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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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In re CELERA CORP. SEC. LITIG.)	No. 5:10-cv-02604-EJD(HRL)
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_____)	<u>CLASS ACTION</u>
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This Document Relates To:)	DECLARATION OF WILLOW E.
ALL ACTIONS.)	RADCLIFFE IN SUPPORT OF MOTIONS
_____)	FOR (1) FINAL APPROVAL OF CLASS
)	ACTION SETTLEMENT AND PLAN OF
)	ALLOCATION OF SETTLEMENT
)	PROCEEDS; AND (2) AN AWARD OF
)	ATTORNEYS' FEES AND EXPENSES

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DATE: July 16, 2015
 TIME: 9:00 a.m.
 CTRM: The Honorable Edward J. Davila

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1 I, WILLOW E. RADCLIFFE, declare as follows:

2 1. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins
3 Geller” or “Lead Counsel”), Court-appointed counsel for Lead Plaintiff Washtenaw County
4 Employees’ Retirement System (“Washtenaw County” or “Lead Plaintiff”) and the Class of
5 investors on whose behalf this action has been brought. I have been actively involved in the
6 prosecution of this action (hereinafter, the “Litigation”), am familiar with its proceedings and have
7 knowledge of the matters set forth herein based upon my participation in the Litigation and
8 supervision of, or communications with, other lawyers and staff who performed work related to this
9 case.¹

10 2. I submit this declaration in support of Lead Plaintiff’s motion, pursuant to Rule 23(e)
11 of the Federal Rules of Civil Procedure, for approval of: (a) the Settlement on the terms set forth in
12 the Stipulation, dated August 28, 2014, which provides for a cash settlement for the benefit of the
13 Class of \$24.75 million plus any interest earned (the “Settlement Fund”); (b) the proposed Plan of
14 Allocation of the settlement proceeds; and (c) Lead Counsel’s motion for an award of attorneys’ fees
15 and expenses.

16 **I. PRELIMINARY STATEMENT**

17 3. This case has been zealously litigated from its commencement in June 2010 through
18 settlement. This case settled after Celera Corporation (“Celera” or the “Company”) and third-parties
19 produced more than one million pages of documents and after Lead Plaintiff had named Celera’s
20 independently registered public accounting firm PricewaterhouseCoopers LLP (“PwC”) as a
21 defendant. At every stage of the Litigation, Defendants asserted that they had defenses to Lead
22 Plaintiff’s claims. The Settlement was achieved only after Lead Plaintiff’s counsel, *inter alia*: (i)
23 directed investigative interviews of many witnesses, including former employees of Celera;² (ii)

24 _____
25 ¹ Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the
Stipulation of Settlement (the “Stipulation”), filed on August 29, 2014. Dkt. No. 166.

26 ² This securities class action was brought against Celera, Kathy Ordoñez, the Company’s former
27 Chief Executive Officer, Ugo DeBlasi and Joel R. Jung, the Company’s former Chief Financial
28 Officers, Christopher Hall, the Berkeley HeartLab, Inc.’s (“BHL”) former Chief Business Officer
(collectively, the “Celera Defendants”). ¶1. Lead Plaintiff alleges that prior to July 1, 2008, Celera
was a wholly owned subsidiary of Applera. ¶2. It is further alleged that on July 1, 2008, Celera

1 thoroughly analyzed, with the assistance of their forensic accountants, complex accounting
2 allegations against the Defendants relating to the Company's bad debt and eventual restatement; (iii)
3 fully briefed three oppositions to motions filed by various Defendants seeking to dismiss the claims
4 in this case, and successfully opposed the Celera Defendants' motion to dismiss the Second
5 Amended Consolidated Complaint for Violation of the Federal Securities Laws ("Second Amended
6 Complaint"); (iv) vigorously pursued the production of discovery from Defendants and third parties;
7 (v) reviewed and analyzed numerous documents produced by Defendants and third parties in
8 discovery; (vi) prepared to take depositions of fact witnesses; (vii) responded to Defendants' efforts
9 to block discovery; and (viii) prepared and filed a successful motion for class certification.

10 4. This Settlement is the product of hard-fought litigation and takes into consideration
11 the significant risks specific to the case. The Settlement is the result of extensive arm's-length
12 negotiations between the parties facilitated by Judge Layn R. Phillips (Ret.), a nationally recognized
13 mediator. These negotiations were conducted by experienced counsel and with an understanding by
14 Lead Counsel of both the strengths and weaknesses of Lead Plaintiff's case. The Settlement for
15 \$24.75 million is an extraordinary recovery in light of the risks involved in this case, in comparison
16 to other securities class actions, and in light of the fact that there was no known contemporaneous
17 criminal fraud action against the Defendants.

18 5. Lead Counsel believe that this Settlement represents an excellent result. The
19 substantial analysis, motion practice and discovery summarized herein informed Lead Counsel and
20 Lead Plaintiff that, while the case had strengths, it also had weaknesses and risks, which had to be,
21 and were, evaluated in determining what course of action was in the best interest of the Class,
22 including the proposed Settlement.

23 6. The gravamen of Lead Plaintiff's Third Amended Complaint is that in violation of
24 §10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated by the
25 split-off from Applera and became an independent company. *Id.* Celera acquired BHL in October
26 2007. ¶3. BHL operated Celera's Lab Services segment during the Class Period. *Id.* Celera is used
27 generally throughout to refer to itself, BHL and/or Applera. All paragraph references (¶ or ¶¶) are to
28 the Third Amended Consolidated Complaint for Violation of the Federal Securities Laws (the "Third
Amended Complaint"), submitted to the Court under seal on August 30, 2013 (Dkt. No. 94) and filed
publicly on October 4, 2013 (Dkt. No. 112).

