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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

|  |   |                                       |
|--|---|---------------------------------------|
| 14 BEAVER COUNTY EMPLOYEES                   | ) | Lead Case No. CGC-14-538355           |
| 15 RETIREMENT FUND, et al., Individually and | ) | (Consolidated with No. CGC-14-539008) |
| on Behalf of All Others Similarly Situated,  | ) |                                       |
| 16   | ) | <u>CLASS ACTION</u>                   |
| Plaintiffs,                                  | ) |                                       |
| 17   | ) | Assigned to: Judge Curtis E.A. Karnow |
| vs.  | ) |                                       |
| 18   | ) | CLASS REPRESENTATIVES'                |
| 19 CYAN, INC., et al.,                       | ) | MEMORANDUM OF POINTS AND              |
| 20   | ) | AUTHORITIES IN SUPPORT OF MOTION      |
| Defendants.                                  | ) | FOR PRELIMINARY APPROVAL OF           |
|  | ) | CLASS ACTION SETTLEMENT               |

21 DATE: November 15, 2018  
22 TIME: 3:00 p.m.  
23 DEPT: 304  
DATE ACTION FILED: 04/01/14

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Class Representatives Beaver County Employees Retirement Fund, Retirement Board of  
3 Allegheny County, and Delaware County Employees Retirement System (collectively, “Class  
4 Representatives” or “Plaintiffs”) respectfully request that the Court grant their unopposed motion for  
5 preliminary approval of the settlement of this class action (the “Litigation”) on the terms set forth in the  
6 Stipulation of Settlement dated November 5, 2018 (“Stipulation” or “Settlement”).<sup>1</sup> The Settlement  
7 will resolve all of the claims asserted in this Litigation against all Defendants.<sup>2</sup> As a result of the  
8 Settlement, defendant Cyan, Inc. (“Cyan” or the “Company”) will pay or cause to be paid, on behalf of  
9 Defendants, the sum of \$15,000,000.00 in cash for the benefit of the Class.<sup>3</sup>

10 The Settlement provides Class Members with an outstanding recovery for their claims under § 11  
11 of the Securities Act of 1933 (“Securities Act”) for alleged misstatements made in Cyan’s initial public  
12 offering (“IPO”). Class Representatives obtained this favorable Settlement only after carefully  
13 investigating and vigorously litigating the case for over four and one-half years, including obtaining an  
14 important decision on subject matter jurisdiction from the United States Supreme Court, and  
15 participating in arm’s-length mediation and negotiations with the Hon. Layn R. Phillips, a respected  
16 retired federal judge who has mediated hundreds of securities class action cases.<sup>4</sup>

17 Class Representatives and their counsel had a comprehensive understanding of the strengths and  
18 weaknesses of the claims asserted and defenses raised and had sufficient information to make an  
19 informed decision regarding the propriety of Settlement before entering into it. The Declaration of John  
20 K. Grant in Support of Motion for Preliminary Approval of Class Action Settlement (the “Grant

22 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the  
23 Stipulation. Citations to the Stipulation are in the form “Stip., ¶\_\_.”

24 <sup>2</sup> Lead Counsel are not aware of any other pending litigation that will be affected by the Settlement of  
25 this Litigation.

26 <sup>3</sup> Subsequent to the filing of this Litigation, Cyan was acquired by Ciena Corporation (“Ciena”), was  
27 merged into Ciena, and ceased to exist independently. “Cyan” as defined herein refers to and includes  
28 Ciena.

26 <sup>4</sup> See, e.g., *In re Delphi Corp. Sec.*, 248 F.R.D. 483, 498, n.14 (E.D. Mich. 2008) (speaking of Judge  
27 Phillips, “the Court and the Parties have had the added benefit of the insight and considerable talents of  
28 a former federal judge who is one of the most prominent and highly skilled mediators of complex  
actions”).

1 Declaration”), filed November 5, 2018, includes a full description of Lead Counsel’s efforts against  
2 similarly-determined adversaries during the course of the Litigation. Grant Decl., ¶5.

3 Lead Counsel are highly experienced in prosecuting securities class actions, and have concluded  
4 that the Settlement is a very favorable recovery for the Class. This conclusion is based on the certain  
5 and substantial recovery when weighed against the significant risk, expense, and delay presented in  
6 continuing the Litigation through the completion of motion(s) for summary judgment, trial, probable  
7 post-trial motion(s) and further appeal(s); a complete analysis of the facts and evidence adduced to date;  
8 experience litigating similar complex securities class actions; and the serious disputes between the  
9 parties concerning the merits and damages. Throughout the Litigation, Defendants asserted strong  
10 defenses, denied liability, and insisted that Class Representatives could not prevail. They took this case  
11 all the way to the United States Supreme Court.

