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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JUAN FERNANDEZ, Plaintiff, v. KNIGHT CAPITAL GROUP, INC., et al., Defendant.	Civil Action No. 12-cv-6760 (MCA)(SCM) **NOTICE OF MOTION**

To: All Counsel via ECF

COUNSEL:

PLEASE TAKE NOTICE that, on a date to be determined, Plaintiff shall move before the Hon. Madeline Cox Arleo, U.S.D.J. at the Martin Luther King, Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102, to enter an Order: (1) preliminarily approving the proposed Settlement of the above captioned action as contained in the accompanying Stipulation of Settlement (the "Settlement"); (2) setting the date for a hearing to consider final approval of the proposed Settlement, as well as Class Counsel's Fee and Expense Application; (3) directing that notice be disseminated to Class Members at the times and in the manner proposed; and (4) granting such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, in support of the motion, the parties will rely upon the accompanying brief and the Declaration of James E. Cecchi.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Federal Rules of Civil Procedure, a proposed form of Order is attached.

PLEASE TAKE FURTHER NOTICE that the parties consent to disposition of this motion on the papers in accordance with Rule 78 of the Federal Rules of Civil Procedure.

CARELLA BYRNE CECCHI
OLSTEIN BRODY & AGNELLO, P.C.

By: /s/ James E. Cecchi
JAMES E. CECCHI

Dated: February 10, 2015

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JUAN FERNANDEZ, Plaintiff, v. KNIGHT CAPITAL GROUP, INC., et al., Defendants.	Civil Action No. 12-cv-06760 (MCA) (SCM) *Document Electronically Filed*

LEAD PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT

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Court-appointed Lead Plaintiff, Louisiana Municipal Police Employees Retirement System ("LAMPERS" or "Lead Plaintiff") individually and on behalf of the putative class in this action (the "Settlement Class," or "Class"), has entered into an agreement (the "Settlement") with defendants Knight Capital Group, Inc. ("Knight"), Thomas M. Joyce, and Steven Bisgay (collectively, "Defendants").[1] Lead Plaintiff respectfully moves for an order preliminarily approving the Settlement, certifying the Settlement Class, and appointing Lead Plaintiff as class representative and Lead Plaintiff's Counsel and Lead Plaintiff's Co-Counsel ("herein together as "Co-Lead Counsel") as class counsel for purposes of the Settlement, approving the form and manner of providing notice of the Settlement to the Class, and setting a hearing at which the Court will consider final approval of the Settlement, approval of the plan of allocation, and Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. Because the Stipulation of Settlement, a copy of which is attached as Exhibit 1 to the Declaration of James E. Cecchi, was negotiated at arm's length by experienced counsel and is reasonable and appropriate, Lead Plaintiff respectfully requests the Court's preliminary approval.

INTRODUCTION

Lead Plaintiff has reached an agreement with Defendants to settle this Action in exchange for a $13 million cash payment (the "Settlement Amount") by Defendants to be deposited into an escrow account for the benefit of the Class as further defined in the Stipulation of Settlement. By any measure, the Stipulation of Settlement represents an outstanding result. If approved by the Court, the $13 million will provide substantial relief to Class Members. The significant benefit the proposed Settlement will provide the Class, if approved, is particularly

[1] Unless otherwise defined, all Capitalized Terms in this memorandum have the same meaning as set forth in the Settlement Agreement.

noteworthy when considered against the risk that the Class might recover less (or nothing) if the action were litigated through dispositive motions, trial, and any likely appeals that would follow -- a process that could last many years. By way of example only, Lead Plaintiff faces risks of establishing liability, including scienter and Defendants vigorously dispute, among other issues, that the allegations do not include actionable misrepresentations and rely instead on puffery, statements of opinion, and forward looking statements. *See generally* Dkt. 60 and 63.

The substantial settlement is the direct result of the significant efforts undertaken by Lead Plaintiff and Co-Lead Counsel in prosecuting and settling this Action. Among other things, Lead Plaintiff, through Co-Lead Counsel: (i) conducted a thorough investigation into the Class's claims; (ii) drafted a detailed consolidated class action complaint; (iii) briefed the initial opposition to the Defendants' Motions to Dismiss; and (iv) further researched and drafted a fulsome Second Amended Complaint and in connection with that Complaint, reviewed the related SEC administrative proceeding and Order. Accordingly, at the time the Settlement was reached, Lead Plaintiff and Co-Lead Counsel had a thorough understanding of the claims asserted and the risks of continued litigation and had an understanding of the evidence supporting their claim that usually does not exist at the motion to dismiss stage. Significantly, the Settlement was reached only after protracted, arm's length negotiations, including negotiations facilitated first by JAMS mediator Jed Melnick, Esq., and later by then-Magistrate Judge Madeline Cox Arleo, both experienced and highly respected mediators. As a result of negotiations that occurred during and after the November 24, 2014 settlement conference, the parties reached agreement on the terms set forth in the Settlement.

