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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SYNCHRONOSS TECHNOLOGIES, INC. SECURITIES LITIGATION	Civil Action No. 17-2978 (FLW) (ZNQ) **CLASS ACTION**
This Document Relates To: [ALL ACTIONS]	**ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Lead Plaintiff Employees' Retirement System of the State of Hawaii ("Lead Plaintiff") submits this memorandum of law in support of its motion for class certification, the appointment of Lead Plaintiff as Class Representative, and the appointment of Grant & Eisenhofer P.A. ("G&E") as Class Counsel and Carella, Byrne, Cecchi, Olstein, Brody & Agnello ("Carella Byrne") as Liaison Counsel for the Class.

I. PRELIMINARY STATEMENT

With this motion, Lead Plaintiff seeks to certify a class of all persons and entities that purchased or acquired Synchronoss Technologies, Inc. ("Synchronoss" or the "Company") common stock between October 28, 2014, and June 13, 2017, inclusive ("Class Period"), and were damaged thereby ("Class").[1] ¶ 25.[2]

Securities fraud cases are ideally suited for class treatment.[3] As in other securities cases, each of the prerequisites of Rule 23(a) is easily met here. First, joinder of the claims of many Class members would not be practicable. Second, this action raises several questions of falsity and misrepresentation, materiality, and scienter that are quintessential common questions of law and fact. Third, Lead Plaintiff's claims are typical of, and co-extensive with, absent Class members' claims. And fourth, Lead Plaintiff is well suited to serve as a representative of the Class.

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[1] Excluded from the Class are (a) Defendants; (b) Synchronoss's subsidiaries and affiliates; (c) any officer, director, or controlling person of Synchronoss, and members of the immediately families of such persons; (d) any entity in which any Defendant has a controlling interest; (e) Defendants' directors' and officers' liability insurance carries, and any affiliates or subsidiaries thereof; and (f) the legal representatives, heirs, successors, and assigns of any such excluded party.

[2] Citations to ¶ __ refer to paragraphs of the Second Amended Complaint dated Aug. 14, 2019 (Dkt. 81) ("Complaint").

[3] *See In re Merck & Co., Inc. Sec. Deriv. & ERISA Litg.*, 2013 WL 396117, at *13 (D.N.J. Jan. 30 2013) (remarking that "federal securities actions are 'well suited' for litigation under Rule 23" (quoting 7 W. RUBENSTEIN, A CONTE & H. NEWBERG, NEWBERG ON CLASS ACTIONS § 22:1 (4th ed. 2002))).

Its interests do not conflict with other Class members, and it, along with Lead Counsel, will continue to prosecute this action vigorously on behalf of the entire Class.

The predominance and superiority requirements of Rule 23(b)(3) are also satisfied. Questions common to all Class members predominate over any questions affecting only individual Class members. In particular, as set forth more thoroughly below and in the Declaration of Benjamin Sacks, dated October 30, 2020 ("Sacks Declaration"), attached as Exhibit 1 to the Declaration of James Cecchi filed contemporaneously with this motion, Class members are entitled to the "fraud-on-the-market" presumption of reliance instead of proving each Class member's individual reliance. Lead Plaintiff has alleged, and the motion shows Lead Plaintiff can prove, that Synchronoss's common stock traded in an efficient market during the Class Period. Accordingly, Lead Plaintiff's showing of market efficiency triggers the fraud-on-the-market presumption and satisfies the predominance requirement. Further, proceeding as a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

Lead Plaintiff respectfully requests that the Court certify the Class, appoint Lead Plaintiff as Class Representative, and appoint Lead Counsel as Class Counsel.

II. SUMMARY OF FACTS

This action arises from material misrepresentations and omissions relating to Synchronoss's financial statements, including statements made by its then-Chief Financial Officer, Defendant Karen L. Rosenberger ("Rosenberger," and with Synchronoss, "Defendants"). These false statements arose from Defendants' efforts to manipulate the Company's revenue figures by improperly and prematurely recognizing revenue.

Synchronoss is a software company that provides services to mobile phone companies. ¶¶37-39. During the Class Period, its common stock traded on the NASDAQ stock exchange. ¶31. Initially, the Company focused on mobile phone activation services, allowing customers of

phone companies to activate their mobile phones automatically. ¶¶6, 38. In or about 2013, its earnings from activation services began to slow, and the Company moved to reposition itself as a "cloud" services provider. ¶40. Cloud revenue, therefore, became critical to the Company's financial position and executives' compensation packages. ¶¶41-42.

Synchronoss's revenue from cloud services began to slow by the third quarter of 2015. ¶54. Because of the centrality of the Company's cloud business to its overall financial health, and to fraudulently paint a rosier picture of the business's condition, the Company began to book revenue for large deals with customers even where the Company lacked sufficient evidence that such a deal had actually been consummated. ¶¶42, 63, 89, 91, 142-43. These accounting steps contravened Company-wide policies requiring a signed contract before the booking of revenue. *See* ECF #91 (Opinion on Defendants' Motion to Dismiss, May 29, 2020 (cited as "Op.") at 29.

Lead Plaintiff highlighted examples of this fraud, including Defendants' representation in November 2016 that Synchronoss had signed a $25 million deal with Verizon when it had not closed that deal in the quarter. ¶¶89, 91-92. Similarly, in the first quarter of 2016, Synchronoss improperly recognized $5 million from a supposed transaction with Verizon, even though no such agreement was reached in that quarter. ¶¶163-166. Synchronoss also falsely booked revenue relating to two transactions with AT&T in late 2015, even though they never actually occurred. ¶¶174-75. As Lead Plaintiff made clear, these transactions represented only a subset of the transactions for which fraudulent revenue was booked. ¶4.[4]

In the wake of this fraud, and after just two months on the job, the new CEO and CFO of the Company both resigned on April 27, 2017, after each had served less than two months on the

[4] The Complaint makes clear that "Synchronoss has not identified certain agreements, customers, and/or transactions that are the subject of the Restatement" but that "[t]hose as-yet-unidentified agreements and transactions" were nevertheless part of the fraud alleged in the Complaint. ¶4.

job. ¶432. On the same day, the Company announced a large miss of earnings guidance issued by Defendant Rosenberger just a short time earlier, causing the Company's stock to drop 46% in a single day. ¶17. The April 27 disclosure was the part of a series of corrective disclosures and/or materialization of concealed risk relating to the misconduct at Synchronoss. ¶432.

The Company's premature and improper recognition of revenue violated accounting policies and GAAP by booking revenue without sufficient evidence of an executed contract. *See, e.g.*, ¶¶7-12; *see also* Op. at 29 ("[Lead Plaintiff's complaint] is sufficient to allege violations of the GAAP standard in question and, further, sufficient grounds from which to infer scienter as to Rosenberger.")).

