UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION SECURITIES LITIGATION	Civil Action No. 16-6509 (ES) (CLW) Motion Date: October 4, 2021

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

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I. INTRODUCTION

Lead Plaintiffs Union Asset Management Holding AG ("Union"), Amalgamated Bank, as Trustee for the LongView Collective Investment Funds ("Amalgamated"), and the Fire and Police Pension Association of Colorado ("Colorado Fire and Police," and, with Union and Amalgamated, "Lead Plaintiffs"), have reached a proposed $95 million settlement (the "Settlement") of the above-captioned action (the "Action"), subject to Court approval. On behalf of themselves and the Settlement Class (defined below), Lead Plaintiffs now respectfully submit this memorandum of law in support of their unopposed motion for preliminary approval of the "Settlement", as embodied in the Stipulation and Agreement of Settlement dated September 2, 2021 (the "Stipulation").[1] Lead Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement because it satisfies the applicable standards set forth in Rule 23(e)(1) of the Federal Rules of Civil Procedure.

Approval of a class action settlement is a two-step process. *See* Fed. R. Civ. P. 23(e)(1), (2). At this initial stage, Lead Plaintiffs request only that the Court grant preliminary approval of the Settlement, which will begin the process of considering the proposed Settlement by allowing notice to be sent to potential members of the Settlement Class, and scheduling the proposed final approval hearing (the "Settlement Hearing"). Next, at the Settlement Hearing, the Court will be asked to determine whether the Settlement is fair, reasonable, and adequate based on more detailed motion papers submitted in support of the proposed Settlement prior to that hearing.

The Settlement before the Court is the result of Lead Plaintiffs' vigorous prosecution of this Action over the past four years and is an outstanding result for the Settlement Class. The $95

[1] All capitalized terms used in this memorandum that are not otherwise defined shall have the meanings given to them in the Stipulation, which is attached as Exhibit 1 to the accompanying Declaration of Michael B. Himmel.

million Settlement represents a significant portion of Lead Plaintiffs' recoverable damages. The Settlement is particularly favorable when weighed against the extended delay, substantial costs, and risks to recovery that continued litigation would have entailed. The Settlement was negotiated at arms'-length by parties that were represented by experienced and able counsel, with the assistance of former United States District Court Judge Layn R. Phillips serving as mediator. The Settlement was based on a mediator's recommendation by Judge Phillips. Further, the Settlement does not unjustly favor any Settlement Class Member, and the anticipated fee and expense application request is reasonable. Accordingly, the Court "will likely be able to" finally approve the Settlement, and thus preliminary approval is warranted. Fed. R. Civ. P. 23(e)(1).

The Court should also approve the proposed form and manner of notice of the Settlement to be provided to the Settlement Class because it mirrors the form of notice routinely approved by courts across the country in securities class action settlements, and is designed to ensure that Settlement Class Members are notified of the Settlement and informed of their rights to participate therein, object thereto, or seek exclusion from the Settlement Class.

Accordingly, Lead Plaintiffs respectfully request that the Court enter the accompanying [Proposed] Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order").[2] The Preliminary Approval Order will, among other things: (1) preliminarily approve the terms of the Settlement as set forth in the Stipulation; (2) approve the form and method for providing notice of the Settlement to the Settlement Class; and (3) schedule the Settlement Hearing at which the Court will consider the request for final approval of: (i) the Settlement set forth in the Stipulation; (ii) the plan for allocating the net proceeds of the Settlement among eligible

[2] The proposed Preliminary Approval Order is submitted herewith.

Settlement Class Members; and (iii) Lead Counsel's application for an award of attorneys' fees and expenses.

II. BACKGROUND

A. Summary of the Action

On October 5, 2016, a class action complaint was filed in this Court captioned *Park v. Cognizant Technology Solutions Corporation, et al.*, Case No. 2:16-cv-06509. ECF No. 1. On February 3, 2017, the Honorable William H. Walls ordered that the case be recaptioned as *In re Cognizant Technology Solutions Corporation Securities Litigation*, Master File No. 2:16-cv-06509 (the "Action"); appointed Union, Amalgamated, and Colorado Fire and Police as Lead Plaintiffs; and approved Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") as Lead Counsel for the class. ECF. No. 20.[3]

On April 7, 2017, Lead Plaintiffs filed and served their Amended Class Action Complaint (the "Amended Complaint"), asserting claims against Cognizant, Cognizant's President Gordon Coburn, Cognizant's Chief Executive Officer Francisco D'Souza, and Cognizant's Chief Financial Officer Karen McLoughlin (the "Original Defendants") under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder. ECF No. 38. The Amended Complaint also asserted claims against Coburn, D'Souza, and McLoughlin under Section 20(a) of the Exchange Act. *Id*. Among other things, the Amended Complaint alleged that the Original Defendants made materially false and misleading statements about Cognizant's business and financial results, including that certain payments relating to company-owned

[3] At that time, Motley Rice LLC ("Motley Rice") was appointed co-Lead Counsel. However, on May 15, 2017, Lead Plaintiff Union submitted a Stipulation that withdrew its selection of Motley Rice as co-Lead Counsel, so that BLB&G would continue as sole Lead Counsel (ECF No. 39), which was approved by the Court on May 19, 2017 (ECF No. 40).

facilities in India were made improperly. The Amended Complaint further alleged that the price of Cognizant common stock was artificially inflated as a result of the Original Defendants' allegedly false and misleading statements and declined when they were disclosed.

