UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re: SPECTRUM PHARMACEUTICALS, INC., SECURITIES LITIGATION	:	Case No. 2:13-cv-00433-LDG (CWH) Base File CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Lead Plaintiff Arkansas Teacher Retirement System, as Court-appointed lead plaintiff ("Lead Plaintiff" or "ATRS") respectfully submits this memorandum of points and authorities in support of its motion for (i) final approval of the proposed settlement (the "Settlement") of the above-captioned class action (the "Action"); (ii) final approval of the proposed Plan of Allocation; and (iii) final certification of the Settlement Class for purposes of this Settlement only.[1]

PRELIMINARY STATEMENT

The Settlement provides for the payment of $7 million dollars in cash ($7,000,000) by and on behalf of Defendants for the benefit of the Settlement Class. The Settlement represents a very favorable benefit to the Settlement Class and avoids the risks and expense of continued litigation, including the risk of recovering less than the Settlement Amount, or no recovery at all. As described below and in the accompanying Gardner Declaration[2], Lead Plaintiff faced, and would continue to face, vigorous opposition from Defendants with respect to the legal and factual bases of Lead Plaintiff's claims. In particular, had the Settlement not been reached, Lead Plaintiff would have faced considerable hurdles in proving falsity, scienter and establishing the Settlement Class' full amount of damages at trial.

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[1] All capitalized terms not otherwise defined herein shall have the same meanings set forth and defined in the Stipulation and Agreement of Settlement, dated as of November 19, 2015 (the "Stipulation", ECF No. 140-1).

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

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

As set forth in detail in the Gardner Declaration, an agreement to settle this Action was reached only after almost three years of litigation, which included, *inter alia*: (i) the review and analysis of publicly available information concerning Spectrum; (ii) interviews of 26 former Spectrum employees and other persons with relevant knowledge (13 of whom provided information as confidential witnesses) after identifying almost 60 potential witnesses; (iii) preparation of a detailed Consolidated Amended Class Action Complaint ("Complaint"); (iv) successful opposition of Defendants' comprehensive motion to dismiss; (v) successful opposition of Defendants' motion for reconsideration of the Court's order denying Defendants' motion to dismiss; and (vi) participation in mediation efforts which included pre-mediation on the critical issues in the case, reviewing almost 31,000 pages of core documents produced by Defendants, including emails of the Individual Defendants, and a full-day mediation session with the assistance of an experienced mediator.

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

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On January 27, 2016, the Court entered an order preliminarily approving the Settlement (the "Preliminary Approval Order") (ECF No. 141). Pursuant to and in compliance with the Preliminary Approval Order, through records maintained by Spectrum, information gathered

from brokerage firms and requests made by individuals and brokerage firms, Analytics Consulting LLC ("Analytics") the Court-appointed Claims Administrator, caused 15,360 copies of the Notice and Proof of Claim and Release form to be mailed to potential Settlement Class Members. *See* Ex. 3 ¶¶ 3-8. On February 19, 2016, the Summary Notice was published in *Investor's Business Daily* and was issued over *PR Newswire*. *Id*. ¶ 9 and Exs. B and C attached thereto. On February 8 , 2016, the Notice and Proof of Claim were posted on the case-dedicated website established by Analytics for purposes of this Settlement. *Id*. ¶ 11.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the attorneys' fees and expense request, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 3–A. The Notice also gave the deadlines for objecting or seeking exclusion from the Settlement Class and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. at 2, 8-10. The Notice specifically notified Settlement Class Members that Lead Counsel's request for attorneys' fees would not exceed 25% of the Settlement Fund and its request for payment of expenses would not exceed $125,000, plus interest at the same rate as earned by the Settlement Fund. *Id*. at 3, 9.

The Ninth Circuit has held that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351 (9th Cir. 1980) (citation omitted). Lead Plaintiff respectfully submit that the notice program utilized here readily meets this standard. *See, e.g.*, *Nat'l Rural Telcomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (finding notice sufficient when, as here, it

described the background of the case and the terms of the proposed settlement, and provided class members with "clear instructions about to how object").

