

1 John T. Jasnoch (CA 281605)
2 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
3 600 W. Broadway, Suite 3300
4 San Diego, CA 92101
5 Telephone: 619-233-4565
6 jjasnoch@scott-scott.com

7 William C. Fredericks (*pro hac vice*)
8 Jeffrey P. Jacobson (*pro hac vice*)
9 **SCOTT+SCOTT ATTORNEYS AT LAW LLP**
10 230 Park Avenue, 17th Floor
11 New York, NY 10169
12 Telephone: (212) 223-6464
13 Facsimile: (212) 223-6334
14 wfedericks@scott-scott.com
15 jjacobson@scott-scott.com

16 *Attorneys for Lead Plaintiff Raju Shah, and*
17 *Lead Counsel for the Putative Class and*
18 *for Lead Plaintiff Raju Shah*

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 MARTIN JOSEPH ABADILLA, et al.,
23
24 Plaintiff,

25 v.

26 PRECIGEN, INC., et al.,
27
28 Defendants.

Case No.: 5:20-cv-06936-BLF

Dept.: Courtroom 3, 5th Floor
Judge: Honorable Beth Labson Freeman

Hearing Date: July 6, 2023

This Document Relates to:
ALL CONSOLIDATED ACTIONS

DECLARATION OF WILLIAM C. FREDERICKS IN SUPPORT OF LEAD PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

1 **DECLARATION OF WILLIAM C. FREDERICKS IN SUPPORT OF**
2 **PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF**
3 **PROPOSED CLASS ACTION SETTLEMENT**

4 1. I, William C. Fredericks, am a partner in the firm of Scott+Scott Attorneys at Law
5 LLP (“Scott+Scott” or “Lead Counsel”). Scott+Scott is counsel for the Court-appointed Lead
6 Plaintiff and proposed class representative Raju Shah (“Plaintiff” or “Lead Plaintiff”). I have
7 personal knowledge of the matters stated herein based on my participation in the Action and review
8 of records maintained by my firm.

9 2. I respectfully submit this Declaration in support of Plaintiff’s Motion for
10 Preliminary Approval of Proposed Class Action Settlement.

11 3. Capitalized terms not otherwise defined herein have the same meaning as used in
12 the Stipulation and Agreement of Settlement, dated February 27, 2023 (the “Settlement
13 Stipulation”).

14 **PRELIMINARY STATEMENT**

15 4. The Proposed Settlement, if approved by the Court, will resolve all claims asserted
16 in this Action against Precigen, Inc., formerly known as Intrexon Corporation, and its Related
17 Persons (including its current and former officers), in exchange for a cash payment of \$13,000,000
18 for the benefit of the Settlement Class. The Settlement was achieved only after contested litigation,
19 which included full briefing on Defendants’ motion to dismiss Plaintiff’s Second Amended
20 Complaint (which resulted in the Court’s dismissal, with leave to replead, of all claims) and
21 Plaintiff’s submission (following further investigation and contacts with confidential witness) of a
22 Third Amended Complaint (the “TAC”). Significantly, the Proposed Settlement was only reached
23 after the TAC was filed, and only after an arm’s-length mediation process conducted under the
24 auspices of a highly experienced mediator, the Hon. Layn Phillips (U.S.D.J., ret.) of Phillips ADR
25 (“Judge Phillips” or the “Mediator”). The Proposed Settlement is based on and fully consistent
26 with Judge Phillips’s “mediator’s proposal,” which was reached after a full-day mediation session,
27 and the Settlement only became final after Lead Counsel had had the opportunity to complete their
28 review of over 83,000 pages of internal documents that Precigen produced prior to the execution of
 the Settlement Stipulation.

1 Complaint (ECF No. 88) (the “Second Amended Complaint”) as to the same defendants who had
2 been named in the Amended Complaint, and (b) the Court terminated the then-pending motion to
3 dismiss as moot (ECF No. 89). On November 3, 2021, Precigen, Kirk, Sterling, and Last filed their
4 opening brief and other supporting materials in support of their Corrected Notice of Motion and
5 Motion to Dismiss the Second Amended Class Action Complaint (ECF No. 96) (the “Renewed
6 Motion to Dismiss”), which was separately joined in by Defendant Walsh (*id.*).

7 10. Lead Plaintiff thereafter submitted his briefs and supporting papers in opposition to
8 Defendants’ Renewed Motion to Dismiss on December 17, 2021 (ECF No. 98), and the moving
9 Defendants submitted their reply brief (as well as certain additional supporting materials) in further
10 support of their Renewed Motion to Dismiss on January 28, 2022 (ECF Nos. 102-103).

11 11. On April 8, 2022, the Court heard oral argument on the Renewed Motion to Dismiss.
12 At oral argument, the Court indicated that it intended to issue an order (a) granting the Renewed
13 Motion to Dismiss without prejudice, but (b) granting Lead Plaintiff leave to file a further amended
14 complaint (ECF Nos. 106, 110).

15 12. On May 31, 2022, the Court issued its 19-page Order Granting Defendants’
16 Renewed Motion to Dismiss with Leave to Amend and set a schedule for Lead Plaintiff to file a
17 further amended complaint (ECF No. 111) (the “MTD Order”).

18 13. Meanwhile, after discussions regarding the time, place, and manner of a possible
19 mediation had commenced (*see* next section), Lead Plaintiff timely filed his Third Amended Class
20 Action Complaint on August 1, 2022 (which complaint, *inter alia*, dropped Last and Sterling as
21 defendants) (ECF No. 116).

