UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MIKE SHAFER, DAVID KEATING, and WILLIAM JEFFREY IGOE, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. GLOBAL PAYMENTS INC., ACTIVE NETWORK LLC, JEFF SLOAN, CAMERON BREADY, PAUL TODD, JOSH WHIPPLE, and ANDREA FACINI, Defendants.	Case No. 1:23-CV-00577-LMM CLASS ACTION

BRIEF IN SUPPORT OF CO-LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND FINAL CERTIFICATION OF SETTLEMENT CLASS

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Co-Lead Plaintiffs Mike Shafer, David Keating and William Jeffrey Igoe ("Co-Lead Plaintiffs"), on behalf of themselves and other members of the Settlement Class, respectfully submit this brief in support of their motion for: (1) final approval of (i) the proposed settlement resolving all claims in the Action for the payment of $3.6 million in cash for the benefit of the Settlement Class (the "Settlement"), (2) certification of the Settlement Class for settlement purposes only, appointment of Co-Lead Plaintiffs as class representatives, and appointment of Co-Lead Counsel as class counsel, and (3) approval of the proposed plan of allocation of the proceeds of the Settlement (the "Plan of Allocation").[1]

I. PRELIMINARY STATEMENT

Subject to Court approval, Co-Lead Plaintiffs have agreed to settle all claims in the Action in exchange for a cash payment of $3.6 million for the benefit of the Settlement Class. Co-Lead Plaintiffs respectfully submit that the proposed Settlement is an excellent result for the Settlement Class and satisfies the standards for final approval under Rule 23(e)(2) of the Federal Rules of Civil Procedure. As detailed in the accompanying Park Declaration and summarized herein, the

[1] Unless otherwise indicated, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated June 10, 2024. Doc. No. 65-2 ("Stipulation"). Unless otherwise indicated, "¶_" citations are to the Declaration of Jonathan D. Park, filed contemporaneously herewith ("Park Declaration" or "Park Decl."). Unless otherwise indicated, all citations and internal quotation marks are omitted.

Settlement was reached through arm's-length negotiations between counsel and represents a very favorable result for the Settlement Class because it provides a significant recovery, particularly when compared to the risks that continued litigation might result in a smaller recovery or no recovery at all. While Co-Lead Plaintiffs and Co-Lead Counsel believe the claims asserted against Defendants have merit, they would have faced substantial challenges in certifying the class, proving the materiality of the alleged misstatements or omissions, proving Defendants made the alleged misstatements knowingly or recklessly, and proving loss causation and damages.

If the case were to continue, Defendants would likely argue at summary judgment that the alleged misstatements that survived the motion to dismiss were not materially false and misleading. ¶¶ 43-47. Defendants would also likely raise numerous scienter arguments that could pose significant hurdles to proving that they acted with the requisite state of mind. ¶¶ 48-51. Even if Co-Lead Plaintiffs overcame these risks and successfully established liability, Defendants would argue that there are no recoverable damages or that damages are minimal. ¶¶ 52-55. Indeed, Defendants squarely took aim at loss causation—a required element of Co-Lead Plaintiffs' claims—when they moved for interlocutory review of this Court's order resolving the motion to dismiss. Doc. No. 56. That motion for interlocutory review was pending when the Parties reached an agreement-in-principle to settle the Action.

In addition, were this Action to continue, Co-Lead Plaintiffs would move for certification of a class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) and would invoke the fraud-on-the-market presumption in order to satisfy the "predominance" requirement of Rule 23(b)(3) pursuant to *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988). ¶ 56. Under Supreme Court precedent, "defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 284 (2014). In light of their arguments in their motions to dismiss and for interlocutory review, Defendants would certainly take this opportunity, which if successful would effectively dispose of this Action. ¶¶ 58-60.

Absent the Settlement, Co-Lead Plaintiffs faced the prospect of protracted litigation through fact discovery, class certification, expert discovery, additional contested motions, a trial, post-trial motion practice, challenges to individual class member loss causation and damages, and likely ensuing appeals. In light of this prospect, Co-Lead Plaintiffs and Co-Lead Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and warrants final approval.

The Court already conditionally certified the Settlement Class in connection with granting preliminary approval of the Settlement. Doc. No. 67 ("Preliminary Approval Order") at 2. Co-Lead Plaintiffs submit that final certification of the

Settlement Class for purposes of the Settlement, as well as appointment of Co-Lead Plaintiffs as class representatives and Co-Lead Counsel as class counsel, is appropriate.