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

ARGUMENT

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

A. The Standard for Final Approval of Class Action Settlements

Strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Indeed, "there is an overriding public interest in settling and quieting litigations," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976); *see also Lee v. Enter. Leasing Co.-W*., No. 3:10-CV-00326-LRH, 2015 WL 2345540, at *4 (D. Nev. May 15, 2015 ("The Ninth Circuit has recognized a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'") (quoting *Class Plaintiffs*, 955 F.2d at 1276).

Class-action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. Settlements of complex cases such as this one greatly contribute to the efficient utilization of scarce judicial resources and achieve the speedy resolution of claims. *See, e.g., Garner v. State Farm Mut. Auto*

Ins. Co., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain and substantial recovery for the Plaintiff class.") (citation and internal quotation marks omitted).

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

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement.[3]

See Churchill Vill. L.L.C. v. Gen. Elec., 361 F.3d 566, 575-76 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at 1026); *Officers for Justice v. Civil Serv. Comm'n of City & Cty of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (same). Not all of these factors will apply to every class action settlement and, under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

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[3] With respect to the eighth factor, Settlement Class Members have until May 23, 2016 to request exclusion from the Settlement Class or object to the matters to be considered during the Settlement Hearing. Lead Plaintiff will file a brief responding to any objections and addressing exclusion requests no later than June 6, 2016.

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

B. Application of the Ninth Circuit's Criteria Supports Approval of the Settlement

1. The Strength of Lead Plaintiff's Case and Risks Associated with Continued Litigation

To determine whether the proposed Settlement is fair, reasonable and adequate, the Court must balance the continuing risks of litigation against the benefits afforded to class members and the immediacy and certainty of a substantial recovery. *See Mego*, 213 F.3d at 458. Although Lead Plaintiff believes that the case against Defendants is strong, that confidence must be tempered by the fact that the Settlement is beneficial and that every case involves significant risk of no recovery, particularly in a complex case such as the one at bar. Here, there was no government investigation to assist Lead Plaintiff and Lead Counsel. There is no question that Lead Plaintiff would have confronted a number of challenges: establishing whether there were

actionable misstatements and omissions, whether Defendants acted with scienter, and whether Lead Plaintiff could prove loss causation as well as the appropriate calculation of damages – each of which could have barred a recovery at trial.

(a) Falsity Defense

Lead Plaintiff faced substantial risks in proving that Defendants' statements and alleged omissions were false and misleading at the time that they were made or occurred. Gardner Decl. ¶¶ 44-47. Defendants have consistently maintained that their statements that Fusilev end-user demand remained strong during the Class Period were accurate and made without material omissions. Defendants would likely point to data that purportedly indicated continued strength in Fusilev end-user demand through at least January 2013, even in the face of the growing supply of generic leucovorin. Defendants would raise "truth on the market" as a defense, arguing that even if data on Fusilev end-user sales could be read as showing a drop in end-user demand, this data was available to the market and discussed by market participants. Defendants would argue that short sellers were betting heavily against the Company and that this short selling activity mirrored the negative sentiment of certain stock analysts who, after reviewing the same end-user data, believed that Fusilev sales would not continue to grow and that Spectrum's stock price would fall. Defendants would assert that analysts and investors had access to the same industry data and reports as Spectrum. *Id*.

(b) Scienter Defense

Even if Defendants' statements and alleged omissions were found by a jury to have been false, Defendants cannot be liable under the Securities Exchange Act of 1934 (the "Exchange Act") for such falsity, unless Defendants acted with scienter—*i.e.*, knowledge of such falsity, or reckless disregard for whether the statements were true or false.

