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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SANTA CLARA**

18 IN RE MAXAR TECHNOLOGIES, INC.
19 SHAREHOLDER LITIGATION

Case No. 19CV357070
CLASS ACTION

20 This Document Relates To:
21 ALL ACTIONS

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date Action Filed: October 21, 2019
Dept. 1
Judge: Hon. Sunil R. Kulkarni
Hearing: June 8, 2023, 1:30 p.m.

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1 **NOTICE OF MOTION AND MOTION**

2 **PLEASE TAKE NOTICE** that on June 8, 2023 at 1:30 p.m., before the Honorable Sunil R.
3 Kulkarni, Department 1, Superior Court of the State of California, County of Santa Clara, Plaintiff
4 and Class Representative Michael McCurdy will and does hereby move the Court for entry of the
5 proposed Preliminary Approval Order, and requests that the Court set the following schedule for
6 settlement proceedings:

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Event	Proposed Deadline
Defendant Maxar to cause shareholder list to be provided to Claims Administrator	Within 14 days after Preliminary Approval
Claims Administrator to complete mailing of Notice and Proof of Claim to Class Members (“Notice Date”)	Within 21 days after Preliminary Approval
Notice to be published in <i>Wall Street Journal</i>	Within 10 days after Notice Date
Notice and other documents to be posted on Settlement Website	Within 14 days after Notice Date
Motion for final settlement approval and application for attorneys’ fees and expenses and payment to Class Representative	Within 46 days after Notice Date
Opt-out and objection deadline	60 days after Notice Date
Last day to submit a Proof of Claim	90 days after Notice Date
Reply papers in support of final settlement approval and application for attorneys’ fees and expenses and payment to Class Representative	At least 7 days before Settlement Fairness Hearing
Class Counsel to file proof of mailing and publication of Notice	At least 7 days before Settlement Fairness Hearing
Settlement Fairness Hearing	At least 45 days after opt-out and objection deadline

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24 The Motion is based on this Notice of Motion, the incorporated memorandum of points and
25 authorities, the Declaration of Michael McCurdy (“McCurdy Decl.”), the Joint Declaration of
26 Adam E. Polk and David W. Hall (“Joint Decl.”), the record in this action, the argument of counsel,
27 and any other matters the Court may consider.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael McCurdy seeks preliminary approval of the settlement of this class action
4 on the terms set forth in the Stipulation of Settlement dated May 5, 2023 (the “Stipulation” or
5 “Settlement”).¹ The Settlement provides a non-reversionary payment by or on behalf of Defendants
6 of \$36,500,000 for the benefit of the Class² and is the result of hard-fought litigation and extensive
7 arm’s-length negotiations between the Parties.³ The Settlement resolves all claims against Defendants
8 and is an excellent result for the Class, especially considering the risk of a much smaller recovery or
9 no recovery at all if the case were to proceed through dispositive motions, trial, and likely appeals.

10 Throughout the litigation, Defendants asserted that the registration statement and prospectus
11 issued in connection with the Merger (collectively, the “Offering Materials”) contained no material
12 misstatements or omissions, denied that Plaintiff or the Class suffered damages or were otherwise
13 harmed by the conduct alleged in this Action, and maintained that they acted at all times in good faith
14 and in a manner reasonably believed to be in accordance with all applicable rules, regulations, and
15 laws. Defendants continue to take the position that Plaintiff and the Class’s claims are completely
16 barred by the statute of limitations and an array of other defenses. Defendants contend, among other

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19 ¹ All capitalized terms not otherwise defined shall have the same meaning as set forth in the
20 Stipulation. Citations are omitted and emphasis is added throughout unless otherwise indicated.

21 ² The “Class” means all persons who acquired Maxar common stock in exchange for
22 DigitalGlobe common stock pursuant to the Offering Materials issued in connection with Maxar’s
23 October 2017 merger and acquisition of DigitalGlobe. Excluded from the Class are Defendants and
24 their families, the officers and directors and affiliates of Defendants, at all relevant times, members
25 of their immediate families and their legal representatives, heirs, successors or assigns and any entity
26 in which Defendants have or had a controlling interest. Also excluded from the Class are any former
27 DigitalGlobe shareholders who entered into a release of claims in connection with the DigitalGlobe
28 appraisal actions. *See, e.g., In re Appraisal of DigitalGlobe, Inc. Common Stock and Preferred Stock*,
Consol. C.A. No. 2017-0810 (Del. Ch.). Also excluded from the Class are those Persons who would
otherwise be Class Members but who timely and validly exclude themselves therefrom.