12 Class Representatives ask the Court to enter the [Proposed] Order Preliminarily Approving  
13 Settlement and Providing for Notice (“Preliminary Approval Order”), filed November 5, 2018. As part  
14 of the Preliminary Approval Order, Class Representatives seek approval of the form, substance, and  
15 manner of dissemination of the Notice of Proposed Settlement of Class Action (“Notice”), Proof of  
16 Claim and Release form (“Proof of Claim”), and the Summary Notice of Proposed Settlement of Class  
17 Action (“Summary Notice”), attached as Exhibits A-1, A-2 and A-3 to the Preliminary Approval Order.  
18 Class Representatives ask the Court to schedule a Settlement Fairness Hearing to consider final  
19 approval of the Settlement, the Plan of Allocation, compensation awards for the Class Representatives’  
20 efforts prosecuting this Litigation, and Lead Counsel’s request for attorneys’ fees and expenses.

21 For all the reasons stated herein and in the Grant Declaration<sup>5</sup>, Class Representatives and their  
22 counsel respectfully request that the Court grant this motion and enter the Preliminary Approval Order.

23 **II. THE SETTLEMENT**

24 The complete terms of the Settlement are set forth in the Stipulation and are summarized below.  
25  
26

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27 <sup>5</sup> The Court is respectfully referred to the Grant Declaration, incorporated herein, for a full recitation of  
28 the factual background and the lengthy procedural history of the Litigation.

1           **A.       Monetary Relief for the Class**

2           Cyan has paid, shall pay or cause to be paid, on behalf of Defendants, \$15,000,000 into an  
3 escrow fund subject to Court oversight. The funds shall be deposited as follows: On October 15, 2018,  
4 Ciena paid \$1,929,179 into the Escrow Account. The remainder of the Settlement Amount  
5 (\$13,070,821) shall be paid into the Escrow Account by Cyan’s insurers within 10 days after  
6 preliminary approval of the Settlement. In addition, Ciena agreed to pay interest at a simple (not  
7 compounded) annual rate of 5% on the amount of \$13 million between October 15, 2018, and the date  
8 that the Court grants preliminary approval of the Settlement. Stip., ¶3.1. The Settlement Fund, less any  
9 attorneys’ fees and expenses awarded by the Court to Plaintiffs’ Counsel and any service award to Class  
10 Representatives awarded by the Court, notice and administration expenses, escrow fees, and any Taxes  
11 and tax expenses payable from the Settlement Fund (the “Net Settlement Fund”), will be distributed to  
12 Authorized Claimants (*i.e.*, Class Members who file timely and valid Proofs of Claim) in accordance  
13 with the Plan of Allocation described in the Notice. *Id.*, ¶6.1. The Plan of Allocation, developed in  
14 consultation with Class Representatives’ damages expert, tracks the damage calculation under §11(e) of  
15 the Securities Act, and treats all claimants in a fair and equitable fashion.

16           The Settlement Fund may be used by Lead Counsel to pay reasonable costs and expenses  
17 actually incurred consistent with the Stipulation in connection with providing notice to the Class,  
18 locating Class Members, assisting with the submission of claims to the Claims Administrator,  
19 administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proofs of  
20 Claim, and paying escrow fees and costs, if any, and Taxes and tax expenses without approval from the  
21 Defendants or the Court (unless otherwise ordered by the Court). *Id.*, ¶¶3.3, 4.2.

22           **B.       Reasonable Estimate of the Amount of Recovery if Plaintiffs Had**  
23           **Prevailed, and the Estimated Net Settlement Recovery Per Share**

24           Lead Counsel’s damage expert estimates that the Class could have recovered approximately \$67  
25 million in damages if they prevailed on all claims. *See* Declaration of Bjorn I. Steinholt, CFA  
26 (“Steinholt Decl.”), filed November 5, 2018. The \$15 million recovery represents approximately 22%  
27 of these recoverable damages, well above the median settlement as a percentage of estimated damages  
28 courts have approved in cases only involving §11. *See, e.g.*, Laarni T. Bulan, Ellen M. Ryan & Laura

1 E. Simmons, *Securities Class Action Settlements - 2017 Review and Analysis*, at 9, Fig. 8 (Cornerstone  
2 Research 2018) (analyzing 70 class settlements asserting §11 and/or §12(a)(2) claims filed between  
3 2008 and 2017 and finding the median settlement as a percentage of “simplified statutory damages” was  
4 7.5%).<sup>6</sup>

5 The amount per share that a Class Member will receive under the proposed Plan of Allocation is  
6 difficult to estimate at this stage as it is impacted by many variables, including the number of valid  
7 claims, the amount of shares those claims represent, and the dates of the purchases and sales represented  
8 by those claims. Nonetheless, based on the information available to Lead Counsel and the analysis  
9 performed by their expert, Lead Counsel estimate that if Class Members submit claims for 100% of the  
10 eligible shares under the Plan of Allocation, the average recovery would be approximately \$1.12 per  
11 share before deduction of Court-approved attorneys’ fees, expenses, Class Representatives’  
12 compensation, and the cost of settlement administration, including providing notice to the Class.  
13 Plaintiffs’ expert estimates approximately 13.37 million shares are covered under the proposed Plan of  
14 Allocation set forth in the Notice.

