in favor of granting final approval.

15 2. **Relief.**

16 In evaluating whether the relief provided to the class is adequate, the court considers: (i)
17 “the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of
18 distributing relief to the class, including the method of processing class-member claims; (iii) the
19 _____

20 ⁵ Prior to the 2018 amendment to Rule 23(e), courts applied the “Churchill” factors to assess
21 whether a class settlement was fair, adequate, and reasonable: “(1) the strength of the plaintiffs’
22 case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of
23 maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the
24 extent of discovery completed and the stage of the proceedings; (6) the experience and views of
25 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
26 members to the proposed settlement.” Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th
27 Cir. 2004); see McKinney-Drobnis, 16 F.4th at 609 (noting that prior to the 2018 amendment to
28 Rule 23(e), the Ninth Circuit instructed courts to consider the Churchill factors). Because the
Ninth Circuit has noted that “it is still appropriate for district courts to consider the[Churchill]
factors in their holistic assessment of settlement fairness[.]” McKinney-Drobnis, 16 F.4th at 609
n. 4; see also 2018 Adv. Comm. Notes to Amendments to Rule 23 (“The goal of th[e] amendment
[wa]s not to displace any factor” courts considered prior to the amendment, “but rather to focus
... on the core concerns of procedure and substance that should guide the decision whether to
approve the proposal.”), the court will consider them in applying the Rule 23(e)(2) factors.

1 terms of any proposed award of attorney's fees, including timing of payment; and (iv) any
2 agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C).

3 In granting preliminary approval, the court carefully scrutinized the settlement and
4 determined that there was "no evidence that the settlement was 'the product of fraud or
5 overreaching by, or collusion between, the negotiating parties[.]'" (See Dkt. 131, PAO at 26)
6 (quoting Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009)). Also, the court
7 previously found that the settlement amount was five to ten percent of the maximum potential
8 damages, that it appeared to be in line with the median recovery in comparable securities cases,
9 and that it was "fair, reasonable, and adequate[.]" (See Dkt. 131, PAO at 16-17); (see also Dkt.
10 131-1, Memo. at 10-11); 4 Newberg on Class Actions, § 13:51 (5th ed.) ("The primary way a court
11 determines whether the settlement's value is sufficient is by (1) making a rough estimate of what
12 the class would have received had it prevailed at trial (or at other endpoints) and then (2)
13 discounting that value by the risks that the class would face in securing that outcome."). Nothing
14 has changed since preliminary approval to undermine the court's previous findings.

15 a. *Costs, Risks, and Delay.*

16 In granting preliminary approval of the settlement, the court found that the class recovery
17 was adequate, "particularly when taking into account the costs, risks, and delay of trial and
18 appeal." (Dkt. 131, PAO at 17). The court recognized that the "costs and risks of continued
19 litigation [were] significant[.]" and when "[w]eighed against those costs and risks" and the "delays
20 associated with continued litigation," the "relief provided to the class [was] adequate[.]" (Id.); see
21 Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed
22 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean
23 that the proposed settlement is grossly inadequate and should be disapproved.") (internal
24 quotation marks omitted). The settlement provides class members immediate monetary benefits
25 in the face of substantial delay and various defenses to plaintiffs' claims. (See Dkt. 133-1, Memo
26 at 11-16). Under the circumstances, the court finds it significant that class members will receive
27 "immediate recovery by way of the compromise to the mere possibility of relief in the future, after
28 protracted and expensive litigation." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D.

1 523, 526 (C.D. Cal. 2004) (internal quotation marks omitted). In short, the court finds these
2 factors support approval of the settlement.

3 b. *Method of Distribution.*

4 Rule 23(e) directs the court to consider the “effectiveness of any proposed method of
5 distributing relief to the class[.]” Fed. R. Civ. P. 23(e)(2)(C)(ii). “[T]he goal of any distribution
6 method is to get as much of the available damages remedy to class members as possible and in
7 as simple and expedient a manner as possible.” 4 Newberg on Class Actions, § 13:53 (5th ed.).

