

1 KESSLER TOPAZ MELTZER  
& CHECK, LLP  
2 Geoffrey C. Jarvis (*Pro Hac Vice*)  
280 King of Prussia Road  
3 Radnor, PA 19087  
Telephone: (610) 667-7706  
4 Facsimile: (610) 667-7056  
gjarvis@ktmc.com

5 -and-

6 Jennifer L. Joost (Bar No. 296164)  
7 One Sansome Street, Suite 1850  
San Francisco, CA 94104  
8 Telephone: (415) 400-3000  
Facsimile: (415) 400-3001  
9 jjoost@ktmc.com

10 *Lead Counsel for Lead Plaintiff and*  
*the Settlement Class*

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 JAY RABKIN, Individually and on Behalf  
of All Others Similarly Situated,

16  
17 Plaintiff,

18 v.

19 LION BIOTECHNOLOGIES, INC.,  
MANISH SINGH, MICHAEL HANDELMAN,  
and KAMILLA BJORLIN,

20  
21 Defendants.

Case No. 3:17-cv-02086-SI

CLASS ACTION

REPLY MEMORANDUM OF POINTS AND  
AUTHORITIES IN FURTHER SUPPORT OF  
(I) LEAD PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF PROPOSED  
SETTLEMENT AND PLAN OF  
ALLOCATION AND (II) LEAD COUNSEL'S  
MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION  
EXPENSES

Hon. Susan Illston

Date: April 12, 2019  
Time: 10:00 a.m.  
Courtroom: 1-17th Floor (San Francisco)

1 Pursuant to Rules 23(e) and 54 of the Federal Rules of Civil Procedure and in accordance  
2 with the Court’s November 30, 2018 Order Preliminarily Approving Settlement and Providing for  
3 Notice (ECF No. 129), Court-appointed Lead Plaintiff Jay Rabkin, on behalf of himself and the  
4 Settlement Class<sup>1</sup> in the above-captioned action (“Action”), respectfully submits this Reply  
5 Memorandum of Points and Authorities in Further Support of (I) Lead Plaintiff’s Motion for Final  
6 Approval of Proposed Settlement and Plan of Allocation (ECF No. 130) and (II) Lead Counsel’s  
7 Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF No. 131)  
8 (together, the “Motions”).

9 **I. PRELIMINARY STATEMENT**

10 In accordance with the Preliminary Approval Order, the Court-authorized claims  
11 administrator for the Settlement, JND Legal Administration (“JND”), under the supervision of Lead  
12 Counsel, has disseminated 21,240 copies of the Notice and Claim Form (“Notice Packet”) to  
13 potential Settlement Class Members or their nominees.<sup>2</sup> The Notice informed recipients of, among  
14 other things, the essential terms of the Settlement, the Plan of Allocation, and Lead Counsel’s  
15 intention to apply to the Court for attorneys’ fees not to exceed 25% of the Settlement Fund and  
16 reimbursement of Litigation Expenses not to exceed \$85,000 (inclusive of any request for  
17 reimbursement to Lead Plaintiff in an amount not to exceed \$5,000). In addition, the Notice—along  
18 with the papers in support of final approval of the Settlement, the Plan of Allocation, and Lead  
19 Counsel’s fee and expense request filed on February 21, 2019 (ECF Nos. 130-132) (“Opening  
20 Papers”)—was made available on the website established for the Settlement,  
21 [www.LionBiotechnologiesLitigationSettlement.com](http://www.LionBiotechnologiesLitigationSettlement.com), and the Summary Notice was published in  
22  
23

---

24 <sup>1</sup> All capitalized terms that are not defined in this memorandum have the same meanings as defined  
25 in the Stipulation of Settlement and Release dated as of September 28, 2018 (ECF No. 121)  
26 (“Stipulation”) and the Declaration of Jennifer L. Joost in Support of (I) Lead Plaintiff’s Motion for  
27 Final Approval of Proposed Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for  
28 an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (ECF No. 132) (“Joost  
Declaration” or “Joost Decl.”).

<sup>2</sup> See Supplemental Declaration of Jack Ewashko regarding (A) Mailing of Notice and Claim Form;  
(B) Report on Requests for Exclusion; and (C) Report on Claims Received to Date dated March 29,  
2019 (“Supp. Mailing Decl.”), ¶ 2, attached as Exhibit 1 hereto.