As a consequence of these falsifications, the Company was forced to restate revenue. On May 12 and May 15, 2017, Synchronoss announced that it would be unable to release its quarterly earnings report and hold its earnings conference call concerning Q1 2017 financial results. ¶¶433-35. These additional corrective disclosures and/or materializations of concealed risk caused the stock price to drop. ¶¶433-35. On May 22, 2017, Synchronoss announced that NASDAQ was suspending trading of Synchronoss common stock because of the Company's failure to timely file its quarterly reports. ¶436. Again, because of this additional corrective disclosures and/or materializations of concealed risk, Synchronoss's stock price fell further. ¶436. Then, on June 13, 2017, Synchronoss announced that its financial reports for 2015 and 2016 should not be relied on, and soon after announced that its 2014 financial statements would also need to be restated. ¶3.

Following a restatement process that took more than a year to complete, ¶21, on July 2, 2018, Synchronoss restated its financials for each of the quarterly and full-year reports for 2014-2016, wiping out millions of dollars in value. ¶¶3, 5, 247. In connection with the restatement, Synchronoss admitted that it had "pervasive material weaknesses" in internal controls, and that it

did "not consistently maintain a corporate culture that prevented the occurrence of certain deviations from Company policy." ¶22. The fraud was so extensive that Defendants' stock dropped from prices in the $30s in early 2017 to prices in the low double-digits by the end of May 2017, ¶¶430-438. NASDAQ suspended trading in Synchronoss shares on May 14, 2018, ¶31, and did not reinstate the stock for almost half a year. Synchronoss stock now regularly trades in the $2.00-4.00 per share range.

While it was falsifying revenue figures, Synchronoss and certain of its employees, including then-CFO Rosenberger, made false statements concerning transactions with customers and concerning the overall financial health of the Company. ¶¶255-321.

III. STATEMENT OF PROCEDURAL BACKGROUND

Lead Plaintiff is an institutional investor public pension fund. ¶30. Lead Plaintiff purchased Synchronoss common stock during the Class Period at artificially inflated prices and suffered substantial losses when the truth about the matters alleged in the Second Amended Complaint ("Complaint") was revealed to the market. ¶30. Lead Plaintiff's authorized representative has certified that Lead Plaintiff (1) reviewed the complaint filed in this matter; (2) did not purchase securities at the direction of counsel, or in order to participate in any private securities action; (3) is willing to serve as a representative party on behalf of the Class; and (4) will not accept any payment for serving as a representative part for the Class beyond its respective *pro rata* share of any recovery, except as ordered or approved by the Court. ECF #10-2.

Lead Plaintiff filed its Complaint on August 14, 2019 (ECF #81) alleging violations of the Securities Exchange Act of 1934, 15 U.S.C. § 78a, *et seq*, and Rule 10b-5 promulgated thereunder. ¶26. On May 29, 2020, the Court sustained the Complaint as to Lead Plaintiff's claims relating to the Company's improper recognition of revenue absent signed contracts, determining that scienter could be inferred from Lead Plaintiff's allegations. ECF #91. The parties began the discovery

process in July, although Lead Plaintiff has presented certain issues to the Court for determination pursuant to Local Rule 37.1(a)(1). ECF #113. Because litigants are instructed to move for a determination on class certification at "an early practicable time,"[5] the parties agreed to, and the Court approved, a case schedule requiring Lead Plaintiff to file this motion by October 30, 2020. ECF #110.

IV. ARGUMENT

A. CLASS CERTIFICATION STANDARD

The Court will certify a proposed class action so long as the case satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure by a preponderance of the evidence.[6] As it conducts the Rule 23 analysis, the Court should avoid addressing factual or legal disputes that touch upon the elements of the cause of action unless "necessary to determine whether a class certification requirement is met,"[7] as a plaintiff is not required "to establish the merits of their case at the class certification stage."[8]

The Supreme Court has recognized that the class action mechanism is appropriate in securities fraud cases.[9] While the courts do not presume that the Rule 23 requirements are met in every securities case, the Third Circuit has held that class actions "are a particularly appropriate

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[5] Fed. R. Civ. P. 23(c)(1)(A); *see also China Agritech, Inc. v. Resh*, 138 S. Ct. 1800, 1802 (2018).

[6] *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 307 (3d Cir. 2009).

[7] *Id.*

[8] *Chiang v. Veneman*, 385 F.3d 256, 262 (3d Cir. 2004); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974); *Hydrogen Peroxide*, 552 F.3d at 317 ("*Eisen* is best understood to preclude" merits inquiries that are not necessary to determine Rule 23 requirements).

[9] *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) ("[p]redominance is a test readily met in certain cases alleging . . . . securities fraud"); *see also Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101 n.11 (1981) (stating that class actions "'vindicat[e] the rights of individuals who otherwise might not consider it worth the candle to embark on litigation in which the optimum result might be more than consumer by the cost'") (citation omitted).

and desirable means to resolve claims based on the securities laws, 'since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'"[10]

B. THE PROPOSED CLASS SATISFIES RULE 23(a)

Pursuant to Rule 23(a), the moving party must demonstrate that the proposed class satisfies four elements:[11]

(1) **Numerosity**: the class is so numerous that joinder of all members is impracticable;

(2) **Commonality**: there are questions of law or fact common to the class;

(3) **Typicality**: the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) **Adequacy**: the representative parties will fairly and adequately protect the interests of the class.

Each of these prerequisites is met in this case.

1. The Members of the Proposed Class Are So Numerous That Joinder of All Members is Impracticable

"No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met."[12] "Determinations of whether numerosity is met must be 'based upon common sense.'"[13] The numerosity element is often met in securities class actions, as "[j]oinder is often impractical [in cases which involve] publicly-owned and nationally-listed

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[10] *Hydrogen Peroxide*, 552 F.3d at 321-22 (quoting *Eisenberg*, 766 F.3d at 785); *see also Smith v. Supreme Specialties, Inc.*, No. 02-168, 2007 WL 1217980, at *3 (D.N.J. Apr. 23, 2007); *In re Lucent Techs., Inc. Sec. Litig.*, 307 F. Supp. 2d 633, 641 (D.N.J. 2004).

[11] Fed. R. Civ. P. 23(a); *In re Coinstar Int'l Inc. Sec. Litig.*, 585 F.3d 774, 780 (3d Cir. 2009).

[12] *Stewart v. Abraham*, 275 F.3d 220, 226 (3d Cir. 2001).