1 U.S. Securities and Exchange Commission (“SEC”), Celera and certain of its former executives as
2 well as the Company’s independently registered public accounting firm PwC participated in a
3 fraudulent scheme to conceal the Company’s bad debt. ¶¶17-18, 216, 256. Lead Plaintiff alleges
4 that the Celera Defendants: (i) falsely reported Celera’s revenue and earnings (¶¶36-71); (ii) falsely
5 certified that the Company had adequate internal controls over financial reporting (¶¶13, 194-203);
6 (iii) misrepresented that Celera’s Lab Services division’s (BHL) revenue source principally consisted
7 of Medicare and other insurance carriers (¶¶6, 9, 67, 109-110); and (iv) issued revenue earnings
8 guidance for 2009 that lacked a reasonable basis (¶¶21, 173-176). Lead Plaintiff also alleges that
9 PwC falsely issued unqualified audit opinions during the Class Period. ¶¶214-216, 220, 223.

10 7. The Third Amended Complaint principally alleges that Defendants knew and/or were
11 deliberately reckless in not knowing that the Company’s accounts receivable (*i.e.*, the payments due
12 for laboratory services it provided but still had not collected from customers) were impaired as a
13 result of the decision of BHL’s most significant payor, Blue Cross/Blue Shield, to stop paying
14 Celera directly for its lab services. ¶¶8, 46-47, 55-56, 68, 71, 76, 114. It further alleges that the
15 restatement of the Company’s financial results for the year ended June 30, 2008, the six months
16 ended December 27, 2008 and the year ended December 26, 2009 was an admission, after this action
17 was initially filed, that Celera’s financial statements were materially false and misleading when
18 issued. ¶¶15, 81, 151, 197, 201, 251.

19 8. When the Company eventually restated its financial results on March 18, 2011, after
20 Lead Plaintiff alleged that Celera had misstated its bad debt during the Class Period, it admitted that
21 Celera overstated net revenue and earnings for 3Q08 (ending March 31, 2008) through 1Q09 (ending
22 March 28, 2009) based on facts in existence at the time those statements were disseminated publicly.
23 ¶¶5, 78, 80-81. At the end of the Class Period, on July 22, 2009, Lead Plaintiff alleges that Celera
24 was forced to announce a significant bad debt charge; which was revealed to be \$20.1 million on
25 August 6, 2009. ¶¶5, 25. The Complaint alleges that most (82%) of the \$20.1 million bad debt
26 charge that was recorded at the end of the Class Period should have been recorded throughout the
27 Class Period, and that the Company improperly misclassified \$27.7 million of Celera’s bad debt
28 expense as a Selling, General and Administrative (“SG&A”) expense rather than as a reduction in

1 revenue during the Class Period as reflected in the Company's restatement. See ¶¶5, 28-29, 89, 97,
2 135.

3 9. Lead Plaintiff alleges that when the relevant truth about Celera's financial condition
4 was revealed, Class Members suffered damages as a result of the decline of the Company's stock
5 price. ¶¶259-260. The first disclosure alleged was on February 17, 2009, when the Company
6 revealed, *inter alia*, that its SG&A expenses for 4Q08, which included bad debt expenses, had
7 increased by 34% over the prior year period primarily as a result of the increased allowance for bad
8 debt at BHL, and that it would record a \$3.7 million increase in Celera's allowance for bad debt over
9 the prior year, causing Celera's stock to drop more than 26%, from a close of \$9.34 a share on
10 February 17, 2009 to \$6.87 a share on February 18, 2009. ¶¶22, 260. The second disclosure alleged
11 was on July 22, 2009, when Celera announced that it would withdraw its 2009 guidance and
12 expected to record significant charges in 2Q09 for bad debt expense. ¶¶204-205, 262. On this news,
13 Lead Plaintiff alleges that Celera's stock dropped from \$7.74 per share by \$1.91 per share to close at
14 \$5.83 per share on July 23, 2009, a one-day decline of nearly 25%. ¶¶24, 205, 262.

15 10. Fact discovery, investigation, motion practice and legal research informed Lead
16 Counsel and Lead Plaintiff that, while they believed the case was meritorious, it also had certain
17 risks that had to be carefully evaluated in determining which course of action was in the best interest
18 of the Class.

19 11. In opting to settle the Litigation, significant risks associated with proving the claims
20 alleged in the Third Amended Complaint were considered. For instance, the accounting claims were
21 subject to varying interpretations. All of the Defendants, for example, contended that Lead Plaintiff
22 could not prove that they had acted with the requisite state of mind with respect to Lead Plaintiff's
23 accounting allegations, arguing, *inter alia*, that Generally Accepted Accounting Principles
24 ("GAAP") provisions at issue were subjective. Although Lead Plaintiff disputed Defendants'
25 assertions, the significant risk remained that Defendants could prevail on this issue at trial.
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1 12. Another disputed issue involved whether Lead Plaintiff could prove that at the time
2 that Celera and certain of its former executives provided 2009 financial guidance to investors during
3 the Class Period, they did so with actual knowledge that the guidance was false and that the guidance
4 was not accompanied by meaningful cautionary language. This issue was highly contested by the
5 Celera Defendants at the motion to dismiss stage, and while the Court denied the Celera Defendants'
6 motion for reconsideration on this issue at the pleading stage, the issue was likely one that they
7 would raise again at summary judgment. Without a smoking gun or admission evidencing actual
8 knowledge of falsity, Lead Plaintiff faced a substantial risk that it would not be successful on its
9 claims that these Defendants had falsely issued 2009 guidance with the requisite scienter.
10

11 13. The parties also disputed the issue of loss causation. For example, the Celera
12 Defendants vigorously argued that the stock price decline following the Company's February 17,
13 2009 disclosures was not causally connected to the fraud alleged but rather, to the market's reaction
14 to disappointing FY09 guidance. The Celera Defendants also argued the July 2009 announcement of
15 disappointing second quarter revenue results, not a revelation of Defendants' fraud, was a reason for
16 the stock decline at the end of the Class Period. While Lead Plaintiff disputed these contentions,
17 there was a substantial risk of recovering limited or no damages if the jury agreed with these
18 arguments.

