SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 7, Honorable Charles F. Adams Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2170

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department7@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

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- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
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- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS
DATE: MARCH 7, 2024 TIME: 1:30 P.M.
PREVAILING PARTY SHALL PREPARE THE ORDER
UNLESS OTHERWISE STATED (SEE RULE OF COURT 3.1312)

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LAW AND MOTION TENTATIVE RULINGS

LINE #	CASE #	CASE TITLE	RULING
LINE 1	2015-1-CV-285182	California Water Curtailment Cases (JCCP 4838)	This hearing was previously vacated pursuant to a stipulation of the parties filed on February 6, 2024.
LINE 2	2015-1-CV-285182	California Water Curtailment Cases (JCCP 4838)	This hearing was previously vacated pursuant to a stipulation of the parties filed on February 6, 2024.
LINE 3	22CV399353	Ocanas v. Catholic Charities of Santa Clara County (Class Action)	See Line 3 for tentative ruling.
LINE 4	19CV353132	In Re HPE Enterprise Services-DXC Technology Co. Merger Litigation (LEAD CASE; Consolidated w/ Case No. 19CV359073)	See Line 4 for tentative ruling.

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LAW AND MOTION TENTATIVE RULINGS

LINE 5	19CV353132	In Re HPE Enterprise Services-DXC Technology Co. Merger Litigation (LEAD CASE; Consolidated w/ Case No. 19CV359073)	See Line 4 for tentative ruling.
LINE 6	21CV385965	Frayle v. Barrita Corporation (Class Action)	RESET to July 11, 2024 at 1:30 p.m.
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Line 1

Case Name:
Case No.:

- oo0oo -

Calendar Line 2

Case Name:
Case No.:

- oo0oo -

Calendar Line 3

Case Name: *Sonya Ocanas v. Catholic Charities of Santa Clara County, et al.*
Case No.: 22CV399353

This is a putative class and Private Attorneys General Act ("PAGA") action. Plaintiff Sonya Ocanas alleges that Defendant Catholic Charities of Santa Clara County failed to provide employees with required meal and rest periods and committed other wage and hour violations.

Before the Court is Plaintiff's motion for final approval of settlement, which is unopposed. As discussed below, the Court GRANTS the motion, with litigation costs limited to $10,000.

I. BACKGROUND

Defendant employed Plaintiff and other non-exempt employees in California, and continues to do so. (First Amended Consolidated Class Action Complaint ("FAC"), ¶¶ 26-27.) Plaintiff alleges that Defendant failed to pay minimum and overtime wages for all hours worked at the correct rate and within the required time. (*Id*., ¶ 29.) Plaintiff and other employees did not receive all required meal and rest periods or premiums. (*Id*., ¶¶ 30-31.) They were not reimbursed for business expenses and were not provided with accurate itemized wage statements. (*Id.*, ¶¶ 32-33.) Employees were not timely paid all wages due upon separation of employment. (*Id*., ¶ 34.)

Based on these allegations, Plaintiff asserts the following putative class claims: (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay wages during employment; (8) failure to pay all wages due upon separation of employment; and (9) violation of Business & Professions Code section 17200 et seq. Plaintiff also brings (10) a representative claim for PAGA penalties.

Plaintiff now moves for an order: granting final approval of the settlement; awarding class counsel's attorney's fees of up to one-third of the gross settlement amount and reimbursement of their litigation costs; awarding Plaintiff an incentive award of up to $10,000; approving $37,500 to the LWDA for its share of penalties under PAGA; and awarding up to $11,150 to ILYM Group, Inc. for administration costs.

II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

A. Class Action

Generally, "questions whether a [class action] settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

> In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Wershba, supra,* 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

In general, the most important factor is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and weighing of relevant factors, depending on the circumstances of each case. (*Wershba, supra,* 91 Cal.App.4th at p. 245.) The trial court must examine the "proposed settlement agreement 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." (*Ibid.*, citation and internal quotation marks omitted.) The trial court also must independently confirm that "the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar, supra,* 168 Cal.App.4th at p. 129.) Of course, before performing its analysis the trial court must be "provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Id.* at pp. 130, 133.)

B. PAGA

Labor Code section 2699, subdivision (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to" PAGA. The court's review "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___U.S.___, 2022 U.S. LEXIS 2940.)

Similar to its review of class action settlements, the Court must "determine independently whether a PAGA settlement is fair and reasonable," to protect "the interests of the public and the LWDA in the enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77.) It must make this assessment "in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 ["when a PAGA claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public …."], quoting LWDA guidance discussed in *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O'Connor*).)

The settlement must be reasonable in light of the potential verdict value. (See *O'Connor, supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].) But a permissible settlement may be substantially discounted, given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8–9.)

III. SETTLEMENT CLASS

For settlement purposes only, Plaintiff requests the following class be certified:

> All current and former non-exempt employees who are and/or were employed by Defendant in California at any time from June 20, 2018 through September 29, 2023.

Rule 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or denying certification of a provisional settlement class after [a] preliminary settlement hearing." California Code of Civil Procedure Section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …."

Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*).) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

In the settlement context, "the court's evaluation of the certification issues is somewhat different from its consideration of certification issues when the class action has not yet settled." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-only context, the case management issues inherent in the ascertainable class determination need not be confronted, and the court's review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or overbroad class definitions require heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

At preliminary approval, the Court provisionally certified the above-described class, determining that Plaintiff had demonstrated by a preponderance of the evidence (1) an ascertainable class, (2) a well-defined community of interest among the class members and (3) that a class action provides substantial benefits to both litigants and the Court. Consequently, the Court will certify the class for settlement purposes as requested.

IV. TERMS AND ADMINISTATION OF SETTLEMENT

The non-reversionary gross settlement amount is $1,205,436.14. Attorney fees of $401,812.05 (one-third of the gross settlement), litigation costs of $11,187, and $11,150 in

administration costs will be paid from the gross settlement. $50,000 will be allocated to PAGA penalties, 75 percent of which ($37,500) will be paid to the LWDA. Ms. Ocanas seeks an incentive award of $10,000.

The net settlement, approximately $722,514.28, will be distributed to 990 class members (accounting for opt-outs) proportionally based on their pay periods during the class and PAGA periods. The estimated average recovery for class members is $725.42, and the estimated highest payment is $2,046.02. For tax purposes, settlement payments will be allocated 33.33 percent to wages and 66.67 percent to penalties and interest. The employer's share of payroll taxes will be paid in addition to the gross settlement. Funds associated with checks uncashed after 180 days will be paid to the Katherine & George Alexander Community Law Center.

In exchange for the settlement, class members who do not opt out will release all claims, charges, etc. "whether known or unknown, that were alleged, or reasonably could have been alleged, during the Class Period based on facts stated in the Operative Complaint ...," including the wage and hour claims asserted in the FAC and some that are not ("failure to pay reporting time pay" and "failure to provide required days of rest in violation of Labor Code sections 551 and/or 552"). Similarly, the PAGA release is limited to "claims for civil penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint, and the PAGA Notice," including the same causes of action. Consistent with the statute, aggrieved employees will not be able to opt out of the PAGA portion of the settlement.