Lead Plaintiff, who is a sophisticated institutional investor of the type favored by Congress when passing the Private Securities Litigation Reform Act of 1995 ("PSLRA"), closely

monitored and participated in this litigation from the outset, including participating in the settlement negotiation process, and recommended that the Settlement be approved. Further, Co-Lead Counsel, who have extensive experience in prosecuting securities class actions, strongly believe that the Settlement is in the best interests of the Class.

At the final settlement hearing (the "Settlement Hearing"), the Court will have before it more extensive motion papers submitted in support of the Settlement, and will be asked to make a determination as to whether the Settlement is fair, reasonable and adequate under all of the circumstances surrounding the Action. At this time, however, Lead Plaintiff requests only that the Court grant preliminary approval of the Settlement so that notice of the Settlement may be disseminated to the Class and the Settlement Hearing may be scheduled.

Lead Plaintiff respectfully requests that this Court enter the proposed Order Preliminarily Approving Settlement, Certifying the Settlement Class and Providing for Notice (the "Preliminary Approval Order"), attached as an exhibit to the Stipulation of Settlement, which has been agreed upon by the Parties. The Preliminary Approval Order, among other things, will:

(i) Preliminarily approve the Settlement on the terms set forth in the Stipulation;

(ii) Find that the proposed Settlement Class meet all of the requirements of Rules 23(a) and 23(b)(3) and certify the Class for settlement purposes;

(iii) Approve the form and content of the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), Proof of Claim and Release Form ("Proof of Claim") and Summary Notice attached as Exhibits A-1, A-2 and A-3 to the Preliminary Approval Order, respectively;

(iv) Find that the procedures established for distribution of the Notice and Proof of Claim and publication of the Summary Notice in the manner and form set forth in the Preliminary Approval Order constitute the best notice practicable under the circumstances, and comply with the notice requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA; and

(v) Schedule the Settlement Hearing and set deadlines and procedures for: disseminating the Notice and Proof of Claim and publishing the Summary Notice; objecting to the Settlement, the proposed Plan of Allocation, Co-Lead Counsel's motion for attorneys' fees and payment of litigation expenses or Lead Plaintiff's requests for reimbursement of costs and expenses related to their representation of the Class; and submitting papers in support of final approval of the Settlement.

BACKGROUND

On October 26, 2012, Juan Fernandez filed the original purported class action complaint in the Litigation alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 (promulgated under the Exchange Act). (Dkt. 1.) On November 5, 2012, Judith Hyde filed a motion to be appointed lead plaintiff. (Dkt. 4.) On November 7, 2012, LAMPERS filed a motion to be appointed lead plaintiff. (Dkt. 6.) On December 13, 2012, the Court appointed LAMPERS as Lead Plaintiff and approved LAMPERS' selection of Co-Lead Counsel. (Dkt. 18.)

Since its appointment, LAMPERS has actively participated and overseen this Action. On March 14, 2013, LAMPERS filed its Amended Class Action Complaint, in which it alleged violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 (promulgated under the Exchange Act) (the "First Amended Complaint"). (Dkt. 40.) Defendants filed their Motion to Dismiss the Amended Complaint on May 13, 2013. (Dkt. 46.) LAMPERS filed its opposition brief on July 12, 2013 (Dkt. 49) and Defendants subsequently filed their reply on August 26, 2013 (Dkt. 50).

On November 27, 2013, LAMPERS filed a letter requesting permission to amend its complaint again (Dkt. 51) and on December 2, 2013, the Court granted LAMPERS' request (Dkt. 52). On December 20, 2013, LAMPERS filed its Second Amended Class Action Complaint alleging violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 (promulgated under the Exchange Act) (the "Second Amended Complaint"). (Dkt. 54.) The

parties then fully briefed the motion to dismiss the Second Amended Complaint, and it is currently pending before the Honorable Madeline C. Arleo of the United States District Court of the District of New Jersey. Specifically, Defendants filed their motion to dismiss on February 18, 2014. (Dkt. 60.) LAMPERS then filed its opposition on April 21, 2014 (Dkt. 62) and Defendants filed their reply brief on June 5, 2014 (Dkt. 63).