1 *Investor's Business Daily* and transmitted over *PRNewswire*.<sup>3</sup> In addition, notice of the Settlement  
2 was provided by Defendants pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b).  
3 *See* Joost Decl., ¶ 46 n.13. The deadline to request exclusion from the Settlement Class or to file an  
4 objection to any aspect of the Settlement has passed.

5 Lead Plaintiff and Lead Counsel are pleased to advise the Court that, following the extensive  
6 Court-approved notice program, *not a single member of the Settlement Class has objected to any*  
7 *aspect of the Settlement, the Plan of Allocation or the requested fees and expenses*. In addition,  
8 *only two* requests for exclusion from the Settlement Class have been received (*see* Supp. Mailing  
9 Decl., ¶ 7), and both of these requests appear to be from individuals who are not Settlement Class  
10 Members.<sup>4</sup> Accordingly, Lead Plaintiff and Lead Counsel respectfully submit that the reaction of  
11 the Settlement Class is a clear testament to the fairness, adequacy, and reasonableness of the  
12 Settlement, the Plan of Allocation, and the fee and expense requests and provides strong support for  
13 the Court's approval of both pending Motions.

## 14 **II. ARGUMENT**

### 15 **A. The Reaction of the Settlement Class Strongly Supports Approval of the** 16 **Settlement and the Plan of Allocation**

17 Lead Plaintiff and Lead Counsel respectfully submit that their Opening Papers amply  
18 demonstrate why the motion for final approval of the Settlement and Plan of Allocation should be  
19 granted. Now that the time for objecting or requesting exclusion has passed, the Settlement Class's  
20 reaction also clearly supports approval.

21 The absence of any objections from Settlement Class Members strongly supports a finding  
22 that the Settlement is fair, reasonable, and adequate. *See Destefano v. Zynga, Inc.*, No. 12-cv-04007-

---

24 <sup>3</sup> *See* Declaration of Robert Cormio regarding (A) Mailing of Notice and Claim Form;  
25 (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date  
dated February 21, 2019 (ECF No. 132-3), ¶¶ 13, 16.

26 <sup>4</sup> From the information provided in the exclusion requests, the requests appear to be from non-  
27 Settlement Class Members. *See* Supp. Mailing Decl., Ex. A. One of the requests was submitted by  
28 an individual who had no purchases of Lion Biotechnologies, Inc. ("Lion") common stock during  
the Class Period, and the other request was submitted by an individual whose transactional  
information does not calculate to a recognized loss pursuant to the Plan of Allocation and therefore,  
was not damaged.

1 JSC, 2016 WL 537946, at \*13 (N.D. Cal. Feb. 11, 2016) (“By any standard, the lack of objection of  
2 the Class Members favors approval of the Settlement.”); *In re Biolase, Inc. Sec. Litig.*, No. 13-cv-  
3 1300-JLS, 2015 WL 12720318, at \*6 (C.D. Cal. Oct. 13, 2015) (finding class’s positive reaction and  
4 absence of objections favored granting final approval of settlement); *In re OmniVision Techs., Inc.*,  
5 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (finding reaction of class favored approval of  
6 settlement where “only 3 out of 57,630 potential Class Members” submitted objections); *Nat’l Rural*  
7 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“[T]he absence of a  
8 large number of objections to a proposed class action settlement raises a strong presumption that the  
9 terms of a proposed class settlement action are favorable to the class members”). Moreover, the  
10 absence of objections from institutional investors with ample means and incentive to object to the  
11 Settlement if they deemed it unsatisfactory, is further evidence of the Settlement’s fairness. *See,*  
12 *e.g., In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018)  
13 (“That not one sophisticated institutional investor objected to the Proposed Settlement is indicia of  
14 its fairness.”).