15 If the Court awards Plaintiffs’ Counsel’s fees and expenses in the maximum amount sought,  
16 awards \$30,000 in the aggregate to Class Representatives, and if the maximum estimated cost of notice  
17 and administration of the Settlement of \$275,000 is incurred, then \$8,595,000 (plus interest earned)  
18 would be available for distribution. If Class Members submit claims for 100% of the eligible shares  
19 under the Plan of Allocation, the per share recovery would be approximately \$0.64. The actual claim  
20 rate is typically less than 100%. See Declaration of Michael Joaquin Regarding Notice and  
21 Administration (“Joaquin Decl.”), ¶26, filed November 5, 2018. In the end, a particular Class  
22 Member’s recovery will depend on the number of valid Proofs of Claim submitted; when Cyan  
23 common stock was purchased, the purchase price and whether the shares were held at the end of the  
24 Class Period and if sold, when they were sold and the amount received. A Class Member’s recovery is  
25 determined by the Class Member’s recognized claim as compared to the total valid Proofs of Claim of  
26 all Class Members.

27 <sup>6</sup> The Cornerstone Research report is available online at: [https://www.cornerstone.com/Publications/  
28 Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis](https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis).



1           **C.     The Release of Claims Are Proper**

2                   **1.     The Scope of the Release**

3           Upon the Effective Date, Class Representatives and each Class Member will release all Settled  
4 Claims against the Released Parties (Stip., ¶1.27), whether or not they submit a Proof of Claim, and  
5 whether or not such Class Member shares in the Settlement Fund. Stip., ¶2.2. The scope of the release  
6 is congruent with (1) the class definition and time period; (2) the allegations in the complaint or which  
7 could have been alleged in the complaint; and (3) the purchase, acquisition, sale or disposition of Cyan  
8 stock during the Class Period, and does not constitute a general release. Pursuant to the Stipulation,  
9 “Settled Claims” means any and all claims (including “Unknown Claims”), that both (a) arise out of, are  
10 based upon, or relate to in any way, any of the allegations, acts, transactions, facts, events, matters,  
11 occurrences, statements, representations, misrepresentations or omissions involved, set forth, alleged or  
12 referred to, in this Action, or which could have been alleged in this Action, and (b) arise out of, are  
13 based upon, or relate to in any way, the purchase, acquisition, sale or disposition of Cyan common stock  
14 during the Class Period. Settled Claims does not include any claims to enforce the Stipulation. Stip.,  
15 ¶1.28. By limiting the releases that Class Members are giving to the Released Parties to the issues  
16 alleged, or that could have been alleged, in the Litigation, and, most importantly, to the purchase or  
17 acquisition, sale, or disposition of Cyan’s common shares from May 9, 2013 through November 4, 2013  
18 (the Class Period), the Stipulation does not include terms outside the scope of the complaint making the  
19 claims that are being released by Class Members proper. *See Trotsky v. Los Angeles Fed. Savings &*  
20 *Loan Ass’n*, 48 Cal. App. 3d 134, 148 (1975).

21                   **2.     A Section 1542 Release Is Appropriate**

22           Inclusion of the Section 1542 release is appropriate here. When drafting the Section 1542  
23 waiver, the parties specifically limited “Unknown Claims” to any Settled Claims that Class  
24 Representatives or Class Members do not know or suspect to exist in their favor at the time of the  
25 release. *See* Stip., ¶1.35. Class Members are only releasing unknown “Settled Claims,” and not giving  
26 the Defendants a general release. The Section 1542 waiver and release of Unknown Claims agreed to  
27 by the parties was specifically bargained for in the Settlement. A release of Unknown Claims is  
28

1 necessary to ensure the Settlement is effective as to the subject matter of the pending litigation,  
2 avoiding ambiguity and duplicative future litigation, and furthering California’s public policy in favor  
3 of settlements. *See Winet v. Price*, 4 Cal. App. 4th 1159, 1167 (1992) (in approving a waiver and  
4 release under Section 1542 of unknown claims, the court noted that this release was a “clear effort to  
5 iterate and reiterate that the release applied to *all* claims” and without that waiver and release a  
6 settlement “could never effectively encompass unknown claims”) (emphasis in original).<sup>7</sup>