[13] *Wragg v. Ortiz*, Civil No. 20-5496, 2020 WL 2745247, at *27 (D.N.J. May 27, 2020) (quoting *Walling v. Brady*, Civ. A. No. 94-410, 1995 WL 447658, at *2 (D. Del. July 19, 1995)).

corporations that had a large amount of outstanding and traded shares during the relevant class period."[14]

The proposed Class includes all purchasers of Synchronoss common stock from October 28, 2014 through June 13, 2017, inclusive. Synchronoss's stock was actively traded on the NASDAQ stock exchange, with more than forty million shares of Synchronoss common stock outstanding during the Class Period. Sacks Decl. at ¶¶8, 20. Thus, while the exact number of Class Members cannot be determined now, given the large number of outstanding shares and highly weekly trading volume on the NASDAQ exchange (Sacks Decl. at ¶¶20, 28), the Class easily satisfies the numerosity requirement of Rule 23(a)(1).[15]

From this evidence, the Court can conclude that the proposed Class includes thousands of members. Joinder of so many members of the Class would be "impracticable" and the numerosity requirement of Rule 23(a)(1) is therefore satisfied.[16]

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[14] *Roofer's Pension Fund v. Papa*, 333 F.R.D. 66, 74 (D.N.J. 2019) (citing *In re Vivendi Universal, S.A. Sec. Litig.*, 242 F.R.D. 76, 84 (S.D.N.Y. 2007)); *see also Bing Li v. Aeterna Zetaris, Inc.*, 324 F.R.D. 331, 339 (D.N.J. 2018) ("[C]ourts 'have recognized a presumption that the numerosity requirement is satisfied when a class action involves a nationally traded security.'") (quoting *In re DVI Inc. Sec. Litig.*, 249 F.R.D. 196, 200 (E.D. Pa. 2008) *aff'd,* 639 F.3d 623 (3d Cir. 2011), *abrogated on other grounds by Amgen, Inc. v. Connecticut Ret. Plans & Trust Funds,* 568 U.S. 455 (2013)).

[15] *See Bing Li*, 324 F.R.D. at 339 (with respect to a defendant company that had 31.6 million shares outstanding in the class period, stating that there was "no difficulty" finding numerosity met).

[16] *Id.*

2. There are Numerous Questions of Law or Fact Common to the Members of the Proposed Class

Rule 23(a)(2) requires "questions of law or fact common to the class" to support class certification.[17] This is a "low threshold" for satisfying this commonality requirement.[18] "'The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.'"[19]

Several questions of law or fact common to the proposed Class are present here. "For example, the issues of materiality and loss causation both present common questions of law and fact and can be proven with common evidence."[20] Other questions common to all members of the proposed Class include: (i) whether Defendants made false or misleading statements; (ii) whether Defendants acted with scienter; and (iii) whether Defendants' misstatements inflated the price of Synchronoss common stock.[21] These are "paradigmatic" common questions in securities class actions.[22] Thus, the commonality requirement is satisfied here.

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[17] Fed. R. Civ. P. 23(a)(2).

[18] *In re Novo Nordisk Sec. Litig.*, 2020 WL 502176, at *5 (D.N.J. Jan. 31, 2020) (citing *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 162 (3d Cir. 2001)).

[19] *Novo Nordisk*, 2020 WL 502176, at *5 (quoting *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 596-97 (3d Cir. 2009)); *see also Gayle v. Warden Monmouth Cty. Corr. Inst.*, 12-cv-02806 (FLW), 2017 WL 5479701, at *13 (D.N.J. Nov. 15, 2017) ("even a single common question will do" (quoting *Wal-Mart Stores, Inc. v. Duke*, 564 U.S. 338, 359 (2011))).

[20] *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudent Fin. Inc.*, 2015 WL 5097883, at *8 (D.N.J. Aug. 31, 2015).

[21] *See In re Merck & Co., Inc. Vytorin/Zetia Sec. Litig.*, Civ. A. No. 08-2177 (DMC) (JAD), 2012 WL 4482041, at *4 (D.N.J. Sept. 25, 2012) ("[I]n a securities fraud class action, 'questions of misrepresentation, materiality and scienter are the paradigmatic common question[s] of law or fact . . . ,' and therefore, 'the commonality requirement has been permissively applied in the context of securities fraud class action.'" (quoting *In re DaimlerChrysler AG Sec. Litig.*, 216 F.R.D. 291, 296 (D. Del. 2003))).

[22] *Id.*

3. The Proposed Class Representative's Claims Are Typical of Those of the Proposed Class

Rule 23(a)(3)'s typicality requirement is satisfied because Lead Plaintiff's claims are "typical" of the claims of the proposed Class.[23] "The standard for demonstrating typicality is undemanding and requires that 'the claims of the named plaintiffs and putative class members involve the same conduct by the defendant.'"[24] "'Complete factual similarity'" between these claims is not required.[25] "'[I]n instances wherein it is alleged that the defendants engaged in a common scheme relative to all members of the class, there is a strong presumption that the claims of the representative parties will be typical of the absent class members.'"[26]

Typicality is established here because Lead Plaintiff and all members of the proposed Class assert claims that Defendants violated the antifraud provisions of the Exchange Act and Rule 10b-5 by making material misrepresentations and omissions concerning Synchronoss's revenues, revenue recognition policies, internal controls, and compliance with GAAP. *See, e.g.*, ¶¶ 1, 7-12, 145-184, 223-25, 229-30, 255-321, 454-70. Like other members of the Class, Lead Plaintiff purchased shares during the period in which the stock price of Synchronoss shares was artificially inflated as a result of Defendants' omissions and misrepresentations. *See* ECF #10-2 at 7. Moreover, Lead Plaintiff and all Class members seek redress for the same injury: they purchased

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[23] Fed. R. Civ. P. 23(a)(3).

[24] *Roofer's Pension Fund*, 333 F.R.D. at 75 (quoting *Newton*, 259 F.3d at 183-84).

[25] *Roofer's Pension Fund*, 333 F.R.D. at 75 (quoting *Schering Plough*, 589 F.3d at 598); *see also Merck/Vytorin*, 2012 WL 4482041, at *4 (citing *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)); *Gayle*, 2017 WL 5479701, at * (acknowledging that "even if there are factual differences, so long as 'the claims of the named plaintiffs and putative class members . . . arise[] from the same practice or course of conduct' by the defendant, and there is a 'strong similarity of legal theories,' typicality is established" (quoting *Newton*, 259 F.3d at 183-84)).