³ As used herein, the term “Parties” means Plaintiff and Defendants Maxar Technologies, Inc.,
Howard L. Lance, Anil Wirasekara, Angela Lau, Robert L. Phillips, Dennis H. Chookaszian, Lori B.
Garver, Joanne O. Isham, C. Robert Kehler, Brian G. Kenning, and Eric Zahler (“Defendants”).

1 things, that the impairment at the center of this case should not have been taken until the third quarter
2 of 2018, well after the effective date of the Offering Materials and the close of the Merger.

3 During the course of litigation, Plaintiff's Counsel conducted a comprehensive investigation,
4 undertook significant motion practice, certified the class, conducted full fact discovery, including
5 analyzing hundreds of thousands of pages of documents and taking 20 depositions, conducted
6 extensive expert discovery, including the retention, preparation, and disclosure of expert witness
7 reports on a range of complex issues, and briefed and argued many contested pleadings and motions
8 before this Court. The Parties also participated in extensive settlement negotiations, including three
9 full-day mediations (two sessions with Gregory P. Lindstrom of Phillips ADR and a third session
10 with both Mr. Lindstrom and the Honorable Layn R. Phillips (Ret.)), where the strengths and
11 weaknesses of the Parties' respective positions were fully explored. Plaintiff and Plaintiff's Counsel
12 therefore had sufficient information to make an informed decision regarding the fairness and
13 adequacy of the Settlement, which provides between 40% and 65% of recoverable damages as
14 estimated in consultation with Plaintiff's experts.

15 Thus, Plaintiff respectfully asks the Court to enter the proposed Order Preliminarily
16 Approving Settlement and Providing for Notice ("Notice Order"), submitted herewith.⁴ As part of the
17 Settlement, Plaintiff also requests approval of the form, substance, and manner of dissemination of
18 the Notice of Proposed Settlement of Class Action ("Notice"), the Proof of Claim and Release ("Proof
19 of Claim"), and the Summary Notice of Proposed Settlement of Class Action ("Summary Notice"),
20 appended as Exhibits 1.A-1 to 1.A-3 to the Notice Order. Finally, Plaintiff requests that the Court
21 schedule a Settlement Fairness Hearing to consider final approval of the Settlement, the Plan of
22 Allocation, Class Counsel's request for attorneys' fees and expenses, and Plaintiff's request for a
23 service award in connection with his representation of the Class, and set relevant deadlines in
24 connection therewith.

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28 ⁴ Plaintiff has conferred with Defendants, and Defendants do not oppose this motion.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. This Action**

3 On October 21, 2019, Plaintiff commenced this action against Defendants in the Superior
4 Court of California, County of Santa Clara (“Santa Clara Superior Court”), asserting claims arising
5 out of Maxar’s October 2017 merger and acquisition of DigitalGlobe (the “Merger”). The Court
6 appointed Hedin Hall LLP (“Hedin Hall”) and Girard Sharp LLP (“Girard Sharp”) as Class Counsel.

7 Plaintiff alleged Defendants violated §§ 11, 12(a)(2) and 15 of the Securities Act by reason
8 of material misrepresentations and omissions in the “Offering Materials.” Among the material facts
9 Plaintiff alleged the Offering Materials misrepresented and omitted are the following: (1) there were
10 significant indicators of impairment of Maxar’s assets, particularly in its Communications, SSL, and
11 geostationary satellite communications (“GeoComm”) businesses; (2) Maxar had not adequately
12 tested for impairment; (3) GeoComm was severely impaired as of the date of the Offering Materials;
13 (4) Maxar had violated International Financial Reporting Standards (“IFRS”) accounting standards,
14 including those related to impairment testing; and (5) risks that Maxar characterized as hypothetical
15 had already materialized at the time of the Merger. (*See generally* Plaintiff’s allegations in the Second
16 Amended Complaint for Violations of the Securities Act of 1933 (the “Complaint”).)

17 Defendants have denied, and continue to deny, these allegations and that there was any
18 violation of the Securities Act.