As the Court determined in its order preliminarily approving the settlement, the releases are appropriately tailored to the factual allegations at issue. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

The notice period has now been completed. According to the declaration of the case manager with settlement administrator ILYM Group, Inc. ("ILYM") submitted in support of the instant motion, Tracy Dantema, ILYM received from Defendant's counsel the names and identifying information (including last known mailing address) for each settlement class member and subsequently processed these items against the National Change of Address database to confirm and update the relevant information. On August 4, 2023, the Notice Packets were mailed via first class mail to all 997 individuals contained in the list provided to ILYM. As of the date of Ms. Dantema's declaration, October 24, 2023, 27 packets have been returned to ILYM as undeliverable, with 1 including a forwarding address. ILYM performed a skip trace on these returned packets, and obtained 12 updated addresses, to which Notice Packets were promptly re-mailed. At present, 14 Notice Packets have been deemed undeliverable. ILYM has received seven requests for exclusion and no objections. The deadline to request exclusion from the settlement or to object to its terms was October 3, 2023.

At preliminary approval, the Court found that the proposed settlement provides a fair and reasonable compromise to Plaintiff's claims, and that the PAGA settlement is genuine, meaningful, and fair to those affected. It finds no reason to depart from these findings now, especially considering that there are no objections. Therefore, the Court finds that the settlement is fair and reasonable for the purposes of final approval.

V. ATTORNEYS FEES, COSTS AND INCENTIVE AWARD

As articulated above, Plaintiff's counsel seeks a fee award of $401,812.05, or one-third of the gross settlement, which is not an uncommon contingency fee in a wage and hour class action. This award is facially reasonable under the "common fund" doctrine, which allows a party recovering a fund for the benefit of others to recover attorney fees from the fund itself. Plaintiff also provides a lodestar figure of $230,285, based on 304.60 hours, which works out to an average billing rate of $756 per hour, resulting in a multiplier of 1.74.[1] This is within range of multiplier's that courts typically approved. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 488, 503–504 (*Laffitte*) [trial court did not abuse its discretion in approving fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13]; *Wershba, supra,* 91 Cal.App.4th at p. 255 ["[m]ultipliers can range from 2 to 4 or even higher"]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6 [stating that multipliers ranging from one to four are typical in common fund cases and citing the court's own survey of large settlements finding "a range of 0.6–19.6, with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range"].)

"While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable by refining the choice of a percentage or by checking the percentage result against a lodestar- multiplier calculation." (*Laffitte, supra*, 1 Cal.5th 480, 494-495.) Applying this latter approach,

> [T]he percentage-based fee will typically be larger than the lodestar based fee. Assuming that one expects rough parity between the results of the percentage method and the lodestar method, the difference between the two computed fees will be attributable solely to a multiplier that has yet to be applied. Stated another way, the ratio of the percentage-based fee to the lodestar-based fee implies a multiplier, and that implied multiplier can be evaluated for reasonableness. If the implied multiplier is reasonable, then the cross-check confirms the reasonableness of the percentage-based fee; if the implied multiplier is unreasonable, the court should revisit its assumptions.

(*Laffitte, supra*, 1 Cal.5th at p. 496, quoting Walker & Horwich, *The Ethical Imperative of a Lodestar Cross-check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases* (2005) 18 Geo. J. Legal Ethics 1453, 1463.) As described by the California Supreme Court, "[i]f the multiplier calculated by means of a lodestar crosscheck is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Laffitte, supra,* 1 Cal.5th at 505.)

Here, the requested multiplier sought by Plaintiff's counsel is well within the range of multipliers regularly approved by California courts in similar actions, and in fact is on the lower end of this range, and is supported by the percentage cross-check. As such, the Court finds counsel's requested fee award is reasonable.

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[1] Counsel does not identify the specific billing rates of the four attorneys who are identified as class counsel.

Plaintiff's counsel also seeks $11,187 in litigation costs, which is beyond the $10,000 provided by the settlement agreement. Given that the agreement *expressly* limits the amount of litigation expenses Plaintiff's counsel is entitled to recover to $10,000 (see settlement agreement at § 3.2.2), the Court will only approve recovery of this amount. The $11,150 in administrative costs are approved.

Finally, Plaintiff requests an incentive award of $10,000. To support her request, she submits a declaration describing her efforts on the case. The Court finds that the class representative is entitled to an enhancement award and the amount requested is reasonable.

VI. CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Plaintiff's motion for final approval is GRANTED, with litigations costs limited to $10,000. The following class is certified for settlement purposes only:

> All current and former non-exempt employees who are and/or were employed by Defendant in California at any time from June 20, 2018 through September 29, 2023.

Excluded from the class are the seven individuals who submitted timely requests for exclusion.

Judgment will be entered through the filing of this order and judgment. (Code Civ. Proc., § 668.5.) Plaintiff and the members of the class will take from their complaint only the relief set forth in the settlement agreement and this order and judgment. Pursuant to Rule 3.769(h) of the California Rules of Court, the Court will retain jurisdiction over the parties to enforce the terms of the settlement agreement and the final order and judgment.

The Court sets a compliance hearing for **October 17, 2024 at 2:30 P.M.** in Department 7. At least ten court days before the hearing, class counsel and the settlement administrator shall submit a summary accounting of the net settlement fund identifying distributions made as ordered herein; the number and value of any uncashed checks; amounts remitted pursuant to Code of Civil Procedure section 384, subdivision (b); the status of any unresolved issues; and any other matters appropriate to bring to the Court's attention. Counsel shall also submit an amended judgment as described in Code of Civil Procedure section 384, subdivision (b). Counsel may appear at the compliance hearing remotely.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go

to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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Calendar Lines 4 & 5

Case Name: *In Re Hewlett Packard Enterprise Co. Shareholder Litigation*
Case No.: 19CV353132 (consolidated with Case No. 19CV359073)

This consolidated putative class action arises from alleged misrepresentations and omissions in the offering materials issued in connection with an April 2017 transaction for Defendant Hewlett Packard Enterprise Company ("HPE"). The transaction occurred when HPE Enterprise Services' business segment was spun off and merged with Computer Sciences Corporation, Inc. ("CSC") to form Defendant DXC Technology Company ("DXC") (the "Merger").

Before the Court are the following motions: (1) Defendants DXE, HPE, Mukesh Aghi, Amy E. Alving, David Herzog, Sachin Lawande, J. Michael Lawrie, Julio A. Portalatin, Peter Rutland, Manoj P. Singh, Robert F. Woods, Rishi Varma, Timothy C. Stonesifer, Jeremy K. Cox, and Margaret C. Whitman's (collectively, "Defendants") motion to strike the declaration of Bjorn I. Steinholt; (2) HPE and DXC's motion to seal; (3) Plaintiffs' motion to strike the declaration of Andrew H. Roper; and (4) Plaintiffs' motion for class certification. All of the foregoing motions are opposed, excluding the motion to seal. As discussed below, the Court GRANTS Plaintiffs' motion for class certification and Defendants' motion to seal. Both motions to strike are DENIED.

VII. BACKGROUND

HPE is a technology company based in Palo Alto, California. (SAC, ¶ 2.) In April 2017, HPE consummated the Merger, spinning off its Enterprise Services business segment, merging it with CSC, and forming the company now known as DXC. (*Ibid*.) DXC provides information technology consulting services to businesses nationwide. (*Ibid*.) In connection with the Merger, each former shareholder of CSC common stock received one share of new DXC common stock in exchange for each share of CSC common stock, representing 49.9% of outstanding DXC common shares. (*Id.*, ¶ 3.) The new shares of DXC common stock were registered, issued, and solicited pursuant to the offering materials ("Offering Materials"). (*Ibid*.)