19 14. There was also a substantial risk that the Court would grant, in whole or in part,
20 Defendant PwC's motion to dismiss, which was fully briefed and awaiting a ruling at the time the
21 parties reached settlement. *See* Dkt. No. 150. PwC strongly disputed the element of scienter,
22 arguing that (i) Lead Plaintiff could not plead scienter on the theory that PwC "must have known";
23 (ii) Lead Plaintiff's Generally Accepted Auditing Standards ("GAAS") and GAAP violations did not
24 support an inference that PwC acted with deliberate recklessness; (iii) the "red flags" cited by Lead
25 Plaintiff were not sufficient to support an inference of scienter on behalf of PwC; and (iv) viewed
26 holistically, Lead Plaintiff's allegations of scienter were not more plausible than the opposing
27 inferences regarding PwC's mental state. Dkt. No. 134.
28

1 15. Even if Lead Plaintiff survived summary judgment and prevailed on any or all of its
2 claims at trial and was awarded damages, there was a risk that Defendants would file post-trial
3 motions and, if unsuccessful, file an appeal of any verdict or award. The post-trial motions and
4 appeals process could take years, during which time the Class would receive no recovery. Further,
5 any appeal would also create the risk of reversal, in which case the Class would receive nothing after
6 having prevailed on their claims at trial.

7 16. On balance, considering all the circumstances and risks were the parties to continue to
8 trial, the settlement on the terms agreed upon was in the Class' best interests.

9 17. Lead Plaintiff's counsel have prosecuted the Litigation on a wholly contingent basis
10 and have advanced or incurred all litigation expenses. By doing so, Lead Plaintiff's counsel
11 shouldered the substantial risk of an unfavorable result. Lead Plaintiff's Counsel have not yet
12 received any compensation for their effort.

13 18. Lead Counsel respectfully submit that the fee application for 25% of the Settlement
14 Fund is fair both to the Class and Lead Plaintiff's counsel, and warrants the Court's approval. This
15 fee request is within the range of fee percentages frequently awarded in this type of action in the
16 Ninth Circuit. *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 943 (9th Cir.
17 2011) (reaffirming 25% benchmark in a common fund case). Under the particular facts of this case,
18 the fee is justified in light of the substantial benefits conferred on the Class, the risks undertaken, the
19 quality of representation, the nature and extent of legal services performed and the fact that the
20 \$24.75 million settlement was not likely at the outset of the case. Both the Settlement and the fee
21 request have been independently approved by the Class Representative and Lead Plaintiff,
22 Washtenaw County.

23 19. Lead Counsel also seek an award of \$222,521.32 in expenses reasonably and
24 necessarily committed to the prosecution of the Litigation over nearly a five year period. These
25 expenses include, *inter alia*: (i) the fees of investigators and consultants/experts whose services Lead
26 Counsel required in the successful prosecution and resolution of this case; (ii) the cost associated
27 with vigorously pursuing evidence; (iii) photocopying, imaging, shipping and managing a database
28 of approximately 1.1 million pages of documents; and (iv) online factual and legal research.

1 20. The following is a summary of the principal events which occurred during the course
2 of the Litigation and the legal services provided by Lead Counsel.

3 **II. THE LITIGATION**

4 **A. Commencement, Consolidation and the Appointment of Lead
5 Plaintiff**

6 21. This securities fraud class action was filed on June 14, 2010 by Washtenaw County
7 against the Celera Defendants for violations of §§10(b) and 20(a) of the Exchange Act, 15 U.S.C.
8 §§78j(b), 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder during the April 24,
9 2008 to July 22, 2009 Class Period. Dkt. No. 1. Between June 14, 2010 and July 9, 2010, two
10 derivative actions were filed with factual allegations similar to the claims here.³ On August 2, 2010,
11 plaintiffs in these derivative actions filed an administrative motion to relate cases. Dkt. No. 8. On
12 August 11, 2010, the Court (the Honorable James Ware (Ret.)) entered an Order Relating Cases.
13 Dkt. No. 11.

14 22. On August 13, 2010, Washtenaw County filed its Motion for Appointment as Lead
15 Plaintiff and Approval of Selection of Counsel. Dkt. No. 12. On September 14, 2010, Judge Ware
16 issued an Order Consolidating Cases; Appointing Lead Class Plaintiff and Lead Class Counsel. Dkt.
17 No. 18. On September 23, 2010, Judge Ware issued an order clarifying the appointment of
18 Washtenaw County as Lead Plaintiff. Dkt. No. 21. The order also clarified the appointment of
19 Robbins Geller as Lead Counsel for this securities class action. *Id.*

20 23. This action was subsequently assigned to the Honorable Edward J. Davila on April
21 25, 2011 for all purposes. Dkt. No. 43.

22 **B. Lead Plaintiff's Investigation, Filing of the Amended Complaints and
23 Opposition to Defendants' Motions to Dismiss**

24 **1. Consolidated Amended Complaint for Violation of the Federal
25 Securities Laws**

26 24. Following its appointment as Lead Plaintiff, Washtenaw County and Lead Counsel
27 continued to investigate the case and prepared a Consolidated Amended Complaint for Violation of

28 ³ The two actions were *Kahn v. Ordoñez, et al.*, No. C 10-02935 EMC and *Greenberg v. Ordoñez, et al.*, No. C 10-03029 BZ.

1 the Federal Securities Laws (“Consolidated Complaint”). The investigation included the review by
2 Lead Counsel and their staff of public documents related to Celera, including press releases,
3 conference call transcripts, reports filed with the SEC, reports issued by analysts and various media.
4 At the direction of Lead Counsel, in-house forensic accountants and their staff prepared financial
5 analyses and assisted in the review of the accounting issues, including violations of GAAP.

6 25. Lead Counsel’s in-house economic staff also prepared and analyzed the stock prices
7 of Celera during the Class Period compared to a peer group and an overall market index. Such
8 analysis was used by Lead Counsel to support the allegations related to loss causation.

9 26. In addition, Lead Counsel retained an investigative firm that contacted former
10 employees of Celera who provided information that was included in the Consolidated Complaint.
11 Lead Counsel believed these allegations provided additional support for the claims alleged that the
12 Celera Defendants knowingly and/or recklessly violated the federal securities laws.

13 27. Lead Counsel also conducted litigation searches related to the allegations in the case,
14 and reviewed case documents with potentially relevant information, and where applicable included
15 said information in the Consolidated Complaint.