22 **THE SETTLEMENT NEGOTIATIONS AND THE “MEDIATOR’S PROPOSAL”**

23 14. Beginning in June 2022, shortly after the Court issued its MTD Order, Defendants
24 and Lead Plaintiff, through their counsel, commenced preliminary discussions regarding the
25 possibility of trying to resolve the claims at issue through mediation, and the Parties ultimately
26 agreed to retain a highly experienced mediator of securities class actions, Judge Phillips, for that
27 purpose.
28

1 15. On August 2, 2022, Lead Plaintiff, Walsh, Precigen, and Kirk advised the Court that
2 they had reached an agreement to try to pursue a settlement through mediation, and that same day
3 the Court entered an Order approving the Parties’ proposed stipulation to vacate existing deadlines
4 for briefing any motions to dismiss the operative complaint while the Parties pursued their efforts
5 to try to reach a mediated settlement (ECF Nos. 118-119).

6 16. Pursuant to Judge Phillips’ instructions (as mediator), both Lead Plaintiff and
7 Defendants prepared and exchanged comprehensive opening mediation briefs and supporting
8 materials on September 30, and submitted additional reply papers and supporting materials on
9 November 3, 2022. In addition, as part of the mediation process, Precigen produced to Lead
10 Plaintiff certain relevant Precigen documents that Lead Plaintiff had requested in advance of the
11 mediation.

12 17. On November 17, 2022, representatives of the Parties attended a full-day in-person
13 mediation session in New York City under the auspices of the Mediator.

14 18. At the end of this full-day mediation session, the Mediator made a “mediator’s
15 proposal” for a global settlement of all claims asserted in the Action (including those asserted
16 against Walsh) under which, *inter alia*, Lead Plaintiff (on behalf of himself and the putative class)
17 would settle, compromise, and release all claims against Precigen and its current and former
18 officers, directors, employees, agents, and representatives (in their capacities as such) in exchange
19 for Defendants’ payment of \$13,000,000.00 million in cash.

20 19. Lead Plaintiff, Precigen, and Kirk accepted the “mediator’s proposal” in principle,
21 subject to the resolution of certain non-monetary terms regarding the nature, scope, and completion
22 of confirmatory discovery to be provided to Lead Plaintiff by Precigen prior to the execution of a
23 final stipulation of settlement, and the Parties promptly notified the Court accordingly.

24 20. Lead Plaintiff and Precigen thereafter reached an agreement in early December
25 2022, whereby Precigen agreed to produce, and Lead Counsel thereafter reviewed, confirmatory
26 discovery consisting of roughly 83,000 pages of documents from Precigen. On January 20, 2023,
27 Lead Counsel advised Precigen that their review had confirmed their original assessment that the
28

1 proposed Settlement was fair, reasonable, and adequate, and that Lead Plaintiff would elect to
2 proceed with the Settlement.

3 21. In January 2023, Defendant Walsh also agreed to become a party to the Settlement,
4 on the terms consistent with the “mediator’s proposal,” and as reflected in the Settlement
5 Stipulation.

6 22. On March 1, 2023, Plaintiff and Defendants completed the process of finalizing and
7 executing the Stipulation of Settlement and the exhibits thereto. On the same day, the Parties also
8 entered into a confidential Supplemental Agreement, which gives Defendants the right to terminate
9 the Settlement if valid requests for exclusion are received from persons and entities entitled to be
10 members of the Settlement Class in an amount that exceeds an amount agreed to by the Parties.

11 **SUMMARY OF THE BENEFITS OF SETTLEMENT VS. THE LIKELY RISKS OF**
12 **CONTINUED LITIGATION AGAINST DEFENDANTS**

13 23. The Proposed Settlement is the product of an arm’s-length mediation process that
14 involved, among other things: (a) the exchange of detailed mediation statements; (b) the pre-
15 mediation production of certain documents by Precigen; (c) pre-mediation calls with the Mediator
16 to review the Parties’ positions on specific legal and factual issues raised by the Mediator; (d) a
17 full-day in-person mediation session in New York on November 17, 2022 conducted under the
18 auspices of the Mediator; (e) further negotiation of the certain non-monetary settlement matters,
19 and in particular, the scope and nature of confirmatory discovery; and (f) negotiations over an initial
20 Term Sheet and thereafter over the final terms of the Stipulation of Settlement (and the exhibits
21 thereto). I respectfully submit that the Settling Parties’ engagement in this type of comprehensive
22 mediation process on an arm’s-length basis under the auspices of a leading Mediator of complex
23 actions (Judge Phillips) – and the fact that the resulting Proposed Settlement is based on that
24 Mediator’s independent proposal – are both factors that strongly support Lead Counsel’s judgment
25 that the Proposed Settlement is “fair, reasonable, and adequate.” I also respectfully submit that,
26 when the Settlement was reached, Lead Counsel had a firm understanding of the strengths and
27 weaknesses of Lead Plaintiff’s claims as a result of (a) their prior briefing of Defendants’ Renewed
28 Motion to Dismiss; (b) their review of both Precigen’s pre-mediation and post-mediation document

1 productions; and (c) their participation in a thorough mediation process (including the preparation
2 of and exchange of comprehensive opening and reply mediation submissions), during which all
3 Parties and the Mediator engaged in depth on relevant liability, damages, and collectability issues.

4 24. Some of the challenges that Plaintiff faced in prevailing on liability on the claims
5 that he proposes to settle were made clear early on. For example, at oral argument on Defendants’
6 initial motions to dismiss on April 8, 2022, the Court raised various questions about certain aspects
7 of Lead Plaintiff’s false and misleading statement claims (brought under §10(b) and SEC Rule 10b-
8 5(b), and related §20(a) claims). In particular, although the Court ultimately found in its MTD
9 Order that Plaintiff had adequately alleged that certain statements from the first part of the Class
10 Period were misleading because they purported to describe test results based on use of natural gas
11 (when Plaintiff alleged that they had instead been obtained using pure methane), the Court’s MTD
12 Order also found that numerous other statements (largely from the latter half of the Class Period)
13 were not actionable, including Defendants’ various statements that the Company’s Methane
14 Bioconversion Platform (“MBP”) had reached “in the money” status with respect to being able to
15 produce certain chemicals. Lead Counsel believed that the Court’s findings that certain key false
16 and misleading statements at issue were not actionable were incorrect, and hoped to persuade the
17 Court on repleading that those finding were incorrect, but there could be no guarantee that the Court
18 would have reversed course on repleading.