The Offering Materials repeatedly referenced purported "net synergies" and other "strategic and financial benefits" that the Merger would realize, specifically claiming over $1 billion in immediate year-one "synergies" as a result of the incoming management team's detailed "workforce optimization" plan. (SAC, ¶ 56.) The Offering Materials projected cost savings of "approximately $1.0 billion post-close, with a run rate of $1 .5 billion by the end of year one," by virtue of "workforce optimization such as elimination of duplicative roles." (*Ibid*.) In statements incorporated into the Offering Materials, individual Defendant J. Michael Lawrie placed focus on "data centers and the delivery centers" where there was "clearly duplication …. across both organizations." (*Ibid*.)

The Offering Materials also touted more than $7 billion in increased goodwill from the Merger, attributing the increase in part to "synergies" from "cost-saving opportunities [such as] improved operating efficiency and asset optimization." (SAC, ¶ 58.) The materials stated that Defendants' plan for the post-Merger Company was to "align [DXC'S] costs with its revenue trajectory" and complement "initiatives to improve execution in sales performance and

accountability . . . ," but emphasized DXC's intent and ability "to attract and retain highly motivated people with the skills necessary to serve their customers," and its plan to continue to "hire, train, motivate and effectively utilize employees with the right mix of skills and experience . . . to meet the needs of its clients." (*Id*., ¶ 62.) The materials promised that "[w]ith a collective workforce of approximately 178,000 employees, the size and scale of the combined company will enhance its ability to provide value to its customers through a broader range of resources and expertise to meet their needs." (*Ibid*.)

But according to Plaintiffs, contrary to these and other statements in the Offering Materials, the Company planned to target experienced employees for termination, even where those employees were critical to the Company's ability to meet its commitments to existing and future clients (and thus not redundant). (SAC, ¶ 57.) Defendants' planned "workforce optimization" plan in fact provided for eliminating tens of thousands of critical senior personnel through the imposition of quotas that would cut costs by nearly three times as much as had been represented to investors. (*Id*., ¶ 68.) Implementing its plan, the Company would slash 20% of its global workforce within its first year, imposing these cuts on its component groups regardless of whether they could absorb the loss of experienced employees. (*Ibid*.) As part of what DXC employees called "greening," the Company targeted senior, more experienced, more expensive employees without regard to their value to the Company, in a short-term effort to improve the Company's quarterly numbers. (*Id*., ¶ 99.) The terminations inflated reported earnings over the short term and boosted DXC'S stock price, allowing individual Defendants J. Michael Lawrie and Margaret C. Whitman, and others, to sell tens of millions of dollars in DXC shares they acquired in connection with the Merger before the effects of the terminations became clear. (*Id*., ¶¶ 117-118.)

Plaintiffs allege that "[a]s former DXC employees would later admit, the actual plan and its undisclosed nature and severe risks were discussed among Company executives before the Merger. Ahead of the Merger, particular senior (i.e., over-40) employees had already been marked for termination, and Defendants had already retained a consulting firm to begin executing the planned mass layoff of older, higher paid employees immediately after the Merger. Indeed, within days of the Merger
close, Defendants began disproportionately terminating older, more experienced (but in truth essential) employees en masse." (SAC, ¶ 9.) "HPE and DXC used uniform, near-verbatim paperwork when
terminating older employees, who all received the same vaguely worded, boilerplate reasons for being terminated, regardless of which entity they worked for after the Merger." (*Id.*, ¶ 79.) "Upon termination, many positions were temporarily eliminated. But even when a terminated employee's specific job title or position was not eliminated, those positions were staffed with new, younger hires at both entities." (*Ibid*.)

"In the wake of the Merger, of all employees terminated by DXC, the rate of employees terminated who were age-protected (i.e., age 40 or older) often exceeded 85%." (SAC, ¶ 83.) "HPE and DXC also implemented bans on hiring employees who were terminated pursuant to any layoff implemented by an HP-related entity. In other words, DXC effectively 'blacklisted' employees who were terminated under a mass layoff plan of any HP-related company." (*Id*., ¶ 86.) "This blacklisting policy was implemented even though both HPE and DXC claimed to have a '60 Day Preferential Rehire Period' during which those terminated under the layoff plan were encouraged to apply for new positions within either HPE or DXC (both before and after the name change and spin-off)." (*Ibid*.) These employees were told they would receive

preferential hiring status for 60 days following their termination, but for older employees this was "a farce" in practice. (*Ibid*.) Both DXC and HPE also implemented nearly the same phased retirement program and similar retirement policies to strongly encourage older employees to leave the company. (*Id.*, ¶¶ 88-89.)

The involuntary terminations of so many experienced employees had a snowball effect, as many more of the Company's most valuable employees left voluntarily even if they had not been targeted for termination. (SAC, ¶ 108.) As the Company shed its most experienced and knowledgeable employees, it became unable to meet its commitments to existing and potential customers. (*Id*., ¶ 119.) Deals were closed, but DXC could not deliver on them because it lacked the personnel and resources to fulfill its obligations; the Company also had to forgo lucrative business opportunities because it lacked the resources and capacity to staff existing and new projects. (*Id*., ¶ 131.)

Decisions about which employees to lay off immediately after the Merger had been made before it closed. (SAC, ¶ 113.) A management consulting firm (McKinsey & Co.) was retained by the Company to assist with its layoff plans, and representatives of that firm were deployed immediately after the Merger. (*Ibid*.) At McKinsey's suggestion, DXC eliminated numerous senior-level employees in Global Delivery with client-specific specialized skills formed during long-term relationships with DXC customers. (*Id*., ¶ 114.) This predictably resulted in significant customer complaints and loss. (*Ibid*.) Within the first year of its existence, the Company laid off close to a fifth of its workforce, with "the bulk impacting the most experienced, higher paid employees whose experience and expertise were critical to both ongoing customer relationships and obligations and the Company's ability to deliver on new business." (*Id*., ¶ 115.) DXC employees have admitted that workforce reductions were tied to financial metrics, not redundancies, and rejected automation as an explanation for terminations. (*Id*., ¶ 110.) Underscoring the short-term focus on inflating financial metrics, DXC employees have admitted that thousands of U.S. employees were cut to offset cuts that could not be made quickly enough to impact quarterly financial metrics in other regions due to more protective labor laws. (*Ibid*.)

Defendants completed the Merger on April 1, 2017, and on April 3, DXC common stock began trading at approximately $59 per share. (SAC, ¶ 71.) However, once investors and the public at large became aware of the effects of the Company's longstanding plans, DXC'S value dropped precipitously. (*Id.*, ¶ 130.) On February 6, 2019, DXC'S former Executive Vice President and Head of Global Delivery, Stephen J. Hilton, filed a civil complaint in the Southern District of New York detailing how Defendants planned DXC'S severe layoff and earnings manipulation effort before the Merger, and describing how the pace and severity of DXC'S massive layoffs had foreseeable "negative impacts on customer satisfaction" and were "disastrous for DXC'S long-term revenue." (*Id.*, ¶ 159.) As of the filing of plaintiffs' complaint, DXC shares have traded as low as $26.02 per share, a decline of over 50% from the approximately $59 price per share on the exchange date for the Merger. (*Id.*, 162.)