During the course of the Litigation, the parties, from time to time, engaged in good-faith settlement discussions. On December 4, 2013, counsel for LAMPERS and Defendants participated in a mediation session with JAMS mediator Jed Melnick, Esq., prior to which each side submitted comprehensive mediation statements setting forth its respective position. That mediation was unsuccessful. On October 7, 2014, then-Magistrate Judge Arleo ordered the parties to submit confidential settlement letters in advance of a mandatory settlement conference that ultimately was scheduled for November 24, 2014. (Dkt. 64.) As a result of negotiations that occurred during and after the November 24, 2014, settlement conference, the parties reached agreement on the settlement terms set forth herein.

ARGUMENT

I. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. The Standards for Preliminary Approval

The settlement of complex litigation is strongly favored and encouraged in the Third Circuit. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) ("Stipulation of Settlements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."); *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004) ("there is an overriding public interest in settling class action litigation, and it should therefore be encouraged"); *In re Gen. Motors Corp.*

Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlements, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.") These principles were most recently reinforced forcefully by the Third Circuit in *Sullivan v. DB Investors, Inc.,* 667 F.3d 273, 311 (3d Cir. 2010) *(en banc).* There, the Third Circuit sitting *en banc* recognized, especially in class actions, the "strong presumption in favor of voluntary Stipulation of Settlements." *Id.*

Rule 23(e) requires judicial approval for the compromise of class actions. *See Amchem,* 521 U.S. at 617; *Evans v. Jeff D.,* 475 U.S. 717, 726 (1986); *Sullivan,* 667 F.3d at 295; *In re Processed Egg Prods. Antitrust Litig.,* 284 F.R.D. 249, 259 (E.D. Pa. 2012). "Review of a proposed class action settlement consists of a two-step process: preliminary fairness approval and a subsequent fairness hearing." *Jones v. Commerce Bancorp Inc*., No. 05-5600 (RBK), 2007 WL 2085357, at *2 (D.N.J. July 16, 2007). When reviewing a proposed settlement in the context of preliminary approval, the Court's function is to make a "preliminary evaluation of the fairness of the settlement prior to directing that notice be given to members of the settlement class." *Id*.

Preliminary approval is granted so long as the settlement was arrived at through a fair process and the terms of the settlement are within the "range of *possible* approval." *Thomas v. NCO Fin. Sys.*, No. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002) (citing *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (emphasis added). It is respectfully submitted that the Settlement satisfies the requirements for preliminary approval.

"Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *Smith v. Prof'l Billing & Mgm't Servs., Inc*., No. 06-4453, 2007 WL 4191749, at *1 (D.N.J. Nov. 21, 2007). Likewise, there is a preliminary presumption of fairness

to a class action settlement under review when the court finds that: "(1) the negotiations occurred at arm's-length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected."[2] *In re Cendant Corp. Litig*., 264 F.3d 201, 232 n. 18 (3d Cir. 2001); *In re Gen. Motors Corp.,* 55 F.3d at 785. There should be no serious dispute about whether the Settlement is the product of arm's-length negotiations and provides a substantial benefit to the Settlement Class.

If a preliminary evaluation of fairness is made, the second step is conduct a formal fairness and final approval hearing after notice has been disseminated to the Settlement Class. *In re General Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig.,* 55 F.3d 768, 785 (3d Cir. 1995) (distinguishing between the evaluations conducted during preliminary approval and final approval). At this time, Lead Plaintiff respectfully requests that the Court take the first step in the settlement process and grant preliminary approval of the Settlement so that notice can be given to the Class.

B. The Settlement is Procedurally Fair

The negotiations that resulted in the proposed Settlement were fairly conducted by highly qualified counsel who endeavored to obtain the best possible result for their clients and the Settlement Class. When counsel for the parties engage in diligent arm's length negotiations with the assistance of a mediator, a settlement is generally entitled to a presumption of fairness. meriting preliminary approval. *See Bernhard v. TD Bank*, No. 08-4392, 2009 WL 3233541, at

[2] Since the Notice to the Settlement Class has not yet been issued, this factor can only be assessed preliminarily. There are currently no known objectors to any aspect of the Settlement, and Lead Plaintiff—a sophisticated institutional investors who has represented Class claims on several occasions in the past—wholly endorses the Settlement as fair, adequate and reasonable. Class Members will be given an opportunity to voice their opinions of the Settlement in connection with the Settlement Hearing, when the Court will make its final determination of the fairness, reasonableness and adequacy of the Settlement.