16 28. Following investigation and detailed analysis, on October 15, 2010, Lead Plaintiff
17 filed its 77-page Consolidated Complaint against the Celera Defendants for violations of §§10(b) and
18 20(a) of the Exchange Act. Dkt. No. 24.

19 **2. Defendants’ Motion to Dismiss the Consolidated Complaint**

20 29. The Celera Defendants moved to dismiss the Consolidated Complaint on November
21 29, 2010. Dkt. No. 29. The Celera Defendants’ complex motion contained 25 pages of briefing
22 challenging nearly every element of Lead Plaintiff’s claims. *Id.* This included arguments, *inter alia*,
23 that alleged that Lead Plaintiff failed to plead particularized facts to: (i) show Celera’s internal
24 accounting personnel failed to appropriately consider Blue Cross/Blue Shield’s policy of remitting
25 payments directly to patients when determining the Company’s allowance for doubtful accounts; (ii)
26 show Celera lacked a reasonable basis for its earnings guidance provided in February 2009 and
27 repeated again in May 2009; (iii) explain why in the face of the alleged fraud Celera’s independently
28 registered public accounting firm, PwC, consistently issued clean audit opinions during the Class

1 Period; (iv) demonstrate that the Safe Harbor provisions of the Private Securities Litigation Reform
2 Act of 1995 (“PSLRA”) were inapplicable; and (vi) allege loss causation. *Id.*

3 30. On January 13, 2011, Lead Plaintiff filed its opposition to the Celera Defendants’
4 motion to dismiss. Dkt. No. 33. In its 25-page opposition, Lead Plaintiff argued that the
5 Consolidated Complaint contained particularized allegations sufficient to uphold the complaint and
6 that the Celera Defendants’ opposition was without merit. Lead Plaintiff argued that it had
7 adequately alleged falsity and scienter with particularity as to the Celera Defendants, based on, *inter*
8 *alia*, the following: (i) post-Class Period admissions (including the restatement) that Celera had
9 failed to account appropriately for its bad debt; (ii) resignations of certain Individual Defendants;
10 (iii) Celera’s actual knowledge that Blue Cross/Blue Shield refused to pay Celera directly for its lab
11 services; (iv) Confidential Witness accounts corroborating the allegations; and (v) the magnitude of
12 the charge (\$20.1 million) taken by Celera in 2Q09. *Id.*

13 31. The Celera Defendants filed their reply on February 14, 2011. Dkt. Nos. 34-35. On
14 February 18, 2011, a notice was issued setting the hearing on the Celera Defendants’ motion to
15 dismiss for March 28, 2011. Dkt. No. 36. In preparation of the hearing, Lead Counsel analyzed the
16 Celera Defendants’ reply as well as the moving papers, the opposition brief and the complaint
17 allegations.

18 32. Less than two weeks before the scheduled hearing on the Celera Defendants’ motion
19 to dismiss, on March 18, 2011, Celera filed Forms 8-K and 10-K, disclosing that the Company was
20 restating its financial statements from the year ended June 30, 2008 through the first three quarters of
21 the year ended December 25, 2010 to, *inter alia*, correct errors related to the classification of bad
22 debt expense and the recognition of unreimbursed and uncollectible charges. As such, Lead Plaintiff
23 sought additional time to assess the restatement and to file an amended complaint incorporating the
24 restated financial results. Dkt. No. 39. On March 21, 2011, the Celera Defendants and Lead
25 Plaintiff filed a stipulation and proposed order requesting the March 28, 2011 hearing date be
26 vacated and that Lead Plaintiff be given leave to file an amended complaint in light of Celera’s
27 announcement concerning the restatement. *Id.* The Court granted the parties’ stipulation on March
28 24, 2011. Dkt. No. 40.

1 **3. Second Amended Consolidated Complaint for Violation of the**
2 **Federal Securities Laws**

3 33. On May 6, 2011, Lead Plaintiff filed the Second Amended Complaint, which, *inter*
4 *alia*, amended Lead Plaintiff's falsity and scienter allegations against the Celera Defendants based
5 upon the admissions in the Company's March 18, 2011 SEC filings restating its historical financial
6 results. Dkt. No. 45. These admissions as alleged in the Second Amended Complaint included
7 concessions that over 82% of Celera's bad debt charge, or \$17 million, should have been recorded in
8 earlier periods. Second Amended Complaint, ¶¶88, 96. In addition, Lead Plaintiff alleged that the
9 Company admitted that nearly \$28 million of Celera's bad debt recorded during the Class Period was
10 misclassified as an SG&A expense. *Id.*, ¶¶85-88. The Second Amended Complaint further alleged
11 that the restatement conceded that Celera had a material weakness in its internal controls relating to,
12 *inter alia*, the timely recognition of unreimbursed and uncollectible charges for services. *Id.*, ¶¶11,
13 13, 78-81.

14 34. On June 21, 2011, the Celera Defendants moved to dismiss the Second Amended
15 Complaint in a 25-page brief with more than 35 exhibits submitted in support of their motion. Dkt.
16 Nos. 48, 50. In their motion, the Celera Defendants asserted that Lead Plaintiff had failed to identify
17 a persuasive reason for any of the Individual Defendants to have embarked upon a scheme to
18 temporarily inflate Celera's stock price in the first place because there was no allegation that any of
19 them sold stock at an inflated price. *Id.* The Celera Defendants further alleged that Celera's
20 guidance was forward-looking and accompanied by meaningful cautionary language, and was
21 therefore protected by the PSLRA's Safe Harbor provision as well as the Bespeaks Caution doctrine.
22 *Id.* The motion also asserted that Lead Plaintiff failed to adequately plead loss causation. *Id.*

23 35. On August 4, 2011, Lead Plaintiff filed an Opposition to the Celera Defendants'
24 Motion to Dismiss the Second Amended Complaint, arguing that the Second Amended Complaint
25 set forth particularized allegations sufficient to meet each element of a claim for securities fraud.
26 Dkt. No. 53. Lead Plaintiff argued, *inter alia*, that: (i) it had adequately alleged false and misleading
27 statements; (ii) those statements were made with the requisite state of mind; (iii) it had adequately
28 alleged loss causation; and (iv) it had properly alleged a control person claim. Lead Plaintiff cited

1 approximately 88 cases in its 25-page briefing, spending significant time to effectively counter the
2 Celera Defendants' arguments and satisfy the heightened pleading standard imposed by the PSLRA.
3 Dkt. No. 53.

