UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 17-00118 AG (DFMx)	Date	May 31, 2018
Title	IN RE BANC OF CALIFORNIA SECURITIES LITIGATION		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER GRANTING MOTION TO CERTIFY CLASS**

Several lawsuits were filed against Defendants Banc of California, a financial holding company, and its former CEO Steven A. Sugarman purporting to allege securities fraud claims under the Securities Exchange Act of 1934 (referred to as the "Exchange Act" for short) and Rule 10b–5 adopted by the Security and Exchange Commission ("SEC") to implement the Exchange Act. Those lawsuits were consolidated and Iron Workers Local No. 25 Pension Fund was appointed as lead plaintiff. (Dkt No. 39.) In this order, the Court will refer to the lead plaintiff as "the Fund." Defendants later filed motions to dismiss, but the Court determined that the plaintiffs had sufficiently stated a claim under Federal Rule of Civil Procedure 12(b)(6). (*See* Dkt. No. 68.) Now the Fund moves for class certification under Federal Rule of Civil Procedure 23(b)(3). (*See* Dkt. Nos. 91–94.) Defendant Banc opposes the Fund's motion (Dkt. No. 141) and Defendant Sugarman filed a notice of joinder in Banc's opposition (Dkt. No. 142.)

The Court GRANTS the Fund's motion for class certification. (Dkt. Nos. 91, 94.)

1. BACKGROUND

The Court has described the allegations in the consolidated complaint in some detail in earlier orders. (*See, e.g.*, Order Denying Defs.' Mot. to Dismiss, Dkt. No. 68.) The background provided here will be more succinct.

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The Fund alleges that Defendants misled their investors by concealing ties between Sugarman and notorious securities fraudster, Jason Galanis. The Fund relies on the Sugarman biography filed on April 15, 2016 with Banc's 2015 Proxy. Among other things, the Fund alleges that Sugarman's biography "touted his involvement" with COR, the entity that was responsible for the recapitalization of Banc, and related entities, "but failed to disclose the ties Sugarman and those companies had to Galanis." (Consolidated Compl., Dkt. No. 41 at ¶ 68.)

On October 18, 2016, a blog post published on the website SEEKINGALPHA purportedly revealed those alleged ties, and the value of Banc's stock dropped 29%. (Dkt. No. 41 at ¶¶ 5–7.) And later, two Banc public statements involving Banc's investigations into Sugarman's ties to Galanis allegedly caused the stock value to drop further: by another 5% after a November 16, 2016 statement, and then again by 9% after a January 23, 2017 statement. (*Id.* at ¶¶ 87–90.)

The Fund describes the proposed class as follows.

> All persons and entities who purchased or otherwise acquired the common stock of Banc of California, Inc. ("Banc" or the "Company") during the period from April 15, 2016 through January 20, 2017, inclusive (the "Class Period"), and were damaged thereby. Excluded from the Class are Defendants, present or former executive officers and directors of Banc and their immediate family members (as defined in 17 C.F.R. §229.404, Instructions (1)(a)(iii) and (1)(b)(ii)).

(Mem. in Supp. of Pl.' Mot. for Class Certification, Dkt. No. 92 at 1.) The Fund is also the proposed class representative. Early on, the Fund filed a "Certification of Named Plaintiff Pursuant to Federal Securities Laws," certifying that it had reviewed the complaint, that it had made specific Banc stock purchases, which were not made "at the direction of . . . counsel or in order to participate" in any securities law litigation, and that it was willing to serve as class representative. (Dkt. No. 18-2.) And Schedule A to the Certification shows that the Fund purchased 14,905 shares of Banc stock between May 5, 2016 and October 11, 2016 and sold its Banc stock on October 18 and 19, 2016, at a significant loss. (Dkt. No. 18-2.)

The Fund asks the Court to appoint as class counsel Robbins Geller Rudman & Dowd LLP, which filed the consolidated complaint and has since represented the Fund in motions before this Court as well as in discovery matters. (Dkt. No. 92 at 1, 24.)

2. PRELIMINARY ISSUES

The Fund submitted an expert report with its motion, Banc submitted its own expert report with its opposition, and the Fund submitted a rebuttal expert report with its reply. (Dkt. Nos. 93-3, 141-2, 164-1.) Then a few days before the hearing on this motion, Banc filed a request for leave to file its own rebuttal expert report, asserting a need to address evidence that the Fund improperly submitted for the first time in its rebuttal report. (Dkt. No. 177.) But since the Court hasn't considered the Fund's rebuttal expert report in ruling on this motion, Banc doesn't need to reply to that report.