[26] *Merck/Vytorin*, 2012 WL 4482041, at *4 (quoting *Weisfeld v. Sun Chem. Corp.*, 210 F.R.D. 136, 140 (D.N.J. 2002)).

or otherwise acquired Synchronoss common stock at prices artificially inflated by Defendants' fraud, and sustained damages when the disclosure of the fraud removed that artificial inflation.[27]

4. The Interests of the Proposed Class Will Be Fairly and Adequately Protected

The last Rule 23(a) factor is met here, as "the representative parties will fairly and adequately protect the interests of the class."[28] In this circuit, courts assess adequacy by inquiring: (1) whether "the named plaintiff's interests [are] sufficiently aligned with the interests of the absentees" and (2) whether the "plaintiff's counsel [is] sufficiently qualified to represent the class."[29]

Lead Plaintiff purchased Synchronoss securities during the Class Period and was injured by the same wrongful course of conduct that injured the Class. *See* Compl. at App'x A. So it is in Lead Plaintiff's economic interest to vigorously prosecute this action on behalf of the entire Class. And indeed, for more than three years, Lead Plaintiff has been doing just that.[30]

The Court has already conducted an adequacy determination by appointing the proposed class representative as Lead Plaintiff and its counsel as Lead Counsel pursuant to the Private Securities Litigation Reform Act of 1995. *See* Order Consolidating Related Cases, Appointing Lead Plaintiff, and Approving Selection of Counsel, ECF #20 (Sept. 5, 2017) ("Lead Plaintiff Order"). In its decision, the Court ruled that Lead Plaintiff "satisfies the adequacy requirements

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[27] *See also Novo Nordisk*, 2020 WL 502176, at *6 ("[T]ypicality is clearly satisfied because Plaintiffs' claims arise from the same course of conduct that gave rise to the claims of all other Class members and are based on the same legal theory.").

[28] Fed. R. Civ. P. 23(a)(4).

[29] *Roofer's Pension Fund*, 333 F.R.D. at 76 (quoting *Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 98 (D.N.J. 2018)).

[30] *In re Herley Indus. Inc. Sec. Litig.*, 2009 WL 31698888, at *13 (E.D. Pa. Sept. 30, 2009) (finding that adequacy factor was met because court had "no doubt" that the lead plaintiff would "continue to vigorously litigate in a manner beneficial to the class as a whole").

of Rule 23."[31] The Court considered that Lead Plaintiff had a "large financial loss" and, therefore, a "strong incentive to prosecute this action."[32] The Court also noted that Lead Plaintiff has "the necessary resources and legal sophistication to pursue the action,"[33] including a "large and dedicated staff with the legal, financial, and organizational expertise to effectively oversee this proceeding and direct the actions of lead counsel."[34] In addition, "Hawaii ERS's interests appear to be aligned with the rest of the class; there are no facts which indicate any conflicts of interest between Hawaii ERS and other class members."[35]

In making its determination of Rule 23(a)'s adequacy factor, the Court also considered that Hawaii ERS chose G&E as its proposed Lead Counsel and chose Carella Byrne as Liaison Counsel.[36] As the Court acknowledged, Lead Counsel and Liaison Counsel have extensive experience in complex securities fraud cases.[37]

For these reasons, Lead Plaintiff has shown that the interests of the proposed Class will be fairly and adequately protected.

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[31] Lead Plaintiff Order at 6.

[32] Lead Plaintiff Order at 6 (citing *In re Milestone Scientific Sec. Litig.*, 183 F.R.D. 404, 416 (D.N.J. 1998)).

[33] Lead Plaintiff Order at 6 (citing *In re Cendant Corp.*, 264 F.3d 201, 268 (3d Cir. 2001)).

[34] Lead Plaintiff Order at 6 (citing ECF #10-2 (Hawaii ERS Certification, Cecchi Decl. to the Employees' Retirement System of the State of Hawaii's Motion for Consolidation, Appointment as Lead Plaintiff, and for Approval of its Selection of Counsel, at Ex. 1)).

[35] Lead Plaintiff Order at 6.

[36] Lead Plaintiff Order at 6.

[37] Lead Plaintiff Order at 7; *see also* Exhibit 2 to the Declaration of James Cecchi attached hereto.

C. THE PROPOSED CLASS SATISFIES RULE 23(b)(3)

Class certification pursuant to Rule 23(b)(3) is merited where (i) common questions of law or fact predominate over the potential for individual questions and (ii) the class action is superior to other available means of adjudication.[38] Both requirements are satisfied here.

1. Common Questions of Law and Fact Predominate Over Questions Affecting Only Individual Members of the Proposed Class

The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."[39] This factor requires examining the elements of the claims "'through the prism' of Rule 23."[40] Even so, plaintiffs need not prove the elements of their claim at the class certification stage; instead, the question is whether those elements are susceptible to classwide proof.[41] The appropriate inquiry focuses on the elements of liability, not damages, as the need to calculate "damages on an individual basis should not preclude [class certification] when the common issues which determine liability predominate."[42]

When a plaintiff alleges that a defendant made "similar representations, nondisclosures, or engaged in a common course of conduct," the predominance requirement is satisfied.[43] As the Court has noted, "even a few common issues can satisfy this requirement where their resolution

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[38] Fed. R. Civ. P. 23(b)(3).

[39] *Amchem*, 521 U.S. at 623.

[40] *Malack v. BDO Seidman, LLP*, 617 F.3d 743, 746 (3d Cir. 2010).

[41] *Amgen v. Conn. Ret. Plans and Trust Funds*, 568 U.S. 455, 469 (2013) ("Rule 23(b)(3), however, does *not* require a plaintiff seeking class certification to prove that each 'elemen[t] of [her] claims [is] susceptible to classwide proof.'") (citation omitted).

[42] *Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 127 (3d Cir. 2000); *Supreme Specialties,* 2007 WL 1217980, at *9.

[43] *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 231 (D.N.J. 2005); *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 309 (3d Cir. 2005) (finding predominance where "[a]ll plaintiffs' claims arise from the same alleged fraudulent scheme").

will significantly advance the litigation," and "[t]he mere existence of individual issues will not of itself defeat class certification."[44]

Securities class actions are particularly well suited to satisfy the predominance requirement because they involve common theories of liability arising from a uniform set of wrongful acts. Indeed, the Supreme Court has stated that "[p]redominance is a test readily met in certain cases alleging . . . securities fraud[.]"[45]

Here, all members of the Class seek a determination that Defendants misrepresented, and omitted disclosing, material facts regarding the Company's contracts and its recognition of revenue from those contracts, and that these misrepresentations and omissions violated federal securities laws. More specifically, Lead Plaintiff alleges that Defendants fraudulently inflated the price of Synchronoss securities by falsifying publicly reported revenue figures in its financial statements issued in 2014-2016, and public communications, including earnings calls.

When trying their case, Lead Plaintiff will rely on evidence and legal theories common to all members of the Class. Courts have deemed such common questions sufficient to satisfy the predominance requirement in securities class actions.[46] Lead Plaintiff is not required to show at the class certification stage that it could prove loss causation on a classwide basis.[47]

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[44] *La. Mun. Police Emps. Ret. Sys. v. Dunphy*, Civ. A. No. 03-cv-4372 (DMC), 2008 WL 700181, at *6 (D.N.J. Mar. 13, 2008); *Weisfeld*, 210 F.R.D. at 141 (holding that individual issues will not defeat class certification if they have "lesser overall significance than the issues common to the class").