Lead Plaintiff faced significant risks in proving that the alleged misstatements were made with scienter, as required by the Exchange Act. Defendants would argue that they sincerely and reasonably believed that Fusilev demand was not being displaced by leucovorin. Defendants would likely argue that their optimism in the prospects for Fusilev was well-grounded and based on a number facts, including, among others, (i) the clinical advantages to using Fusilev given given that Fusilev was purer in form than leucovorin; (ii) that doctors were not likely to switch patients from Fusilev to leucovorin if patients were already on Fusilev and tolerating the drug, given the poor health of such patients and the difficulties and risks of switching them to a new drug that might not be tolerated; and (iii) that Fusilev brought financial benefits to doctors who sold the drug to patients, given that a vial of Fusilev sold for about $150 while leucovorin sold for about $40. Gardner Decl. ¶¶ 48-49.

Defendants would likely rely on *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S.Ct. 1318, 1325-28 (2015) where the Supreme Court held that to prove the falsity of statements of opinion, plaintiffs must prove that the speaker did not truly hold the opinion or that the statements did not rest on some meaningful inquiry. As noted above, Defendants would maintain that their belief in the success of Fusilev was sincerely held and supported by data in their possession and, therefore, Lead Plaintiff would fail to satisfy *Omnicare*.

(c) Loss Causation and Damages Defenses

Another risk in continuing the litigation is the difficulty in proving loss causation and damages, which would be hotly contested by Defendants at summary judgment, in pretrial *Daubert* motions, and at trial. The United States Supreme Court has confirmed that the law requires that "a plaintiff prove that the defendant's misrepresentation (or other fraudulent

conduct) proximately caused the plaintiff's economic loss." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

In moving to dismiss the Complaint, Defendants argued that Lead Plaintiff failed to allege facts indicating that the market understood the March 12, 2013 press release to be a revelation of any purported fraud. To the contrary, Defendants argued that the press release merely disclosed a change in Spectrum's 2013 forward guidance from prior guidance based on communications with distributors concerning ordering patterns, and therefore the reason for the stock drop is the market's reaction to the change in guidance and the Company's lowered expectations, not any revelation of fraud. Although the Court disagreed with Defendants' argument at the motion to dismiss stage and found that Lead Plaintiff adequately alleged loss causation, there is no doubt that Defendants would continue to maintain at summary judgment and at trial that the disclosure did not reveal any fraud. Gardner Decl. ¶ 52.

The issue of damages would also be hotly contested. Defendants would likely contend that given that Lead Plaintiff's fraud theory is based on an undisclosed material decline in end-user demand at the time of the alleged misstatements, Lead Plaintiff's damages calculation must be based on a class period that begins *during* a material decline in end-user demand. Defendants would argue that the first seven weeks of the Class Period saw end-user demand climb to an all-time high, therefore, the Class Period begins too early. According to Defendants, the Class Period should begin on the first-alleged misstatement after the first date on which a material declining trend in end-user demand can be identified. Therefore, Defendants would likely assert that the Class Period should begin either on December 12, 2012 or January 9, 2013 (the first alleged misstatements after the alleged dips in demand on November 23, 2012 or December 28, 2012, respectively). If the Court (at summary judgment) or the jury (at trial) were to agree with

Defendants, a shortening of the Class Period would materially reduce Lead Plaintiff's alleged damages. *Id*. ¶¶ 53-54.

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

In sum, as a result of the availability to Defendants of the various defenses described, *supra* and in the Gardner Declaration, it is possible that, even if a court or a jury were to find that Defendants knowingly made misleading statements, Settlement Class Members would recover no damages, or damages in an amount smaller than the amount of the Settlement.

