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16 Lead Counsel for Lead Plaintiff

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 WILLIAM LAMARTINA, Individually and on )  
Behalf of All Others Similarly Situated, )

20 Plaintiff, )

21 vs. )

22 VMWARE, INC., et al., )

23 Defendants. )  
24 \_\_\_\_\_ )

Case No. 5:20-cv-02182-EJD (VKD)  
CLASS ACTION  
REPLY MEMORANDUM AND  
STATEMENT OF NON-OPPOSITION IN  
FURTHER SUPPORT OF: (1) LEAD  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND APPROVAL OF PLAN  
OF ALLOCATION, AND (2) LEAD  
COUNSEL'S MOTION FOR AN AWARD  
OF ATTORNEYS' FEES AND EXPENSES  
AND AWARD TO CLASS  
REPRESENTATIVE PURSUANT TO 15  
U.S.C. §78u-4(a)(4)  
DATE: March 31, 2025  
TIME: 9:00 a.m.  
JUDGE: Honorable Edward J. Davila  
CTRM: 4, 5th Floor

1           Lead Plaintiff Eastern Atlantic States Carpenters Pension Fund (“Lead Plaintiff”) and Lead  
2 Counsel Robbins Geller Rudman & Dowd LLP respectfully submit this reply memorandum in  
3 further support of: (1) Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and  
4 Approval of Plan of Allocation (ECF 191) (“Final Approval Motion”); and (2) Lead Counsel’s  
5 Motion for an Award of Attorneys’ Fees and Expenses and Award to Class Representative Pursuant  
6 to 15 U.S.C. §78u-4(a)(4) (ECF 192).<sup>1</sup>

7 **I. INTRODUCTION**

8           The March 10, 2025 deadline for objections to the \$102,500,000 all-cash Settlement has now  
9 passed. Lead Counsel is pleased to report that no Class Member has lodged an objection to the  
10 Settlement, the Plan of Allocation, or Lead Counsel’s Fee and Expense Application. This lack of  
11 objections ““is perhaps the most significant factor to be weighed in considering [the Settlement’s]  
12 adequacy,” *In re Rambus Inc. Derivative Litig.*, 2009 WL 166689, at \*3 (N.D. Cal. Jan. 20, 2009)<sup>2</sup>;  
13 is a testament to the fairness, adequacy, and reasonableness of the proposed Settlement, the proposed  
14 Plan of Allocation, and Lead Counsel’s Fee and Expense Application; and further underscores why  
15 each warrants the Court’s approval.

16 **II. ARGUMENT**

17 **A. The Notice Provided to the Class Met All Due Process Requirements**

18           As detailed in prior submissions, the comprehensive notice program approved by the Court  
19 and implemented here was “the best notice that [was] practicable under the circumstances, including  
20 individual notice to all members who [could] be identified through reasonable effort.” Fed. R. Civ.  
21 P. 23(c)(2)(B); *see* ECF 181, §V.; ECF 191, §V. To date, the Claims Administrator has emailed or  
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25 <sup>1</sup> Unless otherwise noted, all capitalized terms not defined herein have the same meaning set forth  
26 in the Stipulation of Settlement dated October 4, 2024 (ECF 181-2).

27 <sup>2</sup> Citations are omitted throughout unless otherwise indicated.  
28

1 mailed a total of 138,116 Postcard Notices to potential Class Members and nominees;<sup>3</sup> the Summary  
2 Notice was published in *The Wall Street Journal* and transmitted over *Business Wire*; and all  
3 pertinent information has been posted and made generally available on the website dedicated to the  
4 Settlement. See Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and  
5 Requests for Exclusion Received to Date (ECF 193-2) (“Murray Decl.”), ¶¶13-16, and Murray  
6 Suppl. Decl., ¶4. In response to this notice program, the Claims Administrator has received 184,909  
7 Proofs of Claim and Release. Murray Suppl. Decl., ¶5.