[45] *Amchem*, 521 U.S. at 625; *La. Mun. Police*, 2008 WL 700181, at *6.

[46] *See, e.g.*, *Herley*, 2009 WL 3169888, at *14; *Suprema Specialties*, 2007 WL 1217980, at *9; *In re Ravisent Techs., Inc. Sec. Litig.*, No. Civ. A 00-CV-1014, 2005 WL 906361, at *5 (E.D. Pa. Apr. 18, 2005); *DaimlerChrysler*, 216 F.R.D. at 300.

[47] *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 813 (2011); *see also Schleicher v. Wendt*, 618 F.3d 679, 868-87 (7th Cir. 2010) ("[W]e do not understand *Basic* to license each court of appeals to set up its own criteria for certification of securities class actions or to 'tighten' Rule 23's requirements."); *see also Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, 310

Further, Lead Plaintiff can establish the reliance element of its Section 10(b) claim on a classwide basis. Lead Plaintiff can do so based on the fraud-on-the-market theory, which provides that "where a company's stock trades on an efficient market, its stock price incorporates all material public information, including misrepresentations."[48] As explained in *Herley*, "[t]he availability of the fraud-on-the-market theory in securities class actions such as this one alleviates any concern [that] questions of individual reliance would dominate class-wide issues."[49] Under the theory, "[r]eliance may be presumed when a fraudulent misrepresentation or omission impairs the value of the security traded in an efficient market."[50]

To rely on the theory, plaintiffs must also show that the securities at issue traded in an "open and developed"—i.e., efficient—market.[51] Although *Basic* stated that an efficient market was one in which the price reflected all publicly available information,[52] the Supreme Court did not set forth a methodology for making such a determination. The seminal decision for guiding the determination of whether a market is efficient is *Cammer v. Bloom*, 711 F. Supp. 1264, 1276 (D.N.J. 1989).

F.R.D. 69, 86 (S.D.N.Y. 2015) ("[T]he net result of *Halliburton I* and *Halliburton II* is that at class certification, a plaintiff is not required to prove either price impact—stock price movement based on the fraud—or loss causation—that the caused a subsequent economic loss.").

[48] *Roofer's Pension Fund*, 333 F.R.D. at 73 (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 246-47 (1988)).

[49] *Herley*, 2009 WL 31619888, at *14.

[50] *Newton*, 259 F.3d at 175; *see also Basic*, 485 U.S. at 241-42 (in an efficient market, "[m]isleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements"); *Halliburton*, 563 U.S. at 813 (conveying that the "fundamental premise" of the theory is "that an investor presumptively relies on a misrepresentation so long as it was reflected in the market price at the time of his transaction").

[51] *See Basic*, 485 U.S. at 241-42; *DVI Inc.*, 249 F.R.D. at 208.

[52] 485 U.S. at 247.

a. The Cammer Factors Support a Finding of Market Efficiency

Under *Cammer*, to assess market efficiency, courts consider the following factors:

(1) a large weekly trading volume;

(2) the existence of a significant number of analyst reports;

(3) the existence of market makers and arbitrageurs in the security;

(4) the eligibility of the issuer to file an S-3 registration statement; and

(5) a history of immediately movement of the stock price caused by unexpected corporate events or financial releases.[53]

If the *Cammer* factors favor finding market efficiency, *Basic*'s fraud-on-the-market presumption applies, and therefore reliance need not be established on an individual basis.[54] As explained in the Sacks Declaration, Lead Plaintiff has established each *Cammer* factor, as well as other indicia of efficiency, all of which confirm that Synchronoss common shares traded on an efficient market during the Class Period. *See* Sacks Decl. at ¶68.

i. The First *Cammer* Factor: Weekly Trading Volume

In *Cammer*, the court held that "average weekly trading of 2% or more of the outstanding shares would justify a strong presumption that the market for the security is an efficient one; 1% would justify a substantial presumption."[55] The Sacks Declaration finds that, during the Class Period, the average weekly trading volume of Synchronoss stock was 7.12%—well above the 2% benchmark set forth in *Cammer* as substantiating a "strong presumption" of market efficiency.[56]

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[53] *Cammer*, 711 F. Supp. at 1286-87; *DVI Inc.*, 249 F.R.D. at 208.

[54] *Newton*, 249 F.3d at 175; *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1419 n.8 (3d Cir. 1997).

[55] 711 F. Supp. at 1293.

[56] *Cammer*, 711 F. Supp. at 1286.

Sacks Decl. at ¶28. This heavy trading volume justifies a strong presumption Synchronoss stock traded on an efficient market.[57]

ii. The Second *Cammer* Factor: Securities Analysts And Media Coverage

Securities analysts employed by a significant number of then-major brokerage firms—including JP Morgan, Credit Suisse, and Jefferson Research & Management—published reports on Synchronoss's securities during the Class Period. Sacks Decl. at ¶¶29-30 & Figures 9-10. Indeed, 17 equity analysts were covering the Company's stock, publishing 382 analyst reports during the Class Period. Sacks Decl. at Figure 9. Moreover, as the Sacks Declaration observes, over 450 articles about Synchronoss appeared in financial publications throughout the Class Period. Sacks Decl. at ¶31. Under *Cammer* and its progeny, this type of extensive coverage of Synchronoss by securities analysts and the media establishes that Synchronoss's common shares trade in an informationally efficient market during the Class Period.[58]

iii. The Third *Cammer* Factor: Number of Market Makers or Specialists in Synchronoss Common Stock

The Third *Cammer* factor looks at the existence of traders who increase liquidity in the market. As *Cammer* explained, market makers and arbitrageurs "ensure completion of the market mechanism" and "react swiftly to company news and reported financial results by buying or selling stock and driving it to a changed price level."[59] With respect to Synchronoss, several institutions

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[57] *See Roofer's Pension Fund*, 333 F.R.D. at 81 ("[T]rading volume of two perfect or more justifies a strong presumption of market efficiency."); *Merck/Vytorin*, 2012 WL 4482041, at *5 (weekly trading volume of 2.8% "justif[ied] a 'strong presumption'" of market efficiency).

[58] *See Wagner v. Barrick Gold Corp.*, 251 F.R.D 112, 119 (S.D.N.Y. 2008) (finding that shares traded on an efficient market, based in part on "cover[age] by a number of brokerage firms and other analysts").

[59] *Cammer*, 711 F. Supp. at 88-87.

consistently held over a million shares of the Company's security on the NASDAQ. *See* Sacks Decl. at ¶37 & Figure 11 (referring BlackRock, The Vanguard Group, Inc., and RBC Global Asset Management).