2. The Expense and Likely Duration of Further Litigation

Final approval is also supported by the expense and likely duration of the Action. *See Torrisi*, 8 F.3d at 1376 ("the cost, complexity and time of fully litigation the case all suggest that this settlement was fair"). "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecommc'ns. Coop*, 221 F.R.D. at 526. Here, the expense and duration of preparing and trying the case to a jury and the subsequent motion practice on a likely appeal of the Court's decision on the motion to dismiss, class certification, summary judgment, post-trial motions, and a jury verdict would be significant. Barring a settlement, there is no question that this case would be litigated for years, taking a considerable amount of court time and costing millions of additional dollars, with the possibility that the end result would be no better for the class, and might even be worse. *See Destefano v. Zynga, Inc*., No. 12-cv-04007-JSC, 2016 WL 537946, at *10 (N.D. Cal. Feb. 2, 2016) ("continuing litigation would not only be costly – representing expenses that would take away from any ultimate classwide recovery – but would also delay resolution and recovery for Settlement Class Members"); *cf Glickenhaus & Co., et al. v. Household Int'l, Inc., et al*., 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011)).

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

3. The Risk of Maintaining Class Action Status Through Trial

Absent the Settlement there would have been a contested motion for class certification. Class-certification discovery would have been conducted and Defendants, without doubt, would have opposed the motion. While Lead Counsel was confident that it would have presented a compelling motion for certification of a litigation class, the process would have added time and expense to the proceedings, and the outcome of such a contested motion was far from certain. Moreover, throughout the remainder of the Action, as issues of loss causation and class-wide reliance were resolved and the law evolved, it is possible that Defendants would have sought to decertify any class certified by the Court.

4. Amount Offered in the Settlement

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

The proposed $7 million Settlement is well within the range of reasonableness in light of the best possible recovery at trial and the risks of continued litigation. According to analyses prepared by Lead Plaintiff's consulting damages expert, the maximum aggregate damages Lead Plaintiff could have obtained for the Settlement Class at trial, assuming liability were established, is estimated to be in the range of approximately $80 million to $110 million

(depending on assumptions regarding the number of active traders), assuming the entire Class Period is implicated and assuming 100% of the stock drop on the alleged corrective disclosure date is entirely attributable to the correction of the alleged fraud. The $7 million settlement thus represents approximately 6% to 9% of this best case scenario estimated damages amount. *See* Gardner Decl. ¶¶ 7, 55. However, Defendants argued that the Settlement Class sustained maximum damages in the range of approximately $35 to $45 million, again assuming liability were established, in which case the Settlement Amount represents approximately 16% to 20% of estimated damages. *Id*. ¶ 7 fn. 3; ¶¶ 53-54.

Under either analysis, the percentages fall well within the range of approval, and courts have generally approved settlements in cases since the passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), that recover a comparable or far smaller percentage of maximum damages. *See Int'l Brotherhood of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving $12.5 million settlement recovering about 3.5% of the maximum damages that plaintiffs believe could be recovered at trial and noting that the amount is within the median recovery in securities class actions settled in the last few years); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG- JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement recovering 7% of estimated damages was fair and adequate); *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) ($13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements").

Moreover, the Settlement is in-line with the median reported settlement amounts since the passage of PSLRA, which have ranged from $5.6 million in 1996 (adjusted for inflation) to $7.3 million in 2015. *See* Ex. 2 at 28.

Further, the $7 million Settlement was the result of a mediator's proposal following a full day of mediation and weeks of follow-up discussions.

Therefore, the Settlement is very favorable result and falls well within the range of reasonableness.

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

The stage of the proceedings and the amount of discovery completed are also factors courts consider in determining the fairness, reasonableness and adequacy of a settlement. *See Mego*, 213 F.3d at 459. Because of the stay on discovery imposed by the PSLRA, Lead Plaintiff did not conduct formal discovery. "In the context of class action settlements, as long as the parties have sufficient information to make an informed decision about settlement, 'formal discovery is not a necessary ticket to the bargaining table.'" *Zynga*, 2016 WL 537946, at *12 (citing *Linney*, 151 F.3d at 1239). Nonetheless, Lead Plaintiff did, through their counsel, conduct their own pre-filing investigation concerning Lead Plaintiff's claims against Defendants. Gardner Decl. ¶¶ 3, 17.