On June 6, 2017, the Original Defendants served their motions to dismiss the Amended Complaint, which was fully briefed by September 5, 2017. ECF Nos. 40-41, 46, 50-52. That day, Cognizant also moved to strike certain allegations in the Amended Complaint, which motion was fully briefed by October 10. ECF Nos. 50-52, 58, 59.

On August 8, 2018, the Court denied in part and granted in part the Original Defendants' motion to dismiss the Amended Complaint and denied Cognizant's motion to strike. ECF Nos. 66-67. Specifically, the Court sustained the Section 10(b) claim against Cognizant, dismissed the Section 10(b) claim against Coburn but sustained the Section 20(a) claim against him, and dismissed all claims against D'Souza and McLoughlin.

On September 7, 2018, Cognizant filed a motion seeking immediate interlocutory appeal under 28 U.S.C. § 1292(b) of the Court's ruling that the Complaint adequately alleged its scienter, which was fully briefed on October 9, 2018. ECF No. 70, 73, 74. On October 18, 2018, the Court granted Cognizant's motion. ECF No. 75.

On October 29, 2018, Cognizant filed a petition with the Third Circuit for permission to take an interlocutory appeal of the Court's order partially denying the motion to dismiss. On November 8, 2018, Lead Plaintiffs filed their opposition to that motion. On November 13, 2018, Cognizant filed a motion for leave to file additional briefing in support of the petition, which Lead Plaintiffs opposed.

On February 15, 2019, while these motions were pending, the U.S. Department of Justice indicted Defendants Coburn and Schwartz on charges that they engaged in a scheme to bribe one

or more government officials in India to obtain a planning permit relating to Cognizant's KITS facility in India (the "Criminal Action"). On February 18, 2019, Lead Plaintiffs notified the Third Circuit about the indictments, informed the Third Circuit that they would seek leave to amend the Amended Complaint to add new allegations relating to the indictments, and requested that the Third Circuit dismiss the appeal as moot. On February 27, 2019, Cognizant opposed Lead Plaintiffs' request.

On March 6, 2019, the Third Circuit granted Lead Plaintiffs' request and denied Cognizant's petition for an appeal, though it allowed Cognizant to renew its petition if the District Court denied Lead Plaintiffs' forthcoming motion to amend the Amended Complaint.

On April 26, 2019, Lead Plaintiffs filed their Second Amended Class Action Complaint ("SAC" or "Complaint"), which added Steven Schwartz as a Defendant and included additional allegations gleaned from the Criminal Action. ECF No. 83. On June 10, 2019, Defendants moved to dismiss the SAC, which was fully briefed on August 26. ECF Nos. 92-94, 109, 110-112. On July 26, 2019, while these motions were pending, the case was transferred to the Honorable Esther Salas. ECF No. 108.

On May 19, 2020, the Court held oral argument on Defendants' motions to dismiss the SAC. ECF No. 129. On June 5, 2020, the Court entered an order denying Defendants' motions to dismiss the SAC. ECF No. 132. On July 10, 2020, Cognizant filed and served its Answer. ECF No. 141.

Following the Court's order sustaining the Complaint, discovery in the Action commenced. Lead Plaintiffs served two sets of document requests on Cognizant, as well as further document requests on Defendants Coburn and Schwartz. The Parties also negotiated a proposed protective

order and protocol for electronically stored information, which the Court entered on September 1, 2020. ECF No. 157.

On June 16, 2020, the United States Attorney for the District of New Jersey ("Government") notified the Court that it would seek to intervene in the Action for the purpose of seeking a stay of discovery in the Action during the pendency of the Criminal Action against Defendants Coburn and Schwartz. ECF No. 133. Following discussions, the Parties and the Government stipulated to a partial stay of discovery in the Action, pursuant to which Cognizant would produce to Lead Plaintiffs all documents it previously produced to the Government in connection with the Criminal Action. The Court entered this stipulation on July 24, 2020. ECF No. 140. Pursuant to that order, on September 3, 2020, Cognizant produced to Lead Plaintiffs 124,047 documents, comprised of 660,154 pages, which it had previously produced to the Government. Cognizant produced additional documents to the parties to the Criminal Action, which it then also produced to Lead Plaintiffs on May 21, 2021.

B. The Mediation and Settlement Process

Lead Plaintiffs and Cognizant retained former United States District Court Judge Layn R. Phillips as mediator and participated in a full-day mediation session on February 7, 2020. Judge Phillips is one of the nation's preeminent mediators, and has significant experience mediating complex disputes, including numerous securities class actions. Prior to the mediation, the parties exchanged detailed mediation submissions, with each side discussing the strengths and weaknesses of their claims and defenses. Despite their best efforts, Lead Plaintiffs and Cognizant were unable to reach an agreement at the February 2020 mediation.

Thereafter, Lead Plaintiffs and Cognizant continued their arms'-length settlement negotiations. On August 6, 2021, following extensive settlement negotiations, Judge Phillips issued a mediator's recommendation that the action be settled for $95 million in cash, which was

accepted on August 10. In the following weeks, the Parties negotiated a formal Stipulation and Agreement of Settlement, which was executed on September 2, 2021.