Co-Lead Plaintiffs also request that the Court approve the Plan of Allocation, which was set forth in the Notice to potential Settlement Class Members. The Plan of Allocation, which was developed by Co-Lead Counsel in consultation with Co-Lead Plaintiffs' damages expert, provides a reasonable method of allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on losses they suffered that were attributable to the alleged fraud.

Notably, no Settlement Class Members have objected to the Settlement. The deadline for objections is November 20, 2024, and Co-Lead Plaintiffs will address any objections in their reply papers to be filed on or before December 4, 2024.

II. ARGUMENT

A. The Proposed Settlement Warrants Final Approval.

The proposed Settlement should be approved because it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Eleventh Circuit has recognized that public policy favors the settlement of disputed claims among private litigants, particularly in class actions. *See, e.g., In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 862 (11th Cir. 2009) ("Public policy strongly favors the pretrial settlement of class action lawsuits."). Rule 23(e)(2), as amended on December 1, 2018, provides

that the Court should determine whether a proposed settlement is "fair, reasonable, and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The Eleventh Circuit has held that district courts should also consider following factors set forth in *Bennett v. Behring Corp*.:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

737 F.2d 982, 986 (11th Cir. 1984); *accord Faught v. Am. Home Shield Corp*., 668 F.3d 1233, 1240 (11th Cir. 2012).

The Advisory Committee Notes to the 2018 amendments to the Federal Rules of Civil Procedure indicate that the factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the Court of Appeals, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Advisory Committee Notes to 2018 Amendments.

Accordingly, this brief addresses the four factors set forth in Rule 23(e)(2), as well as the relevant, non-duplicative *Bennett* factors. *See Ponzio v. Pinon*, 87 F.4th 487, 494-95 (11th Cir. 2023) ("The four core concerns set out in Rule 23(e)(2) provide the primary considerations in evaluating proposed agreements, but we think that the *Bennett* factors can, where appropriate, complement those core concerns."). All of the applicable factors strongly support approval.

1. Co-Lead Plaintiffs and Co-Lead Counsel Have Adequately Represented the Settlement Class.

In determining whether to approve a class action settlement, the Court should consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Courts consider (1) whether class representatives have interests antagonistic to the interests of other class members; and (2) whether class counsel has the necessary qualifications and experience to lead the litigation. *See, e.g.*, *Kirkpatrick v. J.C. Bradford Co.*, 827 F.2d 718, 726 (11th Cir. 1987).

Here, Co-Lead Plaintiffs and Co-Lead Counsel have adequately represented the Settlement Class by vigorously prosecuting the Action for sixteen months until securing the Settlement through arm's-length negotiations. Co-Lead Plaintiffs' claims that are typical of and coextensive with those of other Settlement Class Members, and they have no interests antagonistic to the interests of other members of the Settlement Class. In addition, Co-Lead Counsel is highly qualified and

experienced in securities litigation (*see* Park Decl., Exs. 11 and 12 (resumes of Pomerantz LLP and Lowey Dannenberg, P.C.)) and was able to successfully conduct the litigation against skilled opposing counsel and obtain a favorable settlement.

2. The Settlement Resulted from Good Faith, Arm's-Length Negotiations By Well-Informed and Experienced Counsel.

Courts presume that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations between counsel. *See Gunthert v. Bankers Std. Ins. Co.*, 2019 WL 1103408, at *3 (M.D. Ga. Mar. 8, 2019) ("There is a presumption of good faith in the negotiation process [and] [w]here the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion ...."); *see also Almanzar v. Select Portfolio Servicing, Inc.*, 2016 WL 1169198, at *1 (S.D. Fla. Mar. 25, 2016). In assessing a proposed class action settlement, courts give considerable weight to the opinion of well-informed and experienced counsel. *See Lunsford v. Woodforest Nat'l Bank*, 2014 WL 12740375, at *9 (N.D. Ga. May 19, 2014) ("The Court should give great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation."); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 312-13 (N.D. Ga. 1993) ("The trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.").