19 25. Moreover, although Lead Counsel believe that they would have been able to prove
20 that Defendants acted with *scienter*, such proof is never certain in a §10(b) case. First, although
21 defendant Walsh (the executive who headed the MBP Program) was the defendant most at risk of
22 being found to have acted with *scienter* (based, *inter alia*, on his closeness to the program), Mr.
23 Walsh retired from the Company well before the end of the Class Period, and personally issued
24 only a few of the allegedly false or misleading statements at issue. Moreover, Mr. Walsh did not
25 engage in any suspicious stock sales during the Class Period, a factor that made it harder for Lead
26 Plaintiff to plead (let alone prove) that he acted with *scienter*. And finally, the Court had already
27 rejected Lead Plaintiff’s reliance on certain confidential witnesses (“CWs”) to support the requisite
28 “strong inference” of Mr. Walsh’s *scienter*, so once again there could be no assurance that Lead

1 Plaintiff's reliance on many of the same CWs in the TAC would cause the Court to reach a different
2 view as to Mr. Walsh's *scienter*. Second, with respect to former CEO Kirk, the challenges of
3 pleading and proving his *scienter* were even greater, as he was further removed from the MBP
4 Program than Mr. Walsh, the CW allegations against Mr. Kirk were significantly weaker than they
5 were as to Mr. Walsh, and Mr. Kirk also did not sell a suspiciously large percentage of his Precigen
6 shares during the Class Period.

7 26. In addition, Defendants also had significant loss causation defenses. This case, for
8 example, did not involve a single large drop in Precigen's share price in response to a "clean"
9 disclosure that one or more of the Company's prior statements about the MBP Program had been
10 false. Instead, this case involved a series of roughly ten "partial corrective disclosure dates," with
11 Plaintiff alleging that the truth about Defendants' alleged misstatement only emerged gradually
12 over a multi-year period. On the facts alleged, proving loss causation was particularly challenging,
13 because on certain alleged "partial corrective disclosure dates," the negative stock price reaction
14 was not statistically significant, and even on dates when there was a statistically significant reaction,
15 there were other negative (and hence potentially "confounding") disclosures relating to non-MBP-
16 related aspects of Precigen's business, such that proving that the observed price declines on such
17 dates were related to fraud-related disclosures (as opposed to unrelated matters) would likely be
18 difficult. Accordingly, after considering these and other loss causation issues, Lead Plaintiff's
19 damages expert estimated that the range of reasonably recoverable damages in this case was roughly
20 \$135 to \$270 million.

21 27. Moreover, even if Lead Plaintiff had prevailed in full on all his claims against
22 Defendants, the chances that he could ever actually recover a significantly larger amount was
23 uncertain at best. For example, Defendants have only limited available insurance coverage, which
24 could well have been fully exhausted had Lead Plaintiff elected to litigate his claims against them
25 through discovery, summary judgment, trial, and likely appeals. In addition, Precigen's business
26 (which was historically comprised of four major business sectors, of which the MBP Program was
27 only one) has been in sharp decline in recent years; for example, in Precigen's third fiscal quarter
28 of 2022 Form 10-Q, filed November 9, 2022, the Company reported operating losses of \$57,601

1 for the first nine months of 2022, that it expected “operating losses and negative cash flows from
2 operations to continue for the foreseeable future,” that it had \$82.44 million in convertible notes
3 coming due in July 2023, and that, as a result, “these matters raise substantial doubt about the
4 Company’s ability to continue as a going concern.”

5 28. In addition, based on several objective metrics, the \$13,000,000 settlement compares
6 favorably to other securities class action settlements. For example, the Settlement is almost double
7 the size of the median securities class action settlement (\$6.9 million) in the Ninth Circuit between
8 2012 and 2021.² In addition, as noted above, Lead Plaintiff’s consulting damages expert advised
9 that reasonably recoverable damages were in the range of \$135-\$270 million here, which would
10 mean that the proposed \$13,000,000 recovery here – equal to roughly 5% of the *high* end of this
11 range – would compare quite favorably to the roughly 2.3% of maximum recoverable §10(b)
12 damages observed in comparably sized securities cases.³

13 29. In sum, by accepting Judge Phillips’ mediator’s proposal and finalizing the Proposed
14 Settlement, Lead Plaintiff has closed on a \$13 million “bird in the hand” to settle claims that, from
15 a collectability standpoint, might well have ultimately proven to be worth materially less than that
16
17
18
19

20 ² See Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2021 Review*
21 *and Analysis*, CORNERSTONE RESEARCH, at 19 (2021), [https://www.cornerstone.com/wp-](https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf)
22 [content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf](https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf).

23 ³ By comparison, NERA Economic Consulting recently reported that, between 2012 and 2021,
24 the median securities class action settlement equated to roughly 2.3% of maximum damages in cases
25 involving estimated investor losses between \$200 and \$399 million. Janeen McIntosh & Svetlana
26 Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA
27 ECONOMIC CONSULTING, at 23 (Jan. 25, 2022), [www.nera.com/publications/archive/2022/recent-](http://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation-2021-full-y.html)
28 [trends-in-securities-class-action-litigation-2021-full-y.html](http://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation-2021-full-y.html).