III. SUMMARY OF KEY SETTLEMENT TERMS

Cognizant has agreed to pay or cause to be paid $95 million in cash, on behalf of all Defendants, to be deposited within twenty business days after preliminary approval into an interest-bearing escrow account controlled by Lead Counsel. Lead Counsel may pay the cost of notice to the Settlement Class from the deposited funds.

The Settlement Class that Lead Plaintiffs ask the Court to certify in connection with the Settlement consists of all persons and entities who purchased or otherwise acquired the common stock of Cognizant during the Class Period. In exchange for the $95 million Settlement Amount, Settlement Class Members will provide a standard release, releasing all claims that (i) were asserted in the Action or could be asserted in any other forum that arise out of the allegations and transactions set forth in the Complaint and (ii) that relate to the purchase, acquisition, holding, or sale of Cognizant common stock during the Class Period. Stipulation ¶ 1(oo).

The Settlement Class will receive the full benefit of the $95 million payment net of Court-approved fees and expenses. There will be no reversion of funds to Defendants or their insurers if the Settlement becomes final. Prior to final approval, members of the Settlement Class will be provided the opportunity to request exclusion from the Settlement Class.

IV. ARGUMENT

In the Third Circuit, there is a "strong presumption in favor of voluntary settlement agreements," which is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)); *see also, e.g.*, *In re Warfarin*

Sodium Antitrust Litig., 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990); *James v. Glob. Tel*Link Corp.*, 2020 WL 6197511, at *4 (D.N.J. Oct. 22, 2020).

Federal Rule of Civil Procedure 23(e) requires judicial approval of class action settlements. The procedure for approval of a proposed class action settlement is a well-established, two-step process. *First*, the Court performs a preliminary review of the settlement to determine whether to grant preliminary approval and authorize plaintiffs to send notice of the proposed settlement to the members of the class. *See* Fed. R. Civ. P. 23(e)(1). *Second*, following distribution of the notice, and after a hearing, the Court determines whether to grant final approval of the settlement. *See* Fed. R. Civ. P. 23(e)(2).

The Federal Rules of Civil Procedure instruct that a court should grant preliminary approval to authorize notice of a settlement upon 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). This standard effectively codifies prior case law that provided that courts should grant preliminary approval after considering whether "the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *In re Nat'l Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (citation omitted).

In considering final approval of the Settlement, Federal 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). As detailed below, the facts and circumstances concerning the Settlement reached here readily satisfy Rule 23(e)(2), and the Settlement warrants preliminary approval.

A. The Settlement Was Reached Through Extensive Good-Faith, Arm's-Length Negotiations Between Experienced Counsel, and Achieved with an Experienced Mediator's Assistance

A proposed class action settlement is considered presumptively fair where, as here, the parties have engaged in extensive arm's-length negotiations after substantial discovery. *See In re Nat'l Football League Players Concussion Injury Litig.,* 821 F.3d 410, 436 (3d Cir. 2016) ("*NFL Players*"); *Warfarin*, 391 F.3d at 535.

As noted above, Lead Plaintiffs and Cognizant participated in mediation before Judge Phillips, a preeminent mediator of complex litigation (and, in particular, securities litigation), which involved the exchange of detailed mediation statements; an all-day, in-person mediation session in February 2020; and extensive subsequent negotiations assisted by Judge Phillips. Indeed, the agreement to settle for $95 million was based on Judge Phillips' recommendation that the Action be settled for that amount.

The substantial arm's-length negotiations under the supervision of an experienced mediator support the conclusion that the Settlement is fair and was achieved free of collusion. *See In re Ocean Power Techs., Inc*., 2016 WL 6778218, at *11 (D.N.J. Nov. 15, 2016) (the "participation of an independent mediator in settlement negotiations virtually insures [*sic*] that the negotiations were conducted at arm's length and without collusion between the parties") (citation omitted).

Moreover, Lead Counsel's extensive investigation of the claims asserted, the briefing on the motions to dismiss, the discovery conducted, and the mediation and other settlement negotiations provided Lead Plaintiffs and Lead Counsel with ample information to evaluate the strengths and weaknesses of the Action and assess the fairness of the Settlement. *See Schuler v. Medicines Co.*, 2016 WL 3457218, at *7 (D.N.J. Jun. 24, 2016) (finding that "Lead Counsel had ample information to evaluate the prospects for the Class and to assess the fairness of the Settlement" where it had reviewed publicly-available information, conducted an extensive investigation, consulted with an expert, drafted the initial and amended complaints, briefed an opposition to defendants' motion to dismiss, and engaged in mediation).

In addition, Lead Plaintiffs, each an institutional investor of the type favored by Congress to lead securities class actions under the PSLRA, supervised this litigation throughout and recommend that the Settlement be approved. Moreover, BLB&G, which is one of preeminent firms in prosecuting securities class actions, had a thorough understanding of the factual and legal issues in the Action, and supports the Settlement. These facts weigh strongly in favor of preliminary approval. *See Alves v. Main,* 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("[C]ourts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class.") (internal quotations omitted).