As Mr. Sacks explains in his Declaration, simply counting market makers is a less reliable indicator, from an economic perspective, of market activity than the "presence and size of institutional holdings." Sacks Decl. at ¶36. As Mr. Sacks has demonstrated, many institutional investors—ninety-three—participated in the market for Synchronoss common stock during the Class Period, and held a majority of the stock during the Class Period, which also supports an efficient market finding.[60] Sacks Decl. at ¶¶38-39 & Figure 11. In addition, Synchronoss's common stock traded on the NASDAQ during the Class Period. Sacks Decl. at ¶3. Courts agree that listing on the NASDAQ is a good indicator that the stock trades in an efficient market.[61] There is little doubt that these factors together demonstrate that the Synchronoss common stock treaded on an open and liquid market.

[60] *DVI Inc.* 249 F.R.D. at 215 (E.D. Pa. 2008) (accepting the contention that institutional investors "often play[] a similar role to market makers by serving as broker for buyer and sellers, thus creating a robust market"); *see also In re Alstom SA Sec. Litig.*, 253 F.R.D. 266, 280 (S.D.N.Y. 2008) ("[B]ecause institutional investors held a substantial percentage" of the company's securities and "could easily buy and sell" those securities on exchanges "such as the NYSE and Euronext Paris, they have likely acted as arbitrageurs and facilitated the efficiency of the market.").

[61] *See, e.g.*, *Angley v. UTi Worldwide Inc.*, 311 F. Supp. 3d 1117, 1121 n.4 (C.D. Cal. 2018) ("The fact that UTi common shares were traded on NASDAQ further demonstrates the market for UTi shares was efficient.") (*citing Todd v. Starr Surgical Co.*, 14-cv-05263, 2017 WL 821662 (C.D. Cal. Jan. 5, 2017)); *In re Initial Public Offering Sec. Litig.*, 544 F. Supp. 2d 277, 296 n.133 (S.D.N.Y. Mar. 26, 2008) (while NASDAQ listing is not dispositive, "the federal courts are unanimous in their agreement that a listing on the NASDAQ or a similar national market is a good indicator of efficiency"); *Burke v. China Aviation Oil (Singapore) Corp. Ltd.*, 421 F. Supp. 2d 649, 653 (S.D.N.Y. 2005) ("The NASDAQ is recognized as maintaining an efficient market . . . .").

iv. The Fourth *Cammer* Factor: Eligibility for File Form S-3

The fourth *Cammer* factor assesses a corporation's eligibility to file an S-3 registration statement. A company is eligible to file a Form S-3 registration statement if it has filed SEC reports for twelve straight months and possesses a market capitalization of at least $75 million.[62] As reported in the Sacks Declaration, Synchronoss has been eligible to file a Form S-3 since its IPO in 2006, and did so in 2010 in connection with a secondary equity offering. Sacks Decl. at ¶42. Accordingly, this factor also supports finding efficiency in the market for Synchronoss common stock.[63]

v. The Fifth *Cammer* Factor: Causal Relationship Between Unexpected News and Prompt Response in Share Price

The "cause and effect relationship between unexpected corporate events or financial releases and an immediate response in the stock price . . . . is the essence of an efficient market and the foundation for the fraud on the market theory."[64]

The evidence submitted in the Sacks Declaration, in the form of an "event study," shows that there was a causal connection between new company specific-information and the reactions in the market prices of Synchronoss common stock. Sacks Decl. at ¶¶43-55. "The event study is a statistical framework that can be used to evaluate whether stock returns observed after an event, after controlling for market and industry factors, are sufficiently large to conclude that the event

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[62] 17 C.F.R. § 239.13.

[63] *See Merck/Vytorin*, 2012 WL 4482041, at *5 (finding market efficient and plaintiffs entitled to a presumption of reliance based in part on defendant company's eligibility to file Forms S-3).

[64] *Cammer*, 711 F. Supp. at 1287; *see also DVI Inc.*, 249 F.R.D. at 210.

likely had an impact on prices." Sacks Decl. at ¶46. The event study "has now become 'standard operating procedure in federal securities litigation.'"[65]

In his event study, Mr. Sacks "evaluate[d] the connection between news and price movements for Synchronoss stock during the Class Period" by "considering the set news events" that were disclosed in the Company's 8-K filings.[66] Because these disclosures provide material information relevant to the price of the stock, they serve as "a logical and objective basis to evaluate price responsiveness to news."[67] Sacks Decl. at ¶48. The eleven filings during the Class Period (and before the first alleged disclosure on February 7, 2017) that provided news concerning Synchronoss earnings were included in Mr. Sacks's study and are set forth in Table 12 of his Declaration.

The event study revealed "strong evidence of a price reaction on 10 of the 11 dates." Sacks Decl. at ¶50. Courts routinely accept, as supporting market efficiency, event studies with an even lower proportion of event dates resulting in a market price reaction as is the case here.[68] As Mr.

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[65] *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 253 (2d Cir. 2016) (quoting *United States v. Gushlak*, 728 F.3d 184, 201 (2d Cir. 2013)). Market efficiency can still be determined based on a mix of other factors, even "in the absence of an event study or where the event study was not definitive." *Carpenters Pension Trust Fund*, 310 F.R.D. at 84.

[66] *See In re Diamond Foods, Inc. Sec. Litig.*, 295 F.R.D. 240, 249 (N.D. Cal. 2013) (determining that an event study based on official disclosures in 8-Ks was objectively reasonable).

[67] *See Monroe Cty. Emps. Ret. Sys. v. Southern Co.*, 332 F.R.D. 370, 385 (N.D. Ga. 2019) ("Earnings announcement dates are appropriate event dates in event studies investigating a cause-and-effect relationship between the release of company-specific news and company stock price movement,").

[68] *See id.* at 385 (five of seven dates resulted in price reaction); *id.* at 386 n.12 (stating that "[t]here is no requirement that every event date tested by following by a statistically significant price reaction in order to conclude that the market for a stock was efficient"); *Thorpe v. Walter Inv. Mgmt. Corp.*, 14-cv-20880, 2016 WL 4006661 (S.D. Fla. Mar. 16, 2016) (five of ten event dates supported efficiency).

Sacks concluded, this is "strong direct evidence that Synchronoss prices did, in fact, respond to material news during the Class Period and supports a finding of efficiency." Sacks Decl. at ¶50.