7 Moreover, this Court has approved class action settlements containing Section 1542 waivers in  
8 the past when they contain the type of limiting language present here. *See, e.g., In re King Digital*  
9 *Entertainment plc Shareholder Litigation*, Lead Case No. CGC-15-544770, Stipulation of Settlement,  
10 ¶1.30 (Cal. Super. Ct., San Francisco Cty.) (June 7, 2017); *Hellum v. Prosper Marketplace, Inc.*, No.  
11 CGC-08-482329, Amended Stipulation and Agreement of Compromise, Settlement, and Release, ¶20  
12 (Cal. Super. Ct., San Francisco Cty.) (Dec. 5, 2013); *Pier 1 Imports Song-Beverly Cases*, JCCP Case  
13 No. 4669, Second Amended Settlement Agreement and Release of Claims and Rights, ¶5.2 (Cal. Super.  
14 Ct., San Francisco Cty.) (July 17, 2015). Class Representatives respectfully submit that the inclusion of  
15 the Section 1542 waiver is appropriately limited and should not prevent approval of the Settlement.

16 **III. PRELIMINARY APPROVAL SHOULD BE GRANTED**

17 California has strong public policy favoring settlement. *Hamilton v. Oakland Sch. Dist.*, 219  
18 Cal. 322, 329 (1933) (“[I]t is the policy of the law to discourage litigation and to favor compromises  
19 . . . .”). This policy is particularly compelling in class actions. *See 7-Eleven Owners for Fair*  
20 *Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000).

21 Preliminary approval is the first of three steps for the approval procedure of settlements of class  
22 actions. The second step is the dissemination of notice to class members. The third step is a final  
23 approval or fairness hearing, where evidence concerning the fairness, adequacy, and reasonableness of  
24 the settlement may be presented and class members may be heard. *See California Rules of Court, Rule*  
25 *3.769; Manual for Complex Litigation* §21.63 (4th ed. 2004). California courts have adopted the

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27  
28 <sup>7</sup> Unless otherwise noted, internal citations are omitted and emphasis is added.

1 procedures and standards developed in federal courts as the standard for preliminary approval. *See La*  
2 *Sala v. American Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971).

3 Class Representatives now request that the Court take the first step in the process. In  
4 determining whether to grant preliminary approval, the Court need only consider whether “the proposed  
5 settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious  
6 deficiencies, does not improperly grant preferential treatment to class representatives or segments of the  
7 class, and falls within the range of possible approval.” 2 Herbert B. Newberg & Alba Conte, *Newberg*  
8 *on Class Actions* §11.25, at 11-37 (3d ed. 1992) (quoting *Manual for Complex Litigation* §30.44 (2d ed.  
9 1985)); *see also Manual for Complex Litigation* §13.14, at 173 (4th ed. 2004) (“First, the judge reviews  
10 the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If  
11 so, the final decision on approval is made after the hearing.”). The Settlement readily meets these  
12 criteria. Indeed, settlement agreements are presumed fair ““where: (1) the settlement is reached through  
13 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to  
14 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is  
15 small.”” *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 245 (2001).

16 **First**, this Settlement is the product of serious and informed settlement negotiations. The  
17 negotiations were facilitated by Judge Phillips, a well-regarded mediator of securities class actions. All  
18 parties were represented by skilled attorneys. The parties participated in two day-long mediation  
19 sessions, and negotiated in good faith and at arm’s length, but without reaching an accord. During the  
20 mediations, the strengths and weaknesses of the parties’ respective claims and defenses were fully  
21 explored as Judge Phillips challenged both sides’ positions. The parties continued their negotiations  
22 thereafter, with Judge Phillips as intermediary, and ultimately agreed to settle the Litigation for  
23 \$15,000,000.

24 Moreover, as detailed in the Grant Declaration, Lead Counsel had conducted a thorough review  
25 of SEC filings, press releases, and analysts reports concerning Cyan’s IPO. In addition, Lead Counsel  
26 analyzed more than 500,000 pages of documents produced by Defendants and took or defended 30 fact  
27 and expert depositions. Based on these facts, Class Representatives and Lead Counsel settled the  
28

1 Litigation with a fully informed understanding of the factual issues. Lead Counsel were able to  
2 intelligently evaluate the strengths and weaknesses of the case and determine that the Settlement was in  
3 the best interest of the Class. The Settlement is presumptively fair because it was reached through  
4 arm’s-length negotiations between experienced lawyers with sufficient information to make an  
5 intelligent decision on the propriety of settlement under the supervision of an experienced mediator.  
6 *See Wershba*, 91 Cal. App. 4th at 245.

7 **Second**, the Settlement has no obvious deficiencies, does not grant preferential treatment to  
8 Class Representatives, and falls within the range of possible approval. It provides a substantial cash  
9 benefit to the Class of \$15,000,000, and is plainly within a range of reasonableness, considering the  
10 risks and delay of continued litigation described below and in the Grant Declaration. Indeed, if  
11 approved, it will recover approximately 22% of estimated maximum damages. *See* Steinholt Decl., ¶7.