Banc's request for leave to file a rebuttal expert report is DENIED. (Dkt. No. 177.)

3. LEGAL STANDARD

Federal Rule of Civil Procedure 23 governs class actions, which are "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (citing *Califano v. Yamasaki,* 442 U.S. 682, 700–01 (1979)). This exception is only justified if certain requirements are met.

First, a plaintiff seeking class certification must show that a proposed class satisfies the four elements of Federal Rule of Civil Procedure 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation by the class representatives and class counsel. Fed. R. Civ. P. 23(a). All of these elements must be satisfied for a class to be certified.

Second, a plaintiff seeking class certification must show that a proposed class satisfies the requirements of at least one of three subsections of Rule 23(b). Certification under Rule 23(b)(3) requires a court to find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

"Rule 23 does not set forth a mere pleading standard." *Dukes*, 564 U.S. at 350. "The plaintiff seeking class certification bears the burden of demonstrating that all the requirements of Rule

23 have been met." *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 690 (9th Cir. 2018) (citing *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1188 (9th Cir.), *opinion amended on denial of reh'g*, 273 F.3d 1266 (9th Cir. 2001)). Plaintiffs must thus demonstrate through evidentiary proof that the class meets the prerequisites of Rule 23(a) and at least one of the provisions of Rule 23(b). *See Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *In re Hyundai*, 881 F.3d at 690.

A court's class certification analysis must be "rigorous," and will frequently overlap with the merits of plaintiffs' underlying claim. *Comcast*, 569 U.S. at 33 (citing *Dukes*, 564 U.S. at 351). Still, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.* (citing *Dukes*, 564 U.S. at 351 n.6.)

"An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B).

4. ANALYSIS

4.1 Numerosity

Under Rule 23(a)(1), a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[I]mpracticability does not mean impossibility," it means that joinder of all class members must be difficult or inconvenient. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir. 1964) (*quoting Advertising Specialty Nat. Ass'n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956) (internal quotation marks omitted)). It's generally accepted that when a proposed class has at least forty members, joinder is presumptively impracticable based on numbers alone. See *Nguyen v. Radient Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012); *Glover v. City of Laguna Beach*, No. SACV 15-01332 AG (DFMx), 2017 WL 4457507, at *3 (C.D. Cal. Jun. 23, 2017); 1 William B. Rubenstein, Newberg on Class Actions § 3:12 (5th ed.).

According to the Fund's expert, Zachary Nye, Ph.D., during the class period there were between 43.9 and 49.6 million Banc shares issued and outstanding, with an average trading volume of about five million a week. (Nye Decl., Dkt. No. 93-3 at ¶ 24.) "Given this trading volume, common sense dictates that the proposed class is surely sufficiently large to make joinder impracticable." *Maiman v. Talbott*, No. SACV 09-00012 AG (ANx), 2011 WL 13065750, at *3 (C.D. Cal. Aug. 29, 2011); *see also In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 634 (N.D. Cal. 2009). The proposed class satisfies the numerosity requirement.

4.2 Commonality

Rule 23(a)(2) requires that "there are questions of law and fact common to the class." The common questions must be capable of class-wide resolution. *Dukes*, 564 U.S. at 350. But "Plaintiffs need not show that every question in the case, or even a preponderance of questions, is capable of classwide resolution. So long as there is 'even a single common question,' a would-be class can satisfy the commonality requirement of Rule 23(a)(2)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 359.)

"Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest . . . which is not defeated by slight differences in class members' positions." *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975). Here, the Fund mentions multiple common questions, including whether Defendants violated the Exchange Act, and whether Defendants omitted or misrepresented material facts. (Dkt. No. 92 at 9.) And there are other questions that are capable of classwide resolution as well. Among those is the question that Banc has focused on since the beginning of this litigation: whether the October 18, 2016 blog post was a corrective disclosure. In short, the proposed class satisfies the commonality requirement.

4.3 Typicality

The "claims or defenses of the representative parties" must be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (internal quotation marks omitted). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Here, all putative class members allegedly suffered injuries based on Defendants' misrepresentations in the 2015 Banc Proxy. There's nothing to suggest that the Fund's injury is unique in any way, or that Defendants may have affirmative defenses against the Fund that wouldn't apply to the rest of the class. That's enough for typicality.