B. The Proposed Settlement Is Within the Range of Possible Approval

At the preliminary approval stage, the Court need only determine whether it will "likely be able" to approve the Settlement, Fed. R. Civ. P. 23(e)(1), or, in other words, whether the Settlement is "within the range of possible approval." *NFL Players,* 301 F.R.D. at 198 (citation omitted). Because the proposed $95 million Settlement represents an excellent recovery for the Settlement Class in light of the substantial risks of non-recovery entailed by continued litigation, the Settlement falls well within the range of possible approval.

Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the significant time and expense that would be necessary to pursue their claims against Defendants through the completion of discovery, certification of the class, summary judgment, trial, and appeals, as well as the substantial risks they would face in establishing liability and damages.

In the Action, Lead Plaintiffs allege that Defendants made three kinds of misstatements: (1) false financial statements, in which Cognizant improperly booked approximately $6 million in alleged bribes as capital expenses; (2) statements touting the benefits of the Indian facility licenses; and (3) statements representing that no incidents of corruption had been reported internally. Defendants have argued, and would likely continue to assert at trial, that these alleged false statements were not material to investors because the underlying misconduct was insignificant to Cognizant's financial performance and, thus, was not actionable under the securities laws. Specifically, Defendants have argued, and would likely continue to assert at trial, that Cognizant's financial results were impacted by less than $6 million over five years—as compared to Cognizant's more than $50 billion in revenue and approximately $7 billion in net income during that time period. Moreover, Defendants likely would assert that Cognizant's operations were not materially impacted, because the Company completed all the facilities at issue; its stock price swiftly recovered; and the Company continued to report positive financial results in the quarters after the scheme was disclosed. Additionally, Defendants likely would argue that many of the alleged misstatement are vague statements of corporate optimism or merely aspirational and, for this reason too, were not material. Finally, Defendants Coburn and Schwartz have denied that any bribery scheme took place and would continue to do so at trial.

Defendants have argued, and likely would continue to assert at trial, that Lead Plaintiffs cannot establish their "scienter," or fraudulent intent, which is an element of the claims asserted. Defendant Cognizant has argued, and would likely continue to assert, that the conduct at issue was carried out by a small group of officers, whose culpable intent may not, and should not, be imputed to the Company at large. In support of this contention, Cognizant has pointed to, and would continue to point to, the Government's decision to decline to prosecute the Company. Cognizant would also continue to argue that, when it discovered the payments at issue, it promptly self-reported to the Government and the Securities and Exchange Commission ("SEC"), cooperated with their investigations, and launched an internal investigation of its own. Moreover, Defendants Coburn and Schwartz have pleaded not guilty to the criminal charges against them and have asserted that they believe the record contains exculpating evidence demonstrating that they did not participate in any bribery scheme.

Lead Plaintiffs would also face risks in connection with proving loss causation and damages. Lead Plaintiffs anticipated that Defendants would have argued that the size of the decline in Cognizant's stock price on September 30, 2016, immediately following the disclosure of the Company's internal investigation into potential FCPA violations, was not a reasonable measure of damages caused by the alleged misstatements, because much of the decline on that day was due to the uncertainty created by the open investigation. Defendants likely would have argued that Cognizant's stock price *increased* as more information was disclosed about the size of the alleged bribery scheme and its limited impact on the Company's previously reported financial results. In support of this contention, Defendants likely would have asserted that Cognizant's stock price fully recovered from its September 30, 2016 decline less than 40 days later.

On all of these and other issues, Lead Plaintiffs would have had to prevail at several stages of litigation, including at summary judgment and trial—and then again on the appeals that would likely have followed. Each of these stages posed meaningful risks and, even if Lead Plaintiffs were successful, would likely have taken years to complete. The Settlement avoids these risks and will provide a prompt and certain benefit to the Settlement Class, rather than risk a smaller recovery—or none at all—after additional years of litigation.

This case was also subject to a unique level of delay (and additional risks) associated with the Criminal Action brought against Coburn and Schwartz and the need to conduct discovery in India. Discovery was stayed in this Action pending the completion of the criminal trial, which meant that Lead Plaintiffs could not begin to conduct any further extensive discovery in this Action until after the criminal trial finishes, which is not scheduled to occur until 2022 and is at serious risk of being delayed even further. Moreover, obtaining depositions in a foreign country like India is a slow process without any guarantee of success, and requires significant cooperation from governmental bureaucracies. The process of obtaining depositions in India would likely have added at least another year to the normal discovery process, thus significantly delaying the ability to ready the case for trial. Moreover, individuals in India are not necessarily subject to a duty to retain evidence, raising the risk that key evidence could be lost.

In sum, there were a number of significant risks attendant to the continued prosecution of the Action, including the risk of zero recovery. The Settlement eliminates these risks. It also eliminates the risk and costs attendant with the delay inherent in further litigation.