19 **B. The Litigation and Settlement Negotiations**

20 Before commencing this litigation in October 2019, Plaintiff’s counsel thoroughly
21 investigated Defendants’ actions in connection with the Merger and the claims alleged in this Action.
22 Joint Decl., ¶ 16(a). Among other things, Class Counsel analyzed public filings, records, media and
23 analyst reports, press releases, and documents concerning Defendants and third parties and researched
24 the applicable law with respect to Plaintiff’s claims against Defendants and the potential defenses
25 thereto. *Id.* Class Counsel’s investigation continued over five years through several amended
26 pleadings, extensive discovery, crafting and litigating formal, targeted written discovery requests,
27 extensive consultation with accounting, financial, and other subject matter experts, and briefing and
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1 oral argument on several contested procedural, discovery, and merits motions, demurrers, and other
2 filings by Defendants. Joint Decl., ¶¶ 16(b), (c). At every stage, Class Counsel continued analyzing
3 the claims, theories, and remedies alleged and sought in this action, and prepared briefing in response
4 to Defendants’ numerous, often novel arguments and filings while also maintaining a professional
5 and open line of communication with Defendants’ counsel. Joint Decl., ¶ 16(b).

6 As detailed below, the Settlement reflects careful consideration by the parties of the benefits,
7 burdens, and risks associated with continued litigation of this Action. Plaintiff and Plaintiff’s
8 Counsel’s assessment of the propriety of the Settlement was informed by years of litigation, an
9 intimate understanding of the strength and weaknesses of the claims, and continued investigation of
10 and discovery into Defendants’ conduct, the impairment and IFRS standards at issue, and the other
11 underlying facts and contentions. Joint Decl., ¶ 23. Class Counsel’s advocacy resulted in several
12 favorable rulings on behalf of Plaintiff and the Class. All of this work informed the Parties’ more than
13 two years of thorough, arm’s-length settlement negotiations. Joint Decl., ¶ 21. On March 22, 2023,
14 the Parties reached an agreement in principle to settle the Action. *Id.* The record demonstrates Plaintiff
15 has carefully weighed the benefits, burdens, and risks associated with the continued litigation of the
16 Action and is well positioned to assess and endorse the propriety of the Settlement.

17 **III. THE SETTLEMENT**

18 The complete terms of the Settlement are set forth in the concurrently filed Stipulation. *See*
19 Joint Decl., Ex. 1.

20 **A. Monetary Relief for Class Members**

21 As consideration for the release of the claims described below, Defendants have agreed to
22 deposit the Settlement Amount into the Escrow Account for the benefit of the Class. *See* Joint Decl.,
23 Ex. 1 at ¶ 3.1. The Settlement Amount is to be placed into an interest-bearing escrow account within
24 thirty (30) business days of execution of the Notice Order. *Id.* The Net Settlement Fund will be
25 distributed to eligible Class Members in accordance with the Plan of Allocation (“Plan”) described
26 in the Notice. The Plan accounts for the statutory calculation of damages under § 11(e) of the
27 Securities Act and treats all potential claimants in a fair and equitable fashion.

1 **B. Release of Claims**

2 In exchange for this monetary relief, Plaintiff agrees to the dismissal of the Action against all
3 Defendants and the release of Released Claims. The proposed release is appropriately tailored to the
4 claims that were or could be asserted in the case, and is defined to include all claims, including
5 “Unknown Claims” as defined in the Stipulation, based on, arising out of, or in connection with: (i)
6 the purchase or acquisition of Maxar common stock pursuant to the Offering Materials issued in
7 connection with Maxar’s October 2017 merger and acquisition of DigitalGlobe; or (ii) the allegations,
8 acts, facts, matters, occurrences, disclosures, filings, representations, statements or omissions that
9 were or could have been alleged by Plaintiff and other members of the Class in the Action. *See* Joint
10 Decl., Ex. 1 at ¶ 1.25. “Released Claims” also includes any and all claims arising out of, relating to,
11 or in connection with the Settlement or resolution of the Action against the Released Parties
12 (including Unknown Claims), except claims to enforce any of the terms of this Stipulation. *See id.*
13 For the avoidance of doubt, “Released Claims” does not include any claims brought under the federal
14 securities laws against Maxar that are unrelated to the allegations, acts, transactions, facts, events,
15 matters, occurrences, statements, representations, misrepresentations, or omissions involved, set
16 forth, alleged, or referred to, in this Action. *Id.*