8 In granting preliminary approval, the court approved the plan of allocation and determined
9 that it is reasonable and effective. (See Dkt. 131, PAO at 19-20). The court explained that “class
10 members who submit valid claims will receive a pro rata distribution from the settlement fund
11 based on when they bought and sold OSI Securities.” (Id. at 19-20); (see Dkt. 125-4, Appendix
12 (“Appx.”) A, Proposed Plan of Allocation of Net Settlement Fund Among Authorized Claimants at
13 ¶¶ 1-3, 9); (Dkt. 125-4, Settlement Agreement at ¶ 22); (Dkt. 133-1, Memo. at 19, 22-23). The
14 court also found that “there is no alternative method of distribution that would be more practicable
15 here, or any more reasonably likely to notify the class members.” (Dkt. 131, PAO at 22). In short,
16 this factor also weighs in favor of approval.

17 c. *Attorney’s Fees.*

18 Rule 23(e) requires the court to consider “the terms of any proposed award of attorney’s
19 fees, including timing of payment” in determining whether the settlement is fair, adequate and
20 reasonable. See Fed. R. Civ. P. 23(e)(2)(C)(iii). The Ninth Circuit has interpreted this factor “as
21 imposing an obligation on district courts to examine whether the attorneys’ fees arrangement
22 shortchanges the class.” McKinney-Drobnis, 16 F.4th at 607 (internal quotation marks omitted).
23 In doing so, the court “must balance the proposed award of attorney’s fees vis-a-vis the relief
24 provided for the class[.]” Id. (internal quotation marks omitted).

1 The court must assess the proposed award of attorney’s fees by considering the Bluetooth
2 factors.⁶ See McKinney-Drobnis, 16 F.4th at 608 (“If we conclude that the district court did not
3 adequately consider the Bluetooth factors, and therefore did not adequately consider signs that
4 the parties had negotiated an unreasonable amount of attorneys’ fees in assessing settlement
5 fairness in the first instance, then we must vacate and remand the Approval Order [in addition to
6 the attorneys’ fee award], so that the court may appropriately factor this into its Rule 23(e)
7 analysis.”) (internal quotation marks omitted) (brackets in original). Here, consideration of the
8 Bluetooth factors does not undermine the fairness of the settlement.

9 First, the Settlement Agreement provides that class counsel will seek 25% in attorney’s
10 fees from the gross settlement amount of \$12.5 million. (Dkt. 125-4, Settlement Agreement at ¶
11 16). Thus, counsel would not be receiving a disproportionate share of the settlement. See
12 Bluetooth, 654 F.3d at 947 (noting that a sign of collusion included “when counsel receive a
13 disproportionate distribution of the settlement, or when the class receives no monetary distribution
14 but class counsel are amply rewarded”) (internal quotation marks omitted). Second, the parties
15 noted that there is no clear sailing agreement, (see Dkt. 133-1, Memo. at 21); (Dkt. 135,
16 Greenstein Decl. at ¶ 108); (Dkt. 139, Defendants’ Brief in Support of Lead Plaintiffs’ Motion [] at
17 2), or any reverter provision. (See Dkt. 133-1, Memo. at 21). In short, the absence of these
18 “warning signs” of collusion supports approval of the settlement. See Bluetooth, 654 F.3d at 947.

19 d. *Additional Agreements.*

20 This factor considers any “agreement required to be identified under Rule 23(e)(3)[.]”⁷ Fed.
21 R. Civ. P. 23(e)(2)(C)(iv). Here, the parties entered into a confidential supplemental agreement
22 providing that OSI had the right to terminate the Settlement Agreement if the number of requests
23 for exclusion exceeded a certain threshold. (See Dkt. 125-4, Settlement Agreement at ¶ 37); (Dkt.
24

25 ⁶ In granting preliminary approval, the court carefully scrutinized the settlement and
26 determined that there was “no evidence that the settlement was ‘the product of fraud or
27 overreaching by, or collusion between, the negotiating parties[.]’” (See Dkt. 131, PAO at 16)
(quoting Rodriguez, 563 F.3d at 965).