4.4 Adequacy of Representation

As the proposed class representative, the Fund must be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To assess the Fund's ability in this regard, the Court must answer two questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

The Fund's "Certification of Named Plaintiff Pursuant to Federal Securities Laws" sufficiently establishes that there's no conflict of interest between the Fund and the rest of the class. (*See* Dkt. No. 18-2.) And as already mentioned in the Court's order consolidating the underlying cases, the Fund has the largest financial interest in this action, which is a strong incentive to prosecute it vigorously. (Dkt. No. 39 at 2–3.) The Court actually need not speculate about the willingness of the Fund and its counsel to vigorously prosecute this case, but only look at all the activity on the docket, which has over 110 entries since the Court denied Defendants' motion to dismiss about seven months ago, including three pending discovery motions. It's also worth noting that on the consolidation motion, all named plaintiffs and movants agreed that the Fund was the most appropriate lead plaintiff. (*Id.* at 2.) The Court is satisfied that the Fund will adequately represent the interests of the class.

The Fund has met its burden regarding all four prerequisites of Rule 23(a). The Court now turns to the requirements of Rule 23(b)(3).

4.5 Predominance

"The predominance inquiry of Rule 23(b)(3) asks 'whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *In re Wells Fargo Home Mortg. Overtime Pay*

Litig., 571 F.3d 953, 957 (9th Cir. 2009) (quoting *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than an individual basis." *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted).

"Considering whether 'questions of law or fact common to class members predominate' begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804 (2011) ("*Halliburton I*") (quoting Fed. R. Civ. P. 23(b)(3)). As the Court explained on Defendants' motions to dismiss, the Fund asserts a first claim for violation of § 10(b) of the Exchange Act and SEC Rule 10b–5, and a second claim for violation of § 20(a) of the Exchange Act, with all parties agreeing that the fate of the second claim depends on the fate of the first. So focusing on the first claim, to prevail the plaintiffs will ultimately have to prove (1) a material misrepresentation or omission by the defendant, (2) "scienter," (3) a connection between the misrepresentation or omission and the purchase or sale of a security, (4) reliance on the misrepresentation or omission, (5) economic loss, and (6) loss causation. *See In re Rigel Pharm., Inc. Sec. Litig.*, 697 F.3d 869, 876 (9th Cir. 2012) (citing *Stoneridge Inv. Partners, LLC v. Scientific–Atlanta, Inc.,* 552 U.S. 148, 157 (2008)). "Scienter" is a term of art describing "an intent to deceive, manipulate, or defraud." Scienter, Black's Law Dictionary (10th ed. 2014).

Defendants argue that common issues do not predominate because of uncommon questions concerning both liability and damages. The Court assesses each argument in turn.

4.5.1 Liability

In a putative securities fraud class action, some questions are necessarily common to the class because they depend on defendants' actions, not those of any class member: whether defendants made a material misrepresentation or omission, and whether defendants acted with the required intent to defraud. The Supreme Court has also made clear that plaintiffs need not prove loss causation or price impact at the class certification stage. *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2406, 2414 (2014) ("*Halliburton II*"); *Halliburton I*, 563 U.S. at 813. The crucial issue for predominance in a securities fraud case is therefore reliance.

Requiring proof of individualized reliance from each member of a proposed class would effectively prevent plaintiffs from proceeding with a class action under Rule 23(b)(3), since individual issues would overwhelm the common ones. *Halliburton II*, 134 S. Ct. at 2407–08; *Basic Inc. v. Levinson*, 485 U.S. 224, 242 (1988). But securities fraud plaintiffs can in certain circumstances satisfy the reliance element of a Rule 10b–5 action by invoking a rebuttable presumption of reliance based on what's called the "fraud-on-the-market" theory, rather than by proving direct reliance on a misrepresentation. *Halliburton II*, 134 S. Ct. at 2408. The fraud-on-the-market theory "holds that 'the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations.'" *Id.* (citing *Basic*, 485 U.S. at 246).

To successfully invoke the fraud-on-the-market theory, plaintiffs must show "(1) that the alleged misrepresentations were publicly known, (2) that they were material, (3) that the stock traded in an efficient market, and (4) that the plaintiff traded the stock between the time the misrepresentations were made and when the truth was revealed." *Halliburton II*, 134 S. Ct. at 2408 (citation omitted). "The burden of proving those prerequisites still rests with plaintiffs and (with the exception of materiality) must be satisfied before class certification." *Id.* at 2412. Even when plaintiffs' evidence considered alone is enough to satisfy that burden though, defendants may introduce rebuttal evidence to show that the criteria just mentioned aren't actually satisfied. *See id.* at 2408, 2414–15.