17 **C. Claim Requirement**

18 Pursuant to the Settlement, Class Members are required to submit a Proof of Claim in order
19 to receive their *pro rata* share of the Net Settlement Fund. Joint Decl., Ex. 1 at ¶¶ 6.1, 6.3, 7.1. A Proof
20 of Claim form is necessary to verify the Class Member’s number of qualifying shares, and their
21 corresponding *pro rata* settlement payment. Joint Decl., ¶ 41. Submission of a Proof of Claim Form
22 allows the Claims Administrator to determine the validity of the claims, and Class Members will be
23 able to confirm that they wish to participate in the Settlement and receive additional mailings from
24 the Claims Administrator. *Id.*

25 **D. Attorneys’ Fees and Costs and Service Award**

26 Class Counsel will seek an award of attorneys’ fees not to exceed 35% of the Settlement
27 Amount, plus reasonable expenses. Joint Decl., ¶ 43 & Ex. 1 at ¶ 5.1. Motions for such awards shall
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1 be filed at least 14 days before the deadline for filing objections to the Settlement, so that Class
2 Members will have the opportunity to review such motions and make any objections. Joint Decl., Ex.
3 1.A at ¶ 15. Class Counsel will detail their work, hours, lodestar, and expenses in their motion for an
4 award of attorneys’ fees and costs and will provide the Court with information necessary to determine
5 the adequacy of the requested awards based on the percentage of fund method with a lodestar cross-
6 check. Joint Decl., ¶ 44.

7 Class Counsel will also seek a service award to be awarded to Plaintiff, not to exceed \$10,000,
8 to be paid out of the Settlement Amount. Joint Decl., ¶ 45, Ex. 1 at ¶ 5.6 & Ex. 2 at ¶ 7. This award
9 is comparable to those awarded in other similar settlements. *See, e.g., Weiss v. Sunpower Corp.*, 2022
10 WL 3284350 (Cal. Super. Santa Clara Cty., Apr. 4, 2022) (class representatives each awarded
11 \$10,000 with respect to \$4,750,000 settlement amount); *Aguilar v. All Seasons Roofing &*
12 *Waterproofing, Inc.*, 2022 WL 16904432 (Cal. Super. Santa Clara Cty., Sept. 6, 2022) (class
13 representatives each awarded \$10,000 as to \$995,000 settlement amount). Plaintiff understood and
14 carried out his responsibilities in serving as a Class Representative, participated in this litigation from
15 its inception, spent time providing valuable information to Class Counsel in connection with
16 investigating and developing the claims in this action, reviewed and approved documents including
17 the Complaint and the Stipulation, participated in discovery by reviewing discovery requests,
18 producing documents, and providing several rounds of written discovery responses, as well preparing
19 and sitting for his deposition, in addition to vigorously pursuing litigation on behalf of the Class. Joint
20 Decl., ¶ 45 & Ex. 2 at ¶¶ 2-6.

21 **IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

22 California has a well-established public policy favoring compromises of litigation. *See*
23 *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933) (“it is the policy of the law to discourage
24 litigation and to favor compromises”); *Cent. & W. Basin Water Replenishment Dist. v. S. Cal. Water*
25 *Co.*, 109 Cal. App. 4th 891, 912 (2003). This policy is particularly compelling in class actions. *See*
26 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152 (2000).

1 “In reviewing the fairness of a class action settlement, due regard should be given to what is
2 otherwise a private consensual agreement between the parties.” *Cellphone Termination Fee Cases*,
3 186 Cal. App. 4th 1380, 1389 (2010). Approval of a class settlement follows three steps. *See Manual*
4 *for Complex Litigation (Fourth)* § 21.632 (2004); *Luckey v. Superior Court*, 228 Cal. App. 4th 81, 93
5 (2014). First, the plaintiff moves for preliminary approval of the settlement, seeking approval to
6 provide notice of the settlement to the class. *See* Cal. R. Ct. 3.769(c). Second, the plaintiff
7 disseminates notice to class members informing them of the proposed settlement and their options
8 and rights, including to object. *See* Cal. R. Ct. 3.769(f). Third, the court holds a final fairness hearing
9 during which it considers the fairness, adequacy, and reasonableness of the settlement. *See* Cal. R.
10 Ct. 3.769(g); *see also Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (explaining
11 three steps for settlement approval).