Accordingly, for the reasons set forth above, each of the five *Cammer* factors supports a finding of market efficiency with respect to Synchronoss's common shares.

b. Additional Factors Show the Market's Efficiency

In addition to the five *Cammer* factors, the Sacks Declaration analyzes three factors derived from *Krogman v. Sterritt*, 202 F.R.D. 467, 474 (N.D. Tex. 2001), which further establish that the market for Synchronoss common stock was efficient during the Class Period. Sacks Decl. at ¶¶11-15.[69] These factors include: the market capitalization of the company, the public float, and the bid-ask spread.

i. Market Capitalization

The market capitalization for Synchronoss's common stock ranged from $544 million to $2,334 million during the Class Period. This range indicates that the Company ranked in the 25th to 75th percentile for companies by market cap. Sacks Decl. at ¶18. As "[a] large market capitalization is often associated with market efficiency," Sacks Decl. at ¶16, this factor indirectly supports a market efficiency finding.

ii. Public Float

The size of the public float indicates how free the shares may be to trade on public information, rather than inside information, and free from insider influence. Sacks Decl. at ¶19. The public held above 85% of the Company's stock during the Class Period, representing between

[69] *See also Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 501-02 (S.D. Fla. 2003) (discussing additional factors); *In re Xcelera.com Sec. Litig.*, 430 F.3d 503, 511 (1st Cir. 2005) (same); *DVI Inc.*, 249 F.R.D. at 208 (same).

36 million and 41.6 million shares. Sacks Decl. at ¶20 & Figure 3. This factor, therefore, also indirectly supports a conclusion of efficiency.

iii. Bid-Ask Spread

Courts sometimes consider a stock's bid-ask spread in determining market efficiency because it is an indicator of the liquidity of that stock. "[A] relatively low bid-ask spread is associated with an efficient security market." Sacks Decl. at ¶22. Because the average daily spread was 0.06% of the stock price, the stock was "between the 25th and 50th percentile of normalized bid-asks spreads—ranked from lowest to highest—on the NYSE and NASDAQ between 2013 and 2018." Sacks Decl. at ¶23. This relatively low spread "supports the inference that [the stock] traded in an efficient market." Sacks Decl. at ¶23.

As the Sacks Declaration concludes, each of these additional factors evidences that the market for Synchronoss's common shares was informationally efficient during the Class Period. Sacks Decl. at ¶68.

c. Reliance is Also Presumed Under *Affiliated Ute*

As mentioned above, plaintiffs pursuing securities fraud claims can establish reliance employing *Basic*'s fraud-on-the-market presumption. In cases alleging material omissions—such as this case—the presumption of reliance set forth in *Affiliated Ute*[70] is also available. *Affiliated Ute* established that reliance is presumed from the materiality of the information alleged to have been omitted.[71]

Where a court has determined that reliance is established through the fraud-on-the-market theory, the court need not reach the question of whether reliance is available under *Affiliated Ute*.

[70] *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153-43 (1972); *see also Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 192 (3d Cir. 2001).

[71] *Johnston*, 265 F.3d at 192.

Here, Lead Plaintiff has established the applicability of the fraud-on-the-market theory and therefore established reliance through the *Basic* presumption. *See* Section IV.C.v. *supra*. Because Lead Plaintiff has also alleged fraud by material omission, *see, e.g.*, ¶¶ 302, 313, 321, reliance could also be established through *Affiliated Ute*, if necessary.[72]

d. Damages Are Measurable Using a Common Methodology

Rule 23 does ***not*** require a plaintiff to set forth a detailed model for proving damages at the class certification stage.[73] Even so, Lead Plaintiff reveals that per-share damages can be determined classwide, further establishing predominance.

Damages in securities fraud cases are particularly susceptible to calculation through a common, classwide methodology.[74] Consistent with securities class-action practice, Lead Plaintiff will establish damages on a classwide basis at summary judgment or trial after full development of the record.[75]

Mr. Sacks explains in his Declaration that there is a well-established, generally accepted methodology for calculating damages on a classwide basis in this case. As he notes in his Declaration, "[d]amages sustained by Class Members on each of their (eligible) shares can be calculated based on the difference between the *price inflation* present in the share price when it

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[72] *Affiliated Ute*, 406 U.S. at 153 ("All that is necessary is that the facts withheld be material[.]").

[73] *Novo Nordisk*, 2020 WL 502176, at *3; *In re Air Cargo Shipping Servs. Antitrust Litig.*, 06-MD-1175, 2014 WL 7882100, at *59 (E.D.N.Y. Oct. 15, 2014) ("It has long been settled that Rule 23(b)(3) does not require common proof of damages in order for class certification to be appropriate."); *see also Neale v. Volvo Carbs of N. Am., LLC*, 794 F.3d 353, 375 (3d Cir. 2015) (ruling that to deny certification just because individual damage calculations may be required would be "an abuse of discretion").

[74] *See Strougo v. Barclays PLC*, 312 F.R.D. 307, 313 (S.D.N.Y. 2016) ("Issues and facts surrounding damages have rarely been an obstacle to establishing predominance in section 10(b) cases.").

[75] *Bing Li v. Aeterna Zentaris*, Inc., 2018 WL 1143174, at *2 (D.N.J. Feb. 28, 2018) (approving an expert framework for assessing damages, while indicating that a model was not required).

was purchased and the *price inflation* present in the share price when it was sold (or if never sold, just the price inflation present when purchased)." Sacks Decl. at ¶56.

Lead Plaintiff's damages approach fits with its theory of liability. When, as here, the model proposes to measure damages based on the difference between the price at which a Class member purchased, and later sold, the stock, this is sufficient to measure damages in a manner consistent with a liability theory based on the inflation of stock price arising from misrepresentations and omissions.[76]

Lead Plaintiff alleges that the price of Synchronoss common stock was artificially inflated during the Class Period by Defendants' fraudulent misstatements and omissions, and Class members suffered when that inflation was removed as the truth emerged. As Mr. Sacks explains, damages arising from the artificial inflation in common stock prices during the Class Period can be determined for any member of the Class by applying the same measure of damages.[77] Sacks Decl. at ¶56. While the actual amount damages for each Class members will differ depending on that Class member's transactions in common stock, the Third Circuit has made clear that "individual damages calculations do not preclude class certification."[78]

2. Class Action Treatment is Superior to Other Available Methods

To determine whether a class action is superior to other methods of adjudication, courts must consider the following four factors: (1) the interests of members of the class in individually controlling the prosecution of separate actions; (2) whether other litigation has already commenced; (3) the desirability or undesirability of concentrating claims in one forum; and (4) the

[76] *See Pirnik v. Fiat Chrysler Autos., N.V.*, 327 F.R.D. 38, 47-48 (S.D.N.Y. 2018).

[77] *Affiliated Ute*, 406 U.S. at 128.

[78] *Neale*, 794 F.3d at 374-75 (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 41 (2013)).

likely difficulties in managing a class action.[79] Here, each of these factors illustrates that a class action is the superior method by which to adjudicate the Class members' claims.

a. The Limited Interests of Class Members in Individually Controlling the Prosecution or Defense of Separate Actions

The superiority factor is readily found satisfied when the alternatives to a class action are either no recourse for a large number of defrauded investors or a scattering of suits with the resulting inefficient administration of litigation.[80]

Lead Plaintiff seeks to represent a Class consisting of a large number of Synchronoss purchasers who are geographically dispersed and whose individual damages are likely small enough to render individual litigation prohibitively expensive. Given the prohibitive expense of bringing individual actions for securities fraud, a class action is well suited to resolving the individual Class members' claims.[81]

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[79] Fed. R. Civ. P. 23(b)(3).