12 **IV. FACTORS CONSIDERED BY COURTS AT FINAL APPROVAL FURTHER**  
13 **DEMONSTRATE THAT THE SETTLEMENT WARRANTS PRELIMINARY**  
14 **APPROVAL**

15 The standard for final approval is whether the settlement is fair, adequate, and reasonable to the  
16 class. *Wershba*, 91 Cal. App. 4th at 245. To make this fairness determination, courts consider several  
17 factors, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
18 further litigation, the risk of maintaining class action status through trial, the amount offered in  
19 settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and  
20 views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). “The list of factors is  
21 not exclusive and the court is free to engage in a balancing and weighing of factors depending on the  
22 circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245.

23 The reasonableness of the Settlement is underscored by the inherent complexities of the  
24 Litigation, the substantial risks of continued litigation, and the duration of further litigation. While  
25 Class Representatives believe they could have prevailed in this complex litigation on the merits, success  
26 at trial was far from assured. For example, while Plaintiffs would dispute Defendants’ factual and legal  
27 arguments, Plaintiffs understand that Defendants would argue that all or most of Plaintiffs’ losses were  
28 due to facts that arose after Cyan’s IPO. For example, there is some evidence that would allow

1 Defendants to argue that although Windstream’s engineers intended to and would have continued to  
2 purchase Cyan products following the IPO, a decision was made by senior Windstream executives to  
3 restrict capital expenditures in order to protect Windstream’s balance sheet. Windstream’s apparent  
4 request to substitute leasing arrangements for straight purchases may have been an example and  
5 evidence of this dynamic. The eventual decline in sales to Windstream may also have been aggravated  
6 by sales to Windstream in excess of Windstream’s needs immediately after the IPO. In addition, a few  
7 quarters after the collapse of Windstream’s purchases, Windstream again began to purchase significant  
8 amounts of products from Cyan. In other words, there was a real possibility that Defendants could  
9 persuade a jury that the decline in sales to Windstream was due in large part to events that occurred  
10 after the IPO and that would not support a recovery for misrepresentations in the Registration  
11 Statement. The evidence for these and other arguments that Defendants might make at trial are set out  
12 in Defendants’ various summary judgment papers and exhibits, previously filed.

13 With respect to their disclosures, Defendants argued at summary judgment and would continue  
14 to argue at trial that the Registration Statement contained numerous disclosures regarding the risks  
15 associated with Cyan’s business with Windstream, including that: (i) Windstream accounted for nearly  
16 50% of Cyan’s revenues; (ii) Cyan did not have committed purchase contracts with its customers, which  
17 meant that at any time, any customer, including Windstream, might cease purchases; (iii) Windstream  
18 was going to reduce its capital expenditures in 2013; (iv) Cyan expected sales to Windstream to  
19 decrease as a result of the capital expenditure reduction; and (v) Cyan might not be able to replace any  
20 lost sales. Grant Decl., ¶50.

21 In addition to proving liability, Class Representatives would have to establish damages. At  
22 summary judgment and trial, the damage assessments of Class Representatives’ and Defendants’  
23 respective experts would sharply diverge, and this element would reduce to a “battle of experts.” *In re*  
24 *Tyco Int’l, Ltd.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) (“[E]ven if the jury agreed to impose  
25 liability, the trial would likely involve a confusing ‘battle of the experts’ over damages.”). Moreover,  
26 under §11(e) of the Securities Act, a defendant can reduce or eliminate damages through showing that  
27 the false or misleading statements or omissions alleged were not the cause of the class’ loss.

1 In the best case scenario for the Class here, the statutory damages calculation is approximately  
2 \$67 million. *See* Steinholt Decl., ¶7. This assumes: (i) Class Representatives’ success in establishing  
3 liability; (ii) Class Representatives’ success in introducing into evidence the complete opinions of Class  
4 Representatives’ damages expert at trial; (iii) Class Representatives’ absolute success in persuading the  
5 jury on the amount of damages; and (iv) 100% success by Class Representatives in rebutting all  
6 affirmative defenses, including negative causation. On the other hand, if Defendants were entirely  
7 successful in their negative causation defense, the damages would be zero. In light of the ongoing  
8 litigation challenges, as well as the substantial delay of trial, and even if successful at trial, the likely  
9 appeals that would follow, the substantial and certain recovery of \$15,000,000 represents a highly  
10 favorable result for the Class considering the risk of receiving a much smaller recovery or no recovery  
11 at all if litigation proceeded further.

12 **V. THE NOTICE AND CLAIMS PROCEDURE**

13 **A. Gilardi & Co. LLC Is a Highly Experienced Claims Administrator**

14 The parties propose appointing Gilardi & Co. LLC (“Gilardi”) as the Claims Administrator.  
15 This Court approved the appointment of Gilardi to provide the notice of the pendency in 2015. *See*  
16 May 19, 2015 Order Approving Form of Notices of Pendency of Class Action. Gilardi is an  
17 experienced claims administration firm, which has implemented successful notification and  
18 administration programs in more than a thousand securities class actions over the past three decades.  
19 *See* Joaquin Decl., ¶4; [www.gilardi.com](http://www.gilardi.com).