12 At the first step in the process, Plaintiff requests that the Court preliminarily approve the
13 Settlement. While the standard for preliminary approval is not set forth in California law, California
14 courts have adopted procedures and standards developed in the federal courts. *See Dunk v. Ford*
15 *Motor Co.*, 48 Cal. App. 4th 1794, 1801 n.7 (1996). The Court thus considers whether ““the proposed
16 settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious
17 deficiencies, does not improperly grant preferential treatment to class representatives or segments of
18 the class, and falls within the range of possible [judicial] approval.”” 4 *Rubenstein and Newberg on*
19 *Class Actions* § 13:13 (5th ed. 2014) (quoting *Manual for Complex Litigation (Second)* § 30.44
20 (1985)). The Settlement satisfies these criteria.

21 **A. The Settlement Is the Product of Informed, Arm’s-Length Negotiations**

22 A settlement “presumably will be fair to all concerned” when negotiations are overseen by “a
23 neutral mediator” that assured “itself that [the] settlement agreement represents an arm’s-length
24 transaction entered without self-dealing or other potential misconduct.” *Kullar v. Foot Locker Retail,*
25 *Inc.*, 168 Cal. App. 4th 116, 129 (2008). This Settlement was reached after two years of serious,
26 arm’s-length negotiations among the Parties that included three separate mediations supervised by
27 two well-regarded mediators, Hon. Layn R. Phillips and Gregory P. Lindstrom, both specializing in
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1 the mediation of similar securities class actions and other complex matters. Joint Decl., ¶¶ 17, 21.
2 Prior to each mediation, the Parties prepared, exchanged, and provided to the mediator(s) detailed
3 mediation statements and exhibits setting forth their respective positions on the merits and damages.
4 Joint Decl., ¶¶ 18-20. During these negotiations the Parties were each represented by experienced
5 securities litigation counsel well-versed in the facts and law at issue, who debated and fully explored
6 the strengths and weaknesses of their respective claims and defenses. Joint Decl., ¶ 17. Although no
7 agreement was reached during the full-day mediations, the Parties continued to actively negotiate
8 through the mediators, participating in numerous conference calls and other follow-up
9 communications with Judge Phillips and Mr. Lindstrom. Joint Decl., ¶¶ 18-20. As a result of these
10 extensive and zealous negotiations, the Parties fully understood the nuances of the disputed issues in
11 the Action when they considered – and ultimately agreed to – the mediators’ proposal from Judge
12 Phillips and Mr. Lindstrom for the monetary terms for a settlement of this Action on a class-wide
13 basis. Joint Decl., ¶ 21. The Settlement is therefore presumptively fair because it was reached through
14 arm’s-length negotiations conducted by and among well-regarded mediators and highly experienced
15 securities attorneys who had sufficient information to make an intelligent decision regarding the
16 propriety of the Settlement. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001),
17 *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018).

18 **B. The Settlement Has No Obvious Deficiencies and Does Not Unfairly Favor Any**
19 **Class Members**

20 Second, the Settlement has no deficiencies and does not unfairly favor any Class Members.
21 The Class is limited to those Persons who acquired Maxar common in exchange for DigitalGlobe
22 common stock pursuant to the Offering Materials issued in connection with the Merger. *See Joint*
23 *Decl., Ex. 1 at ¶ 1.4.* The Parties were careful to exclude from the Class all Persons related to
24 Defendants and any person who may have benefitted from Defendants’ actions, as well as any former
25 DigitalGlobe shareholders who already released their claims in connection with the DigitalGlobe
26 appraisal actions. *Id.* Furthermore, the Settlement’s release language appropriately releases only
27 claims arising out of or related to the acquisition of Maxar common stock pursuant to the Offering
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1 Materials issued in connection with the Merger. *See* Joint Decl., Ex. 1 at ¶ 1.25. Because general
2 releases “covering ‘all claims’ that were or could have been raised in the suit – [are] common in class
3 action settlements,” this release language is sufficiently narrowly tailored to warrant approval. *Carter*,
4 224 Cal. App. 4th at 811; *see Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 586 (2010) (release
5 appropriate when it barred “‘claims based on the allegations underlying the claims in the settled class
6 action . . . even though the precluded claim *was not presented*, and *could not have been presented*,
7 in the class action’”) (emphasis in original).