The Settlement was achieved after sixteen months of litigation and arm's-length negotiations by well-informed and experienced counsel. Co-Lead

Counsel, Pomerantz LLP ("Pomerantz") and Lowey Dannenberg, P.C. ("Lowey Dannenberg"), are leading class action litigation firms. Co-Lead Counsel thoroughly considered the strength and weaknesses of the Parties' claims and defenses, and consulted with experts on market efficiency, loss causation, and damages to assess, among other things, Defendants' arguments concerning loss causation. As a result, Co-Lead Plaintiffs and Co-Lead Counsel had an adequate basis to assess the strengths of the claims and defenses when they entered into the Settlement.

These facts strongly support the conclusion that the Settlement is fair. *See Agnone v. Camden Cnty.*, 2018 WL 4937061, at *5 (S.D. Ga. Oct. 10, 2018) ("Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness"), *R & R adopted,* 2018 WL 4937060 (S.D. Ga. Oct. 11, 2018); *see also In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (S.D. Fla. 2011) (approving settlement that was "the product of informed, good-faith, arms'-length negotiations between the parties and their capable and experienced counsel").

3. The Substantial Benefits For The Settlement Class, Weighted Against Litigation Risks, Support Final Approval of the Settlement.

In determining whether a settlement is "fair, reasonable, and adequate," the Court must consider whether the "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" as well as other

relevant factors. Fed. R. Civ. P. 23(e)(2)(C). In most cases, this will be the most important factor for the Court to consider in analyzing the proposed settlement.[2]

As discussed in detail in the Park Declaration and below, continued litigation presented a number of risks to Co-Lead Plaintiffs' ability to establish liability and damages. ¶¶ 43-55. In addition, continuing the litigation through trial and appeals would impose substantial additional costs on the Settlement Class and would result in extended delays before any recovery could be achieved. The Settlement, which provides a $3.6 million cash payment for the benefit of the Settlement Class, avoids those further costs and delays. Moreover, the Settlement represents a substantial percentage of the maximum damages that could be established at trial, and thus represents a very favorable outcome in light of the litigation risks. ¶ 53. All of these factors strongly support approval of the Settlement.

a. The Risks of Establishing Liability and Damages and Certifying the Class Support Approval of the Settlement.

While Co-Lead Plaintiff and Co-Lead Counsel believe that the claims asserted against Defendants in the Action are meritorious, they recognize that this Action presented a number of substantial risks.

[2] Indeed, this factor under Rule 23(e)(2)(C) encompasses four of the six factors of the traditional *Bennett* analysis: "(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; [and] (4) the complexity, expense and duration of litigation." 737 F.2d at 986.

1) Risks Concerning Liability

First, Co-Lead Plaintiffs faced significant risks that, at either the summary judgment stage or after a trial, they would not be able to establish one or more of required elements of falsity, materiality, scienter, and loss causation to sustain their securities fraud claims. Defendants would likely argue at summary judgment that the alleged misstatements were not materially false or misleading. Indeed, the Court dismissed a number of alleged misstatements in its order resolving the Motion to Dismiss. As to the remaining alleged misstatements, Co-Lead Plaintiffs would face significant risks to proving they were actionable. These risks are set forth in more detail in the accompanying Park Declaration. ¶¶ 43-47.

Even if Co-Lead Plaintiffs established that Defendants' alleged misstatements were materially false and misleading, Defendants would strenuously maintain that they did not act with scienter, which is often the most difficult element of a securities fraud claim for a plaintiff to plead or prove. In this case, Defendants would likely raise numerous scienter arguments that could pose significant hurdles. There is a very significant risk that the Court, at summary judgment, or a jury at trial, could conclude that Defendants did not act with scienter. ¶¶ 48-51.

2) Risks Related to Loss Causation and Damages

Even if Co-Lead Plaintiffs overcame the above risks and successfully established liability, Defendants would likely argue that there are no recoverable damages or that damages are minimal.

Co-Lead Plaintiffs' consulting damages expert has estimated maximum aggregate damages of approximately $97 million, not accounting for the disaggregation of inactionable (or statistically non-significant) price movements. ¶ 53. Defendants would argue that damages are much less. In its order on the Motion to Dismiss, the Court sustained only the alleged corrective disclosure on October 18, 2022. Defendants would likely argue, inter alia, that the price of Global Payments common stock tracked the movement of the S&P 500 Index on October 18 and 19, 2022, and thus that all or nearly all of the decline in Global Payments share price on those days was not caused by their alleged fraud. ¶ 54.