[80] *See La. Mun. Police*, 2008 WL 700181, at *8 (finding superiority where "class certification will secure the rights of those investors whose rights cannot be redressed because it would not be economically feasible to retain individual counsel or otherwise pursue their individual actions"); *see also Novo Nordisk*, 2020 WL 502176, at *9 ("class actions are appropriate in securities cases where a significant number of investors with relatively small losses would likely have decreased motivation to pursue their claims individually"); *Ravisent*, 2005 WL 906361, at *6 ("[A] class action is superior to individual lawsuits because it provides an efficient alternative to individual claims, and because individual class members are unlikely to bring individual actions given the likelihood that litigation expenses would exceed any recovery.").

[81] *See Basic*, 485 U.S. at 250 (a class action is the most favorable way to adjudicate federal securities fraud claims); *Eisenberg*, 766 F.2d at 785 (finding that effectiveness of securities laws may depend largely on applying the class action device); *La. Mun. Police*, 2008 WL 700181, at *8 (finding superiority where class certification would "facilitate . . . the statutory objective of a fair, orderly, trustworthy, and reliable securities market").

b. The Extent and Nature of Any Litigation Concerning the Controversy Already Commenced by or Against Members of the Class

To Lead Plaintiff's knowledge, there are no other pending civil lawsuits asserting claims by investors for securities fraud against Synchronoss based on the facts alleged in the Complaint.[82] Accordingly, whatever interests individual class members may have in controlling the prosecution or defense of separate actions, such interests are heavily outweighed by the benefits of allowing this case to proceed as a class action.

c. The Desirability of Concentrating the Litigation in a Single Forum

Concentrating litigation against Synchronoss in a single forum has a number of benefits, including eliminating the risk of inconsistent adjudication and promoting the fair and efficient use of the judicial system. Thus, the benefits of concentrating litigation against Synchronoss in this Court heavily favor certifying the Class.[83]

d. The Lack of Difficulties that Would Present Themselves in Managing this Action as a Class Action

Federal securities class actions are routinely certified and raise no unusual manageability issues.[84] Further, class certification would promote the efficient use of the limited resources of the judicial system and the litigants:

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[82] *La. Mun. Police*, 2008 WL 700181, at *8 ("there is no record of any other actions now proceeding on behalf of similarly situated investors on an individual basis"); *Ravisent*, 2005 WL 906361, at *6 (the court was "unaware of any other individual claims being pressed against Defendants for the wrongs alleged in this action").

[83] *See Supreme Specialties*, 2007 WL 1217980, at *10 ("[C]oncentrating these claims in one forum will avoid inconsistent verdicts and promote fairness and efficiency.").

[84] *See, e.g.*, *La. Mun. Police*, 2008 WL 700181, at *8 ("[T]here is no reason to expect any difficulties in the management of this action as a class action because actions of this size and complexity are common."); *Supreme Specialties*, 2007 WL 1217980, at *10 ("[T]he Court perceives no insurmountable difficulties that will be encountered in managing the class action.").

> Absent a class action, courts could theoretically be inundated with hundreds of lawsuits presenting near-identical factual and legal issues, and many potential claimants might be precluded from pursing their claims due to the prohibitively high costs associated with securities litigation. A class action would allow both Lead Plaintiffs and Defendants to avoid duplicative expenses and take advantage of economies of scale which they would otherwise lack.[85]

For all of the foregoing reasons, proceeding by the class action mechanism is superior to any other method to secure the just, speedy, and inexpensive determination of Class members' claims. Accordingly, the requirements of Rule 23(b)(3) are satisfied.

3. The Proposed Class is Ascertainable

In this Circuit, the plaintiff need not identify all class members at the time of the filing of the class certification motion; "instead, a plaintiff need only show that 'class members can be identified.'"[86] Here, the proposed Class is sufficiently ascertainable because it is defined by reference to objective criteria and whether persons fall within that definition can be determined "based on ordinary business records."[87]

The proposed Class includes all persons and entities that purchased or acquired Synchronoss common stock during the Class Period and were damaged thereby. *See* Section I, *supra*. These criteria are objective. Furthermore, members of the Class can be "readily

[85] *DVI Inc.*, 249 F.R.D. at 218; *see also Lucent*, 307 F. Supp. 2d at 641 ("The class mechanism is the best way of resolving all class members' claims and sparing the judicial system the expense and burden of dealing with duplicative lawsuits.").

[86] *Hargrove v. Sleepy's LLC*, 974 F.3d 467, 476 (3d Cir. 2020) (quoting *Byrd v. Aaron's, Inc.*, 784 F.3d 154, 163 (3d Cir. 2015)).

[87] *Dzeliak v. Whirlpool Corp.*, 12-cv-0089, 2017 WL 6513347, at *21 (D.N.J. Dec. 20, 2017); *see also Byrd*, 784 F.3d at 169 (class ascertainable where "[t]here are 'objective records' that can 'readily identify' the[] class members.'") (quoting *Grandalski v. Quest Diagnostics Inc.*, 767 F.3d 175, 184 n.5 (3d Cir. 2014)).

identif[ied]" using records of shareholder ownership.[88] For these reasons, certification of a class action presents no ascertainabilty concerns.

V. CONCLUSION

For these reasons, Lead Plaintiff respectfully requests that the Court: (1) certify this action as a class action pursuant to Rule 23(a) and 23(b)(3); (2) appoint Lead Plaintiff to serve as class representative; (3) appoint G&E as Class Counsel and Carella Byrne as Liaison Counsel for the Class; and (4) grant such other and further relief as the Court deems just and proper.

DATED: October 30, 2020

[88] *Byrd*, 784 F.3d at 169 (citation and internal quotation omitted); *see also Hargrove*, 974 F.3d at 480 (observing that in *Byrd*, the Third Circuit found ascertainability "even though no evidence as to [the class members] had been submitted because we could imagine the types of evidence that could be identified and used to link the existing class members to household members"); *Dzeliak*, 2017 WL 6513347, at *21 (class membership could be determined "based on ordinary business records"); *In re Winstar Commc'ns. Sec. Litig.*, 290 F.R.D. 437, 443 (S.D.N.Y. 2013) (acknowledging that in a securities class action, "[w]hether a prospective class member purchased [the securities] during the class period can be objectively determined by examination of brokerage or trading statements").

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CERTIFICATE OF SERVICE

I, James E. Cecchi, hereby certify that on October 30, 2020, I served the foregoing MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR CLASS CERTIFICATION by filing the same via ECF to distribute to all counsel of record.

Dated: October 30, 2020

/s/ *James E. Cecchi*
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