15 In addition, there have been no objections to the Plan of Allocation. As discussed in the  
16 Opening Papers, just like the Settlement as a whole, the Plan of Allocation must be fair, reasonable,  
17 and adequate. *See Nguyen v. Radiant Pharm. Corp.*, No. 11-cv-00406-DOC, 2014 WL 1802293,  
18 at \*5 (C.D. Cal. May 6, 2014). Here, Lead Counsel believes that the Plan of Allocation—which was  
19 developed in consultation with Lead Plaintiff’s damages expert and is consistent with the damages  
20 that Lead Plaintiff and Lead Counsel believe were recoverable in the Action—is fair and reasonable.  
21 Here, the Settlement Class’s reaction provides additional strong support for approving the Plan of  
22 Allocation. *See, e.g., Patel v. Axesstel, Inc.*, No. 14-cv-01037-CAB, 2015 WL 6458073, at \*7  
23 (S.D. Cal. Oct. 23, 2015) (approving plan of allocation where it “was laid out in detail in the notice,  
24 and no class members objected”); *In re Heritage Bond Litig.*, No. 02-ML-1475-DT, et al., 2005 WL  
25 1594403, at \*11 (C.D. Cal. June 10, 2005) (“The fact that there has been no objection to this plan of  
26 allocation favors approval of the Settlement.”).

27 Likewise, the fact that only two requests for exclusion (from non-Settlement Class Members)  
28 were received following the mailing of 21,240 Notice Packets further supports approval of the

1 Settlement. *See, e.g., Destefano*, 2016 WL 537946, at \*14 (noting that a low number of exclusions  
2 supports the reasonableness of a securities class action settlement).

3 **B. The Settlement Class’s Reaction Also Strongly Supports Approval of Lead**  
4 **Counsel’s Fee and Expense Requests**

5 As is true with the Settlement, not a single Settlement Class Member has objected to Lead  
6 Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses,  
7 including the request for reimbursement to Lead Plaintiff. The fact that there are no objections is  
8 strong evidence that the requested amount of fees and expenses is reasonable. *See, e.g., Destefano*,  
9 2016 WL 537946, at \*18 (finding “the lack of objection by any Class Members” to support the 25%  
10 fee award); *In re Nuvelo, Inc. Sec. Litig.*, No. 07-cv-04056-CRB, 2011 WL 2650592, at \*3 (N.D. Cal.  
11 July 6, 2011) (finding only one objection to the fee request to be “a strong, positive response from  
12 the class, supporting an upward adjustment of the benchmark [fee award]”); *Heritage Bond*, 2005  
13 WL 1594403, at \*21 (“The absence of objections or disapproval by class members to Class  
14 Counsel’s fee request further supports finding the fee request reasonable.”). Additionally, as with  
15 approval of the Settlement, the lack of any objections by institutional investors particularly supports  
16 approval of the fee request. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005)  
17 (finding the fact that “a significant number of investors in the class were ‘sophisticated’ institutional  
18 investors that had considerable financial incentive to object had they believed the requested fees  
19 were excessive” and did not do so, supported approval of the fee request).

20 **III. CLAIMS INFORMATION TO DATE**

21 The claim submission deadline was March 22, 2019. Through March 22, 2019, JND has  
22 received 4,358 claims. *See Supp. Mailing Decl.*, ¶ 8. The number of claims received as of the claims  
23 submission deadline represents approximately 20% of Notice Packets mailed, which in JND’s  
24 experience, is in line with the “return rate” of other securities class action settlements at this stage  
25  
26  
27  
28

1 of the administration. *Id.*, ¶ 8 n.4.<sup>5</sup> This rate of return is also comparable to recent securities  
2 settlements involving Lead Counsel.<sup>6</sup>

3 Of the 4,358 claims received through March 22, 2019, 4,001 were submitted by or on behalf  
4 of institutions and 357 were submitted by or on behalf of individuals. *Id.* ¶ 10. Moreover, based on  
5 JND's preliminary review, the 4,358 claims received through March 22, 2019, represent  
6 approximately \$3,550,184.60 in preliminary *unaudited* recognized losses as calculated pursuant to  
7 the Plan of Allocation set forth in the Notice. *Id.*

8 The above numbers are preliminary and unaudited, as JND's review and analysis of the  
9 claims received is ongoing. Many of the claims received to date contain deficiencies, which will be  
10 addressed during the normal course of the administration. *See* Supp. Mailing Decl., ¶ 9. Pursuant  
11 to the Stipulation, claimants with deficient claims will be given an opportunity to cure the  
12 deficiencies in their claims.<sup>7</sup> Given this, and the fact that additional claims likely will be received  
13  
14