1 amount even if, after years of litigation, he largely prevailed on liability and secured the full amount
2 of the maximum estimated reasonably recoverable damages.⁴

3 30. For all of the foregoing reasons, it is respectfully submitted that the Proposed
4 Settlement meets the “fair, reasonable, and adequate” standards required for preliminary (as well
5 as final) approval by this Court.

6 **THE PROPOSED PLAN OF ALLOCATION ALSO MERITS APPROVAL**

7 31. The plan of allocation proposed by Plaintiff (the “POA”) is set forth at pages 10-13
8 of the proposed Notice (Ex. A-1 to the Stipulation).

9 32. Lead Counsel developed the POA in consultation with Lead Plaintiff’s consulting
10 damages expert – a Ph.D.-holding financial economist and chartered financial analyst (“C.F.A.”)
11 with over 25 years of experience in advising on (among other things) damages, loss causation, and
12 plan of allocation issues in federal securities cases. In short, the POA proposes that the Net
13 Settlement Fund be allocated to Authorized Claimants (*i.e.*, those who submit a completed Claim
14 Form to the Claims Administrator that is later approved for payment from the Net Settlement Fund)
15 on a *pro rata* basis based on the relative size of their Recognized Claims, where their Recognized
16 Claims are in turn based on that portion of the losses on their Class Period purchases of Precigen
17 common shares that can be fairly attributed to Defendants’ misconduct as alleged in the TAC. To
18 reduce administrative costs, the Plan provides that “Recognized Claims” of less than \$10 will not
19 be paid. In addition, in our experience, the type of allocation formula (as customized to the facts
20 of this case by Lead Plaintiff’s expert), as well as the manner of presentation of the POA in the
21 Notice, are fully consistent with customary practice in other securities class action settlements. The
22 Stipulation also identifies Investor Protection Trust as the proposed *cy pres* recipient for any
23 residual funds that may remain after all cost-effective distributions of the Net Settlement Fund to

24 _____
25 ⁴ Lead Plaintiff notes that defendant Kirk does appear to have substantial additional personal
26 assets that might be brought into play in the event that liability were established as against him. As
27 noted above, however, proving Mr. Kirk’s *scienter* would involve significant challenges, in
28 particular as compared to Mr. Walsh.

1 all eligible Claimants have been completed. The Investor Protection Trust, a 501(c)(3) nonprofit
2 organization devoted to investor education, is an appropriate *cy pres* recipient because of the nature
3 of the securities fraud claims at issue, and courts in this District have approved it as a *cy pres*
4 recipient in other similar actions. Scott+Scott has no relationship with the Investor Protection Trust.
5 Payment will only be made to the Investor Protection Trust if and when the residual amount left for
6 re-distribution to Class Members is so small that a further re-distribution would not be cost effective
7 (for example, where the costs would subsume the funds available). Accordingly, we respectfully
8 submit that the Plan of Allocation is fair and reasonable, and also merits submission to the Class in
9 anticipation of later final approval proceedings.

10 **THE COURT SHOULD PROVISIONALLY CERTIFY THE CLASS**

11 33. Under the Proposed Settlement, Defendants have agreed to stipulate to the following
12 Class for purposes of settlement:

13 [A]ll Persons or entities who purchased or otherwise acquired publicly traded
14 shares of the common stock of Precigen, Inc. f/k/a Intrexon Corporation
15 (“Precigen”) (ticker PGEN, formerly XON) between May 10, 2017 and September
25, 2020, inclusive (the “Class Period”), and were damaged thereby.⁵

16 The definition of the proposed Settlement Class is substantively the same as that alleged in the
17 operative Third Amended Complaint. TAC, ¶201.

21 ⁵ Excluded from the Settlement Class are (i) Defendants; (ii) the past and current officers,
22 directors, partners and managing partners of Precigen (and any of Precigen’s subsidiaries or
23 affiliates, including but not limited to MBP Titan LLC); (iii) the immediate family members, legal
24 representatives, heirs, parents, subsidiaries, successors, successors and assigns of any excluded
25 Person; and any entity in which any excluded Person(s) have or had a majority ownership interest,
26 or that is or was controlled by any excluded Person(s). Also excluded from the Settlement Class
27 will be those Persons who file valid and timely requests for exclusion in accordance with the Court’s
28 Preliminary Approval Order. Settlement Stip., ¶1.46.

1 34. Although the legal requirements for determining whether certification of the Class
2 appears to be appropriate are set forth in the accompanying brief, we briefly note here certain facts
3 relevant to the “adequacy” aspect of the class certification inquiry.

4 35. As noted in Lead Plaintiff’s accompanying brief, the “adequacy” inquiry in this
5 Circuit under Rule 23(a)(4) is typically limited to an assessment of the qualifications of the
6 movant’s counsel, and of whether the proposed class representatives or their counsel have any
7 “fundamental” conflicts of interest that disqualify them from serving as fiduciaries for the proposed
8 class.

9 36. **Absence of Conflicts.** Here, Lead Plaintiff Shah has faithfully served the interests
10 of the Class and has consulted with Plaintiff’s Counsel (including me) regarding the claims asserted,
11 has consistently made himself available whenever needed by Lead Counsel, and has confirmed his
12 willingness to continue to serve the Class as may be necessary or appropriate going forward.
13 Moreover, Lead Counsel are also unaware of any conceivable (let alone actual) “fundamental
14 conflicts” between the interests of the Lead Plaintiff and the interests of the Class, or any other
15 impairments, that would disqualify him from serving as a fiduciary for the Class.⁶

16 37. I also respectfully submit that my firm, Scott+Scott, is well-qualified to serve as
17 Class Counsel based on its extensive experience in prosecuting securities class actions in general,
18 as well as based on its representation to date of the Lead Plaintiff and the Class here. Copies of my
19 firm’s résumé and the biographies of the attorneys at our firms who have worked on this case are
20 available at www.scott-scott.com and have also previously been filed with the Court at ECF No.
21 11. As will be further discussed in Plaintiff’s Counsel’s Fee and Expense Application (to be
22 submitted prior to any Fairness Hearing), it is also respectfully submitted that my firm has worked
23

24 ⁶ To the extent the Court should require more information about Mr. Shah prior to granting
25 final class certification, I note that, should preliminary approval be granted, he expects to submit
26 additional information about his effort and work on behalf of the Class in this matter in connection
27 with his anticipated requests for modest monetary awards (of no more than \$5,000) pursuant to 15
28 U.S.C. §78u-4(a)(4).