8 In addition, the Settlement treats all Class Members on the same basis, without granting any
9 preferential treatment. The proposed Plan, set forth in the Notice, is designed to distribute a *pro rata*
10 share of the Net Settlement Fund to Authorized Claimants based upon their loss under the Plan. The
11 Plan properly accounts for the statutory damages under the Securities Act for claims relating to shares
12 of Maxar common stock acquired in connection with the Merger.

13 **C. The Settlement Amount Is Well Within the Range of Reasonableness**

14 The Settlement, which provides a substantial cash benefit to the Class of \$36.5 million, is well
15 within the range of reasonableness. The adequacy of the Settlement Amount is underscored by the
16 inherent complexities of the Action and the substantial risks of continued litigation. While Plaintiff
17 firmly believes in the merit of these claims, success at further stages of litigation was far from certain.
18 Defendants have vigorously argued that Plaintiff cannot demonstrate the falsity or materiality of the
19 challenged statements in the Registration Statement. Joint Decl., ¶ 26. For example, Defendants
20 would likely continue to argue that the Offering Documents contained no material misrepresentations
21 and in fact disclosed the very risks Plaintiff alleged were omitted. These issues have been heavily
22 disputed throughout the Action and would present significant challenges to the Class prevailing at
23 trial. *Id.*

24 Further, Plaintiff’s burden at summary judgment and trial would require expert testimony on
25 industry-specific issues, complex accounting standards, and damages. Even with the most competent
26 experts in these fields, there could be no guarantee that Plaintiff would prevail on liability and
27 damages. Defendants’ experts would likely present opinions designed to establish affirmative
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1 defenses such as the statute of limitations, negative causation, and due diligence, undermine
2 Plaintiff's ability to demonstrate liability, and mitigate or eliminate damages.

3 An evaluation of the Settlement benefits should be tempered by the recognition that any
4 compromise involves concessions on the part of the settling parties. That the Class potentially could
5 have recovered more after trial does not preclude finding the Settlement within the "range of
6 reasonableness" warranting approval. *See, e.g., Cahill v. San Diego Gas & Elec. Co.*, 194 Cal. App.
7 4th 939, 966-67 (2011) (finding that the settlement amount equal to one half of one percent of total
8 damages was "in the ballpark" of reasonable settlements when the risks of smaller or no recovery at
9 trial were considered). Still, by any measure, the recovery of \$36.5 million represents an extremely
10 favorable result for the Class under the circumstances of this case. Plaintiff estimates this amount
11 represents between 40% and 65% of the Class's recoverable damages. Joint Decl., ¶ 28. As detailed
12 in the Joint Declaration, Plaintiff derived this estimate in consultation with causation and damages
13 experts on the basis of standard damages methodologies and accounting for Defendants' various
14 negative causation and related damages arguments. *Id.*

15 The settlement recovery achieved here falls well above the median recovery in Securities Act
16 cases, which, according to Cornerstone Research, amounts to 8.7% of statutory damages. Joint Decl.,
17 ¶ 28. The outsized percentage recovery achieved here through the exhaustive efforts of Plaintiff and
18 Class Counsel is particularly exceptional in light of the heightened causation and damages risks
19 presented by the facts of this case. Unlike most Securities Act actions following a merger, here certain
20 Defendants and related entities announced a go-private tender offer at near the same offering price as
21 the Merger at the heart of this Action. Joint Decl., ¶ 29. While the Parties disputed the relevance and
22 impact of these unusual developments upon liability and damages, Plaintiff properly assessed the risk
23 that these uncommon circumstances would offset, extinguish, or otherwise result in the Class
24 receiving a much smaller recovery if litigation were to proceed. *Id.* In addition, Defendants would
25 argue that the declines in Maxar's stock price were caused in whole or part by factors other than the
26 misrepresentations and omissions alleged by Plaintiff, and this risk was particularly acute given the
27 facts of this case. Unlike certain cases where a single, easily cabined piece of news is followed by a
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1 single, directly attributable stock decline on a single day, in this case a wide array of information was
2 disclosed by Defendants during the relevant time in connection with the relevant declines. To what
3 extent particular stock declines were or were not attributable to the alleged misrepresentations and
4 omissions, and further, to what extent, if any, confounding information in connection with certain
5 dates and declines would need to be disaggregated, were hotly contested issues that were unlikely to
6 be resolved short of competing expert testimony and trial. If Plaintiff's arguments as to these issues
7 were not accepted by the Court or a jury, in whole or part, the potential recovery could have been
8 dramatically limited. *Id.* Although Plaintiff retained a well-respected expert to address damages and
9 causation under the circumstances of this case, Defendants similarly put forth their own experts who
10 intended to argue the contrary. Numerous issues of disclosure, materialization of the risk, leakage,
11 ostensibly resulting stock price movement, stock market price versus stock value, negative causation,
12 and damages would be the subject of a complex "battle of the experts" and up to a jury to decide. *Id.*
13 Although the collective risks were real, Plaintiff and Class Counsel proceeded undeterred by the novel
14 issues, invested the time and resources to thoroughly research and understand the strength of their
15 claims and theories in this unique factual context, and thus were well-positioned to factor these risks
16 into their assessment of the claims, defenses, and eventual Settlement. Joint Decl., ¶ 31.