20 **B. The Number of Class Members**

21 The number of Class Members in this case, as in virtually every securities class action, cannot  
22 be definitively ascertained because the vast majority of class members hold their securities through a  
23 financial institution in what is referred to as “street name,” as opposed to in their own name. Because  
24 of the street name system, it is not possible to meaningfully project the total number of Class Members  
25 prior to implementing a notice plan. *See* Joaquin Decl., ¶24. In the over 30 years Gilardi has been  
26 notifying potential class members, Gilardi has found the majority of class members hold their securities  
27 in street name and are reached through the Nominee Holders. *Id.*, ¶10.

1 Here, in providing the notice of pendency, Gilardi mailed a total of 8,953 Pendency Notices to  
2 potential Class Members and Nominee Holders. *Id.*, ¶7. This number includes 66 names and addresses  
3 that Gilardi received directly from Cyan’s transfer agent. As detailed in the accompanying Joaquin  
4 Declaration, Gilardi intends to mail the Settlement Notice to this same universe of potential Class  
5 Members and Nominees, and follow its standard procedures to attempt to identify any additional  
6 potential Class Members.

7 **C. The Manner of Giving Notice Complies with CRC 3.766(d)**

8 Under California law, notice of settlement must have “a reasonable chance of reaching a  
9 substantial percentage of the class members.” *Wershba*, 91 Cal. App. 4th at 251. As long as the notice  
10 had a “reasonable chance” of reaching a substantial percentage of class members, it should be found  
11 effective. *Id.* As discussed and described in detail in the Joaquin Declaration, an extensive notice  
12 program will be used to reach potential Class Members. This notice program includes direct mailing of  
13 the Notice and Proof of Claim (collectively, the “Claim Package”) to Class Members who hold Cyan  
14 common shares in their own name and an extensive outreach program to brokers, banks and other  
15 institutions (the “Nominee Holders”) that hold the securities for the benefit of their clients and who may  
16 hold Cyan common shares in “street name” for Class Members. Joaquin Decl., ¶11.

17 The parties also propose to supplement the mailed Notice with a Summary Notice to be  
18 published in *The Wall Street Journal* and once over the *Business Wire*, where it will remain available  
19 for one month. *Id.*, ¶16. The Notice and Summary Notice are attached to the Stipulation as Exhibits A-  
20 1 and A-3, respectively. In addition, throughout the notification and claims processing period, the  
21 Claims Administrator will maintain a toll-free number for Class Members’ inquiries. *See* Joaquin  
22 Decl., ¶19. The Claims Administrator will also maintain a settlement-specific website where key  
23 documents will be posted, including the Stipulation, the Notice and Proof of Claim and the executed  
24 Preliminary Approval Order. *Id.*, ¶20. Gilardi estimates that the direct mail and publication program  
25 proposed will provide notice to more than 95% of the potential Class Members. *Id.*, ¶22. Because the  
26 Notice directs the cooperation of Nominee Holders and provides for the reimbursement of their costs,

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1 Gilardi anticipates a high level of compliance from those institutions, many of which have developed  
2 systems for providing the required information. *See id.*

3 The procedures used by Gilardi have proven extremely effective at compiling a very  
4 comprehensive list of class members and providing notice in thousands of class actions. *Id.*, ¶23.  
5 Substantially similar notice plans have been approved by numerous courts as being the best notice  
6 practicable under the circumstances. *See id.* The contemplated notice satisfies California law and the  
7 rules of due process. *See, e.g., Silber v. Mabon*, 18 F.3d 1449, 1453-55 (9th Cir. 1994); *Chavez v.*  
8 *Netflix, Inc.*, 162 Cal. App. 4th 43, 57 (2008).

9 **D. The Content of the Notice Complies with CRC 3.766(d)**

10 The Notice complies with California law. The ““notice given to the class must fairly apprise the  
11 class members of the terms of the proposed compromise and of the options open to dissenting class  
12 members.”” *Wershba*, 91 Cal. App. 4th at 251. Here, the Notice describes the Litigation; includes the  
13 definition of the Class; states the Class’ claims; and warns of the binding effect of the settlement  
14 approval proceedings on Class Members. In addition, the Notice describes the Settlement and the  
15 Settlement Amount; explains the proposed Plan of Allocation; states the parties’ disagreement over the  
16 merits; sets out the attorneys’ fees and expenses that Lead Counsel will seek, and the amount that Class  
17 Representatives will seek for their representation of the Class; provides contact information for Lead  
18 Counsel and the Claims Administrator; and summarizes the reasons the parties are proposing the  
19 Settlement. The Notice also discloses the date, time, and place of the Settlement Fairness Hearing; the  
20 procedure for objecting to the Settlement, the Plan of Allocation, the payment of Class Representatives’  
21 request for compensation for their representation of the Class, and/or Lead Counsel’s request for  
22 attorneys’ fees and expenses; and the procedure for appearing at the Settlement Fairness Hearing.