Indeed, loss causation was the subject of Defendants' motion for interlocutory review of the Court's order resolving the motion to dismiss. Defendants argued that interlocutory review was warranted because the Eleventh Circuit was likely to hold that private securities fraud plaintiffs must plead loss causation with particularity and the Complaint, in Defendants' view, did not meet that standard. Doc. No. 56. If Defendants prevailed on their loss causation arguments, recoverable damages could be eliminated entirely.

Even a reduced damages estimate assumes liability, which is not guaranteed. To recover any damages at trial, Plaintiffs would have to overcome significant risks at summary judgment, class certification, trial, and appeal. There is no guarantee that further litigation would yield a higher recovery, or any recovery at all.

3) Risks Related to Class Certification

The Settlement was reached before class certification. Were the Action to continue, Plaintiffs would move for class certification pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). To satisfy Rule 23(b)'s "predominance" requirement, Co-Lead Plaintiffs would invoke the fraud-on-the-market presumption of classwide reliance pursuant to *Basic Inc.*, 485 U.S. at 224. The *Basic* presumption is rebuttable. "Any showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance." *Id.* at 249. Defendants would likely seek to rebut the *Basic* presumption by attempting to "sever[] the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff." *Id.* Under Supreme Court precedent, "defendants must be afforded an opportunity before class certification to defeat the presumption through evidence that an alleged misrepresentation did not actually affect the market price of the stock." *Halliburton Co.* 573 U.S. at 284. Consistent with their argument that the Complaint did not adequately allege loss causation

because "the price of Global Payments' stock moved in virtual lock-step with the S&P 500 Index" on October 18 and 19, 2022 (Doc. No. 53 at 16), Defendants would likely argue that their alleged misstatements did not have any impact on the price of Global Payments stock, and thus that the *Basic* presumption was rebutted and class certification is inappropriate. The denial of class certification would effectively dispose of the Action, as it would then proceed with only the individual claims of Co-Lead Plaintiffs.

Therefore, Co-Lead Plaintiffs would have to prevail at several stages—at class certification, at summary judgment, and at trial, and if they prevailed on those, on any ensuing appeals—which could take years. *See, e.g.*, *Robbins v. Koger Props. Inc.*, 116 F.3d 1441 (11th Cir. 1997) (finding no loss causation and overturning $81 million jury verdict); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning jury verdict in favor of plaintiff class and granting judgment as a matter of law in favor of defendants), *aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc*., 688 F.3d 713 (11th Cir. 2012).

The Settlement avoids these risks and delay and will provide a prompt and certain benefit to the Settlement Class. Co-Lead Plaintiffs respectfully submit that, considering the risks of continued litigation and the time and expense which would be incurred to prosecute the Action through a trial, the $3.6 million Settlement represents a meaningful recovery that is in the best interests of the Settlement Class.

The Settlement is also reasonable when considered in relation to the range of potential recoveries that might be recovered if Co-Lead Plaintiffs prevailed at trial. Co-Lead Plaintiffs' consulting damages expert has estimated maximum aggregate damages of approximately $97 million. This estimate does not account for the disaggregation of inactionable (or statistically non-significant) price movements, and it could be further reduced depending on the outcome of loss causation and damages arguments. Accordingly, the $3.6 million Settlement represents approximately 3.7% of the maximum recoverable damages for the Settlement Class. This is a very positive result for Settlement Class Members given the risks of the litigation, and further supports final approval of the Settlement.

b. The Settlement Represents a Substantial Percentage of Likely Recoverable Damages.

Co-Lead Plaintiffs submit that the $3.6 million Settlement is a very favorable result when considered in relation to the maximum damages that could be established at trial. Assuming that Co-Lead Plaintiffs prevailed on all liability issues at trial (which was far from certain), the maximum damages that Co-Lead Plaintiffs would be able to prove was approximately $97 million. ¶ 53. If Defendants succeeded with respect to certain of their loss causation and damages arguments, damages would be reduced to significantly (and could be further reduced to zero if certain other arguments were accepted). ¶¶ 52-55. Accordingly, the Settlement represents approximately 3.7% of the maximum recoverable damages for the

Settlement Class. This is a positive result for the Settlement Class Members given the risks of the litigation. Accordingly, for all the foregoing reasons, Co-Lead Plaintiffs respectfully requests that the Court grant final approval.

c. The Costs and Delays of Continued Litigation Support Approval of the Settlement.