The Settlement is also reasonable when considered in relation to the range of potential recoveries for the Settlement Class if Lead Plaintiffs prevailed at trial and on any appeals (which, as noted above, was far from certain). The maximum classwide damages that Lead Plaintiffs would

likely be able to prove at trial is approximately $650 million. Even judged against this benchmark, the recovery under the Settlement compares favorably to the average settlement recovery in other securities class actions. *See, e.g., Ocean Power*, 2016 WL 6778218, at *21 (noting that "Courts in this Circuit have routinely approved settlements" comparable to the recovery of 11.5% of maximum damages achieved in that case); *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *14 (E.D. Pa. Jan. 25, 2016) (approving settlement representing "roughly 9-10% of the maximum estimated losses"); *In re Hemispherx Biopharma, Inc., Sec. Litig.*, 2011 WL 13380384, at *6 (E.D. Pa. Feb. 14, 2011) (approving settlement representing 5.2% of the maximum damages and finding that it "falls squarely within the range of reasonableness approved in other securities class action settlements").

Moreover, Defendants had arguments that damages were far less than $650 million. For example, as noted above, Lead Plaintiffs anticipated that Defendants would argue that: (1) the September 30 stock price decline was not a measure of true damages because much of that decline was due to the uncertainty created by the open investigation; (2) Cognizant's stock price increased as more information was disclosed about the size of the alleged bribery scheme and its limited impact on Cognizant's financial results; and (3) Cognizant's stock price recovered in less than 40 days. While Lead Plaintiffs believe they had counter-arguments, if these anticipated arguments were accepted, damages could have been reduced significantly, potentially even to less than the Settlement amount.

In all events, any damages estimate assumes that Lead Plaintiffs successfully overcame all of the risks to establishing liability involving materiality, falsity, and scienter—any one of which could have resulted in investors recovering nothing.

C. The Settlement Treats All Settlement Class Members Fairly

The Settlement does not improperly grant preferential treatment to Lead Plaintiffs or any segment of the Settlement Class. Rather, all Settlement Class Members will receive a distribution from the Net Settlement Fund in accordance with a plan of allocation to be approved by the Court.

At the final Settlement Hearing, Lead Plaintiffs will ask the Court to approve the proposed Plan of Allocation for the Net Settlement Fund (the "Plan," which is stated in full in the Notice). The Plan of Allocation provides for distribution of the Net Settlement Fund to Settlement Class Members demonstrating a loss on their transactions in Cognizant common stock related to the alleged fraud. The formula to apportion the Net Settlement Fund among Settlement Class Members was developed by Lead Counsel in consultation with Lead Plaintiffs' damages expert and is based on an estimated amount of artificial inflation in the price of Cognizant common stock during the Class Period related to Defendants' alleged misconduct.

The calculation of "Recognized Loss Amounts" under the Plan will depend on when the claimant purchased and/or sold the eligible securities, whether the claimant held the securities through the statutory 90-day "look-back" period, *see* 15 U.S.C. § 78u-4(e), and the value of the securities when the claimant purchased, sold, or held them. Under the Plan, a claimant's "Recognized Claim" will be the sum of the claimant's Recognized Loss Amounts, and the Net Settlement Fund will be allocated to Settlement Class Members on a *pro rata* basis based on the relative size of their Recognized Claims. *See In re Gen. Instrument Sec. Litig.,* 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of General Instrument stock").

Once the Claims Administrator has processed all submitted claims, it will make distributions to eligible Settlement Class Members, until additional redistributions are no longer

cost effective. Any remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) approved by the Court.

The proposed Plan is thus a fair and reasonable method for allocating the Net Settlement Fund to eligible Settlement Class Members and merits approval at the Settlement Hearing.

D. The Settlement Does Not Excessively Compensate Plaintiffs' Counsel

The proposed Settlement also does not grant excessive compensation to Plaintiffs' Counsel.[4] *See NFL Players,* 301 F.R.D. at 198 (considering at preliminary approval stage whether "the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as . . . excessive compensation of attorneys"). The Settlement does not provide for any specific award to Plaintiffs' Counsel, and Lead Counsel will be compensated solely out of the Settlement Fund in an amount to be approved by the Court.

In Lead Counsel's fee and expense application, Lead Counsel will seek a fee of no more than 20% of the Settlement Fund for all Plaintiffs' Counsel—an amount that is well within the fee percentage range that courts in the Third Circuit approve in securities class actions. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery").

Lead Counsel's fee and expense application will be filed with the Court, and all supporting papers will also be posted on a website (the "Settlement Website") where Settlement Class Members can review them, as provided by the Preliminary Approval Order. By granting preliminary approval, the Court does not in any way pass upon the reasonableness of the fee or expense application, which will be decided *de novo* at the Settlement Hearing.

[4] Plaintiffs' Counsel consists of Lead Counsel; Liaison Counsel Lowenstein Sandler LLP; Kessler Topaz Meltzer and Check, LLP; and Motley Rice LLC.

E. Lead Plaintiffs Have Identified All Agreements Made in Connection with the Settlement

In addition to the Stipulation, Lead Plaintiffs and Cognizant have entered into a confidential Supplemental Agreement regarding requests for exclusion ("opt-outs") from the Settlement Class. *See* Stipulation ¶ 37. This agreement establishes the conditions under which Cognizant may terminate the Settlement if the opt-outs received exceed an agreed-upon threshold. This type of termination agreement is standard in securities class actions. *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020) ("This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement."); *Thomas v. MagnaChip Semiconductor Corp.*, 2017 WL 4750628, at *7 (N.D. Cal. Oct. 20, 2017). As is also standard in securities class actions, agreements of this kind are not made public to avoid incentivizing individuals to leverage the opt-out threshold to exact individual settlements at the Settlement Class's expense. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, *7 (N.D. Cal. Dec. 18, 2018) ("There are compelling reasons to keep this information confidential in order to prevent third parties from utilizing it for the improper purpose of obstructing the settlement and obtaining higher payouts."). In accordance with its terms, the Supplemental Agreement may be submitted to the Court in camera.