17 Class Counsel, having carefully considered and evaluated, *inter alia*, the legal authorities and
18 extensive evidence adduced to date relevant to Plaintiff's claims, the likelihood of prevailing, the
19 risk, expense, and duration of continued litigation, and the likely appeals and other proceedings that
20 would follow a trial, believe the Settlement is fair, reasonable, and adequate and in the best interest
21 of the Class.⁵ Class Counsel have significant experience in complex class action litigation and have
22 negotiated scores of class action settlements throughout the country. *See* Joint Decl., Exs. 3, 4.

23 _____
24 ⁵ *See Odrick v. UnionBanCal Corp.*, No. C 10-5565 SBA, 2012 U.S. Dist. LEXIS 171413, at
25 *6-8 (N.D. Cal. Dec. 3, 2012). It is neither for the court to reach any ultimate conclusions regarding
26 the merits of the dispute, nor to second guess the settlement terms. *Officers for Justice v. Civil Serv.*
27 *Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("[T]he court's intrusion upon what is otherwise a private
28 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
reasonable and adequate to all concerned.").

1 Because it is well established that the “court undoubtedly should give considerable weight to the
2 competency and integrity of counsel” when evaluating a settlement, Class Counsel’s endorsement of
3 the Settlement further supports its reasonableness. *Kullar*, 168 Cal. App. 4th at 129; *see Nat’l Rural*
4 *Telecommc’ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“‘Great weight’ is
5 accorded to the recommendation of counsel, who are most closely acquainted with the facts of the
6 underlying litigation.”) (citation omitted).

7 For these reasons, the Court should permit notice of the terms of the Settlement to be given to
8 the Class and schedule a hearing to consider any views stated by Class Members regarding the
9 fairness of the Settlement, the Plan of Allocation, and Class Counsel’s request for an award of
10 attorneys’ fees and expenses. *See generally 4 Rubenstein and Newberg on Class Actions* § 13:13.

11 **V. THE NOTICE PROGRAM SATISFIES CALIFORNIA LAW AND DUE PROCESS**

12 The proposed Notice follows the customary procedure in securities actions and should be
13 approved. Due process requires “notice plus an opportunity to be heard and participate in the
14 litigation.” *Epstein v. MCA, Inc.*, 179 F.3d 641, 649 (9th Cir. 1999). In *Phillips Petroleum Co. v.*
15 *Shutts*, 472 U.S. 797 (1985), the Supreme Court held that due process is satisfied “where a fully
16 descriptive notice is sent first-class mail to each class member, with an explanation of the right to
17 ‘opt out.’” *Id.* at 812. Under California law, notice of settlement must have “‘a reasonable chance of
18 reaching a substantial percentage of the class members.’” *Wershba*, 91 Cal. App. 4th at 251. Here,
19 the Notice will be mailed by first-class mail to all persons who fall within the definition of the Class
20 and whose names and addresses can be identified from Maxar’s transfer records, with remailings of
21 returned mail to be performed based on skip traces. Joint Decl., ¶ 40. In addition, the Claims
22 Administrator will send letters to entities which commonly hold securities in “street name” as
23 nominees for the benefit of their customers who are the beneficial holders of the shares. *Id.* The
24 Parties further propose to supplement the mailed Notice with a Summary Notice to be published in
25 *The Wall Street Journal* and a national newswire service. *Id.* The Notices are attached to the
26 Stipulation as Exhibits 1.A-1 and 1.A-3. *See* Joint Decl., Ex. 1.A-1, 1.A-3. The Claims Administrator
27 will also establish a dedicated website where relevant information and documents can be found, as
28

1 well as a toll-free telephone number for putative Class Members to call with any questions. Joint
2 Decl., ¶ 40.