Plaintiffs Jason McLees and Palm Tran, Inc. Amalgamated Transit Union Local 1577 Pension Plan ("Palm Tran") directly acquired DXC shares in the Merger. (SAC, ¶ 22.) Based on the allegations summarized above, they assert claims on behalf of a class of "all persons and entities who acquired DXC common stock in exchange for CSC securities pursuant to the Offering Materials." (*Id*., ¶ 163.) Plaintiffs' claims are brought under: (1) Section 11 of the

Securities Act of 1933 ("Section 11") (against all Defendants); (2) section 12(a)(2) of the Act ("Section 12") (against all Defendants); and (3) section 15 of the Act (against all Defendants).

VIII. MOTION TO SEAL

HPE and DXC move to seal Exhibits 1 and 2 to the Declaration of Adam E. Polk in Support of Plaintiffs' Motion for Class Certification and the quoted excerpts from those documents at page 7, lines 8-14 of Plaintiffs' Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Class Certification. This motion is unopposed.

A. Legal Standard

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).) Pleadings, in particular, should be open to public inspection "as a general rule," although they may be filed under seal in appropriate circumstances. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 104, fn. 35.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*Providian, supra*, 96 Cal.App.4th at p. 309.)

B. Discussion

In support of their motion, HPE and DXC provides declarations from their counsel and Senior Vice President of Litigation and Human Resources which generally support their request for sealing. According to these declarations, that materials cited above contain confidential, proprietary, and/or high sensitive information of CSC, HPE and DXC, more specifically information regarding confidential merger negotiations between HPE and CSC, confidential financial information concerning the companies, and internal analyses on potential strategies and implications for future operations of DXC as the company formed from the merger between HPE and CSC. (See Declarations of Stephen P. Barry and Robert Particelli filed in Support of Motion to Seal.) Additional, the exhibits referenced contain information relating to these companies' business operations, strategies, historical and projected financial information, internal reporting and analytics, internal business communications, and business decisions.

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3 (*Providian*).) Confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to

effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1285–1286.) Thus, as a general matter, the materials at issue appear to be properly subject to sealing. Moreover, the request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

IX. MOTIONS TO STRIKE

A. Legal Standard

"Under California law, trial courts have a substantial 'gatekeeping' responsibility." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 769.) "[U]nder Evidence Code sections 801, subdivision (b), and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative. Other provisions of law, including decisional law, may also provide reasons for excluding expert opinion testimony." (*Id.* at 771-772.)

B. Plaintiffs' Motion to Strike Declaration of Andrew H. Roper

Plaintiffs move to strike the Declaration of Andrew H. Roper, including the Exhibits and Appendix attached thereto, filed by Defendants in support of their opposition to Plaintiffs' motion for class certification. Defendants offer Mr. Roper's declaration to opine on issues involving the actual knowledge of putative class members concerning topics discussed in the Offering Materials based on publicly available materials, as well as damages. Plaintiffs maintain that Mr. Roper's declaration should be stricken because: his opinions on actual knowledge and damages are inadmissible as they presume the wrong legal standard; he improperly constructs a narrative; his opinions require no expertise, and to the extent that they do, he is not qualified to give them; and his principles and methodology are flawed.

In opposition, Defendants counter that Mr. Roper is qualified to offer his opinions, which are of the type routinely accepted by Courts, both in California and elsewhere, and Plaintiffs' criticisms of these opinions fall far short of meeting the standard required to justify exclusion.

Upon review, the Court's position on Mr. Roper's declaration falls somewhere in between the two extremes advocated by the parties. On the one hand, Mr. Roper's declaration is useful in collating and summarizing what information was publicly available with regards to DXC and its predecessors' workforce practices, be it factual or opinion based reporting. On the other hand, the Court does find merit in Plaintiffs' contention that Mr. Roper's conclusions concerning whether putative class members had actual knowledge of the alleged material misstatements or omissions in the Offering Materials are not entirely reliable. The Court agrees that Mr. Roper has not, and cannot, explain how class members would have interpreted the information he describes as "publicly available" or how, if they had, could have known the scope of magnitude of what DXC planned to do after the Merger. Nevertheless, the Court is not persuaded that exclusion of Mr. Roper's declaration is warranted; to the extent the Court has questions about the validity of his conclusions, they will affect the weight given to, and not the admissibility of, the declaration.

Accordingly, Plaintiffs' motion to strike is DENIED.

C. Defendants' Motion to Strike Declaration of Bjorn I. Steinholt

Defendants move to strike the Declaration of Bjorn I. Steinholt filed by Plaintiffs in support of their motion for class certification. Mr. Steinholt was identified for the first time as an expert witness by Plaintiffs in connection with their class certification reply. Defendants maintain that Mr. Steinholt's declaration should be stricken for the following reasons: it is improper rebuttal because it ignores Defendants' expert and purports to address a premature merits issue; and its methodology is "clearly" invalid and unreliable.

In opposition, Plaintiffs respond that Mr. Steinholt's proffers necessary rebuttal testimony by exposing the unreliability of Mr. Roper's analysis, including his improper conflation of liability (where knowledge can be relevant) with statutory damages (where knowledge is never relevant). Moreover, they continue, his event studies are admissible and utilized the same methodology that courts routinely admit.

As Defendants argue, much of Mr. Steinholt's declaration discusses the event study that he conducted as part the assignment he received from Plaintiffs' counsel to review Mr. Roper's declaration. While event studies are "accepted methodolog[ies]" that courts consider "standard operating procedure" in securities litigation (*In re Barclays Bank PLC Sec. Litig.* (S.D.N.Y. 2017) 2017 U.S. Dist. LEXIS 148695, *80 (*Barclays*); see *In re Flag Telecom Holdings, Ltd. Sec. Litig.* (S.D.N.Y. 2007) 245 F.R.D. 147, 170 ["[N]umerous courts have held that an event study is a reliable method for determining market efficiency and the market's responsiveness to certain events or information."]), the Court agrees with Defendants that Mr. Steinholt's conclusions, based on his event study, as to what caused DXC's stock prices to decline,[2] are not relevant at this stage of the proceedings, which does not implicate the ultimate merits of Plaintiffs' claims. However, as with Mr. Roper's declaration, the Court does not believe the standard for exclusion has been met (e.g., his methodology is not "clearly" invalid or unreliable). Similarly, to the extent the Court has questions about the validity of Mr. Steinholt's conclusions, they will affect the weight given to, and not the admissibility of, the declaration.

Accordingly, Defendants' motion to strike is DENIED.

X. PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

In this motion, Plaintiffs move to (1) certify a class consisting of "all persons who acquired DXC common stock in direct exchange for CSC securities in the April 1, 2017 Merger Exchange"; appoint Jason McLees and Palm Tran, Inc. Amalgamated Transit Union Local 1577 Pension Plan ("Palm Tran") as class representatives; and (3) appoint Girard Sharp

[2] Contrary to Plaintiffs' assertions in their opposition, the Court agrees with Defendants that much of Mr. Steinholt's declaration involves consideration of "loss causation," which is a phrase typically used by courts to describe the affirmative defense to Section 11 claims in which the defendant establishes the lack of a "causal connection between the material misrepresentation and the loss." (*Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.* (9th Cir. 2013) 730 F.3d 1111, 1120.)

LLP, Hedin Hall LLP, and Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as class counsel.

Defendants oppose Plaintiffs' motion, arguing that individual issues regarding shareholders' knowledge of publicly available information will predominate; class certification is not a superior method of adjudication; and their proposed representatives are neither typical nor adequate because Mr. McLees did not own DXC common stock at any time and Palm Tran's money manager's admitted having knowledge of allegedly omitted facts before the Merger, which knowledge is imputed to Palm Tran.