1 hard to ensure that all aspects of this complex class action have been (and will continue to be)
2 conducted with superior knowledge, skill, thoroughness, and preparation so as to ensure that the
3 Class's interests are professionally and zealously represented in this matter.

4 **PLAINTIFF'S PROPOSED FORMS OF NOTICE**
5 **AND PROPOSED NOTICE PLAN SHOULD BE APPROVED**

6 38. Attached hereto is Exhibit 1 is a compliance "checklist" that identifies (a) relevant
7 criteria under the Northern District of California Class Action Procedural Guidelines for Class
8 Action Settlements (the "N.D. Cal. Class Action Guidelines"), and (b) the relevant sections of the
9 Notice or other preliminary approval submissions where the relevant information can be found.

10 39. As summarized in the "compliance checklist" at Exhibit 1, it is respectfully
11 submitted that the Parties' proposed forms of individual and summary Notice, as well as the
12 proposed Notice Plan detailed in the accompanying form of [Proposed] Preliminary Approval
13 Order, meet or exceed all customary requirements and standards under Federal Rule of Civil
14 Procedure 23 and Due Process, as well as all relevant requirements of the N.D. Cal. Class Action
15 Guidelines, as they relate to class action settlements.

16 40. Additional details about the nature and scope of the proposed Notice Plan are set
17 forth in the separately filed Declaration of Adam D. Walter of A.B. Data.

18 **ADDITIONAL DISCLOSURES PURSUANT TO THE COURT'S PROCEDURAL**
19 **GUIDELINES FOR CLASS ACTION SETTLEMENTS**

20 41. **Disclosures re Prior Claims Administrations.** Pursuant to the N.D. Cal. Class
21 Action Guidelines, Lead Counsel makes the following disclosure regarding its prior retentions of
22 A.B. Data Ltd ("A.B. Data") as a claims administrator in other class action cases within the past
23 two years. During this period, Scott+Scott engaged A.B. Data as claims administrator in the
24 following nine class action cases in which Scott+ Scott was appointed as a lead counsel:

- 25 (a) *In re Netshoes Sec. Litig.*, Index No. 157435/2018 (N.Y. Supr. Ct., New
26 York Cnty., Commercial Division)
- 27 (b) *Plymouth Cnty. Contributory Ret. Sys. v. Adamas Pharms., et al.*, Case No.
28 RG19018715 (Cal. Super. Ct., Alameda Cnty.)

- 1 (c) *In re Pivotal Software, Inc. Sec. Litig.*, Case No. CGC-19-576750 (Cal. Super. Ct., San Francisco Cnty.)
- 2 (d) *St. Lucie Cnty. Fire Dist. Firefighters’ Pension Tr. Fund v. Sw. Energy Co.*, Case No. 4:16-cv-3569 (S.D. Tex.)
- 3
- 4 (e) *In re Papa John’s Emp. & Franchisee Emp. Antitrust Litig.*, No. 3:18-cv-00825 (W.D. Ken.)
- 5 (f) *In re Euro. Gov’t Bonds Antitrust Litig.*, No. 1:19-cv-2601 (S.D.N.Y.)
- 6 (g) *In re SmileDirectClub, Inc. Sec. Litig.*, Lead Case No. 19-1169-IV (Tenn. Ch. Ct.)
- 7
- 8 (h) *In re Vaxart Sec. Litig.*, Master Case No. 3:20-cv-05949-VC (N.D. Cal.)
- 9 (i) *In re Google Assistant Priv. Litig.*, No. 5:19-cv-04286-BLF (N.D. Cal.)

10 42. Scott+Scott also provides the following information concerning a distribution in a
11 recent comparable case, *In re: Evoqua Water Tech. Corp. Sec. Litig.*, Master File No. 1:18-cv-
12 10320-JPC (S.D.N.Y.), in which the distribution motion (ECF No. 159) was filed on November 23,
13 2022:

- 14 • Settlement amount: \$16,650,000
- 15 • Total Notices mailed: 27,172
- 16 • Notice method: individual mailer notice packet by U.S. mail, plus
17 publication via internet (*PR Business Wire*) and print, supplemented by
dedicated settlement website referenced in the other forms of notice
- 18 • Percentage of those sent Notices by mail who submitted claims: 36.6%
19 (9,955 filed claims)
- 20 • Average estimated payment per valid claim: \$5,073.75
- 21 • Total administrative costs: \$153,237.35

22 43. Lead Counsel request that the Court approve its choice of A.B. Data to serve as the
23 Claims Administrator. Lead Counsel state that they selected A.B. Data based primarily on its
24 having submitted the most competitive bid, out of a total of three experienced claims administration
25 firms solicited, in response to Lead Counsel’s request for proposals (“RFP”) for notice and claims
26 administration services in this matter. All the proposals received involved comparable methods of
27 providing notice and claims processing including use of first-class mail and identifying potential
28 Class Members through brokers and nominee owners.