F. The Proposed Settlement Class Satisfies Rule 23

In determining whether to grant preliminary approval, the Court should also determine whether it "will likely be able to" certify the proposed Settlement Class for purposes of the Settlement at final approval. Fed. R. Civ. P. 23(e)(1)(B). The proposed Settlement Class, which has been stipulated to by the Parties, consists of "all persons and entities who purchased or otherwise acquired the common stock of Cognizant during the Class Period" (*i.e.*, from February

27, 2015 through September 29, 2016, inclusive). Stipulation ¶¶ 1(i), 1(tt).[5]

Courts have long acknowledged the propriety of certifying a class solely for purposes of a class action settlement. *See, e.g., Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 619-22 (1997); *see also Pozzi v. Smith,* 952 F. Supp. 218, 221 (E.D. Pa. 1997) ("The Third Circuit has declared that class actions created for the purpose of settlement are recognized under the general scheme of Federal Rule of Civil Procedure 23, provided that the class meets the certification requirements under the Rule."). A settlement class, like other certified classes, must satisfy all the requirements of Rules 23(a) and (b), although the manageability concerns of Rule 23(b)(3) are not at issue. *See Amchem,* 521 U.S. at 593 ("Whether trial would present intractable management problems . . . is not a consideration when settlement-only certification is requested[.]"). While the Court need only determine at this preliminary approval stage whether it "will likely be able to" certify the Settlement Class at final approval, as demonstrated below, certification of the proposed Settlement Class for purposes of the Settlement is appropriate here.

1. The Settlement Class Satisfies the Requirements of Rule 23(a)

Certification is appropriate under Rule 23(a) if "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

[5] Excluded from the Settlement Class are: (i) Defendants (Cognizant, Gordon Coburn, and Steven Schwartz), Francisco D'Souza, and Karen McLoughlin; (ii) members of the Immediate Families of the Individual Defendants (Gordon Coburn and Steven Schwartz), Francisco D'Souza, and Karen McLoughlin; (iii) the Company's subsidiaries and affiliates; (iv) any person who is or was during the Class Period an Officer or director of the Company or any of the Company's subsidiaries or affiliates; (v) any entity in which any Defendant or other excluded person or entity has a controlling interest; and (vi) the legal representatives, heirs, successors, and assigns of any such excluded person or entity; provided, however, that any employee stock ownership plan, 401(k) plan, or similar plan or account is not excluded from the Settlement Class. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court. Stipulation ¶ 1(tt).

and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

a. The Settlement Class Satisfies Numerosity

Lead Plaintiffs meet Rule 23(a)(1)'s numerosity requirement because the proposed Settlement Class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). "There is no minimum number of members needed for a suit to proceed as a class action," but a showing that the "potential number of plaintiffs exceeds 40" generally satisfies this requirement. *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). Numerosity is readily met in securities cases involving a company with common stock widely traded on a major exchange. *See, e.g., In re Novo Nordisk Sec. Litig.*, 2020 WL 502176, at *5 (D.N.J. Jan. 31, 2020) ("*Novo*"). Here, there were over 600 million shares of Cognizant common stock outstanding during the Class Period, and the shares were publicly traded on NASDAQ with an average weekly trading volume of over 18 million shares. These facts easily establish numerosity. *See City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc.*, 2015 WL 5097883, at *8 (D.N.J. Aug. 31, 2015) (numerosity satisfied where "Prudential stock trade[d] on the NYSE with significant daily volume"); *Dartell v. Tibet Pharms., Inc.*, 2016 WL 718150, at *3 (D.N.J. Feb. 22, 2016) (numerosity satisfied where "there were three million shares of stock sold in the IPO").

b. There Are Common Questions of Law and Fact

Rule 23(a)(2)'s commonality requirement is met where, as here, there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement is "not particularly demanding," *Prudential*, 2015 WL 5097883, at *8, and is satisfied where proposed class representatives share "at least one question of fact or law with the grievances of the prospective class." *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 486 (3d Cir. 2015); *see also Novo*, 2020 WL 502176, at *5 ("The threshold for establishing commonality is straightforward: 'The commonality

requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.'") (quoting *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 596-97 (3d Cir. 2009)). "Courts in this Circuit have recognized that securities fraud cases often present a paradigmatic common question of law or fact of whether a company omitted material information or made misrepresentations that inflated the price of its stock." *Roofer's Pension Fund v. Papa*, 333 F.R.D. 66, 74–75 (D.N.J. 2019). Such is the case here.