So the Court now evaluates the arguments and evidence that the Fund has presented to satisfy its burden regarding the three fraud-on-the-market theory prerequisites it must prove at this stage. First, the relevant misrepresentations here are from Banc's 2015 Proxy filed with the SEC. The Proxy was therefore itself "publicly-filed," and it had to reflect the proxies sent out to individual shareholders. *See* 17 C.F.R. § 240.14a-3. The alleged misrepresentations were clearly "publicly known." *See Halliburton II*, 134 S. Ct. at 2408. Second, Schedule A to the certification submitted by the Fund as a named plaintiff in a putative securities fraud class action (Dkt. No. 18-2) shows that the Fund "traded the stock between the time the misrepresentations were made and when the truth was revealed." *See id.* Finally, the key evidence that the Fund submit is the report of Zachary Nye, Ph.D., an expert retained by the Fund's counsel. (Nye Report, Dkt. No. 93-3.) Nye's resume and experience sufficiently establish his qualification as an expert witness, which Defendants don't dispute. *See* Fed. R. Evid. Rule 702. The documents that form the basis of Nye's report are properly attached as exhibits when necessary. The report thus demonstrates that many signs of an "efficient market" are present here. *See Halliburton II*, 134 S. Ct. at 2408.

For one thing, throughout the proposed class period Banc stock was traded on the New York Stock Exchange, or "NYSE," which is the largest secondary trading market in the world. (Dkt. No. 93-3 at ¶ 17.) Further, the report supports a finding of what's commonly called the "*Cammer* factors," five non-exclusive indicators of an efficient market listed in *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989), and routinely among the factors considered by federal courts to assess market efficiency. *See, e.g.*, *ScripsAmerica, Inc. v. Ironridge Glob. LLC*, 119 F. Supp. 3d 1213, 1252 (C.D. Cal. 2015) ("Courts typically apply the five factors set forth in [*Camer*] in assessing whether a particular stock meets the efficient market requirement."); 1 Joseph M. McLaughlin, McLaughlin on Class Actions § 5:26 (14th ed.) ("Courts generally consider up to eight factors (the first five generally known as the *Cammer* factors . . .) in determining whether a security trades in an efficient market, so as to justify application of the fraud-on-the-market doctrine").

> The *Cammer* factors address first, whether the stock trades at a high weekly volume; second, whether securities analysts follow and report on the stock; third, whether the stock has market makers and arbitragers; fourth, whether the company is eligible to file SEC registration form S-3, as opposed to form S-1 or S-2; and fifth, whether there are empirical facts showing a cause and effect relationship between unexpected corporate events or financial releases and an immediate response in the stock price.

ScripsAmerica, 119 F. Supp. at 1252 (citation omitted); *see also Cammer*, 711 F. Supp. at 1285–87. The Court addresses the evidence presented for each factor in turn.

First, during the relevant class period, Banc stock traded at an average weekly volume of about five million, while there were 43.9 to 49.6 million Banc shares issued and outstanding. (Dkt. No. 93-3 at ¶ 24.) In other words, the average weekly turnover rate during the class period was about 10%. "Turnover measured by average weekly trading of two percent or more of the outstanding shares would justify a strong presumption that the market for the security is an efficient one; one percent would justify a substantial presumption." *Cammer*, 711 F. Supp. at 1285–87 (citation omitted). The weekly trading volume here favors market efficiency.

Second, a search of three databases revealed 59 reports during the proposed class period from a dozen securities analysts including well-known firms like Bank of America Merrill Lynch, FIG Partners, Sandler O'Neill & Partners, UBS Equities, and Wells Fargo Securities. (Dkt. No. 93-3 at ¶ 30 & Exs. 5A–5B.) Nye also notes that stories involving Banc appeared during the relevant period in numerous news articles, and that all of Banc's SEC filings were available at no cost on the SEC's EDGAR website. (*Id.* at ¶¶ 31–32.) The number of securities analysts following and reporting on Banc stock during the class period favors market efficiency (as does the extent of Banc news coverage in general).