*2 (D.N.J. Oct. 5, 2009) (preliminarily approving settlement and noting that the proposed settlement, which was achieved with the assistance of a mediator, appears to be the result of serious negotiation between the parties); *see also Alves v. Main*, No. 01-789 (DMC), 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("The participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's-length and without collusion between the parties." (internal quotation omitted)). Such is the case here. The Settlement was achieved only after arm's-length negotiations – including an initial mediation session with JAMS mediator Jed Melnick, Esq., and a mandatory settlement conference before the Honorable Madeline Cox Arleo, U.S.D.J.

Further, while the parties did not engage in substantive discovery, significant other fact finding occurred with respect to the allegations in the Second Amended Complaint, which confirm that Plaintiff's counsel was adequately informed concerning the relative strengths and weaknesses of their case. Indeed, Plaintiff's counsel conducted a wide-ranging and extensive investigation into Lead Plaintiff's claims against Defendants, including interviewing numerous former employees of Knight and reviewing substantial public information concerning the factual bases for Plaintiff's claims. Significantly, the SEC conducted an in-depth investigation into the problems that culminated in Knight's trading collapse as alleged in the Second Amended Complaint. The SEC did not find any intentional or knowingly improper conduct, and Defendants have maintained that the SEC investigation supports their contention that no scienter was involved in causing the trading problems and that the SEC Order reflects a mere technical violation. While Plaintiff does not necessarily agree with this conclusion and at all times believed in the strength of its claims, the fact remains that the SEC did not find any intentional misconduct after their thorough investigation.

C. The Proposed Settlement is Substantively Fair

A proposed settlement is substantively fair, for preliminary approval purposes, if it falls within the "range of *possible* approval." *Thomas*, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002). The proposed Settlement creates a very substantial cash payment of $13,000,000 in cash, which is an excellent result for the Settlement Class especially in light of the risks posed by continued litigation. The benefit of the present proposed Settlement must be compared to the risk that no recovery or a lesser recovery might be achieved after trial and likely appeals, and possibly years into the future.

The claims alleged by the Settlement Class involve numerous and complex factual issues. If the Action were to proceed past the pending motion to dismiss, into discovery and eventually to class certification, summary judgment and trial, Lead Plaintiff would have had to overcome the numerous defenses asserted by Defendants. Among other things, the Parties disagree about: (i) what was known about Knight's trading platforms and operating procedures and its efforts to comply with the Market Access Rule prior to the trading collapse; (ii) whether Defendants acted with the requisite mental state; (iii) whether the alleged misstatements and omissions were false or misleading; (iv) the appropriate economic model for measuring damages; and (v) when the market was fully cured of the alleged misstatements and omissions.

In addition, Lead Plaintiff is confident that even if they were to prevail on class certification and on liability and damages at trial, Defendants would appeal these decisions and any eventual verdict. At best, the entire process would take many years to complete, and at worst, the Class may receive no recovery at all. This Settlement allows the Settlement Class to recover now, and without incurring any additional risks or costs.

D. The Proponents of the Settlement Are Experienced In Similar Litigation

"The Court's fairness determination also reflects the weight it has placed on the judgment of the parties' respective counsels, who are experienced attorneys, and have represented to the Court that they believe the settlement provides to the Class relief that is fair, reasonable and adequate." *Bussie v. Allmerica Fin. Corp*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999). Lead Plaintiff's Counsel has significant experience in securities and other complex class action litigation and has negotiated numerous other substantial class action settlements throughout the country. Lead Plaintiff's Counsel has been an integral part of many settlements of this nature and in their estimation this settlement is an excellent result because it provides the Settlement Class with genuine relief under difficult legal and practical circumstances. It is Lead Plaintiff's Counsel's informed opinion that given the risks and uncertainties inherent in complex securities class action litigation, the proposed settlement is fair, reasonable and adequate and in the best interest of the Settlement Class.