The substantial costs and delays required before any recovery could be obtained through litigation also strongly support approval of the Settlement.

This case settled prior to discovery and class certification. As such, achieving a litigated verdict in the Action would have required substantial time and expense. In the absence of the Settlement, achieving a recovery for the Settlement Class would have required (i) expensive and time-consuming fact discovery; (ii) briefing a class certification motion; (iii) complex and expensive expert discovery; (iv) briefing an expected motion for summary judgment; (iv) a trial involving substantial fact and expert testimony; and (v) post-trial motions. Finally, whatever the outcome at trial, it is virtually certain that the verdict would be appealed. The foregoing would pose substantial expense for the Settlement Class and delay the Settlement Class's ability to recover – assuming, of course, that Co-Lead Plaintiffs and the Settlement Class were ultimately successful on their claims.

d. All Other Factors Set Forth in Rule 23(e)(2)(C) Support Approval of the Settlement.

Rule 23(e)(2)(C) instructs courts to consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" "the terms of any proposed award of attorney's fees, including timing of payment;" and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors supports approval of the Settlement or is neutral.

First, the procedures for processing Settlement Class Members' claims and distributing the proceeds of the Settlement to eligible claimants are well-established, effective methods that have been widely used in securities class action litigation. Here, the proceeds of the Settlement will be distributed to class members who submit eligible Claim Forms with required documentation to the Claims Administrator, A.B. Data, Ltd. ("A.B. Data"). A.B. Data, an independent company with extensive experience administering securities class action settlements, will review and process claims under the supervision of Co-Lead Counsel, will provide claimants with an opportunity to cure any deficiencies in their claims or request review of the denial of their claim by the Court, and will then mail or wire claimants their *pro rata* share of the Net Settlement Fund (as calculated under the Plan of Allocation) upon

approval of the Court. This type of claims processing is standard in securities class actions and has long been found to be effective.

Second, the relief provided for the Settlement Class in the Settlement is adequate when the terms of the proposed award of attorney's fees are taken into account. As discussed in the contemporaneously-filed brief in support of Co-Lead Counsel's motion for attorneys' fees, the proposed attorneys' fees of 33.3% of the Settlement Fund are reasonable in light of the efforts made and risks faced by Co-Lead Counsel. The issue of attorneys' fees is entirely separate from approval of the Settlement, and neither Co-Lead Plaintiffs nor Co-Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees. *See* Stipulation ¶ 19.

Lastly, Rule 23 asks the court to consider the fairness of the proposed settlement in light of any agreements required to be identified under Rule 23(e)(3). See Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, the only such agreement is the Parties' confidential Supplemental Agreement, which sets forth the conditions under which Global Payments would be able to terminate the Settlement if the number of Settlement Class Members who request exclusion from the Settlement Class reaches a certain threshold. This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement. *See Hefler v.*

Wells Fargo & Co., 2018 WL 6619983, at *7 (N.D. Cal. Dec. 18, 2018), *aff'd sub nom. Hefler v. Pekoc*, 802 F. App'x 285 (9th Cir. 2020).

4. The Settlement Treats Settlement Class Members Equitably Relative to Each Other,

The proposed Settlement treats members of the Settlement Class equitably relative to one another. As discussed in Section II.C., below, pursuant to the Plan of Allocation, eligible claimants approved for payment by the Court will receive their *pro rata* share of Net Settlement Fund based on their transactions in Global Payments stock. Co-Lead Plaintiffs will receive the same level of *pro rata* recovery (based on their Recognized Claims calculated under the Plan of Allocation) as all other Settlement Class Members.

B. THE SETTLEMENT CLASS SHOULD CERTIFIED FOR SETTLEMENT PURPOSES.

Since the Settlement was reached prior to class certification, the Court must determine whether to finally certify the class for settlement purposes under Federal Rules of Civil Procedure 23(a) and 23(b)(3). *Morefield v. NoteWorld, LLC*, 2012 WL 1355573, at *2 (S.D. Ga. Apr. 18, 2012). In connection with granting preliminary approval of the Settlement, the Court conditionally certified the Settlement Class, which consists of "all persons who purchased or otherwise acquired publicly-traded Global Payments common stock during the period from October 31, 2019 through and including October 18, 2022, inclusive (the "Class

Period"), and who were damaged thereby," with customary exclusions. Preliminary Approval Order at 2.