Lead Counsel also obtained and thoroughly examined the extensive pre-mediation discovery produced by Defendants, totaling close to 31,000 pages of core material including: (i) inventory and sales reports for Fusilev; (ii) internal emails between Spectrum executives regarding Fusilev sales updates, sales data, and forecasts, among other topics; (iii) presentations showing doctors' insights regarding the use of leucovorin; (iv) distribution agreements showing the supply and rebates that the Company offered to health care providers; and (v) invoices of

drugs shipped to health care providers and/or that were held in distribution centers. *Id.* ¶¶ 3, 31. This discovery assisted Lead Counsel in evaluating the strengths and weaknesses of the pending claims and further helped them, and the Lead Plaintiff, confirm that the Settlement was fair, reasonable, and adequate to the Settlement Class.

As a result of these efforts, Lead Plaintiff, through its counsel, had a comprehensive understanding of the Action and sufficient information to make a well-informed decision regarding the fairness of the Settlement. *See Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement where record established that "all counsel had ample information and opportunity to assess the strengths and weaknesses of their claims and defenses"); *Redwen v. Sino Clean Energy, Inc*., No. 11-3936, 2013 U.S. Dist. LEXIS 100275, at *22 (C.D. Cal. July 9, 2013) (settlement approved when, as here, "the parties have spent a significant amount of time considering the issues and facts in this case and are in a position to determine whether settlement is a viable alternative"). This factor supports final approval of the Settlement.

6. The Experience and Views of Counsel

Experienced counsel, negotiating at arm's-length, have weighed the factors discussed above and endorse the Settlement. As courts have stated, the views of the attorneys actively conducting the litigation and who are most closely acquainted with the facts of the underlying litigation, are entitled to "great weight." *Nat'l Rural Telecomm.*, 221 F.R.D. at 528; *see also Int'l Brotherhood of Elec. Workers Local 697 Pension*, 2012 WL 5199742, at *3 (giving "considerable weight to Lead Counsel's representation that the Settlement Amount is a favorable recovery based on their understanding of the issues and challenges in this case in particular and their experience in securities litigation in general").

Lead Counsel firmly believe the Settlement is fair, adequate and reasonable, and particularly so in view of the risks, burdens and expense of continued litigation. Further, it is respectfully submitted that Plaintiff's Counsel are experienced and able lawyers in this area of practice (*see* Exs. 4–C and 5–A) and "[t]here is nothing to counter the presumption that Lead Counsel's recommendation is reasonable." *Omnivision*, 559 F. Supp. 2d at 1043.

Accordingly, this factor strongly favors approval of the Settlement.

7. The Settlement is Not the Product of Collusion

Another factor is whether there is any evidence that the settlement is the result of collusion. *See In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 947 (9th Cir. 2011); *see also Mego*, 213 F.3d at 458. "The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair." *Linney v. Cellular Alaska P'Ship*, No. C 96-3008 DLJ, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir. 1998). The presumption is entirely proper here. The Settlement is the product of extensive and informed arm's-length negotiations with the assistance of Mr. Jed D. Melnick, Esq. of JAMS, a well-respected and highly experienced mediator. *See Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) ("[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

The Parties met with Mr. Melnick on August 10, 2015, in an attempt to reach a settlement. While the mediation session narrowed some of the Parties' differences and despite the Parties' good faith efforts, the Parties did not reach an agreement. However, after the mediation, with the assistance of Mr. Melnick, the Parties continued to engage in productive

settlement discussions and ultimately accepted a mediator's proposal on September 27, 2015. Gardner Decl. ¶¶ 33-34.

Finally, the recommendation of Lead Plaintiff, a sophisticated institutional investor, also supports the fairness of the Settlement. *See* Ex. 1 ¶¶ 2, 5.

Accordingly, this factor, like the others discussed above, strongly favors approval of the Settlement. Lead Plaintiff respectfully submits that the Settlement is fundamentally fair, adequate and reasonable and should be approved.