Counsel for Defendants similarly have extensive expertise from a long track record in securities class actions and have vigorously defended Defendants throughout the course of the Litigation. "Counsel are among the most experienced lawyers the national bar has to offer in the prosecution and defense of significant class actions." *In re Lupron Mktg. & Sales Practices Litig*, 345 F. Supp. 2d 135, 137-138 (D. Mass. 2004). Given that the Parties are represented by well-respected counsel experienced in securities class action litigation who have vigorously litigated the action, this factor supports preliminary approval of the Settlement. *See Hochstadt v. Boston Scientific Corp.*, 708 F. Supp. 2d 95, 107 (D. Mass. 2010).

II. THE PROPOSED CLASS SHOULD BE CERTIFIED

One of this Court's functions in reviewing a proposed settlement of a class action is to determine whether the action may be maintained as a class action under Rule 23 of the Federal

Rules of Civil Procedure. *See Amchem Prods. v. Windsor*, 521 U.S. 591 (1997); *see also, e.g., Ramirez v. Lycatel Group*, No. 07-5533, 2009 U.S. Dist. LEXIS 119630, at **3-4 (D.N.J. Dec. 8, 2009) (preliminarily approving settlement and conditionally certifying class for settlement purposes). Rule 23(a) sets forth four prerequisites to class certification applicable to all class actions, including classes for purposes of settlement: (i) numerosity, (ii) commonality, (iii) typicality, and (iv) adequacy of representation. Fed. R. Civ. P. 23(a); *see also Amchem Prods.*, 521 U.S. at 613. The proposed class must also meet one of the three requirements of Rule 23(b). Fed. R. Civ. P. 23(b); *see also* Manual for Complex Litigation, §21.633 (4th ed. 2004).

The proposed "Class" is defined in the Settlement as: all persons or entities who purchased or otherwise acquired Knight securities from May 10, 2011 through August 1, 2012, inclusive, and who were allegedly damaged thereby. In certifying a class for settlement purposes, "a district court need not inquire whether the case, if tried, would present intractable management problems … for the proposal is that there be no trial." *Amchem Prods.*, 521 U.S. at 620.[3] Although not mentioned in Rule 23, some courts have held that a certifiable class must be ascertainable – that is, the class's membership must be "defined by identifiable objective criteria." *Engel v. Scully & Scully, Inc.*, 279 F.R.D. 117, 128 (S.D.N.Y. 2011). Here, as demonstrated below, certification is appropriate because the proposed Class meets all the requirements of Rule 23(a) and Rule 23(b)(3).

[3] Indeed, certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995). "[S]ettlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the trial judge." *Id.* (quoting *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 174 (5th Cir. 1979)).

A. The Settlement Class Meets the Requirements of Rule 23(a)

1. Numerosity

First, Rule 23(a)(1) requires that the class be so numerous that joinder of all members would be "impracticable." *See Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182 (3d Cir. 2001). Impracticability does not mean impossibility. *See In re LG/Zenith Rear Projection TV Class Action Litig.*, No. 06-5609 (JLL), 2009 U.S. Dist. LEXIS 13568, at *11 (D.N.J. Feb. 18, 2009). Rather, it means that joinder would be "extremely difficult or inconvenient." *Szczubelek v. Cendant Mortgage Corp.*, 215 F.R.D. 107, 116 (D.N.J. 2003) (citing *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993)). While there is no threshold number necessary to satisfy the numerosity requirement, courts in this Circuit generally hold that "classes of close to one hundred members are sufficient." *Bernhard*, 2009 WL 3233541, at *3. Courts have also "recognized a presumption that the numerosity requirement is satisfied when a class action involves a nationally traded security." *In re Cigna Corp. Sec. Litig.*, No. 02-8088, 2006 U.S. Dist. LEXIS 58560, at *6 (E.D. Pa. Aug. 18, 2006).

Here, Knight had more than 98 million shares of common stock outstanding during the Class Period and its stock was actively traded on the New York Stock Exchange during the relevant time period. *See In re Honeywell Int'l Inc. Sec. Litig.*, 211 F.R.D. 255, 260 (D.N.J. 2002) (recognizing that numerosity is "obviously" present where the securities issuer is "a large and prominent publicly held company, and its SEC filings confirm that its shareholders number in the thousands"). Lead Plaintiff believes that beneficial holders of Knight common stock number in the thousands and are geographically located throughout the United States, making joinder of all Class Members impractical. The numerosity requirement is therefore easily met.