23 **E. The Claims Process**

24 Upon the Effective Date and thereafter, the Net Settlement Fund will be distributed to  
25 Authorized Claimants. *Stip.*, ¶6.3. Within 90 days after the mailing of the Notice or such other time as  
26 may be set by the Court, each Class Member will be required to submit to the Claims Administrator a  
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1 completed Proof of Claim. *Id.*, ¶7.1.<sup>8</sup> The Net Settlement Fund will be distributed to Authorized  
2 Claimants substantially in accordance with the Plan of Allocation set forth in the Notice and approved  
3 by the Court. The Notice and website will also provide Class Members with information on methods  
4 for submitting claims and contact information for directing any questions regarding the process.

5 **F. The Cost of Notice and Claims Administration**

6 Gilardi estimates that administering the notice, claims process, and settlement distribution  
7 aspects of the Settlement will generate professional services fees and expenses of approximately  
8 \$275,000 (given an estimated 25,000 potential Class Members). *Id.*, ¶¶25-27. This estimate is based on  
9 Gilardi’s experience with securities settlements of similar size and involving companies with similar  
10 market capitalizations and numbers of shareholders. *Id.* The actual fees and costs required to complete  
11 the administration may be significantly higher or lower, however, depending on how many Class  
12 Members are identified, how many claims are filed, how many claims are valid, and how many claims  
13 require additional communication with the filer. *Id.*

14 **VI. THE RIGHT TO OBJECT**

15 Class Members who wish to object to any aspect of the Settlement, the Plan of Allocation, Class  
16 Representatives’ request for service awards, and/or Lead Counsel’s request for attorneys’ fees and  
17 expenses must mail to Lead Counsel a written objection within 60 days from the date of the mailing of  
18 the Notice and Proof of Claim (or other time period ordered by the Court) in accordance with  
19 instructions provided in the Notice. A sixty day time period from the date of mailing for class members  
20 to object is common in many securities class action settlements. *See, e.g.*, Preliminary Approval of  
21 Class Action Settlement Checklist, Department 304 (Superior Court of California, San Francisco  
22 County) (noting that “usually 60 days is needed”). Any objection will be provided to the Court in  
23 connection with Class Representatives’ briefing for the Settlement Fairness Hearing.

24 \_\_\_\_\_  
25 <sup>8</sup> Except as otherwise ordered by the Court, Class Members who fail to timely submit a Proof of  
26 Claim within such period, or such other period as may be ordered by the Court, shall be barred from  
27 receiving payments pursuant to the Stipulation and the Settlement, but will in all other respects be  
28 subject to and bound by the provisions of the Stipulation, the releases contained therein, and the  
Judgment. Notwithstanding the foregoing, Lead Counsel may in their discretion, accept for processing  
late filed claims so long as the distribution of the Net Settlement Fund to Authorized Claimants is not  
materially delayed. Lead Counsel shall have no liability for not accepting late claims. *Stip.*, ¶7.2.

1 **VII. RESIDUAL DISTRIBUTION**

2 The Stipulation designates Bay Area Legal Aid as the recipient to receive any residue amount of  
3 the Net Settlement Fund after distribution to Class Members is no longer feasible. Lead Counsel and  
4 the Claims Administrator are bound by the Stipulation to distribute the Net Settlement Fund to Class  
5 Members who submit valid claims, including redistribution, to the extent necessary until the balance of  
6 the Net Settlement Fund is *de minimis*, *i.e.*, no longer economically feasible to make a further  
7 distribution to Class Members. Stip., ¶7.8. The goal of this methodology is to distribute all available  
8 funds to eligible investors; however, a small residual may remain in the fund.<sup>9</sup> Joaquin Decl., ¶32.

9 The parties selected Bay Area Legal Aid as the recipient of any *de minimis* funds because it  
10 provides free civil legal services to the low-income and indigent residents in the San Francisco Bay  
11 Area. Bay Area Legal Aid’s purpose is analogous to assisting those injured by securities fraud and  
12 coincides with the purpose of a class action – to provide legal representation to persons with claims too  
13 small to justify an individual action and thus satisfy the objectives of class action litigation. Thus, the  
14 selection of the Bay Area Legal Aid is sufficiently “tethered to the nature of the lawsuit and the interests  
15 of the silent class members.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 (9th Cir. 2011). The Bay  
16 Area Legal Aid has been approved as an appropriate recipient of residual funds by courts in the  
17 Superior Courts of the State of California County of San Mateo and Santa Clara. *See, e.g., Robinson v.*  
18 *Audience, Inc.*, Case No. 1:12-cv-232227 (Cal. Super. Ct., Santa Clara Cty.). This Court recently  
19 approved distributing residual funds to Bay Area Legal Aid in the *King Digital* case. *See In re King*  
20 *Digital Entertainment plc Shareholder Litigation*, Lead Case No. CGC-15-544770, Class Distribution  
21 Order, ¶4 (Cal. Super. Ct., San Francisco Cty.) (Feb. 14, 2018).