28 ⁷ Rule 23(e)(3) provides that “[t]he parties seeking approval [of a settlement] must file a
statement identifying any agreement made in connection with the proposal.”

1 133, Memo. at 20-21). “The existence of a termination option triggered by the number of class
2 members who opt out of the Settlement does not by itself render the Settlement unfair.” Hefler
3 v. Wells Fargo & Co., 2018 WL 4207245, *11 (N.D. Cal. 2018). Moreover, “[t]here are compelling
4 reasons to keep this information confidential in order to prevent third parties from utilizing it for the
5 improper purpose of obstructing the settlement and obtaining higher payouts.” Thomas v.
6 MagnaChip Semiconductor Corp., 2017 WL 4750628, *5 (N.D. Cal. 2017).

7 3. Equitable Treatment of Class Members.

8 Rule 23(e)(2) requires the court to consider whether the settlement “treats class members
9 equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). “A distribution of relief that favors
10 some class members at the expense of others may be a red flag that class counsel have sold out
11 some of the class members at the expense of others, or for their own benefit.” 4 Newberg on
12 Class Actions, § 13:48 (5th ed.).

13 Here, the settlement does not favor any particular group of class members. (See,
14 generally, Dkt. 125-4, Settlement Agreement). The net settlement amount will be shared pro rata
15 among all class members who file valid claims pursuant to a “recognized loss” formula developed
16 by lead plaintiff’s damages consultant. (See Dkt. 133-1, Memo. at 19, 22-23); (Dkt. 125-4,
17 Settlement Agreement at ¶ 22); see, e.g., In re Extreme Networks, Inc. Sec. Litig., 2019 WL
18 3290770, *3 (N.D. Cal. 2019) (“The Net Settlement Fund will be distributed among claimants on
19 a pro rata basis based on ‘Recognized Loss’ formulas tied to claimants’ potential damages and
20 developed by ATRS’s expert.”). Specifically, each authorized claimant’s share of the net
21 settlement amount will be based on when the claimant acquired and sold the subject securities.
22 (See Dkt. 125-4, Settlement Agreement at ¶ 22); (Dkt. 133-3, Exh. A, Notice, Appx. A, Proposed
23 Plan of Allocation of Net Settlement Fund Among Authorized Claimants at 10-11). Accordingly,
24 this factor also weighs in favor of final approval.

25 4. The Reaction of Class Members to the Proposed Settlement.

26 The reaction of the class members to the proposed settlement has been very positive as
27 there were no objections and only 14 requests for exclusion. (See Dkt. 135, Greenstein Decl. at
28 ¶¶ 94, 105); (Dkt. 138-1, Supp. Schachter Decl. at ¶ 7); (Dkt. 145-1, Second Supp. Schachter

1 Decl. at ¶ 3). The positive reaction of the class supports approval of the settlement. See, e.g.,
2 Destefano v. Zynga, Inc., 2016 WL 537946, *14 (N.D. Cal. 2016) (“[A] low number of exclusions
3 representing a small fraction of shares in the public float also supports the reasonableness of a
4 securities class action settlement.”); Bostick v. Herbalife Int’l of Am., Inc., 2015 WL 12731932, *26
5 (C.D. Cal. 2015) (approving settlement with 687 exclusion requests out of proposed class of 1.5
6 million individuals and noting that “[c]ourts generally consider a low number of requests for
7 exclusion [] to weigh strongly in favor of settlement approval”); Franco v. Ruiz Food Prods., Inc.,
8 2012 WL 5941801, *14 (E.D. Cal. 2012) (finding this factor weighed in favor of approval where
9 only two out of 2,055 class members – less than one percent – opted out, and there were no
10 objections to the settlement); Gong-Chun v. Aetna Inc., 2012 WL 2872788, *16 (E.D. Cal. 2012)
11 (settlement approved when less than two percent of the class members opted out and no
12 objections were received); Barcia v. Contain-A-Way, Inc., 2009 WL 587844, *4 (S.D. Cal. 2009)
13 (finding this factor weighed in favor of approval of settlement when there were only 56 opt-outs
14 out of the 2,385 class members and there were no objections). In short, the court finds that the
15 settlement is fair, reasonable, and adequate, and not the product of collusion.