1. The Settlement Class Satisfies Rule 23(a).

Rule 23 requires that: (1) the class is so numerous that joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the representative party are typical of those of the class ("typicality"); and (4) the representative party will fairly and adequately protect the interests of the class ("adequacy"). Fed. R. Civ. P. 23(a). *First*, in securities class actions, numerosity is generally presumed when a claim involves a nationally traded security. *In re Scientific-Atlanta, Inc. Sec. Litig.*, 571 F. Supp. 2d 1315, 1325 (N.D. Ga. 2007). The Settlement Class consists of purchasers of Global Payments common stock, which traded on the New York Stock Exchange during the Class Period. Thus, the Settlement Class satisfies numerosity.

Second, "questions of law or fact common to the class" exist. Fed. R. Civ. P. 23(a)(2). "Generally, where plaintiffs allege that the action is a result of a unified scheme to defraud investors, the element of commonality is met." *In re Netbank, Inc. Sec. Litig.*, 259 F.R.D. 656, 664 (N.D. Ga. 2009). Co-Lead Plaintiffs allege a "unified scheme." *Id*. All Settlement Class Members share the same claims involving whether (1) Defendants made false or misleading statements; (2) with

scienter; (3) that artificially inflated the price of Global Payments common stock; and (4) damaged Settlement Class Members. Commonality is satisfied.

Third, Rule 23(a)(3) requires that the class representative's claims or defenses be "typical" of the claims or defenses of the putative class. A class representative's claim is typical if there is a "nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) . Typicality is found where plaintiffs allege that defendants made false and misleading statements that artificially inflated the stock price. *See In re Internap Network Servs. Corp. Sec. Litig.*, 2012 WL 12878579, at *5 (N.D. Ga. Aug. 23, 2012). Typicality is satisfied.

Lastly, courts in the Eleventh Circuit apply a two-prong test for Rule 23(a)(4)'s adequacy requirement: "(1) whether any substantial conflicts of interest exist between the representatives and the class, and (2) whether the representatives will adequately prosecute the action." *Scientific-Atlanta*, 571 F. Supp. 2d at 1331. Co-Lead Plaintiffs' claims are typical of the Settlement Class, and there are no conflicts of interest between them and the Settlement Class. Further, Co-Lead Plaintiffs have adequately prosecuted the Action, and have retained and actively overseen Co-Lead Counsel, including by reviewing court filings, discussing the Action with Co-Lead Counsel, and assessing and approving the proposed

Settlement. Adequacy is satisfied. *See Morefield*, 2012 WL 1355573, at *2. Co-Lead Counsel is qualified, experienced, and has demonstrated its ability in this Action.

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

The Settlement Class satisfies Rule 23(b)(3), which requires "that the questions of law or fact common to class members predominate over any questions affecting only individual members ['predominance'], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy ['superiority']." Fed. R. Civ. P. 23(b)(3). "Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation," and is "readily met" in securities class actions. *Amchem*, 521 U.S. at 623, 625. Here, "[r]esolution of [P]laintiff[s'] allegations—including questions of liability, causation, and damages—are susceptible to generalized proof and, further, such generalized inquiries predominate over any issues specific to individual class members." *Gordon v. Vanda Pharms. Inc.*, 2022 WL 4296092, at *8 (E.D.N.Y. Sept. 15, 2022), *see also Micholle v. Ophthotech Corp.*, 2022 WL 1158684, at *3 (S.D.N.Y. Mar. 14, 2022).

For a settlement class, superiority is more easily established. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, 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."). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amchem*, 521 U.S. at 617. Many Settlement Class Members are individuals for whom prosecution of a costly individual action is not a realistic alternative. No Settlement Class Members have brought separate claims. Thus, superiority—and Rule 23(b)(3)—is satisfied. *City of Sunrise Gen. Emps. Ret. Plan v. FleetCor Techs., Inc.*, 2019 WL 3449671, at *7 (N.D. Ga. July 17, 2019).