22 **VIII. ATTORNEYS’ FEES AND EXPENSES AND SERVICE AWARDS**

23 The Notice provides that Lead Counsel will request attorneys’ fees of up to 33-1/3% of the  
24 Settlement Fund (or \$5,000,000) and litigation expenses not to exceed \$1,100,000. This request falls  
25 within the parameters of percentage awards in other class action litigations in California and represents  
26 a fair and commensurate amount in view of the complex nature of the Litigation, the risks incurred, the

27 <sup>9</sup> None of the Settlement proceeds will revert back to Defendants unless the Settlement does not  
28 become effective pursuant to the terms of the Stipulation.

1 result obtained and the extensive efforts of counsel in obtaining the \$15 million recovery for the benefit  
2 of the Class, and the contingent nature of their representation.<sup>10</sup> Lead Counsel will provide further  
3 supporting documentation and briefing regarding the request for attorneys' fees and expenses in their  
4 motion for attorneys' fees and expenses to be filed in connection with the Settlement Fairness Hearing.

5 The Notice also provides that Class Representatives who were actively involved in the  
6 Litigation will request service awards in aggregate of no more than \$30,000.00 for their service in  
7 representing the Class. They consulted with counsel during the pendency of the Litigation; monitored  
8 the proceedings on behalf of the Class; provided documents and participated in depositions; and  
9 consulted with Lead Counsel regarding the Settlement.

10 **IX. PROPOSED SCHEDULE**

11 Finally, Class Representatives respectfully request that the Court set deadlines and a schedule in  
12 the case, which are to be incorporated in the proposed Preliminary Approval Order, consistent with the  
13 events and deadlines identified in Exhibit 1 hereto.

14 **X. CONCLUSION**

15 Class Representatives respectfully request that the Court preliminarily approve the Settlement  
16 and enter the Preliminary Approval Order.

17 DATED: November 6, 2018

Respectfully submitted,

18 ROBBINS GELLER RUDMAN  
19 & DOWD LLP  
20 JOHN K. GRANT  
KENNETH J. BLACK

21  
22 s/ John K. Grant  
23 JOHN K. GRANT

24  
25  
26 <sup>10</sup> The only agreement regarding attorneys' fees among the parties is set forth in the Stipulation.  
27 Pursuant to the Stipulation, after the Court executes an order awarding attorneys' fees and expenses,  
28 such fees and expenses shall be payable to Lead Counsel immediately after the Court executes such an  
award. *See* Stip., ¶5.1. Lead Counsel shall thereafter allocate such fees and expenses among Plaintiffs'  
Counsel subject to the terms and conditions set forth in the Stipulation. *Id.*

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## EXHIBIT 1

### PROPOSED SCHEDULE

|   |   |
|---|---|
| Deadline to mail Notice and Proof of Claim to Class Members (Preliminary Approval Order, ¶5(a))   | 21 calendar days after entry of Preliminary Approval Order                    |
| Deadline to publish Summary Notice (Preliminary Approval Order, ¶5(b))  | 10 calendar days after mailing of the Notice and Proof of Claim               |
| Deadline for filing papers in support of Settlement, Plan of Allocation, attorneys' fees and expenses, and payment of Class Representatives' service awards (Preliminary Approval Order, ¶12)       | 14 calendar days prior to the deadline for Class Members to file objections   |
| Deadline for filing objections to the Settlement, Plan of Allocation, attorneys' fees and expenses, and payment of Class Representatives' service awards (Preliminary Approval Order, ¶11)          | 60 calendar days after mailing of the Notice and Proof of Claim               |
| Deadline for filing reply papers in support of Settlement, Plan of Allocation, attorneys' fees and expenses, and payment of Class Representatives' service awards (Preliminary Approval Order, ¶12) | 7 calendar days prior to the Settlement Fairness Hearing                      |
| Deadline for submitting Proofs of Claim (Preliminary Approval Order, ¶9(a))   | 90 days from the date when the Claims Administrator mails notice to the Class |
| Settlement Fairness Hearing   | To be set by the Court  |

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DECLARATION OF SERVICE BY LEXIS FILE AND SERVE XPRESS

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant’s business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on November 6, 2018, declarant served the CLASS REPRESENTATIVES’ MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT by serving electronically via Lexis File & Serve Xpress to the parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 6, 2018, at San Diego, California.

  
\_\_\_\_\_  
JACLYN STARK

CYAN

Service List

Page 1 of 1

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