1 44. **Lodestar and Hours Incurred.** Based on information collected by Lead Counsel,
2 the lodestar that Lead Counsel (Scott+Scott) and one other firm (the Schall Law Firm) have incurred
3 from inception through mid-February 2023 in this matter, which includes time spent on pre-
4 discovery factual investigation; preparing the initial consolidated and subsequent first and second
5 amended complaints; briefing Defendants’ Renewed Motions to Dismiss; conducting further
6 investigation and preparing and filing the Third Amended Complaint pursuant to the Court’s May
7 2022 MTD Order; appearing for multiple court hearings and related preparation; participating in
8 the mediation process and drafting comprehensive opening and reply mediation briefs and other
9 mediation submissions; negotiating an initial term sheet and the nature and scope of confirmatory
10 discovery; the careful review of roughly 83,000 pages of Precigen documents before agreeing to
11 proceed with the Settlement; and negotiation of the “long form” settlement documents now pending
12 before the Court, is roughly \$1.9 million (based on approximately 2,200 hours).

13 45. As stated in the proposed Notice, Lead Counsel plan to seek an award of attorneys’
14 fees of 25% of the Gross Settlement Fund – that is, not more than roughly \$3.25 million. If a 25%
15 fee were requested and then granted in full, such award would result in a “lodestar multiplier” of
16 approximately 1.7 on all lodestar time billed to date on this case. I also note that Plaintiff’s Counsel
17 will necessarily expend additional time going forward in connection with preparing papers in
18 support of settlement approval, working with the Claims’ Administrator and Class members to
19 facilitate the claims administration process (assuming that the Settlement is approved), and
20 preparing and filing an appropriate final distribution motion and related papers.

21 46. Plaintiff’s Counsel will also seek reimbursement of up to \$111,000 for their
22 reasonable litigation expenses incurred in prosecuting the Action to date. Such expenses, which
23 will be further detailed in counsel’s Fee and Expense Application (which will be posted on the
24 Settlement Website promptly after filing), consist primarily of expert fees and mediation fees, and
25 also include court filing fees, legal research fees, document database costs and related document
26 review platform and management costs, and other customarily reimbursed expenses. In addition,
27 as noted above, the Fee and Expense Application will also include a request for a 15 U.S.C. §78u-
28 4(a)(4) award of no more than \$5,000 to the Lead Plaintiff.

APPOINTMENT OF PROPOSED ESCROW AGENT (HNB)

1
2 47. In addition to respectfully requesting the appointment of A.B. Data as Claims
3 Administrator, Lead Counsel also respectfully requests that the Court approve the appointment of
4 Huntington National Bank (“HNB”) as Escrow Agent. HNB was established in 1866, holds over
5 \$60 billion in assets, and has more than 700 branches nationwide. HNB’s national settlement team
6 has handled more than 1,000 settlements for law firms, claims administrators, and regulatory
7 agencies. HNB has extensive experience acting as escrow agent in class action settlements, and my
8 firm has had a very good relationship with the HNB’s professional staff. Significantly, HNB has
9 also agreed not to charge the Class any fees in connection with its investment of Settlement Fund
10 assets.

11 **CONCLUSION**

12 48. For all the reasons set forth above and Plaintiff’s accompanying brief, Lead Counsel
13 respectfully submit that the Court should (a) preliminarily approve the Proposed Settlement as fair,
14 reasonable, and adequate; (b) preliminarily certify the proposed Settlement Class for purposes of
15 settlement; (c) set a time and date for the final Fairness Hearing; (d) approve the Parties’ proposed
16 forms of Notice and Notice Plan, and (e) approve Lead Counsel’s choices of HNB as Escrow Agent
17 and A.B. Data as Claims Administrator, respectively, all as set forth in and in accord with the
18 Parties’ proposed Preliminary Approval Order.

19 I declare, under penalty of perjury, that the foregoing is true and correct.

20 Dated: March 1, 2023

Respectfully submitted,

21
22 s/ William C. Fredericks
William C. Fredericks

EXHIBIT 1

EXHIBIT 1**N.D. CAL. PROCEDURAL GUIDANCE FOR CLASS ACTION SETTLEMENTS
COMPLIANCE CHECKLIST**

N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval	Where Procedural Guidance Is Addressed in Papers
1. INFORMATION ABOUT THE SETTLEMENT	
(a) Any differences between the settlement class and the class proposed in the operative complaint (or, if a class has been certified, the certified class) and an explanation as to why the differences are appropriate.	Not applicable.
(b) Any differences between the claims to be released and the claims in the operative complaint (or, if a class has been certified, the claims certified for class treatment) and an explanation as to why the differences are appropriate.	Not applicable.
(c) The class recovery under the settlement (including details about and the value of injunctive relief), the potential class recovery if plaintiffs had fully prevailed on each of their claims, claim by claim, and a justification of the discount applied to the claims.	Brief at 9-12; Fredericks Decl., ¶¶24-30; and Notice at 1, 5-6.
(d) Any other cases that will be affected by the settlement, an explanation of what claims will be released in those cases if the settlement is approved, the class definitions in those cases, their procedural posture, whether plaintiffs' counsel in those cases participated in the settlement negotiations, a brief history of plaintiffs' counsel's discussions with counsel for plaintiffs in those other cases before and during the settlement negotiations, an explanation of the level of coordination between the two groups of plaintiffs' counsel, and an explanation of the significance of those factors on settlement approval. If there are no such cases, counsel should so state.	Not applicable. There are no such cases.