16 II. ATTORNEY’S FEES AND COSTS.

17 A. Attorney’s Fees.

18 Rule 23(h) provides that “[i]n a certified class action, the court may award reasonable
19 attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.”
20 Fed. R. Civ. P. 23(h). Attorney’s fees in class actions are determined “using either the lodestar
21 method or the percentage-of-recovery method.” In re Hyundai, 926 F.3d at 570. The court’s
22 discretion in choosing between these two methods “must be exercised so as to achieve a
23 reasonable result.” Bluetooth, 654 F.3d at 942; see id. (In class actions where a “settlement
24 produces a common fund . . . courts have discretion to employ either the lodestar method or the
25 percentage-of-recovery method.”); In re Hyundai, 926 F.3d at 570. The lodestar method is
26 typically utilized when the relief obtained is “not easily monetized,” such as when injunctive relief
27 is part of the settlement. See Bluetooth, 654 F.3d at 941. The percentage-of-recovery method
28 is typically used when a common fund is created. See id. at 942.

1 Under the lodestar method, the court multiplies the number of reasonable hours expended
2 by a reasonable hourly rate. See In re Hyundai, 926 F.3d at 570. Once the lodestar has been
3 calculated, the court may “adjust the resulting figure upward or downward to account for various
4 factors, including the quality of the representation, the benefit obtained for the class, the
5 complexity and novelty of the issues presented, and the risk of nonpayment[.]” Id. (internal
6 citation omitted). However, “adjustments [to the lodestar calculation] are the exception rather than
7 the rule.” Fischel v. Equitable Life Assurance Society of U.S., 307 F.3d 997, 1007 (9th Cir. 2002)
8 (internal quotation marks omitted); Johnson v. MGM Holdings, Inc., 794 F.Appx. 584, 586 (9th Cir.
9 2019) (same).

10 Under the “percentage-of-the-fund” or “percentage-of-recovery” method, the “court simply
11 awards the attorneys a percentage of the fund sufficient to provide class counsel with a
12 reasonable fee, using 25% as a benchmark.” In re Hyundai, 926 F.3d at 570 (internal quotation
13 marks omitted). The 25% benchmark “can be adjusted upward or downward, depending on the
14 circumstances.” Id.; Bluetooth, 654 F.3d at 942 (“[C]ourts typically calculate 25% of the fund as
15 the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any
16 ‘special circumstances’ justifying a departure.”); Six (6) Mexican Workers v. Ariz. Citrus Growers,
17 904 F.2d 1301, 1311 (9th Cir. 1990) (“The benchmark percentage should be adjusted, or replaced
18 by a lodestar calculation, when special circumstances indicate that the percentage recovery would
19 be either too small or too large in light of the hours devoted to the case or other relevant factors.”).
20 In determining whether to depart from the 25% benchmark, courts consider “all of the
21 circumstances of the case[.]” including: (1) the results achieved for the class; (2) the risk of
22 litigation; (3) the skill required and quality of the work; (4) the contingent nature of the fee; and (5)
23 awards made in similar cases. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048-50 (9th Cir.
24 2002); Viceral v. Mistras Grp., Inc., 2017 WL 661352, *3 (N.D. Cal. 2017) (utilizing similar factors);
25 In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 955 (9th Cir. 2015) (explaining that “there
26 are no doubt many factors that a court could apply in assessing an attorneys’ fees award” and that
27 “Vizcaino does not purport to establish an exhaustive list”).