2. Commonality

Second, Rule 23(a)(2) requires the identification of a common contention, one "of such a nature that it is capable of class wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011); *see also Johnston v. HBO Film Management, Inc*., 265 F.3d 178, 184 (3d Cir. 2001). "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." *Stewart v. Abraham*, 275 F.3d 220, 226-227 (3d Cir. 2001) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). Moreover, courts look to the "common nucleus of operative facts" to determine predominance of common questions. *In re Lucent Techs., Inc. Sec. Litig.*, 307 F. Supp. 2d 633, 640 (D.N.J. 2004) (citing *Safran v. United Steelworkers of Am., AFL-CIO*, 132 F.R.D. 397, 401 (W.D. Pa. 1989)).

Here, questions which are common to the proposed Class include, among others, whether the federal securities laws were violated by Defendants' acts as alleged in the Second Amended Complaint and to what extent the members of the Class have sustained damages and the proper measure of damages. Federal securities cases like this one easily meet the commonality requirement, which is satisfied where "putative class members have been injured by similar material misrepresentations and omissions." *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 85 (S.D.N.Y. 2007); *see also In re DaimlerChrysler AG Sec. Litig.*, 216 F.R.D. 291, 296 (D. Del. 2003) ("questions of misrepresentation, materiality and scienter are the paradigmatic common question[s] of law or fact . . . ," and therefore, "the commonality requirement has been permissively applied in the context of securities fraud class actions").

In short, because the core complaint of all Class Members is that they purchased Knight common stock at artificially inflated prices and suffered losses as a result of the alleged fraud, the commonality requirement of Rule 23(a)(2) is satisfied.

3. Typicality

Third, Rule 23(a) requires that claims of the Class Plaintiff be typical of the claims of other Class Members. *See* Fed. R. Civ. P. 23(a)(3); *see also Amchem Prods.*, 521 U.S. at 625 (common issues test readily met in securities fraud cases). As with commonality, the test for typicality is not demanding.[4] "Where class members all allegedly suffered from the same course of conduct, and the legal theories for all members are similar, typicality will generally be satisfied." *In re LG/Zenith*, 2009 U.S. Dist. LEXIS 13568, at *13-14. Moreover, the requirement is satisfied as long as the lead plaintiff, the other representatives, and the Class "point to the same broad course of alleged fraudulent conduct to support a claim for relief." *Lucent*, 307 F. Supp. 2d at 640.

Lead Plaintiff's claims and the claims of the prospective Class arise out of the same alleged conduct by the Defendants, and the proof Lead Plaintiff would be required to present to establish its claims would also prove the claims of the rest of the Class. Therefore, Lead Plaintiff's claims are typical of the claims of the Class, and thus, Rule 23(a)(3) is satisfied.

4. Adequacy

Fourth, Rule 23(a)(4) requires that the class plaintiff "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy of representation is measured by two standards. First, the representatives must not have interests that are antagonistic to the interest of

[4] The Supreme Court has recognized that the commonality and typicality analyses "tend to merge." *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 157 n. 13 (1982).

other members of the class. *See Sosna v. Iowa*, 419 U.S. 393, 403 (1975); *Lucent*, 307 F. Supp. 2d at 641. Second, class counsel must be qualified, experienced and able to conduct the litigation. *Id.* Both requirements are satisfied here for the Settlement Class.

Here, as described above, Lead Plaintiff—the proposed Settlement Class Representative—has claims which are typical of and coextensive with those of the Class. Lead Plaintiff, like all Class Members, purchased Knight common stock at artificially inflated prices during the Class Period as a result of Defendants' alleged materially false and misleading statements, and was allegedly damaged thereby. *See In re Schering-Plough Corp.*, No. 8-397 (DMC)(JAD), 2012 U.S. Dist. LEXIS 138078, at *21 (D.N.J. Sept. 25, 2012) ("Further, when Lead Plaintiffs have a strong interest in establishing liability under federal securities law, and seek similar damages for similar injuries, the adequacy requirement can be met.") (citations omitted). In addition, Co-Lead Counsel has extensive experience and expertise in complex securities litigation and class action proceedings throughout the United States, and is qualified and able to conduct this litigation, as the Court recognized when appointing it lead counsel for the putative.[5] Thus, Lead Plaintiff is an adequate representative of the Class, and its counsel is qualified, experienced and capable of prosecuting this Action, in satisfaction of Rule 23(a)(4).