8 This notice program is very similar to those approved and employed in other securities class  
9 actions in this District. See, e.g., *Purple Mountain Trust v. Wells Fargo & Co.*, 2023 WL 11872699,  
10 at \*3 (N.D. Cal. Sept. 26, 2023); *Evanston Police Pension Fund v. McKesson Corp.*, No. 3:18-cv-  
11 06525 CRB, Final Judgment and Order of Dismissal with Prejudice, ECF 290, ¶12 (N.D. Cal.  
12 July 14, 2023); *Fleming v. Impax Laboratories Inc.*, 2022 WL 2789496, at \*3 (N.D. Cal. July 15,  
13 2022); *Destefano v. Zynga, Inc.*, 2016 WL 537946, at \*7 (N.D. Cal. Feb. 11, 2016) (finding  
14 individual notice mailed to class members combined with summary publication constituted “the best  
15 form of notice available under the circumstances”). As those courts did, this Court should conclude  
16 that Lead Counsel here has provided the best notice practicable, as Rule 23 requires and due process  
17 demands.

18 **B. The Reaction of the Class Strongly Supports Approval of the**  
19 **Settlement and Plan of Allocation**

20 Federal Rule of Civil Procedure 23(e)(2) and *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th  
21 Cir. 1998), provide factors that the Court must consider when assessing whether to approve a class  
22 action settlement. As explained in both Lead Plaintiff’s Final Approval Motion and Motion for  
23 Preliminary Approval of Proposed Class Action Settlement (ECF 181) (“Preliminary Approval

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24 <sup>3</sup> Of the 138,116 mailed Postcard Notices, 1,395 were undeliverable. Updated addresses were  
25 located for many of these, and an additional 247 Postcard Notices were mailed. See Supplemental  
26 Declaration of Ross D. Murray Regarding Continued Notice Dissemination, Claims Received, and  
27 Requests for Exclusion Received (“Murray Suppl. Decl.”), n.2, submitted herewith.

1 Motion”), the proposed Settlement readily satisfies the relevant factors, as the Settlement resulted  
2 from Lead Plaintiff’s and Lead Counsel’s diligent representation of the Class throughout this years-  
3 long litigation; the Settlement was negotiated at arm’s length following extensive document  
4 discovery and with the assistance of an experienced mediator; and the Settlement provides an  
5 excellent recovery considering the costs, risk, and delay of further litigation. *See* ECF 191, §III.B.1-  
6 3.

7 Similarly, Lead Plaintiff’s Final Approval Motion and Preliminary Approval Motion  
8 explained that the Plan of Allocation provides an equitable basis to allocate the Net Settlement Fund  
9 among all Authorized Claimants. *See* ECF 181, §IV.A.4; ECF 191, §IV. In particular, the Plan  
10 treats Class Members equitably by providing that each will receive a proportional *pro rata* amount of  
11 the Net Settlement Fund depending on when each Class Member bought VMware stock during the  
12 Class Period and whether and when they sold their shares.

13 In determining whether to approve the Settlement and Plan of Allocation, the Court may now  
14 assess the final *Hanlon* factor given that the March 10, 2025 objection deadline has passed: “the  
15 reaction of the class members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026. That reaction  
16 – as measured by objections – has been overwhelmingly positive and further supports final approval  
17 of the Settlement. *See id.*

18 Indeed, no Class Member has objected to any aspect of the Settlement. This “unanimous,  
19 positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is  
20 fair, just, reasonable, and adequate.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D.  
21 523, 529 (C.D. Cal. 2004); *accord Impax*, 2022 WL 2789496, at \*7. Simply stated, this absence of  
22 objections ““raises a strong presumption that the terms of [the] proposed class settlement action are  
23 favorable to the class members.”” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D.  
24 Cal. 2008). In fact, “[c]ourts have repeatedly recognized that the absence of a large number of  
25 objections to a proposed class action settlement raises a strong presumption that the terms of a  
26 proposed class action settlement are favorable to the class members.”” *Foster v. Adams & Assocs.,*  
27 *Inc.*, 2022 WL 425559, at \*6 (N.D. Cal. Feb. 11, 2022); *accord AdTrader, Inc. v. Google LLC*, 2022  
28 WL 16579324, at \*5 (N.D. Cal. Nov. 1, 2022) (“A court may appropriately infer that a class action

1 settlement is fair, adequate, and reasonable when few class members object to it.”). Similarly, the  
2 lack of objections to the proposed Plan of Allocation provides firm support for its approval. *See In*  
3 *re Heritage Bond Litig.*, 2005 WL 1594403, at \*11 (C.D. Cal. June 10, 2005) (“The fact that there  
4 has been no objection to this plan of allocation favors approval of the Settlement.”).