Third, Banc stock was traded on the NYSE, where all traded securities are assigned to a "designated market maker" or "DMM." (Dkt. No. 93-3 at ¶ 35.) During the relevant period, Banc's DMM was Global Trading Systems, which acquired the trading business of Banc's former DMM, Barclays Capital. (*Id.*) The NYSE imposes specific obligations on DMMs to maintain fair and orderly markets for their assigned securities. (*Id.*) The oversight of a DMM favors market efficiency.

Fourth, Banc was eligible during the proposed class period to file documents with the SEC on Form S-3, a simplified registration form that the SEC reserves for companies that meet specific requirements, including regarding how their stock is held. (Dkt. No. 93-3 at ¶¶ 46, 48.) In fact, Banc filed on Form S-3 both before and during the proposed class period. (*Id.* at ¶ 48.)

And fifth, Nye conducted an event study "showing a cause-and-effect relationship between unexpected corporate events or financial releases and the price reaction of Banc of California stock." (Dkt. No. 93-3 at 22.) Event studies are "regression analyses that seek to show that the market price of the defendant's stock tends to respond to pertinent publicly reported events." *Halliburton II*, 134 S. Ct. at 2415. For his event study, Nye selected six events. (Dkt. No. 93-3 at ¶¶ 52–53 & Ex. 12.) The first two are 2016 quarterly earnings releases and conference calls. (*Id.*, Ex 12 at 1.) Neither event corresponds with any significant impact of Banc stock value. The other four events are the release of statements regarding Sugarman's ties to Galanis: the three sets of statements that the Fund alleges revealed the truth about those ties (one blog post and two Banc press releases), and one Banc press release *refuting* alleged ties between Sugarman and Galanis. That press release came out after the October 18, 2016 blog post, but before the two Banc press releases alleged to be corrective disclosures. What's particularly compelling about Nye's report is that it shows not only a drop in Banc stock price within one day of the three purported corrective disclosures, it also shows that Banc stock price *increased* by 17 to 18% within one day of the Banc press release refuting alleged ties between Sugarman and Galanis. The Court finds Nye's event study sufficient to show a causal relationship "between unexpected corporate events or financial releases and the price reaction of Banc of California stock," which therefore also favors a finding of market efficiency. (*See* Dkt. No. 93-3 at 22.)

Considering the Fund's evidence on the five *Cammer* factors and other indicators of market efficiency, the Court determines that the Fund has met its burden of demonstrating that Banc stock was traded in an efficient market. Accordingly, the Fund has generally met its burden at this stage to invoke the fraud-on-the-market theory.

But Banc contends that it has introduced rebuttal evidence "countering" the Fund's "showing of market efficiency." *See Halliburton II*, 134 S. Ct. at 2414–15. The Court determines that Banc's evidence doesn't rebut the Fund's showing. Banc hasn't attempted to refute five of the six signs of market efficiency that the Fund showed. The report of Banc's retained expert, Alexander Aganin, Ph.D., does challenge some of Nye's opinions on price impact, although somewhat indirectly. (*See, e.g.*, Opp'n, Dkt. No. 141 at 12.) But overall, Aganin mostly takes a different approach regarding market efficiency. Aganin's opinion is that the information in the three alleged corrective disclosures was already publicly available, so the fact that the market didn't react to that information sooner shows that the market wasn't properly absorbing information and therefore wasn't efficient. (*See* Aganin Report, Dkt. No. 141-2.)

But reviewing the publicly available information that Aganin's opinion relies on shows that his opinion isn't an effective rebuttal to a showing of market efficiency here. For example, Banc says that a September 7, 2016 Bloomberg article revealed alleged ties between Galanis and Sugarman. But what the article actually said was, "The Sugarmans weren't accused of any involvement in the alleged scam, Steven Sugarman said his company had no role, and there's no direct link between Galanis and the bank or its CEO." Jennifer Surane, Zeke Faux & Dakin Campbell, *CEO Helps Brother, Again, With $100 Million Soccer Stadium Deal*, BLOOMBERG (Sep. 7, 2016, 5:00 AM EST), https://www.bloomberg.com/news/articles/2016-09-07/ceo-helps-brother-again-with-100-million-soccer-stadium-deal. So the article took the position that

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there were no ties between Galanis and Sugarman, which is the opposite of what the October 18, 2016 blog post said. Other information relied on by Aganin includes statements available in court filings somewhere on PACER. (*See* Dkt. No. 141-2 at ¶ 45.)

So considering that Aganin's opinion relies on information that's different in kind from the information in the October 18, 2016 blog, and considering where and how some of that information was made available to the public, the Court concludes that Aganin's opinion, and Banc's arguments, don't rebut the Fund's showing of market efficiency. Rather they go to issues of materiality and loss causation that are inappropriate to decide on a certification motion.