B. The Settlement Class Meets the Requirements of Rule 23(b)(3)

Certification under Rule 23(b)(3) requires a showing that "questions of law or fact predominate over any questions affecting only individual members," and the class action must be "superior to other available methods for fairly and efficiently adjudicating the controversy," Fed. R. Civ. P. 23(b)(3) – two requirements referred to as "predominance" and "superiority."

[5] Co-Lead Counsel has and will continue to fairly and adequately represent the interests of the Settlement Class. Accordingly, Co-Lead Counsel should be appointed as lead counsel for the Settlement Class under Rule 23(g).

Amchem Prods., 521 U.S. at 615. However, the manageability concerns of Rule 23(b)(3) are not at issue in settlement classes. *Id.* at 593. Certification of the Class will serve these purposes.

1. Common Questions of Law and Fact Predominate

Rule 23(b)(3)'s predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Schering-Plough Corp.*, 2012 U.S. Dist. LEXIS 138078, at *22-23 (citation omitted). Further, "[i]t requires more than a common claim . . . rather, issues common to the class must predominate over individual issues." *Neale v. Volvo Cars of N. Am., LLC*, No.10-cv-04407 (DMC)(JAD), 2011 U.S. Dist. LEXIS 39154, at *5 (D.N.J. Apr. 11, 2011) (citations omitted). Common issues will predominate where each class member is alleged to have suffered the same kind of harm pursuant to the same legal theory arising out of the same alleged course of conduct, and the only individualized questions concern the amount of damages. *See Initial Pub. Offering*, 243 F.R.D. at 92. As the Supreme Court has noted, predominance is a test "readily met" in cases alleging securities fraud. *Amchem Prods*, 521 U.S. at 625.

Here, the same alleged course of conduct by Defendants forms the basis of all Class Members' claims. There are numerous common issues relating to the liability of Defendants which predominate over any individualized issues. Predominance is clearly met here given the number of common issues described above.

2. A Class Action Is Superior

The Court must balance, in terms of fairness and efficiency, the advantages of class action treatment against alternative available methods of adjudication. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998); *see* Fed. R. Civ. P. 23(b)(3) (listing four considerations relevant to this determination). Here, any interests of Class

Members in individually controlling the prosecution of separate claims are outweighed by the efficiency of the class mechanism for fairly and efficiently adjudicating the claims of the large number of purchasers of Knight common stock. Indeed, courts have concluded that the class action device in securities cases is usually the superior method by which to redress injuries to a large number of individual plaintiffs. *See Lucent*, 307 F. Supp. 2d at 641 ("Class actions are a particularly appropriate and desirable means to resolve claims based on the securities laws, 'since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'" (citing *Eisenberg v. Gagnon,* 766 F.2d 770, 785 (3d Cir. 1985)); *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008) ("as a general rule, securities fraud cases 'easily satisfy the superiority requirement [as] [m]ost violations of the federal securities laws . . . inflict economic injury on large numbers of geographically dispersed persons such that the cost of pursing individual litigation to seek recovery is often not feasible'") (quoting *Darquea v. Jarden Corp.*, No. 06 Civ. 722 (CLB), 2008 U.S. Dist. LEXIS 17747, at *14 (S.D.N.Y. Mar. 6, 2008)) (alterations in original).

The scope and complexity of Lead Plaintiff's claims against Defendants, together with the high cost of individualized litigation, make it unlikely that the vast majority of the Settlement Class Members would be able to obtain relief without class certification. Moreover, it is clearly desirable to concentrate the claims of all Settlement Class Members in this forum, and Lead Plaintiff does not foresee any difficulties in the management of this Action as a class action. Accordingly, the requirements of Rule 23(b)(3) are satisfied.

In light of the foregoing, all of the requirements of Rule 23(a) and (b) are satisfied. Thus, there are no issues which would prevent the Court from certifying this Settlement Class for settlement purposes and appointing Lead Plaintiff as Class Representative.

3. Proposed Class Counsel Satisfy Rule 23(g)

Rule 23(g) governs appointment of class counsel. Not only has Class Counsel vigorously prosecuted this case, Class Counsel also devoted significant time and effort achieving this highly favorable Settlement for the Class. Co-Lead Counsel have significant experience in securities litigation and class actions, including settlements thereof, which makes these firms particularly well-suited to serve as Settlement Class Counsel.