5 Of particular significance, no institutional investors, those Class Members with the largest  
6 amounts at stake, objected to either the Settlement or the Plan of Allocation. The overwhelmingly  
7 positive reaction from sophisticated institutional investors is further persuasive evidence that the  
8 Settlement is fair. *See In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at \*6 (S.D.  
9 Cal. Oct. 30, 2020) (“Many potential class members are sophisticated institutional investors; the lack  
10 of objections from such institutions indicates that the settlement is fair and reasonable.”).

11 In short, “[t]he small number of objections” (*zero*) “supports that the settlement and plan of  
12 allocation are fair, reasonable, and adequate.” *In re Volkswagen “Clean Diesel” Mktg., Sales*  
13 *Pracs., & Prods. Liab. Litig.*, 2019 WL 2077847, at \*3 (N.D. Cal. May 10, 2019) (approving \$48  
14 million securities fraud class action settlement where “[o]nly one class member objected to the  
15 settlement and only 16 potential class members opted out of the settlement”). Accordingly, the  
16 Court should approve the Settlement and Plan of Allocation here as fair, adequate, and reasonable.

### 17 **C. The Reaction of the Class Strongly Supports Approval of the** 18 **Requested Attorneys’ Fees and Expenses**

19 The Notice identified that Lead Counsel intended to seek a benchmark fee of 25% of the  
20 Settlement Amount and payment of litigation expenses not to exceed \$950,000. The exceptional  
21 result, “[t]he touchstone for determining the reasonableness of attorneys’ fees in a class action,”<sup>4</sup>  
22 strongly supports the requested award of attorneys’ fees and expenses. The result is even more  
23 impressive given the highly complex and uncertain nature of this securities fraud class action and the  
24 potential for years of additional litigation absent the Settlement, and it required skill and high quality  
25 work to attain. *See also* ECF 192, §III.B. (discussing relevant factors). The appropriateness of Lead  
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27 <sup>4</sup> *Lowery v. Rhapsody Int’l, Inc.*, 75 F.4th 985, 988 (9th Cir. 2023).  
28

1 Counsel's fee request is also confirmed with a cross check against its lodestar, which reflects a 1.5  
2 multiplier. *See id.*, §III.B.7.

3 No Class Member has objected to Lead Counsel's request for attorneys' fees and payment of  
4 litigation expenses. Again, the lack of objections, particularly from sophisticated institutional  
5 investors, weighs strongly in favor of granting the requested attorneys' fees and expenses. *See*  
6 *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at \*15 (N.D. Cal. Dec. 18, 2018) ("As with the  
7 Settlement itself, the lack of objections from institutional investors 'who presumably had the means,  
8 the motive, and the sophistication to raise objections' [to the attorneys' fee] weighs in favor of  
9 approval."); *Zynga*, 2016 WL 537946, at \*18 ("[T]he lack of objection by any Class Members also  
10 supports the 25 percent fee award."); *In re Nuvelo, Inc. Sec. Litig.*, 2011 WL 2650592, at \*3 (N.D.  
11 Cal. July 6, 2011) (finding only one objection to fee request to be "a strong, positive response from  
12 the class"); *Omnivision*, 559 F. Supp. 2d at 1048 ("None of the objectors raised any concern about  
13 the amount of the fee. This factor . . . also supports the requested award of 28% of the Settlement  
14 Fund."). Accordingly, the Court should approve Lead Counsel's request for attorneys' fees of 25%  
15 of the Settlement Amount and payment of \$806,188.95 for litigation expenses.

### 16 **III. CONCLUSION**

17 Lead Counsel obtained an exceptional result for the Class, and the Class agrees. For the  
18 reasons set forth above and in their previously filed briefs and declarations, Lead Plaintiff and Lead  
19 Counsel respectfully request that the Court approve the proposed Settlement and Plan of Allocation,  
20 as well as the request for attorneys' fees and payment of expenses, and award to Lead Plaintiff.  
21 Proposed orders are submitted herewith.

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1 DATED: March 24, 2025

Respectfully submitted,

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