4 36. On September 1, 2011, the Celera Defendants filed their 15-page reply in support of
5 their motion to dismiss. Dkt. No. 55. Lead Counsel reviewed and analyzed the arguments set forth
6 in the Celera Defendants' reply brief in preparation for the hearing on the Celera Defendants' motion
7 to dismiss.

8 37. On September 30, 2011, a hearing was held on the motion wherein counsel for Lead
9 Plaintiff argued why the Second Amended Complaint should be upheld. Dkt. No. 57. On
10 September 4, 2012, the Court issued an Order Denying Celera's Motion to Dismiss. Dkt. No. 65.
11 Immediately following the Court's order, Lead Plaintiff participated in a Rule 26 Conference and
12 sought discovery as set forth in ¶¶51-64 below.

13 38. On September 21, 2012, the Celera Defendants filed a motion for leave to file a
14 motion for reconsideration of the Court's order denying the Celera Defendants' motion to dismiss
15 ("Motion to Reconsider"). Dkt. No. 69. In the Motion to Reconsider, the Celera Defendants
16 asserted that the Court erred in ruling that the Safe Harbor provision was inapplicable and further
17 erred in finding that Lead Plaintiff's bonus allegations supported a finding of scienter. *Id.*

18 39. On October 5, 2012, Lead Plaintiff filed a response to the Celera Defendants' Motion
19 to Reconsider, arguing that the Celera Defendants failed to make the required showing of a manifest
20 error or change in controlling law sufficient to warrant reconsideration because: (i) the Court
21 correctly held that Safe Harbor protection did not apply because the Celera Defendants' "cautions"
22 were not meaningful, and (ii) the Celera Defendants' cited case law did not create new law regarding
23 motive allegations, and the Court correctly included the Celera Defendants' motive for bonuses as
24 part of its collective scienter analysis. Dkt. No. 72.

25 40. On October 19, 2012, the Celera Defendants filed their Answer to the Second
26 Amended Complaint. Dkt. No. 73. Lead Counsel conferred with counsel for the Celera Defendants
27 regarding the sufficiency of their answer, including providing the Celera Defendants with supporting
28

1 case law as to deficiencies in their answer which ultimately resulted in a stipulated agreement that
2 the Celera Defendants would amend their answer. Dkt. No. 76.

3 41. On January 29, 2013, the Celera Defendants filed an Amended Answer to the Second
4 Amended Complaint. Dkt. No. 90.

5 42. On September 3, 2013, the Court issued an Order denying the Celera Defendants'
6 motion for leave to file a motion for reconsideration. Dkt. No. 95.

7 **4. The Third Amended Consolidated Complaint for Violation of**
8 **the Federal Securities Laws**

9 43. After review and analysis of documents produced in discovery, on August 30, 2013,
10 Lead Plaintiff moved the Court to add PwC as a defendant and for leave to file a Third Amended
11 Consolidated Complaint for Violation of the Federal Securities Laws. Dkt. No. 94. On August 30,
12 2013, Lead Plaintiff also filed an administrative motion to file under seal portions of Lead Plaintiff's
13 proposed Third Amended Complaint and corresponding motion for leave to amend because certain
14 of the information in the complaint had been marked confidential under the protective order in the
15 case. *Id.* The proposed Third Amended Complaint sought to add Celera's independently registered
16 public accounting firm, PwC, as a defendant. The Third Amended Complaint's principal new
17 allegations were that PwC violated the securities laws by issuing clean audit reports for Celera
18 during the Class Period despite its knowledge that Celera was no longer being paid directly by Blue
19 Cross/Blue Shield. Further, that PwC falsely certified that the Company's financial statements were
20 fairly stated and free of material misstatement and that it had performed its audits in conformance
21 with Public Company Accounting Oversight Board standards. ¶¶214-216, 220, 223. The
22 preparation of the complaint against PwC involved not only the review and analysis of documentary
23 evidence but the analysis and application of auditing standards by Lead Counsel and their in-house
24 forensic accountants.

25 44. On September 13, 2013, the Celera Defendants filed a declaration withdrawing the
26 confidentiality designations of documents they produced during discovery that were cited and/or
27 quoted in the Third Amended Complaint. Dkt. No. 100. Subsequently, on September 17, 2013, the
28 Court issued an Order denying the administrative motion to file the proposed Third Amended

1 Complaint under seal in light of the fact that the Celera Defendants had withdrawn the
2 confidentiality designations. Dkt. No. 102. Thereafter, on September 18, 2013, Lead Plaintiff
3 publicly filed its motion and the proposed Third Amended Complaint. Dkt. No. 103.

4 45. On October 3, 2013, the Court issued an Order granting Lead Plaintiff's motion for
5 leave to file a Third Amended Complaint. Dkt. No. 110. The next day, on October 4, 2013, Lead
6 Plaintiff formally filed its Third Amended Complaint in accordance with the Court's October 3
7 Order. Dkt. No. 112.

8 46. On November 18, 2013, Defendant PwC filed a motion to dismiss the Third
9 Amended Complaint. Dkt. No. 134. In its 25-page motion, Defendant PwC asserted that certain of
10 Lead Plaintiff's claims were time-barred by the statute of repose. *Id.* Additionally, Defendant PwC
11 alleged that Lead Plaintiff's allegations did not meet the stringent standards applicable to auditors in
12 the Ninth Circuit, noting specifically: (1) the absence of a rational economic incentive for an auditor
13 to participate in its client's fraud and thereby jeopardize the reputation upon which its entire business
14 depends; and (2) the fact that the client is responsible for providing the auditor with the estimates
15 and other information.