3. The Court Should Appoint Co-Lead Plaintiffs as Class Representatives and Co-Lead Counsel as Class Counsel.

Federal Rule of Civil Procedure 23(g) provides that "a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1). Co-Lead Plaintiffs and Co-Lead Counsel have adequately represented the Settlement Class throughout this Action, and they should be appointed as class representatives and Class Counsel, respectively. Under Rule 23(g), the Court must consider, *inter alia*, counsel's work identifying and investigating the potential claims, counsel's relevant experience, and the resources that counsel will commit to representing the class. *Id*. Here, Co-Lead Counsel vigorously identified and investigated the potential claims, including by filing an initial complaint, investigating and developing the Complaint, and defeating in part the motion to dismiss. Co-Lead Counsel Pomerantz and Lowey

Dannenberg are among the most experienced firms in the field of securities class action litigation, and committed sufficient resources to prosecuting this Action. Co-Lead Plaintiffs adeptly represented the Settlement Class, overseeing Co-Lead Counsel and evaluating and approving the proposed Settlement.

C. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE.

The standard for approval of a plan of allocation of settlement funds is the same as for approving a settlement: whether it is "fair, adequate, and reasonable and is not the product of collusion between the parties." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). A plan of allocation will be found fair and reasonable where there is a "rough correlation" between class members' injuries and the settlement distribution. *Id.* at 240; *see Vinh Nguyen v. Radient Pharms. Corp.*, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) ("[A[n allocation formula need only have a reasonable, rational basis …."). In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *9 (S.D.N.Y. Sept. 4, 2014).

Here, the proposed Plan of Allocation, which was developed by Co-Lead Counsel in consultation with Co-Lead Plaintiffs' damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. In developing the Plan, Co-Lead

Plaintiffs' damages expert calculated the amount of estimated artificial inflation in the price of Global Payments common stock allegedly caused by Defendants' alleged misstatements by considering the price changes in Global Payments common stock in reaction to the alleged corrective disclosures, adjusting for price changes attributable to market and industry forces. ¶¶ 72-79; *see also* Notice ¶¶ 52-71.

Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase and acquisition of Global Payments common stock during the Settlement Class Period listed in the Claim Form and for which adequate documentation is provided. Notice ¶ 58. In general, the Recognized Loss Amount will be the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale, or the difference between the actual purchase and sale price of the stock, whichever is less. *Id.*

Co-Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as a result of the alleged misconduct. ¶ 78. To date, no objections to the proposed Plan of Allocation have been received. ¶ 79.

D. NOTICE SATISFIED RULE 23 AND DUE PROCESS.

The Notice to the Settlement Class satisfied the requirements of Rule 23, which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

Fed. R. Civ. P. 23(c)(2)(B). The Notice also satisfied Rule 23(e)(1), which requires that notice of a settlement be "reasonable," i.e., that it "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 114 (2d Cir. 2005).

Both the substance of the Notice and the method of its dissemination to potential members of the Class satisfied these standards. The Court-approved Notice includes all the information required by Federal Rule of Civil Procedure 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7). A.B. Data began mailing copies of the Postcard Notice to potential Settlement Class Members on September 13, 2024, earlier than required by the Court's Preliminary Approval Order. ¶ 64. As of November 6, 2024, A.B. Data had disseminated notice of the Settlement to a total of 256,194 potential Settlement Class Members and nominees. ¶ 69. In addition, A.B. Data posted copies of the Notice and Claim Form on the Settlement website, and caused the Summary Notice to be published in *Investor's Business Daily* and transmitted over *PR Newswire*. ¶ 65. This combination of individual mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely-circulated publication, and transmitted over a newswire, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

III. CONCLUSION

For the reasons discussed above and in the Park Declaration, Co-Lead Plaintiffs respectfully request that the Court (1) approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate, and (2) for settlement purposes only, certify the Settlement Class, appoint Co-Lead Plaintiffs as class representatives, and appoint Co-Lead Counsel as class counsel.

Dated: November 6, 2024

POMERANTZ LLP

s/ Jonathan D. Park

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LOCAL RULE 7.1(D) CERTIFICATION

By signature below, counsel certifies that the foregoing document was prepared in Times New Roman, 14-point font in compliance with Local Rule 5.1.

/s/ Jonathan D. Park

JONATHAN D. PARK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 6, 2024, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system, and a copy of the foregoing pleading has been electronically mailed to all attorneys of record.

/s/ Jonathan D. Park

JONATHAN D. PARK