A. Legal Standard

As explained by the California Supreme Court,

> The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. A trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, internal quotation marks, ellipses, and citations omitted (*Sav-on Drug Stores*).)

California Code of Civil Procedure section 382 authorizes certification of a class "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court …." As interpreted by the California Supreme Court, section 382 requires: (1) an ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, supra*, 34 Cal.4th at p. 326.) "Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

The plaintiff has the burden of establishing that class treatment will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) The court must examine all the evidence submitted in support of and in opposition to the motion "in light of the plaintiffs' theory of recovery." (*Department of Fish and Game v. Superior Court (Fish and Game)* (2011) 197 Cal.App.4th 1323, 1349.) The evidence is considered "together": there is no burden-shifting as in other contexts. (*Ibid.*)

B. Ascertainable Class

A class is ascertainable "when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*).) A class definition satisfying these requirements

> puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment.

(*Noel, supra,* 7 Cal.5th at p. 980, citation omitted.)

"As a rule, a representative plaintiff in a class action need not introduce evidence establishing how notice of the action will be communicated to individual class members in order to show an ascertainable class." (*Noel, supra,* 7 Cal.5th at p. 984.) Still, it has long been held that "[c]lass members are 'ascertainable' where they may be readily identified … by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by *Noel, supra,* 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975-976 ["The defined class of all HD Package subscribers is precise, with objective characteristics and transactional parameters, and can be determined by DIRECTV's own account records. No more is needed."].)

Here, there does not appear to be any dispute that members of the putative class, people who acquired DXC common stock in direct exchange for CSC securities in the Merger (these transactions took place on a single day and involved 141 million shares), are numerous (likely in the thousands according to Plaintiffs) and readily identifiable. The class definition is clear and based on objective characteristics and common transactional facts.

C. Community of Interest

The "community-of-interest" requirement encompasses three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra,* 34 Cal.4th at p. 326.)

1. *Predominant Questions of Law or Fact*

For the first community of interest factor, "[i]n order to determine whether common questions of fact predominate the trial court must examine the issues framed by the pleadings and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (*Hicks*).) The court must also give due weight to any evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*).) "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks, supra,* 89 Cal.App.4th at p. 916.)

All of Plaintiffs' claims are predicated on alleged violations of the Securities Act of 1933 (the "Securities Act" or the 'Act"), particularly Sections 11, 12(a)(2) and 15, which:

> [P]rotects investors by ensuring that companies issuing securities (known as "issuers") make a "full and fair disclosure of information" relevant to a public offering. The linchpin of the Act is its registration requirement. With limited exceptions …, an issuer may offer securities to the public only after filing a registration statement. That statement must contain specified information about both the company itself and the security of the sale. Beyond those required disclosures, the issuer may include additional representations of either fact or opinion.

(*Omnicare, Inc. v. Laborers Dist. Council Const. Industry Pension Fund* (2015) 135 S.Ct. 1318, 1323, internal citations omitted.)

Section 11 of the Act creates a private remedy for any purchaser of a security if any part of the registration statement "contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading…." (*In re Stac Electronics Securities Litigation* (9th Cir. 1996) 89 F.3d 1399, 1403–1404, quoting 15 U.S.C. § 77k(a).) No scienter is required; defendants are liable even for innocent or negligent misstatements or omissions. (*Ibid.*)

Section 12(a)(2) imposes similar liability as Section 11 on sellers of securities for misstatements or omissions in a prospectus, and Section 15 imposes liability on those who "control[ ] any person liable" under Sections 11 and 12. (*In re Ply Gem Holdings, Inc. Securities Litigation* (S.D.N.Y. 2015) 135 F.Supp.3d 145, 149.) Claims under Sections 11, 12, and 15 may consequently be considered together for purposes of determining whether the statements or omissions at issue are actionable. (*Ibid.*)

Here, Plaintiffs maintain that common issues predominate because each of their claims turns on the "central question" of whether the Offering Materials contained a misrepresentation or omission of material fact, specifically with regard to the nature, timing, and scope of a so-called "workforce optimization" plan, which had been described as an effort to eliminate "duplicative" employees, "optimize" the workforce, and "retain" workers "with the skills necessary to serve their customers to achieve billions in "synergies," but was in actuality a plan to effectuate mass layoffs of older, more experienced employees in order to offload their higher salaries and enhance reported earnings ahead of insider sales. (See, e.g., SAC, ¶¶ 4, 5, 8, 16, 51, 50-68, 60-63, 67, 125-128.)

In opposition, Defendants counter that this requirement is not met because (1) the allegedly undisclosed workforce plan for DXC was known to some investors before the Merger and (2) the effect of then-publicly available information concerning DXC's plan necessitates individual inquiries. With these arguments, Defendants are implicating the so-called actual knowledge defense, which is available as a defense to claims under Sections 11 and 12 (and thus by extension, Section 15). (15 U.S.C., § 77k(a) [stating that a plaintiff does not establish liability if "it is proved that at the time of such acquisition he knew of such untruth or omission"] and (b) [requiring that "the purchaser not know[] of such untruth or omission"].)

> Thus, " '[S]ection 11 provides a cause of action for "any person acquiring" a security issued pursuant to a materially false registration statement unless the purchaser knew about the false statement at the time of acquisition.' *DeMaria v.*

> *Andersen*, 318 F.3d 170, 175 (2d Cir. 2003). Where a defendant shows that broad knowledge of the alleged wrongful conduct existed 'throughout the community of market participants . . . this widespread knowledge [] would precipitate individual inquiries as to the knowledge of each member of the class,' and defeat the predominance of common issues …. *In re Initial Pub. Offering Sec. Litig*., 471 F.3d 24, 44 (2d Cir. 2006).

(*N.J. Carpenters Health Fund v. Residential Capital, LLC* (S.D.N.Y. 2011) 272 F.R.D. 160, 168 (*N.J. Carpenters*), *aff'd sub nom. N.J. Carpenters*, 477 F. App'x 809 (2d Cir. 2012); see also *Vignola v. Fat Brands* (C.D. Cal. Mar. 13, 2020, No. CV 18-7469 PSG (PLAx)) 2020 U.S.Dist.LEXIS 73577, at *14–15 (*Vignola*) ["Defendants' evidence here convincingly suggests that knowledge issues as to this publicly available and widely known omitted information would require individualized inquiries"; distinguishing *Pub. Emps.' Ret. Sys. of Miss. v. Merrill Lynch & Co. Inc.* (S.D.N.Y. 2011) 277 F.R.D. 97 (*Merrill Lynch*) and other cases "involv[ing] misstatements and omissions relating to information that is internal, not widely publicly available"].)

"[A]ctual knowledge is an affirmative defense to -- and not a required element of -- a Section 11 claim." (*Yi Xiang v. Inovalon Holdings, Inc*. (S.D.N.Y. 2018) 327 F.R.D. 510, 527 (*Yi Xiang*).) Individual issues arising from an affirmative defense "pose no per se bar" to certification, but "can in some cases support denial of certification," depending on the manageability of the issues in question. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1053–1054 (conc. opn. of Werdegar, J.).) The Court must bear in mind that it is a defendant's burden to prove affirmative defenses: "[w]ere [it] to require as a prerequisite to certification that plaintiffs demonstrate" a defense does nor does not apply as to all class members, it "effectively would reverse that burden." (*Sav-On Drug Stores, supra*, 34 Cal.4th at p. 338 ["the logic of predominance" does not require a plaintiff to make this showing].)