The Complaint asserts a common course of conduct arising from allegedly materially false and misleading statements and omissions made to the investing public, and the Complaint's allegations concern all Settlement Class Members. Accordingly, this Action is replete with questions that are common to the Settlement Class, including: (1) whether Defendants violated Sections 10(b) and 20(a) of the Exchange Act; (2) whether public statements made by Defendants during the Class Period misrepresented or omitted material facts; (3) whether Defendants knew or were deliberately reckless in not knowing that their statements and/or omissions were false and misleading; (4) whether the price of Cognizant common stock was artificially inflated; and (5) whether Defendants' conduct caused the members of the Settlement Class to sustain damages.

c. Lead Plaintiffs' Claims Are Typical of Those of the Settlement Class

Lead Plaintiffs satisfy Rule 23(a)(3)'s typicality requirement because Lead Plaintiffs' claims are "typical" of the claims of the Settlement Class. Fed. R. Civ. P. 23(a)(3). "The standard for demonstrating typicality is undemanding and requires that 'the claims of the named plaintiffs and putative class members involve the same conduct by the defendant.'" *Papa*, 333 F.R.D. at 75 (quoting *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 259 F.3d 154, 183-84 (3d Cir. 2001)). Typicality "does not require that the putative class members all share identical claims." *Papa*, 333 F.R.D. at 75 (citing *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 531-32 (3d Cir. 2004)). Typicality is easily established here.

Here, Lead Plaintiffs' claims are typical of the claims of the Settlement Class because all claims are based on Defendants' alleged conduct and all members of the Settlement Class were similarly affected by such alleged conduct. Like all Settlement Class Members, Lead Plaintiffs purchased or acquired Cognizant common stock during the Class Period and claim to have suffered damages when Defendants' alleged misstatements and omissions were revealed. In short, because "Plaintiffs' claims arise from the very same alleged Exchange Act violations as those that give rise to the claims of the absent class members," typicality is satisfied. *In re Merck & Co., Inc. Sec., Derivative & ERISA Litig.*, 2013 WL 396117, at *5 (D.N.J. Jan. 30, 2013); *see also Novo*, 2020 WL 502176, at *6 ("[T]ypicality is clearly satisfied because Plaintiffs' claims arise from the same course of conduct that gave rise to the claims of all other Class members and are based on the same legal theory."); *Prudential*, 2015 WL 5097883, at *9 (typicality satisfied in class action alleging § 10(b) and § 20(a) violations where "[t]he factual and legal predicates of [the proposed class representative's] claims are the same as those for the class members").

d. Lead Plaintiffs Will Fairly and Adequately Protect the Settlement Class

Rule 23(a)(4) mandates that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy prerequisite has two prongs: (1) "the class representatives' interests are not adverse to those of other members of the class"; and (2) "the class representative is represented by attorneys who are qualified, experienced, and generally able to conduct the litigation." *In re Schering-Plough Corp./ENHANCE Sec. Litig.*, 2012 WL 4482032, at *6 (D.N.J. Sept. 25, 2012). This inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Id*. (quotation marks omitted). Here, Lead Plaintiffs are sophisticated institutional investors that have and will continue to represent the interests of the Settlement Class fairly and adequately, and there is no antagonism or conflict of

interest between Lead Plaintiffs and the other Settlement Class Members.

Moreover, Lead Plaintiffs have retained counsel highly experienced in securities litigation who have successfully prosecuted many securities and other complex class actions throughout the United States, including in the Third Circuit. Lead Plaintiffs are thus adequate representatives of the Settlement Class, and their counsel are qualified, experienced, and capable of prosecuting this Action. A court in this District has recognized that there is "no doubt" BLB&G is "qualified, experienced, and generally able to conduct [securities class action] litigation." *Schering-Plough*, 2012 WL 4482032, at *6.[6]

2. The Settlement Class Satisfies the Requirements of Rule 23(b)(3)

Rule 23(b)(3) authorizes class certification if "questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class meets these requirements.

a. Common Legal and Factual Questions Predominate

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. This inquiry is satisfied where "questions of law or fact common to the class will 'predominate over any questions

[6] Exhibit 2 to the accompanying Declaration of Michael B. Himmel is a copy of an order in an unrelated action where BLB&G has been serving as Lead Counsel for SEB Investment Management AB ("SEB"), and Class Counsel for the certified Class. *See SEB Inv. Mgmt. AB v. Symantec Corp*., 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021). As reflected in the order, counsel for a competing lead plaintiff movant (which was not appointed) raised questions about BLB&G's hiring of a former employee of the lead plaintiff in that case, SEB. Following discovery and extensive briefing, the court found that the evidence did not establish any *quid pro quo*, and allowed BLB&G to continue as Class Counsel. *See id*. at *1-2. The court in *Symantec* nevertheless ordered BLB&G to bring the order to the attention of any court in which BLB&G seeks appointment as class counsel, *see id.* at *2, so we are submitting the order to the Court's attention.

affecting only individual members' as the litigation progresses." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 467 (2013); *see also Papa*, 333 F.R.D. at 78-79 ("[T]he predominance inquiry turns on whether the evidence necessary to prove the essential elements of the underlying claims will vary from class member to class member, causing the Court to engage in individual treatment of the issues."). This "test [is] readily met in certain cases alleging . . . securities fraud." *Amchem,* 521 U.S. at 625.