16 47. On December 18, 2013, Lead Plaintiff filed its 25-page opposition to PwC's motion
17 citing more than 50 cases, as well as attaching evidence to support its opposition. Lead Plaintiff's
18 opposition principally asserted not only that the Third Amended Complaint had been timely filed
19 within the contours of the statute of repose, but also that the complaint and the documentary
20 evidence produced during discovery evidenced PwC's knowledge of Celera's glaring bad debt and
21 receivables problems during the Class Period, yet PwC continued to issue unqualified audit opinions
22 for the Company thereby misleading investors. Dkt. No. 140. The opposition required substantial
23 analysis of complex auditing standards, cases unique to auditor involvement and analysis of
24 documentary evidence.

25 48. On January 15, 2014, Defendant PwC filed a 15-page reply to Lead Plaintiff's
26 opposition. Dkt. No. 142. Lead Counsel, with in-house forensic accountant assistance, analyzed
27 PwC's arguments in support of dismissal and further developed arguments in favor of upholding the
28 Third Amended Complaint.

1 49. On March 25, 2014, the Court issued a notice that it was taking PwC's motion under
2 submission, thereby vacating the hearing scheduled for March 28, 2014. Dkt. No. 150.

3 50. On June 3, 2014, the parties filed a stipulation with a proposed order seeking to stay
4 any decision on PwC's pending motion to dismiss and staying discovery deadlines due to the parties'
5 agreement-in-principle to settle this matter. Dkt. No. 158. The Court on June 4, 2014, granted the
6 stipulation. Dkt. No. 159. Thereafter, the Court terminated PwC's motion to dismiss on September
7 2, 2014, in light of the Motion for Preliminary Approval of Settlement filed on August 29, 2014.
8 Dkt. No. 168.

9 **C. Fact Discovery**

10 **1. Requests for the Production of Documents**

11 51. Following the September 4, 2012 Order denying the Celera Defendants' motion to
12 dismiss the Second Amended Complaint, Lead Plaintiff immediately began to seek fact discovery.

13 52. On October 12, 2012, Lead Plaintiff served the Celera Defendants with its First
14 Request for the Production of Documents. Lead Plaintiff's requests included, *inter alia*, documents
15 and communications concerning:

- 16 (i) The preparation of Celera's earnings announcements, financial reports and
17 quarterly conference calls;
- 18 (ii) Internal and governmental investigations;
- 19 (iii) Executive compensation;
- 20 (iv) The resignation or termination of Celera executives and employees;
- 21 (v) Celera's accounting policies and auditing procedures and practices;
- 22 (vi) Celera's internal controls over financial reporting;
- 23 (vii) Celera's spin-off from Applera;
- 24 (viii) Celera's meetings, committee meetings and management meetings;
- 25 (ix) Celera's acquisition of BHL and the due diligence performed in
26 contemplation of the acquisition; and
- 27 (x) Financial analysts reports concerning Celera.
- 28

1 53. Thereafter, Lead Plaintiff served subpoenas on several third parties. For instance, on
2 October 10, 2012, Lead Plaintiff served subpoenas on Celera's consultant Deloitte & Touche LLP
3 and Celera's independently registered public accounting firm, PwC.

4 54. By agreement of the parties, the Rule 26(f) Conference took place on October 11,
5 2012 between the Celera Defendants and Lead Plaintiff. During the conference, the Lead Plaintiff
6 and the Celera Defendants discussed, *inter alia*:

- 7 (i) A schedule for the completion of discovery;
- 8 (ii) Defendants' proposed early motion for summary judgment;
- 9 (iii) Drafting and submission of a protective order; and
- 10 (iv) Whether discovery should be stayed pending resolution of the Celera
11 Defendants' Motion to Reconsider.

12 55. On October 22, 2012, Lead Plaintiff served additional subpoenas for the production
13 of documents regarding Celera's financial statements and related disclosures during the relevant time
14 period upon the following financial analysts:

- 15 (i) Cowen Group, Inc.;
- 16 (ii) JMP Securities;
- 17 (iii) J.P. Morgan Securities, LLC;
- 18 (iv) Leerink Swann LLC;
- 19 (v) Morgan Stanley & Co. LLC;
- 20 (vi) Piper Jaffray & Co.;
- 21 (vii) RBC Capital Markets;
- 22 (viii) Thomas Weisel Partners;
- 23 (ix) Wright Investors' Service;
- 24 (x) Oppenheimer & Co. Inc.; and
- 25 (xi) UBS Financial Services, Inc.

26 56. Following the production of certain documents, on July 31, 2013, Lead Plaintiff
27 served the Company's consultant Ernst & Young LLP with a subpoena for the production of
28 documents regarding Celera's due diligence in its acquisition of BHL. Similarly, on October 11,

1 2013, Lead Plaintiff served Celera's consultant KPMG LLP with a subpoena to produce documents
2 regarding its goodwill impairment and valuation analyses performed for Celera.

3 57. On October 11, 2013 and October 15, 2013, Lead Plaintiff served subpoenas upon the
4 following health insurance companies seeking documents related to payments or reimbursements for
5 Celera's and BHL's lab services or tests:

- 6 (i) BlueCross BlueShield of Alabama;
- 7 (ii) Blue Shield of California Life & Health Insurance Company;
- 8 (iii) Empire BlueCross and BlueShield;
- 9 (iv) Blue Cross and Blue Shield of Florida, Inc.;
- 10 (v) Blue Cross Blue Shield of Georgia;
- 11 (vi) Horizon Blue Cross Blue Shield of New Jersey;
- 12 (vii) BlueCross BlueShield of North Carolina;
- 13 (viii) BlueCross BlueShield of South Carolina;
- 14 (ix) BlueCross BlueShield of Texas; and
- 15 (x) UnitedHealth Group, Inc.

16 58. Pursuant to Rule 26(a)(1)(C) of the Federal Rules of Civil Procedure, Lead Plaintiff
17 and the Celera Defendants exchanged Initial Disclosures on November 1, 2012. Lead Plaintiff's
18 Initial Disclosures consisted of more than 85 individuals and 14 entities likely to possess relevant
19 information.