According to Defendants, the large-scale workforce restructurings at CSC and HPE before the Merger were no secret- in addition to public statements by their management, major media outlets and financial analysts reported on the "workforce optimization" strategies at both companies. Defendants continue that the money manager for Palm Tran specifically testified that the plan for DXC was expected to be a "continuation of the workforce optimization plan that [Michael Lawrie, CEO of CSC and later DXC] had implemented at CSC." (Declaration of Stephen P. Barry in Support of Opposition to Motion for Class Certification ("Barry Decl."), Ex. 1 (Declaration of Scout Investment, Inc.'s ("Scout") Person Most Knowledgeable, Derek Smashey) at 183:4-8.) Additionally, Defendants assert, workforce initiatives at DXC's predecessors prompted numerous lawsuits and other public criticism accusing CSC and HPE of discriminatory employment practices and/or jeopardizing the companies' business stability. Given the foregoing, Defendants urge, at least *some* putative class members necessarily discovered or were exposed to the plan for DXC before the Merger, and determining *which* members subjectively had such knowledge will require individualized inquiries that cannot be resolved on a common basis, such that certification is not appropriate.

To establish the purported public availability of information concerning the labor strategies of CSC and HPE that Plaintiffs maintain carried over to DXC after the Merger, Defendants offer the declaration of Mr. Roper, who explains in his declaration ("Roper Decl.") that he was retained to assess whether information existed in the public domain prior to the Merger indicating that CSC and HPE had undertaken widespread layoffs that allegedly

targeted (or disproportionally impacted) older, essential, experienced, and higher paid employees in favor of younger, less experienced, and lower paid employees, and/or indicating that DXC's incoming management planned to carry out similar workforce practices following the company's formation. In his declaration and the numerous exhibits attached thereto, Mr. Roper describes and summarizes the following:

- In an August 2015 earnings call, Mr. Lawrie describing CSC's "workforce optimization" strategy as an effort to "remix[]" the company's labor "pyramid and … overall cost structure," with a focus on thinning management layers and recruiting "next-generation" talent (Roper Decl., Ex. 5, Appendix 43 at 825-827);
- Media coverage of CSC's optimization program, with industry observers: viewing it as an effort to "weed out" employees lacking skills in key areas and noting that "[e]mployees who don't support those areas tend to have been on the job for a while, are often older and collect sizable paychecks (Roper Decl., App. 23 at 466); stating that reducing "layers of management by 40 percent" and prioritizing employees with emerging skills could result in higher ration of layoffs among older workers (*Id*. at 464-465); speculating that these efforts were impeding CSC's ability to deliver quality services to customers and capture revenue (Roper Decl., App. 32 at 547-548 and App. 39 at 632);
- Public criticism of Mr. Lawrie's strategy from employees through online postings accusing CSC of targeting older workers and replacing them with younger, cheaper personnel (Roper Decl., ¶¶ 78-79; App. 14 at 303);
- CSC facing several age discrimination lawsuits (Roper Decl., ¶¶ 80-83);
- Before HPE's formation in 2015 as a result of HP separating into two independent companies, there were reports that HP had implemented extensive workforce restructuring plans, including an "early retirement program," intended to "yield significant improvements in efficiency and customer service" and foster "innovation around . . . segments that offer attractive growth potential" (Roper Decl., App. 6 at 197), with HP advising that this strategy would involve "early career hiring"; commentators predicted this strategy would "disproportionately" impact "older workers" (Roper Decl., App. 7 at 201);
- Age discrimination lawsuits against HPE, including before and after the Merger was announced (Roper Decl., ¶¶ 51-58 7 Figures 3-4 and Apps. 66) that were reported on by mainstream media (Roper Decl., App. 84 at 1577 [The *San Diego Union-Tribune* observed that "[m]ore than 85 percent of the employees laid off" as part of the underlying workforce reduction "were over the age of 40"]);
- Criticism in online forums, including accusations by former HPE employees of the company terminating older workers and replacing them with younger, cheaper employees, leading to a "lack of continuity in the sales force" and "[h]uge sales force and management churn" (Roper Decl., ¶¶ 49-50);
- A federal class action filed in August 2016 against HPE and HP by former employees- which garnered considerable media attention (Roper Decl., App. 92, 93 at 1664, 107 at 2078)- alleging that, starting in 2012, HP initiated a workforce reduction plan ("WRP") impacting tens of thousands of employees with a "publicly-stated goal" of "mak[ing] the company younger" (Roper Decl., ¶¶ 55-59, Ex. 4 and App. 88) which was accomplished by intentionally targeting older employees for termination and replacing them with younger employees (*id*. at ¶¶ 17, 41);
- Upon announcement of the Merger, speculation by industry players (e.g., financial institutions and market analysts) that ongoing cost-reduction strategies at the merging

businesses would carry over to DXC but that such labor restructuring efforts came with various risks, including the potential loss of client contracts (Roper Decl., ¶¶ 90-92);

- Materials shared by DXC's soon-to-be management team at the public investor day that it hosted in March 2017 that provided additional detail about the future company's operations, including describing the "workforce optimization," emphasizing the need for "next-gen skills," depicting labor pyramids showing a planned increase in the proportion of lower-cost employees over time, and likening the future plans to what CSC had done in the preceding four years (Roper Decl., ¶¶ 96-110, Apps. 127 and 128 at 3446); and
- Discussion of the foregoing plans by industry analysts who emphasized that DXC expected to "reduce management layers and broaden its employee pyramid, such that junior staff will represent ~40% of total headcount" (Roper Decl., App. 131 at 3493) and the plan was a "key cost driver[]" though which the company could "cut[]out expensive … layers of management" (Roper Decl., App. 129 at 3462).

Defendants insist that Plaintiffs had actual knowledge of the allegedly "omitted facts" concerning the workplace optimization plans for DXC, first asserting that Mr. McLees was privy to Merger-related information circulated internally and noting his testimony that he learned of planned layoffs though company communications, and understood DXC would "reduce redundancies in management" by laying off employees who "tend[ed] to be people who are older and more experienced." (Barry Decl., Ex. 2 (McLess Depo.) at 46:15-47:20, 80:4-81:18.)

With regard to Palm Tran's knowledge, Defendants explain that it gave Scout full discretion to make investments decisions on its behalf (Barry Decl., Ex. 4 at 56:5-22) and, in discharging this role, Scout monitored CSC, which it viewed DXC as a "continuation of," by, among other things, reviewing public filings and news stories. (Barry Decl., Ex. 1 at 28:2-11, 29:17-30:11, 69:17-22, 134:4-135:2.) Scout viewed Mr. Lawrie's "workforce optimization" strategies at CSC and DXC as "interchangeable," with the plan implemented at DXC being a continuation of the plan at CSC" (*id*. at 134:4-137:2, 183:4-8) and thus expected the latter to "reorient[] its employee pyramid" to "reduce the size of management while increasing the size of junior level staff," and understood that "with those management positions being eliminated, the most likely category of [employees] to be impacted would be those who are older" (*id*. at 174:15-175:17, 179:5-20). Scout understood that the foregoing actions brought with them a risk that "you don't have people in charge at sufficient levels." (*Id*. at 176:13-177:8.)