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1 Here, the court will utilize the percentage of fund method, as it is the most likely to achieve
2 a reasonable result. See Bluetooth, 654 F.3d at 942 (“Though courts have discretion to choose
3 which calculation method they use, their discretion must be exercised so as to achieve a
4 reasonable result.”); (Dkt. 134-1, Fee Memo. at 6-9) (requesting attorney’s fee based on the
5 percentage of fund method). Under the circumstances, the court finds that the requested
6 attorney’s fees, which do not depart from the 25% benchmark, constitute a reasonable fee. See
7 In re Hyundai, 926 F.3d at 570-71 (recognizing 25% benchmark and noting that the percentage
8 method is “a rough approximation of a reasonable fee”); Bluetooth, 654 F.3d at 942 (noting
9 benchmark is a reasonable fee award). A lodestar cross-check further supports the
10 reasonableness of the fee request. The fee request equates to a minimal multiplier of 0.77, (see
11 Dkt. 134-1, Fee Memo. at 10-11), based on counsel’s lodestar of \$4,054,672.25. (See Dkt. 134-1,
12 Fee Memo. at 9-10); (Dkt. 135, Greenstein Decl. at ¶¶ 113, 126); (Dkt. 134-3, Declaration of Eli
13 R. Greenstein in Support of Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation
14 Expenses Filed on Behalf of Kessler Topaz Meltzer & Check LLP, Exh. A (time report)); (Dkt. 134-
15 7, Declaration of Jeffrey A. Koncius in Support of Lead Counsel’s Motion for an Award of
16 Attorney’s Fees and Litigation Expenses Filed on Behalf of Kiesel Law LLP, Exh. A (time report));
17 (Dkt. 134-11, Declaration of Lester R. Hooker in Support of Lead Counsel’s Motion for an Award
18 of Attorneys’ Fees and Litigation Expenses filed on Behalf of Saxena White P.A., Exh. A (time
19 report)); (Dkt. 134-15, Declaration of Matt Keil in Support of Lead Counsel’s Motion for an Award
20 of Attorneys’ Fees and Litigation Expenses Filed on Behalf of Keil & Goodson P.A., Exh. A (time
21 report)).

22 B. Costs.

23 Class counsel seek \$134,863.08 in costs. (See Dkt. 134-1, Fee Memo. 1, 20). The court
24 finds that the costs incurred by class counsel over the course of this litigation are reasonable, and
25 therefore awards a total of \$134,863.08 in costs.

26 **CONCLUSION**

27 Based on the foregoing, IT IS ORDERED THAT:
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1 1. Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation
2 **(Document No. 133)** is **granted** as set forth herein.

3 2. Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses
4 **(Document No. 134)** is **granted** as set forth herein.

5 3. The court hereby **grants final approval** of the parties’ Stipulation and Agreement of
6 Settlement (“Settlement Agreement”) (Document No. 125-4). The court finds that the Settlement
7 Agreement is fair, adequate and reasonable, appears to be the product of arm’s-length and
8 informed negotiations, and treats all members of the class fairly. The parties are ordered to
9 perform their obligations pursuant to the terms of the Settlement Agreement and this Order.

10 4. The settlement class is certified under Federal Rule of Civil Procedure 23(c) as defined
11 in ¶ 1(vv) of Settlement Agreement.

12 5. The form, manner, and content of the Class Notice meet the requirements of Federal
13 Rule of Civil Procedure 23(c)(2).

14 6. Class counsel shall be paid \$3,125,000.00 in attorney’s fees, and \$134,863.08 in costs
15 in accordance with the terms of the Settlement Agreement and this Order.

16 7. The Claims Administrator, A.B. Data, shall be paid for its fees and expenses in
17 accordance with the terms of the Settlement Agreement.

18 8. All class members who did not validly and timely request exclusion from the settlement
19 have released their claims, as set forth in the Settlement Agreement, against any of the released
20 parties (as defined in the Settlement Agreement).

21 9. Except as to any class members who have validly and timely requested exclusion, this
22 action is **dismissed with prejudice**, with all parties to bear their own fees and costs except as
23 set forth herein and in the prior orders of the court.

24 10. Without affecting the finality of this Order in any way, the court hereby retains
25 jurisdiction over the parties, including class members, for the purpose of construing, enforcing,
26 and administering the Order and Judgment, as well as the Settlement Agreement itself.

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1 11. Judgment shall be entered accordingly.

2 Dated this 31st day of August, 2022.

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/s/

Fernando M. Olguin
United States District Judge

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