20 59. The Celera Defendants' first substantive production of documents responsive to Lead
21 Plaintiff's discovery requests commenced in April 2013 and continued into 2014. The Celera
22 Defendants produced approximately 192,500 documents, consisting of approximately 943,091
23 pages.

24 60. Together, the Celera Defendants and third parties produced approximately 214,637
25 documents, consisting of approximately 1,112,085 pages. Lead Counsel spent numerous hours
26 reviewing the documents produced for evidence to support Lead Plaintiff's claims. Lead Counsel
27 used electronic discovery databases and targeted search terms, as well as a physical hands-on review
28 of certain portions of the productions in reviewing the documents produced. Further, because of the

1 complex accounting aspects of Lead Plaintiff's allegations, Lead Counsel's forensic accounting staff
2 spent considerable time reviewing and analyzing accounting related documents, including PwC's
3 workpapers, and restatement-related documents.

4 **2. Interrogatories**

5 61. On September 13, 2013, Lead Plaintiff issued its First Set of Interrogatories to the
6 Celera Defendants (the "Interrogatories") seeking information regarding Lead Plaintiff's claims. On
7 October 14, 2013, the Celera Defendants served their responses and objections. The Celera
8 Defendants' responses directed Lead Plaintiff to, *inter alia*, refer to documents produced during
9 discovery and failed to substantively address the Interrogatories. After several discussions,
10 including correspondence and meetings, in which Lead Counsel explained the inadequacy of the
11 interrogatory responses, the Celera Defendants served supplemental responses to the Interrogatories
12 on March 19-21, 2014. After review of the supplemental responses, Lead Counsel explained that the
13 supplemental responses were also inadequate, failing to address Lead Plaintiff's previous concerns
14 or otherwise comport with the requirements of Fed. R. Civ. P. 33. After additional discussions, the
15 Celera Defendants agreed to supplement their responses in accordance with Fed. R. Civ. P. 33. As a
16 result, on April 9, 2014, Lead Plaintiff and the Celera Defendants filed a joint stipulation regarding
17 the Celera Defendants' compliance with Fed. R. Civ. P. 33. Dkt. No. 151. On April 11, 2014, the
18 Court entered the joint stipulation and order. Dkt. No. 155.

19 **3. Deposition Notices and Discovery Dispute**

20 62. On July 30, 2013, Lead Plaintiff notified the Celera Defendants of its intention to take
21 the depositions of Heather M. Abbis, Marco DeAngelis, Stanley Dziemien and Gary Tom. On
22 August 22, 2013, prior to the addition of PwC as a Defendant in this action, Lead Plaintiff
23 subpoenaed for deposition Heather M. Abbis, a former Vice President of Finance at Celera. On
24 October 8, 2013, Lead Plaintiff issued an amended subpoena to Heather M. Abbis after the parties
25 reached an agreement regarding the date of the deposition during meet and confers on September 11
26 and October 8, 2013. Pursuant to the amended subpoena, the Abbis deposition was scheduled for
27 November 7, 2013. Four days prior to the scheduled deposition, the Celera Defendants indicated
28

1 their refusal to produce Ms. Abbis for the deposition, asserting that Lead Plaintiff's addition of PwC
2 as a defendant stayed discovery.

3 63. The parties were unable to reach an agreement as to whether discovery was stayed
4 due to the addition of PwC as a defendant. As such, the parties submitted their positions to the
5 Honorable Howard R. Lloyd pursuant to his standing order regarding civil discovery disputes in a
6 document entitled Discovery Dispute Joint Report No. 1 Regarding Plaintiff's Motion to Compel
7 Celera's Production of Heather Abbis for Deposition and PwC's Production of Documents (the
8 "Joint Report"). Dkt. No. 130. In the Joint Report, Lead Plaintiff asserted that because the
9 Congressional intent of the discovery stay was to prevent "fishing expeditions," the discovery stay
10 served no purpose in the case considering that the allegations were upheld in their entirety and a year
11 of discovery had already taken place. *Id.* The Celera Defendants and Defendant PwC asserted that
12 the discovery stay automatically applied upon the filing of the Third Amended Complaint and that
13 PwC should have the benefit of the stay until its motion to dismiss was resolved. *Id.*

14 64. On February 25, 2014, Magistrate Judge Lloyd issued an Order on the Joint Report,
15 holding that discovery was stayed to the extent it required PwC's participation, but further concluded
16 that: (1) Lead Plaintiff could propound non-party discovery that does not require PwC's
17 participation; and (2) Celera would continue to provide documentary discovery as long as that
18 discovery (i) does not require PwC's active participation and (ii) would not subject Celera to
19 duplicate its discovery efforts in the event PwC's motion to dismiss was denied. Dkt. No. 145.

20 **D. Class Certification**

21 65. On October 4, 2013, Lead Plaintiff filed a Motion for Class Certification. Dkt. No.
22 113. In the 22-page motion, Lead Plaintiff sought to certify a class defined as all persons or entities
23 who purchased or otherwise acquired Celera common stock during the Class Period and who were
24 damaged thereby. Dkt. No. 113. In addition to the motion, Lead Plaintiff submitted the expert
25 declaration of Bjorn I. Steinholt, an expert formerly with Financial Markets Analysis, LLC,
26 discussing whether the market in which the tracking and common stock of Celera traded during the
27 Class Period was efficient. Dkt. No. 114. Washtenaw County further requested an order appointing
28 it as class representative and the law firm of Robbins Geller as class counsel. Dkt. No. 113.

1 66. On November 13, 2013, the Celera Defendants filed a Statement of Non-Opposition
2 to the class certification motion. Dkt. No. 131.

3 67. On November 18, 2013, Defendant PwC filed a limited opposition to the class
4 certification motion, asserting that the motion was not properly brought as to PwC and any
5 expectation that PwC could substantively respond to the motion in its current position as a new
6 defendant in the case was highly unreasonable. Dkt. No. 136. Defendant PwC further alleged that
7 the outcome of its pending motion to dismiss could have a material impact on the class certification
8 motion. *Id.*

9 68. Lead Plaintiff filed its reply on December 11, 2013, explaining by specifically not
10 opposing class certification, PwC conceded that the reservations it raised were not a basis to deny
11 class certification, and that PwC's participation in the alleged fraud was a question of liability and
12 damages that did not go to class certification issues. Dkt. No. 139.