N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval	Where Procedural Guidance Is Addressed in Papers
(e) The proposed allocation plan for the settlement fund.	Notice at 10-13; Brief at 13-15; Fredericks Decl., ¶¶31-32.
(f) If there is a claim form, an estimate of the expected claim rate in light of the experience of the selected claims administrator and/or counsel based on comparable settlements, the identity of the examples used for the estimate, and the reason for the selection of those examples.	Brief at 18; Walter Decl., ¶¶11-12, Ex. B.
(g) In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designated for class recovery will revert to any defendant, the expected and potential amount of any such reversion, and an explanation as to why a reversion is appropriate.	Not applicable; <i>see</i> Stip., ¶2.3; Brief at 4.
2. SETTLEMENT ADMINISTRATION	
<ul style="list-style-type: none"> Identify proposed settlement administrator. 	A.B. Data, Ltd.; <i>see</i> Stip., ¶1.8; Brief at 15; Fredericks Decl., ¶41; Walter Decl., ¶2.
<ul style="list-style-type: none"> Identify the settlement administrator selection process. 	Competitive bidding; Brief at 15; Fredericks Decl., ¶43; Walter Decl., ¶3.
<ul style="list-style-type: none"> Identify how many settlement administrators submitted proposals. 	Three submissions; Brief at 15; Fredericks Decl., ¶43.
<ul style="list-style-type: none"> Identify what methods of notice and claims payment were proposed. 	Fredericks Decl., ¶43; Walter Decl., ¶¶4-10.
<ul style="list-style-type: none"> Identify lead counsel's firm's history of engagements with the settlement administrator over the last two years. 	Brief at 15; Fredericks Decl., ¶41.
<ul style="list-style-type: none"> Address the settlement administrator's procedures for securely handling class member data (including technical, administrative, and physical controls; retention; destruction; audits; crisis response; etc.). 	Walter Decl., ¶14, Ex. A at 7-8.
<ul style="list-style-type: none"> Address the settlement administrator's acceptance of responsibility and maintenance of insurance in case of errors. 	Walter Decl., ¶14.

N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval	Where Procedural Guidance Is Addressed in Papers
<ul style="list-style-type: none"> Address the settlement administrator’s anticipated administrative costs. 	Brief at 17-18; Walter Decl., ¶13.
<ul style="list-style-type: none"> Address the reasonableness of the settlement administrator’s costs in relation to the value of the settlement. 	Brief at 17-18; Walter Decl., ¶13.
<ul style="list-style-type: none"> Address who will pay the settlement administrator’s costs. 	Stip., ¶¶1.29, 2.2, 4.2; Brief at 17-18.
3. NOTICE	
<ul style="list-style-type: none"> The parties should ensure that the class notice is easily understandable, taking into account any special concerns about the education level or language needs of the class members. 	<i>See</i> Notice (providing summary of contents and providing information regarding the Settlement in Q&A format).
<ul style="list-style-type: none"> The notice should include contact information for class counsel to answer questions. 	Notice at 2, 10.
<ul style="list-style-type: none"> The notice should include the address for a website, maintained by the claims administrator or class counsel, that has links to the notice, motions for approval and for attorneys’ fees and any other important documents in the case. 	Notice at 2, footer of each page.
<ul style="list-style-type: none"> The notice should include instructions on how to access the case docket via PACER or in person at any of the court’s locations. 	Notice at 10.
<ul style="list-style-type: none"> The notice should state the date of the final approval hearing and clearly state that the date may change without further notice to the class. Class members should be advised to check the settlement website or the Court’s PACER site to confirm that the date has not been changed. 	Notice at 2, 9.
<ul style="list-style-type: none"> Explanation of how the Notice distribution plan is effective. 	Brief at 16-18; Walter Decl., ¶¶4-10.

<p align="center">N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval</p>	<p align="center">Where Procedural Guidance Is Addressed in Papers</p>
<ul style="list-style-type: none"> • Class counsel should consider the following ways to increase notice to class members: identification of potential class members through third-party data sources; use of text messages and social media to provide notice to class members; hiring a marketing specialist; providing a settlement website that estimates claim amounts for each specific class member and updating the website periodically to provide accurate claim amounts based on the number of participating class members; and distributions to class members via direct deposit. 	<p align="center">Class members to be identified through stock transfer records and distribution of Notice to Claims Administrator’s existing database of broker-dealers; Brief at 17; Walter Decl., ¶¶6-7.</p>
<ul style="list-style-type: none"> • The notice distribution plan should rely on U.S. mail, email, and/or social media as appropriate to achieve the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23(c)(2). If U.S. mail is part of the notice distribution plan, the notice envelope should be designed to enhance the chance that it will be opened. 	<p align="center">Brief at 17; Walter Decl., ¶¶6-10.</p>

<p align="center">N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval</p>	<p align="center">Where Procedural Guidance Is Addressed in Papers</p>
<ul style="list-style-type: none"> Inclusion of suggested language for class notice: This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www._____.com, by contacting class counsel at _____, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, [insert appropriate Court location here], between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. 	<p align="center"><i>See Notice at 10 (providing similar language).</i></p>
<p>4. OPT-OUTS</p>	
<ul style="list-style-type: none"> The notice should instruct class members who wish to opt out of the settlement to send a letter, setting forth their name and information needed to be properly identified and to opt out of the settlement, to the settlement administrator and/or the person or entity designated to receive opt outs. It should require only the information needed to opt out of the settlement and no extraneous information or hurdles. The notice should clearly advise class members of the deadline, methods to opt out, and the consequences of opting out. 	<p align="center">Notice at 3, 8.</p>
<p>5. OBJECTIONS</p>	
<ul style="list-style-type: none"> Objections must comply with Federal Rule of Civil Procedure 23(e)(5). 	<p align="center">Notice at 9-10.</p>