Ultimately, *Basic*'s fraud-on-the-market theory is a rebuttable presumption of classwide reliance on "material misrepresentations aired to the general public" in an efficient market and thus "publicly known," through the class's reliance "on the security's market price as an unbiased assessment of the security's value in light of all public information." *See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 461–63, 471 (2013) (citing *Basic*, 485 U.S. at 241–249). Here, since Banc has failed to rebut the Fund's showing of market efficiency, the proposed class may invoke the fraud-on-the market theory.

4.5.2 Damages

Banc also argues that the Fund fails to meet its burden to show predominance because the Nye report submitted with the Fund's motion doesn't establish a damages model. Without a damages model, Banc says, individual damages issues would predominate. This second argument is as unavailing as the first. It's well settled that "the presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)." *Leyva v. Medline Indus.*, 716 F.3d 510, 514 (9th Cir. 2013). So damages models are only required when they're necessary to isolate damages by liability theory. *See id.* (citing *Comcast*, 133 S. Ct. at 1435.) But this case isn't so complicated as to require damages models to separate liability theories. Banc thinks that it is, based on its argument that "confounding information" had already been made public at the time of the alleged disclosures. But for reasons already mentioned in this and previous orders, this argument is unpersuasive considering the evidence now before the Court. And it's not the Fund's burden at this stage to disprove the theory that Banc is presenting for the third time now, since the Fund doesn't have to prove loss causation at the certification stage. *See Halliburton I*, 563 U.S. at 813.

In conclusion, the Court finds that the Fund has satisfied its burden to show that common questions predominate in this case.

4.6 Superior Method of Adjudication

Class actions certified under Rule 23(b)(3) must be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem Prods. v. Windsor*, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23(b)(3)). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Id.* at 617. Rule 23(b)(3) lists four non-exclusive factors relevant to the Court's decision on whether a class action is superior to other forms of litigation: (1) the class members' interest in controlling the litigation individually; (2) the extent of any pending litigation involving class members and the current controversy; (3) the effect of litigating all the claims in this forum; and (4) the difficulty in managing the case as a class action. Fed. R. Civ. P. 23(b)(3).

A stock price drop for one company doesn't have a large economic impact on an investor who only owns a small number of shares. So all the small investors in the class, and likely many less small, will substantially benefit from having an institutional investor like the Fund, with its considerable monetary interest, in charge of prosecuting this case. And the Court isn't aware of any other pending § 10(b) litigation based on these facts. Finally, the Court doesn't foresee difficulty in managing this case as a class action. To the extent proposed subclasses may become necessary as the parties address the common questions in this case, the Court can amend the class order later. *See* Fed. R. Civ. P. 23(c)(1)(C).

4.7 Class Counsel

The Fund asks the Court to appoint its attorneys, from the law firm Robbins Geller Rudman & Dowd LLP (or "Robbins Geller"), as class counsel. In appointing class counsel, the Court considers (1) the work done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1).

The Court is familiar with the work of Robbins Geller lawyers from other cases where it appointed that firm class counsel. *See, e.g.*, SACV 15-0865 AG (JCGx), *HsingChing Hsu v. Puma Biotechnology, Inc. et al.* The Court's experience dealing with Robbins Geller has been satisfactory, as the firm resume suggests it would be. (*See* Dkt. No. 93-2.) And as already mentioned, the work of Robbins Geller lawyers in this case so far indicates that the Court can again expect that Robbins Geller lawyers will effectively help the class representative vigorously prosecute this case. In short, the Court concludes that the Fund's attorneys will "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4).

5. DISPOSITION

The Court GRANTS the Fund's motion for class certification. (Dkt. Nos. 91, 94.)

The Court certifies a class defined as follows.

> All persons and entities who purchased or otherwise acquired the common stock of Banc of California, Inc. ("Banc" or the "Company") during the period from April 15, 2016 through January 20, 2017, inclusive (the "Class Period"), and were damaged thereby. Excluded from the Class are Defendants, present or former executive officers and directors of Banc and their immediate family members (as defined in 17 C.F.R. §229.404, Instructions (1)(a)(iii) and (1)(b)(ii)).

The Court further appoints Iron Workers Local No. 25 Pension Fund as class representative, and Robbins Geller Rudman & Dowd LLP lawyers as class counsel.

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