Here, the predominance standard is met, because the core factual and legal questions in the Action are common to all Settlement Class Members. Courts have held that the elements of materiality, falsity, and loss causation are all common questions for the Section 10(b) claims at issue here. *See, e.g.*, *Amgen*, 568 U.S. at 467 ("materiality is a 'common questio[n]' for purposes of Rule 23(b)(3)"); *id*. at 475 ("this Court has held that loss causation and the falsity or misleading nature of the defendant's alleged statements or omissions are common questions that need not be adjudicated before a class is certified"); *Erica P. John Fund, Inc. v. Halliburton Co.,* 563 U.S. 804, 813 (2011) (holding that plaintiff need not prove loss causation at class certification).

b. A Class Action Is Superior to Other Methods of Adjudication

Rule 23(b)(3) provides the following non-exhaustive factors to be considered in determining whether class certification is the superior method of litigation: "(A) the class members' interests in individually controlling the prosecution . . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by . . . class members; [and] (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum[.]" Fed. R. Civ. P. 23(b)(3).[7] Superiority "is easily satisfied in securities fraud

[7] As noted above, manageability is not an element relevant to the certification of a settlement class. *See Amchem*, 521 U.S. at 593 ("Whether trial would present intractable management problems . . . is not a consideration when settlement-only certification is requested.").

cases where 'there are many individual plaintiffs who suffer damages too small to justify a suit against a large corporate defendant.'" *In re Heckmann Corp. Sec. Litig.*, 2013 WL 2456104, at *8 (D. Del. June 6, 2013). Courts in this district have recognized that "[a] class action is certainly the superior method for adjudicating" securities fraud claims because "[g]enerally, as a practical matter, investors defrauded by securities law violations have no recourse other than class relief." *Papa*, 333 F.R.D. at 78 (quotations omitted).

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

As outlined in the proposed Preliminary Approval Order, if the Court grants preliminary approval, the Claims Administrator will mail the Notice and Claim Form (Exhibits A-1 and A-2 to the Preliminary Approval Order) to all Settlement Class Members who can be identified with reasonable effort, as well as post the Notice and the Claim Form on the Settlement Website. The Claims Administrator will utilize a proprietary list of the largest and most common banks, brokerage firms, and nominees that purchase securities on behalf of beneficial owners to facilitate the dissemination of notice. The Notice will advise Settlement Class Members of (i) the pendency of the class action, (ii) the essential terms of the Settlement, and (iii) information regarding Lead Counsel's application for attorneys' fees and expenses. The Notice will also provide specifics on the date, time, and place of the Settlement Hearing and state the procedures for objecting to the Settlement, the proposed Plan of Allocation, and the motion for attorneys' fees and expenses, and for requesting exclusion from the Settlement Class. The Summary Notice will be published in *The Wall Street Journal* and transmitted via *PR Newswire*.

The form and manner of providing notice to the Settlement Class are regularly approved in securities class action litigation and satisfy the requirements of due process, Rule 23, and the PSLRA. The Notice and Summary Notice "provide[] all of the required information concerning

the class members' right[s] and obligations under the settlement." *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 328 (3d Cir. 1998). The manner of providing notice, which includes individual notice by mail to all Settlement Class Members who can be reasonably identified, represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. *See Jones v. Commerce Bancorp, Inc.*, 2007 WL 2085357, at *5 (D.N.J. July 16, 2007) ("the proposed distribution of notice to class members by first class mail is reasonable because no alternative method of distribution is more likely to notify class members"). Lead Plaintiffs respectfully request that the proposed notice procedures be approved.

VI. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Lead Plaintiffs respectfully propose the following schedule for proceeding with final approval of the Settlement. If the Court agrees, Lead Plaintiffs request that Court schedule the Settlement Hearing for a date at least 90 calendar days after entry of the Preliminary Approval Order (but not earlier than December 13, 2021), or at the Court's earliest convenience after that date. The illustrative dates provided below assume that the Court enters the Preliminary Approval Order by September 14, 2021, and sets the Settlement Hearing for **December 13, 2021**. Please note that the Court need only enter the date of the Settlement Hearing at paragraph 5 of the accompanying proposed Preliminary Approval Order, as all other dates or 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**	**Example Date**
Deadline for mailing the Notice and Claim Form to Settlement Class Members (which date shall be the "Notice Date")	No later than 15 business days after entry of Preliminary Approval Order (Preliminary Approval Order ¶ 7(b))	October 5, 2021
Deadline for publishing the Summary Notice	No later than 10 business days after the Notice Date (Preliminary Approval Order ¶ 7(d))	October 20, 2021
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)	35 calendar days before the date set for the Settlement Hearing (Preliminary Approval Order ¶ 27)	November 8, 2021
Deadline for receipt of requests for exclusion or objections	21 calendar days before the date set for the Settlement Hearing (Preliminary Approval Order ¶¶ 14, 17, 18)	November 22, 2021
Deadline for filing reply papers	7 calendar days before the Settlement Hearing (Preliminary Approval Order ¶ 27)	December 6, 2021
Settlement Hearing	90 calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter, but not before December 13, 2021 (Preliminary Approval Order ¶ 5)	December 13, 2021
Postmark deadline for submitting Claim Forms	120 calendar days after the Notice Date (Preliminary Approval Order ¶ 11)	February 2, 2022

VII. CONCLUSION

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

Dated: September 7, 2021

Respectfully submitted,

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