Defendants insist that the foregoing evidence makes clear that the allegedly undisclosed workforce plan for DXC was known to some investors before the Merger and thus, adjudicating the merits of their actual knowledge defense will depend on an individual determination with respect to each class member's subjective awareness of the plan, and these determinations will predominate. The Court disagrees.

First, as Plaintiffs respond, the mere fact that Defendants' actual knowledge defense *may* require individualized inquiries does not definitively mean that the requirements of class certification are not met. Critically, "[t]he 'ultimate question' the element of predominance presents in whether 'the issued which may be jointly tried, *when compared with* those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brinker Rest. Corp. v.*

Superior Court (2012) 53 Cal.4th 1004, 1021.) Thus, "[w]hen one or more of the central issued in the action are common to the class[,]" the action should be certified "even though other important matters will have to be tried separate, such as damages or some affirmative defenses peculiar to some individual class members." (*Tyson Foods, Inc. v. Bouaphakeo* (2016) 577 U.S. 442, 453.) Further, Defendants' argument, at least as presented here, appears to rely on the assumption that their actual knowledge defense is as prominent an issue in the predominance inquiry as all others. But as Plaintiffs note, predominance "hinges" on "the theory of recovery advanced by the proponents of certification," and if under the theory "the defendant's liability can be determined by facts common to all members of the class, a class will be certified[.]" (*Id*. at 1021, 1022.)

Here, Plaintiffs are correct that the central issues concerning liability in this case- the existence of a material misstatement (i.e., falsity) or omission in the offering materials- are common ones. (See *Amgen Inc. v. Conn. Ret. Plans & Trust Funds* (2013) 568 U.S. 455, 459–460 ["[b]ecause materiality is judged according to an objective standard," this is a common question in a securities class action].) For this reason, "courts have repeatedly found [that] suits alleging violations of the securities laws, particularly those brought pursuant to Sections 11 and 12(a)(2), are especially amenable to class action resolution." (*Merrill Lynch*, *supra,* 277 F.R.D. at p. 101 ["[t]he instant action depends, more than anything else, on establishing that certain statements and omissions common to all the offerings were material misrepresentations: a classic basis for a class action"].) Courts have emphasized that "[i]n order to defeat predominance on the basis of an actual knowledge defense," defendants must provide evidence rather than mere argument that related individual issues will prove unmanageable. (See *Yi Xiang*, *supra*, 327 F.R.D. at pp. 528–529.) This may be the case where defendants show that a range of information was available throughout the class period, and that some shareholders would have put this information together to understand the truth, while others would not have. (See *Katz v. China Century Dragon Media*, Inc. (C.D. Cal. 2012) 287 F.R.D. 575, 588–589 [defendants made no showing that awareness of limited information could not be tested on a class basis; distinguishing *N.J. Carpenters* based on the "substantial amount of evidence" considered by the district court in that case, reflecting individual issues as to shareholders' knowledge and understanding of complex underwriting guidelines, which changed over the class period as more and more information became available]; *Vignola, supra,* 2020 U.S. Dist. LEXIS 73577, at *12–13 ["Defendants argue that these news articles, over a span of eight years preceding the IPO, from sources with varying readership and reputation and containing varying information, demonstrate that an element of liability is not susceptible to class-wide, generalized proof"].)

Defendants, however, have not demonstrated the unmanageability of determining the actual knowledge of putative class members. Further, it may ultimately be the case that the trier of fact disagrees with Defendants' contention that the publicly available information concerning DXC's workforce optimization plan was sufficient to appraise putative class members of the actual, fundamental nature of the "workforce optimization" plan as alleged by Plaintiffs in the SAC. Defendants insist, based on items listed above, that the nature of the plan was clear, but Plaintiffs' have pleaded more than just the nature of the plan being omitted from the Offering Materials; they additionally allege that Defendants did not disclose its full scope (e.g., not simply eliminating duplicative positions but removing older, more expensive employees from those positions and replacing them with younger new hires without regard to operational effectiveness, and doing so in order to juice insider sales) and its attendant risks to DXC's ability to meet the needs of its customers. When it comes to establishing actual

knowledge for the purpose of defeating claims under Sections 11 or 12, neither constructive nor "generalized knowledge" will suffice (see *Fed. Hous. Fin. Agency v. UBS Ams, Inc.* (S.D.N.Y. 2013) 2013 U.S Dist. LEXIS 92081, *52); rather, Defendants must prove "actual knowledge" that "the particular statement at issue" was false (*Fed. Hous. Fin. Agency v. Nomura Holdings Am., Inc.* (2d. 2017) 873 F.3d 85, 123 (*Nomura*)). Importantly, the mere "[*a*]*availability* elsewhere of truthful information cannot excuse untruths or misleading omissions in the prospectus." (*Nomura*, at 122; see also *In re Cobalt Int'l Energy Inc. Secs. Litig.* (S.D. Tex. 2017) 2017 U.S. Dist. LEXIS 91938, *16 [explaining that speculation as to public knowledge "does not support a finding that the 'actual knowledge' issue predominates"].) Thus, "in order to defeat predominance on the basis of an actual knowledge defense, defendants must provide evidence that certain class members had differing levels of knowledge regarding the misleading nature of the statement or omissions when they invested sufficient to outweigh common issues." (*Yi Xiang v. Inovalon Holdings, Inc.* (S.D.N.Y. 2018) 327 F.R.D. 510, 528.)

Here, the materials submitted by Defendants in support of their opposition fail to establish that class members, on an individual or more widespread basis, actually knew of their undisclosed plan to terminate older employees at DXC for the purpose of making insider sales more lucrative rather than optimizing the workforce.[3] Postings, reviews and employment practices and lawsuits involving different companies, many of which are several years old, arguably did not disclose anything about DXC or that was otherwise contrary to the Offering Materials' portrayal of the "workforce optimization" plan. But more importantly, a determination of whether they *did* would speak more to whether they contained sufficient information to put a reasonable investor on notice, and the answer to this question would *apply to the entire class*. (See *Set Cap. LLC v. Credit Suisse Grp. AG* (S.D.N.Y. 2023) 2023 U.S. Dist. LEXIS 44762, *29 [explaining that "new stories and other publicly available information raise issues of knowledge, actual or constructive, subject to generalized proof, and apply to the whole class"] [citations and quotation marks omitted].)

Thus, the Court finds that questions of law and fact common to all class members are likely to predominate despite Defendants' actual knowledge defense.

2. *Adequacy and Typicality*

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The fact that a class representative does not personally incur all of the damages suffered by each different class member does not necessarily preclude the representative from providing adequate representation to the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238, disapproved of on another ground by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status. (*Ibid.*)

[3] Defendants briefly make the argument that were the class certified, statutory damages could not reliably be calculated because it would impossible to differentiate those with actual knowledge. (See Opp. at 26.) But as Plaintiffs respond, damages are prescribed by a strict statutory formula which is applied mechanically on a class-wide basis and is not dependent on subjective knowledge. (See, e.g., *Randall v. Loftsgaarden* (1986) 478 U.S. 647, 663-667.)

"Although the questions whether a plaintiff has claims typical of the class and will be able to adequately represent the class members are related, they are not synonymous." (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) "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." (*Ibid.*, quoting *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.)