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

The standard of approval of a plan of allocation in a class action under Rule 23 of the Federal Rules of Civil Procedure is the same as the standard applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs,* 955 F.2d at 1284; *Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *In re Heritage Bond Litig*., No. 02-ML-1475, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005). Here, Lead Counsel prepared the Plan of Allocation after careful consideration and with the assistance of a consulting damages expert. Gardner Decl. ¶ 63. The Plan of Allocation was fully disclosed in the Notice that was mailed to 15,360 potential Settlement Class Members and, as of the filing of this motion, no Settlement Class Member has filed an objection to it.

"[A] plan of allocation . . . fairly treats class members by awarding a pro rata share to every Authorized Claimant, even as it sensibly makes interclass distinctions based upon, inter alia, the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue." *Redwen*, 2013 U.S. Dist. LEXIS 100275, at *29 (citation and internal quotation marks omitted). Here, the Plan of Allocation provides for distribution of

the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. These formulas consider the amount of alleged artificial inflation in the prices of Spectrum publicly traded common stock and/or call options (or deflation in the prices of put options), as quantified by Lead Plaintiff's expert. Lead Plaintiff's consulting damages expert analyzed the movement in the prices of Spectrum securities and took into account the portion of the price drops attributable to the alleged fraud. Gardner Decl. ¶ 64; Ex. 3–A at 9-11. Claimants will be eligible for a payment based on when they purchased, held, or sold their Spectrum securities.

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

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

In presenting the proposed Settlement to the Court for preliminary approval, Lead Plaintiff requested that the Court preliminarily certify the Settlement Class for settlement purposes so that notice of the proposed Settlement, the final approval hearing and the rights of Settlement Class Members to request exclusion, object, or submit proofs of claim could be issued. In its Preliminary Approval Order, entered on January 27, 2016, this Court preliminarily certified the Settlement Class. ECF No. 141.

Nothing has changed to alter the propriety of the Court's certification and no potential Settlement Class Member has objected to class certification. Accordingly, and for all the reasons stated in Lead Plaintiff's Memorandum of Points and Authorities in Support of Consented to Motion for Preliminary Approval of Proposed Class Action Settlement (ECF No. 139), incorporated herein by reference, Lead Plaintiff now requests that the Court: (i) finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a)

and (b)(3); (ii) appoint Lead Plaintiff as Class Representative; and (iii) appoint Lead Counsel as Class Counsel. *See, e.g., Boring v. Bed Bath & Beyond of Cal. LLC*, No. 12-cv-05259-JST, 2014 WL 2967474, at *2 (N.D. Cal. June 30, 2014) ("For the reasons discussed in the Court's Preliminary Approval Order, the Court finds that the requirements for certification of the conditionally certified settlement class have been met, and that the appointment of . . . Class Representative and . . . Class Counsel is proper.").

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court: (i) grant final approval of the Settlement; (ii) approve the Plan of Allocation as fair, reasonable and adequate; (iii) find that notice to the Settlement Class was provided as required and to the satisfaction of due process and the PSLRA; (iv) finally certify the Settlement Class; and (v) appoint Lead Plaintiff as Class Representative and Lead Counsel as Class Counsel. Proposed orders will be submitted with Lead Plaintiff's reply submission on or before June 6, 2016, after the deadlines for requests for exclusion from the Settlement Class and objections have passed.

Dated: May 9, 2016

Respectfully submitted,

By: */s/ Jonathan Gardner*

Jonathan Gardner (*pro hac vice*)
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Attorneys for Lead Plaintiff and Lead Counsel for the Class

David C. O'Mara (Nevada Bar No. 8599)
THE O'MARA LAW FIRM, P.C.
311 E. Liberty St.
Reno, Nevada 89501
Telephone: (775) 323-1321

Facsimile: (775) 323-4082

Local Counsel for Lead Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that I am a member of Labaton Sucharow LLP, and on the 9th day of May 2016, I caused to be electronically filed Memorandum of Points and Authorities In Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation with the Clerk of Court using ECF. Accordingly, I also certify that the Memorandum was served on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Jonathan Gardner
Jonathan Gardner