13 69. On February 25, 2014, the Court issued an Order Granting Lead Plaintiff's Motion
14 for Class Certification. Dkt. No. 146.

15 **E. Settlement Negotiations**

16 70. A mediation was scheduled before the Honorable Layn R. Phillips (Ret.) for August
17 9, 2013. At Judge Phillip's direction, Lead Counsel prepared a mediation submission analyzing the
18 issues in the case along with documentary evidence. Additionally, Lead Counsel prepared to address
19 issues related to the case prior to the scheduled mediation. On August 9, 2013, Lead Plaintiff and
20 the Celera Defendants participated in a confidential mediation session facilitated by Judge Phillips in
21 New York, NY. The Celera Defendants and Lead Plaintiff were unable to reach a settlement on that
22 day. The parties, however, continued settlement discussions with the assistance of Judge Phillips,
23 eventually reaching an agreement-in-principle in late May 2014.

24 71. Following a preliminary agreement of the parties in late May 2014 and subsequent
25 negotiations regarding the terms of the settlement, including additional submissions to Judge
26 Phillips, Lead Counsel worked diligently over the following weeks to document the Settlement and
27 prepare preliminary approval papers. On August 29, 2014, the parties presented the Stipulation of
28 Settlement and preliminary approval papers to the Court. Dkt. Nos. 166-167. On November 7,

1 2014, the Court held a hearing on the motion wherein Lead Counsel presented arguments in favor of
2 preliminarily approving the Settlement. Dkt. No. 171. On November 20, 2014, the Court issued an
3 Order Requesting Additional Information re: Motion for Preliminary Approval of Class Action
4 Settlement. Dkt. No. 174. On December 19, 2014, Lead Plaintiff filed its response with the Court.
5 Dkt. No. 177. On March 31, 2015, the Court granted preliminary approval of the Settlement, as well
6 as the form and manner of notice of settlement to the Class. Dkt. No. 179.

7 **III. THE SETTLEMENT IS IN THE BEST INTEREST OF THE CLASS AND**
8 **WARRANTS APPROVAL BASED ON THE STRENGTHS AND**
9 **WEAKNESSES OF THE CASE**

10 72. Lead Plaintiff and Lead Counsel assessed risks necessary to the continued prosecution
11 of the alleged claims against Defendants through summary judgment, trial and subsequent appeals,
12 as well as the difficulties and delays inherent to complex litigation. For instance, there was no
13 certainty that the documentary evidence and testimony of witnesses would weigh in Lead Plaintiff's
14 favor and that Lead Plaintiff's claims would survive a motion for summary judgment. Even if Lead
15 Plaintiff's claims survived summary judgment, there was no way of predicting which interpretation
16 of various evidence a jury would accept. Defendants have denied culpability throughout the
17 litigation and are represented by experienced counsel who appeared prepared to continue to mount
18 aggressive defenses that could have barred any recovery by the Class or substantially reduced the
19 Class' damages.

20 73. Even if Lead Plaintiff succeeds in proving liability, there remains a major risk going
21 forward related to loss causation and damages. For example, the Celera Defendants have and would
22 continue to argue that the Class was not entitled to damages because the stock drops alleged by Lead
23 Plaintiff were related to non-fraud factors. Because the determination of loss causation and damages
24 is a complicated issue requiring expert testimony at summary judgment and/or trial, the Class also
25 faced the risk that the Court could exclude their expert's opinions.

26 74. Another risk to Lead Plaintiff's claims relates to its allegations against PwC. The law
27 can be interpreted as disfavoring securities fraud cases against company auditors, and, as such, there
28 was a substantial risk that PwC would prevail on its motion to dismiss. For example, although there
is no separate rule for pleading scienter against auditors, the Ninth Circuit has acknowledged that

1 plaintiffs alleging scienter against a major independent auditor such as PwC typically face a greater
2 challenge as compared to company defendants.

3 “[S]cienter requires more than a misapplication of accounting principles. The
4 plaintiff must prove that the accounting practices were so deficient that the audit
5 amounted to no audit at all, or an egregious refusal to see the obvious, or to
6 investigate the doubtful, or that the accounting judgments which were made were
7 such that no reasonable accountant would have made the same decisions if
8 confronted with the same facts.”

9 *In re Software Toolworks Inc. Sec. Litig.*, 50 F.3d 615, 628 (9th Cir. 1995) (citation omitted).

10 75. If not for this Settlement, the Litigation would continue to be adversarial and
11 contested by the parties. Continued litigation of this case would also be complex, costly and of
12 substantial duration. Additional document discovery would need to be completed, depositions
13 would have to be taken, experts would need to be designated and expert discovery would need to be
14 completed. In this case, multiple experts would likely need to be retained to prepare reports,
15 including those with expertise regarding accounting, auditing, forecasting, loss causation and
16 damages.

17 76. Considering the foregoing, as well as the risks set forth in paragraphs 11-15 herein,
18 and evaluating Defendants’ likely defenses throughout the Litigation and ultimately at trial, it is the
19 informed judgment of Lead Plaintiff and Lead Counsel, based upon the proceedings to date, as well
20 as Lead Counsel’s extensive experience litigating shareholder class actions, that the proposed
21 Settlement of this matter before the Court is fair, reasonable, adequate and in the best interest of the
22 Class.

23 **IV. THE SETTLEMENT IS IN THE BEST INTEREST OF THE CLASS AND** 24 **WARRANTS APPROVAL**

25 77. The Stipulation resolves the claims of the Class against all Defendants and settles this
26 Litigation for \$24.75 million in cash, \$23 million from the Celera Defendants and \$1.75 million
27 from PwC.

28 78. The Settlement is the result of vigorous and extensive arm’s-length negotiations. In
Lead Counsel’s judgment, the compromise embodies a successful resolution of a complex class
action.

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2015.

s/ Willow E. Radcliffe

WILLOW E. RADCLIFFE

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