"The party seeking class certification has the burden of proving the adequacy of its representation." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) "[T]he test for adequacy of representation is merely whether or not plaintiffs have demonstrated a willingness and vigor to prosecute the action, whether they have any disabling conflicts going to the heart of the controversy, and whether they have qualified counsel." (*In re Adobe Systems, Inc. Securities Litigation* (N.D. Cal. 1991) 139 F.R.D. 150, 156 (*Adobe*).) "The reality of complex cases … is that clients must defer a great amount of discretion to their lawyers." (*Ibid.*) Thus, "[t]he threshold knowledge required of the class representatives is low." (*DuFour v. Be LLC* (N.D. Cal. 2013) 291 F.R.D. 413, 419.) It is adequate that the class representatives "appear familiar with the basic outline of [the] action in that they understand the gravamen of the claims. It is not necessary that they be intimately familiar with every factual and legal issue in the case." (*Adobe, supra,* 139 F.R.D. at p. 156; see also *Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 354–355 [no evidence plaintiff was inadequate where he "testified that he had read the complaint, and that after he spoke to plaintiffs' counsel about the lawsuit, he decided he wanted to be a part of it"].)

As stated above, Defendants contend that Plaintiffs' proposed representatives are neither typical nor adequate because Mr. McLees did not own DXC common stock at any time and Palm Tran's money manager's admitting having knowledge of allegedly omitted facts before the Merger, which is imputed to Palm Tran. More specifically, with regard to their first contention, Defendants assert that because Mr. McLees rights (if any) to CSC or DXC stock exist only by virtue of his participation in Palm Tran, and not because he purchased shares directly, and Palm Tran is a plan in and of itself, logically only one of these plaintiffs can bring claims based upon the shares as the "person acquiring such security" under Section 11. (15 U.S.C. ¶ § 77k.) These arguments are not persuasive.

First, Defendants offer no authority which stands for the proposition that Mr. McLees is an atypical or inadequate representative simply because he purchased DXC shares through a retirement account. As Plaintiffs respond, Sections 11 and 12 authorize claims by any person "acquiring" or "purchasing" the security, which the Court agrees includes investors like Mr. McLees who purchased shares through a retirement plan. (15 U.S.C. §§ 77k(a) and 77l(a).) To qualify as a "purchaser," courts consider control over the investment decision and whether the plaintiff was the "actual party at risk," including through a beneficial interest. (See, e.g., *Ross v. Abercrombie & Fitch Co.* (S.D. Ohio 2009) 257 F.R.D. 435, 449-450 [plaintiff, whose stock was purchased by an investment firm, was an adequate class representative because he "actively participated" in the decisions]); *Vannest v. Sage, Rutty & Co.*, 960 F. Supp. 651, 657-58 (W.D.N.Y. 1997) [plaintiff qualified as a purchaser, despite defendants' argument that his retirement plan purchased his shares, "[b]ecause he controlled the investment decisions"].) Here, Mr. McLees made the relevant investment decisions, electing to exchange CSC shares held in his retirement account. (Barry Decl., Ex. 3A at 209; Supplemental Declaration of

Adam E. Polk in Support of Reply, Ex. 9 (McLees Depo. at 174:18-175:11, 175:2-5, 209:20-211:8-20.) Thus, the Court rejects Defendants' assertion that Mr. McLees is neither a typical nor adequate representative on this basis.

As for Palm Tran, "reliance on the expertise of professional investment advisors" is routine and "does not render [one] an inadequate [class] representative." (*United Food & Comm. Workers Union v. Chesapeake Energy Corp.*, 281 F.R.D. 641, 653-654 (W.D. Okla. 2012). Further, the testimony from a representative of Scout cited by Defendants does not establish that it or Palm Tran "kn[ew] of the allegedly omitted facts before the Merger." Scout's representative testified that, today, six years after the merger, he recalls DXC sought to reduce redundant management layers, which would result in losing some older workers, and he presumed that DXC's workforce optimization plan would resemble CSC's. (Opp. at 16-17.) In other words, his knowledge tracked the Offering Materials. If anything, this testimony confirms that Scout *did not* know before the merger that DXC planned to purge older employees with quota driven layoffs to juice insider sales, nor the effect of crippling service to DXC's customers. Thus, the Court also rejects Defendants' contention that Palm Tran does not qualify as an adequate or typical representative.

Plaintiffs otherwise establish these elements of certification, as they submit evidence that class counsel is well-qualified to conduct this litigation, with all three firms having served as lead or co-lead counsel in many large and significant securities class actions in state and federal courts nationwide, which Defendants do not dispute. Defendants also do not dispute that Plaintiffs' claims are typical of the class. Plaintiffs additionally submit declarations in which they state that they (i) understand the requirements and responsibilities of serving as class representative in this securities class action; (ii) have reviewed key pleadings in this action; (iii) will continue to supervise and monitor the progress of this litigation; (iv) intend to work with Co-Class Counsel to maximize the recovery to the class; (v) will continue to work alongside Co-Class Counsel through discovery, trial preparation, and trial, if necessary; and (vi) do not have a conflict of interest with other members of the proposed class. (See McLees Decl., ¶¶ 6-8; Declaration of Dwight Mattingly, ¶¶ 6-8.) Defendants do not dispute any of the foregoing representations.

Considering this showing, the Court finds that Plaintiffs and their counsel will adequately represent the class, and that Plaintiffs' claims are typical of the class.

D. Superiority

"[A] class action should not be certified unless substantial benefits accrue both to litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid*.) "Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative ground to deny class certification." (*Ibid*.) Generally, "a class action is proper where it provides small claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient size to warrant individual action." (*Id*. at pp. 120-121, internal quotation marks omitted.)

Defendants insist that a class action is not a superior method of adjudication given the individual inquiries that they maintain are necessary to evaluate the actual knowledge of

putative class members. But for the reasons discussed above- including that answering the question of whether class members had actual knowledge of the alleged omissions or material misstatements in the Offering Materials is subject to common proof that applies to the class as a whole- Defendants' argument is without merit.

As stated above, Plaintiffs estimate that the amount of putative class members numbers in the thousands and span a considerable geographic area. It would be inefficient for the Court to hear and decide the same issues separately and repeatedly for each class member. It is clear that a class action provides substantial benefits to both the litigants and the Court in this case and thus that the element of superiority is met.

Because all of the elements for class certification are met, Plaintiffs' motion is GRANTED.

XI. CONCLUSION

Defendants' motion to strike the declaration of Bjorn I. Steinholt is DENIED.

Plaintiffs' motion to strike the declaration of Andrew H. Roper is DENIED.

Plaintiffs' motion for class certification is GRANTED. The following class is certified:

> All persons who acquired DXC common stock in direct exchange for CSC securities in the April 1, 2017 Merger Exchange.

The parties shall meet and confer regarding a procedure for providing notice to the class and a form of notice. If they come to agreement, plaintiff shall file a stipulation along with a statement and proposed order pursuant to California Rules of Court, rule 3.766. If there is any dispute regarding these issues, the parties shall advance their next case management conference to a mutually agreeable date so that the issues may be promptly addressed.

The Court will prepare the order.

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LAW AND MOTION HEARING PROCEDURES

Parties may appear in person or remotely. Remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.

State and local rules prohibit recording of court proceedings without a court order. These rules apply while in court and also while participating or listening in a hearing remotely. No court order has been issued which would allow recording of any portion of this motion calendar.

The Court does not provide court reporters for proceedings in the complex civil litigation departments. Any party wishing to retain a court reporter to report a hearing may do

so in compliance with this Court's October 13, 2020 Policy Regarding Privately Retained Court Reporters. The court reporter can either be in person or appear remotely.

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