<p align="center">N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval</p>	<p align="center">Where Procedural Guidance Is Addressed in Papers</p>
<ul style="list-style-type: none"> The notice should instruct class members who wish to object to the settlement to send their written objections only to the court. All objections will be scanned into the electronic case docket, and the parties will receive electronic notices of filings. The notice should make clear that the court can only approve or deny the settlement and cannot change the terms of the settlement. The notice should clearly advise class members of the deadline for submission of any objections. 	<p align="center">Notice at 9-10.</p>
<ul style="list-style-type: none"> Inclusion of suggested language for class notice: “You can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (_____ v. _____, Case No. _____), (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, [insert appropriate Court location here], and (c) be filed or postmarked on or before _____.” 	<p align="center">Notice at 9-10 (substantially equivalent language).</p>

N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval	Where Procedural Guidance Is Addressed in Papers
6. ATTORNEYS' FEES	
<ul style="list-style-type: none"> • Include information about the fees and costs (including expert fees) class counsel intend to request. 	Notice at 8-9; Brief at 22; Fredericks Decl., ¶¶44-46.
<ul style="list-style-type: none"> • Include information about class counsel's lodestar calculation (including total hours). 	Notice at 8-9; Brief at 22; Fredericks Decl., ¶¶44-46.
<ul style="list-style-type: none"> • Include information about class counsel's resulting multiplier in the motion for preliminary approval. 	Notice at 8-9; Brief at 22; Fredericks Decl., ¶¶44-46.
<ul style="list-style-type: none"> • In a common fund case, the parties should include information about the relationship between the amount of the common fund, the requested fee, and the lodestar. 	Notice at 8-9; Brief at 22; Fredericks Decl., ¶¶44-46.
<ul style="list-style-type: none"> • To the extent counsel base their fee request on having obtained injunctive relief and/or other non-monetary relief for the class, counsel should discuss the benefit conferred on the class. 	Not applicable.
7. SERVICE AWARDS	
<ul style="list-style-type: none"> • Parties should include information about the service awards they intend to request as well as a summary of the evidence supporting the awards in the motion for preliminary approval. 	Notice at 8; Brief at 14; Fredericks Decl., ¶¶36 & n.6, 46.
<ul style="list-style-type: none"> • In general, unused funds allocated to incentive awards should be distributed to the class pro rata or awarded to <i>cy pres</i> recipients. 	<i>See</i> Stip., ¶4.15.
8. CY PRES AWARDEES	
<ul style="list-style-type: none"> • If the settlement contemplates a <i>cy pres</i> award, the parties should identify their chosen <i>cy pres</i> recipients, if any, and how those recipients are related to the subject matter of the lawsuit and the class members' claims. 	Investor Protection Trust; Stip., ¶4.15; Brief at 14-15; Fredericks Decl., ¶32.
<ul style="list-style-type: none"> • The parties should also identify any relationship they or their counsel have with the proposed <i>cy pres</i> recipients. 	Not applicable; <i>see</i> Brief at 14-15; Fredericks Decl., ¶32.

N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval	Where Procedural Guidance Is Addressed in Papers
<ul style="list-style-type: none"> In general, unused funds allocated to attorneys' fees, service awards, settlement administration costs, and class member payments should be distributed to the class pro rata if feasible, or else awarded to <i>cy pres</i> recipients or to the relevant government authorities. 	<p style="text-align: center;"><i>See Stip.</i>, ¶4.15.</p>
9. TIMELINE	
<ul style="list-style-type: none"> The parties should ensure that class members have at least 35 days to opt out or object to the settlement and the motion for attorney's fees and costs. 	<p style="text-align: center;">Brief, Ex. 1 (Proposed Schedule of Settlement Events).</p>
10. CLASS ACTION FAIRNESS ACT (CAFA) AND SIMILAR REQUIREMENTS	
<ul style="list-style-type: none"> The parties should address whether CAFA notice is required and, if so, when it will be given. 	<p style="text-align: center;"><i>See Stip.</i>, ¶4.3.</p>
<ul style="list-style-type: none"> In addition, the parties should address substantive compliance with CAFA. 	<p style="text-align: center;"><i>See Stip.</i>, ¶4.3.</p>
<ul style="list-style-type: none"> In addition, the parties should address whether any other required notices to government entities or others have been provided, such as notice to the Labor & Workforce Development Agency ("LWDA") pursuant to the Private Attorneys General Act ("PAGA"). 	<p style="text-align: center;">Not applicable.</p>
11. COMPARABLE OUTCOMES	
<ul style="list-style-type: none"> Lead class counsel should provide information about comparable cases, including settlements and litigation outcomes. 	<p style="text-align: center;">Fredericks Decl., ¶42; Walter Decl., ¶12, Ex. B.</p>
<ul style="list-style-type: none"> Lead class counsel should provide the following information for as many as feasible (and at least one) comparable class settlements (<i>i.e.</i>, settlements involving the same or similar claims, parties, issues). 	<p style="text-align: center;">Fredericks Decl., ¶42; Walter Decl., ¶12, Ex. B.</p>

<p align="center">N.D. Cal. Procedural Guidance for Class Action Settlements Items to Address at Preliminary Approval</p>	<p align="center">Where Procedural Guidance Is Addressed in Papers</p>
<ul style="list-style-type: none"> • The claims being released, the total settlement fund, the total number of class members, the total number of class members to whom notice was sent, the method(s) of notice, the number and percentage of claim forms submitted, the average recovery per class member or claimant, the amounts distributed to <i>cy pres</i> recipients, the administrative costs, the attorneys’ fees and costs, the total exposure if the plaintiffs had prevailed on every claim. 	<p align="center">Fredericks Decl., ¶42; Walter Decl., ¶12, Ex. B.</p>
<ul style="list-style-type: none"> • Where class members are entitled to non-monetary relief, such as discount coupons or debit cards or similar instruments, the number of class members availing themselves of such relief and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members’ interests. 	<p align="center">Not applicable.</p>
<ul style="list-style-type: none"> • Where injunctive and/or other non-monetary relief has been obtained, discuss the benefit conferred on the class. 	<p align="center">Not applicable.</p>