III. NOTICE TO THE CLASS SHOULD BE APPROVED

As outlined in the proposed Preliminary Approval Order, Lead Plaintiff will notify Settlement Class Members of the Settlement by mailing the Notice and Proof of Claim to all Settlement Class Members who can be identified with reasonable effort. Consistent with Rules 23(c)(2)(B) and 23(e)(1), the Settlement Class Members will be notified of the Fairness Hearing and apprised of their rights relating to the hearing and the Settlement by the short and long form notices. *See* Notice and Summary Notice attached as Exhibits A-1 and A-3 to the Preliminary Approval Order. The proposed Notice has been carefully drafted to contain all necessary information. All of the information is provided in plain language and in a format that is easily accessible to the reader. The notices clearly advise recipients of their legal rights and obligations, including that they can object to any portion of the Settlement, exclude themselves from the Settlement, or submit an attached Proof of Claim to share in their pro rata portion of the Settlement.

The Settlement Notice satisfies the PSLRA's separate disclosure requirements by, *inter alia*, stating the amount of the Settlement on both an aggregate and average per share basis; providing a brief statement explaining the reasons why the Parties are proposing the Settlement; stating the amount of attorneys' fees and maximum amount of litigation expenses (both on an

aggregate and average per share basis) that Co-Lead Counsel will seek; and providing the names, addresses, and telephone numbers of representatives of the Claims Administrator and Co-Lead Counsel who will be available to answer questions from Settlement Class Members. *See* 15 U.S.C. § 78u-4(a)(7). The proposed Preliminary Approval Order further requires Co-Lead Counsel to cause the Summary Notice to be published in *Investor's Business Daily* and posted on *Business Wire* not later than ten (10) calendar days after the Notice Date. Co-Lead Counsel will also post a copy of the Settlement Notice on the settlement website, *www.knightsecuritieslitigation.com*, and on their own websites.

The form and manner of providing notice to the Settlement Class satisfy the requirements of due process, Rule 23, and the PSLRA, 15 U.S.C. 78u-4(a)(7). The Notice and Settlement Notice "provide all the required information concerning the class members' rights and obligations under the settlement." *In re Prudential Ins. Co. 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*, 2007 WL 2085357, at *5 ("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").

In connection with preliminary approval of the Settlement, the Parties are requesting that the Court establish dates by which notice of the Settlement will be distributed to Settlement Class members, dates by which shareholders may comment on the Settlement, and a date on which the Court will hold a final Settlement Hearing. The Parties respectfully propose the

following schedule for the Court's consideration, as agreed to by the Parties and set forth in the proposed Preliminary Approval Order:

Event	**Proposed Due Date**
Deadline for mailing the Settlement Notice and Claim Form to Settlement Class Members ("Notice Date")	28 days after entry of Preliminary Approval Order[6]
Deadline for publishing the Summary Settlement Notice	10 calendar days after the Notice Date
Deadline for filing of papers in support of approval of Settlement, Plan of Allocation, and Co-Lead Counsel's request for attorneys' fees and expenses	35 days prior to the Settlement Hearing
Request for Exclusion	30 days prior to Settlement Hearing
Deadline for submitting objections	21 days prior to the Settlement Hearing
Deadline for filing reply papers	7 days prior to the Settlement Hearing
Settlement Hearing	As convenient for the Court's calendar, but no earlier than 100 days after the filing of this Motion[7]

[6] Pursuant to ¶ 3.2 of the Stipulation, "[f]or the purposes of identifying and providing notice to the Settlement Class, within twenty-one (21) calendar days of the date of entry of the Preliminary Approval Order, Knight shall provide or cause to be provided to the Claims Administrator (at no cost to the Settlement Fund, Lead Plaintiff's Counsel or the Claims Administrator) its list of names and addresses of record holders of Knight securities during the Settlement Class Period, in electronic form."

[7] 28 U.S.C. § 1715 requires Defendants to notify certain federal and state officials of the proposed Settlement within 10 days from the date of filing this Motion. Subsection (d) requires the Court to wait 90 days from the date these officials are served to give final approval to the proposed Settlement. In order to comply with the statute, Lead Plaintiff's Co-Counsel respectfully requests that the Court schedule the Settlement Hearing to occur at least 100 days, and no later than 120 days, from the date of this filing, subject to the Court's convenience.

Event	Proposed Due Date
Deadline for submitting claim forms	Postmarked 90 days from Notice Date

CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant preliminary approval of the proposed Settlement and enter the accompanying proposed Preliminary Approval Order.

Dated: February 10, 2015

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.

BY: /s/ James E. Cecchi
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