3 The form and substance of the Notice also are standard and sufficient. California law requires
4 that the “notice given to the class must fairly apprise the class members of the terms of the proposed
5 compromise and of the options open to dissenting class members.” *Wershba*, 91 Cal. App. 4th at
6 251-52 (citation omitted); *see also* Cal. R. Ct. 3.769(f). Here, the Notice describes the nature of the
7 Action; sets forth the definition of the Class; states the Class’s claims; and discloses the rights of
8 Class Members to object to the Settlement or to exclude themselves from the Class, as well as the
9 deadline and procedure for doing so, and warns of the binding effect of the settlement approval
10 proceedings on Class Members who do not exclude themselves. In addition, the Notice describes the
11 Settlement; discloses the Settlement Amount; explains the proposed Plan of Allocation; sets out the
12 amount of attorneys’ fees and expenses that Plaintiff’s Counsel intend to seek in connection with final
13 settlement approval; sets out the amount that Plaintiff intends to seek for his efforts in representing
14 the Class; provides contact information for Class Counsel, including telephone numbers; and
15 summarizes the reasons that the Parties are proposing the Settlement. Joint Decl., Ex. 1.A-1. The
16 Notice also discloses the date, time, and place of the Settlement Fairness Hearing. Thus, the notice
17 program satisfies California law and due process. Joint Decl., Ex. 1.A at ¶ 11.

18 Finally, Plaintiff proposes that the Court appoint A.B. Data Ltd (“A.B. Data”) as the Claims
19 Administrator for the Settlement. A.B. Data has already been approved in connection with class
20 certification notice earlier in this Action, and has served as a trusted and efficient class action claims
21 administrator for over 30 years. *See* Joint Decl., ¶ 42; [https://abdataclassaction.com/about-us/our-](https://abdataclassaction.com/about-us/our-story/)
22 [story/](https://abdataclassaction.com/about-us/our-story/).⁶

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27 ⁶ *See also* [https://abdataclassaction.com/2021/09/a-b-data-remains-a-top-claims-administrator-for-](https://abdataclassaction.com/2021/09/a-b-data-remains-a-top-claims-administrator-for-2020/)
28 [2020/](https://abdataclassaction.com/2021/09/a-b-data-remains-a-top-claims-administrator-for-2020/).

1 **VI. SCHEDULING THE SETTLEMENT FAIRNESS HEARING**

2 If the Court grants preliminary approval of the Settlement, Plaintiff respectfully requests the
3 Court establish the following schedule of events, which is consistent with the proposed Preliminary
4 Approval Order:

Event	Proposed Deadline
Defendant Maxar to cause shareholder list to be provided to Claims Administrator	Within 14 days after Preliminary Approval
Claims Administrator to complete mailing of Notice and Proof of Claim to Class Members (“Notice Date”)	Within 21 days after Preliminary Approval
Notice to be published in <i>Wall Street Journal</i>	Within 10 days after Notice Date
Notice and other documents to be posted on Settlement Website	Within 14 days after Notice Date
Motion for final settlement approval and application for attorneys’ fees and expenses and payment to Class Representative	Within 46 days after Notice Date
Opt-out and objection deadline	60 days after Notice Date
Last day to submit a Proof of Claim	90 days after Notice Date
Reply papers in support of final settlement approval and application for attorneys’ fees and expenses and payment to Class Representative	At least 7 days before Settlement Fairness Hearing
Class Counsel to file proof of mailing and publication of Notice	At least 7 days before Settlement Fairness Hearing
Settlement Fairness Hearing	At least 45 days after opt-out and objection deadline

22 **VII. CONCLUSION**

23 For all these reasons, Plaintiff and Class Counsel believe the Settlement is an excellent result
24 for the Class. Plaintiff therefore respectfully requests that the Court grant preliminary approval and
25 enter the Notice Order.

1 DATED: May 5, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2023, I served the foregoing document on all counsel on record through One Legal LLC’s e-filing system.

/s/ Adam E. Polk _____