---

15 <sup>5</sup> It is important to note that the number of notices mailed does not directly translate into the number  
16 of class members. For purposes of mailing notice, the majority of the names/addresses for potential  
17 class members are received from nominees. For administrative convenience, nominees often  
18 provide mailing lists of all past and present owners of a particular security relevant to a class action  
19 settlement, and therefore, these lists of names and addresses are typically over inclusive. Claims  
20 administrators rely on these general mailing lists to disseminate notice, and as a result, are mailing  
to individuals and entities that may not have owned the security at issue during the class period or  
were not damaged and have no valid claim to the settlement proceeds. Moreover, name and address  
information for the same class member may be provided to the claims administrator by multiple  
nominees resulting in some class members receiving multiple notices/claim forms.

21 <sup>6</sup> *See, e.g., In re NII Holdings, Inc. Secs. Litig.*, Civ. No. 1:14-cv-00227-LMB-JFA (E.D. Va.),  
Supplemental Declaration of Eric Schachter filed September 9, 2016 (ECF No. 259-1) & Declaration  
22 of Eric Schachter filed March 23, 2018 (ECF No. 270-1) (188,634 notice packets mailed at time of  
final hearing and 34,779 claims received by the claim submission deadline, resulting in an 18%  
return rate); *In re JPMorgan Chase & Co. Secs. Litig.*, Master File No. 1:12-cv-03852-GBD  
23 (S.D.N.Y.), Supplemental Declaration of Daniel J. Marotto filed May 3, 2016 (ECF No. 208-1) &  
Declaration of Justin R. Hughes filed January 5, 2018 (ECF No. 229) (743,313 notice packets mailed  
24 at time of final hearing and 193,802 claims received by the claim submission deadline, resulting in  
a 26% return rate).

25 <sup>7</sup> "Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with  
26 the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the  
Claim Form submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all  
27 Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth  
the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected  
28 has the right to review by the Court if the Claimant so desires and complies with [certain]  
requirements . . . ." Stipulation, ¶ 24(d).



1 and processed, Lead Plaintiff cannot report the number of valid claims at this time.<sup>8</sup> After all claims  
2 are processed, Lead Counsel will file a motion for authorization to distribute the Settlement proceeds  
3 to eligible Settlement Class Members, which will provide a detailed report on all claims submitted.<sup>9</sup>

4 **IV. CONCLUSION**

5 For the reasons set forth above and discussed in the Opening Papers, Lead Plaintiff and Lead  
6 Counsel respectfully request that the Court approve (i) the Settlement; (ii) the Plan of Allocation; and  
7 (iii) Lead Counsel's request for attorneys' fees and expenses, including the requested reimbursement  
8 to Lead Plaintiff. Proposed Orders approving these requests are submitted concurrently with this  
9 memorandum.

10 Respectfully submitted,

11 Dated: March 29, 2019

**KESSLER TOPAZ MELTZER  
& CHECK, LLP**

*/s/ Jennifer L. Joost*

Jennifer L. Joost (Bar No. 296164)  
One Sansome Street, Suite 1850  
San Francisco, CA 94104  
Telephone: (415) 400-3000  
Facsimile: (415) 400-3001  
jjoost@ktmc.com

-and-

Geoffrey C. Jarvis (*Pro Hac Vice*)  
280 King of Prussia Road  
Radnor, PA 19087  
Telephone: (610) 667-7706  
Facsimile: (610) 667-7056  
gjarvis@ktmc.com

*Lead Counsel for Lead Plaintiff and  
the Settlement Class*

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 <sup>8</sup> See Preliminary Approval Order, ¶ 10: "Notwithstanding the foregoing, Lead Counsel may, at its  
25 discretion, accept for processing late Claims provided such acceptance does not delay the  
distribution of the Net Settlement Fund to the Settlement Class."

26 <sup>9</sup> Pursuant to the Northern District's "Procedural Guidance for Class Action Settlements," after the  
27 claims administration process is complete, and payments have been issued to eligible claimants,  
28 Lead Counsel will file a post-distribution accounting. However, because settlement payments are  
usually negotiable over a 90 to 120 day period, the distribution accounting would be more fulsome  
if submitted more than 21 days after distribution. Lead Counsel will provide a timeline for the  
Court's consideration and approval in connection with Lead Plaintiff's motion for distribution.