

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 THEODORE J. PINTAR (131372)
 LAURIE L. LARGENT (153493)
 3 JONAH H. GOLDSTEIN (193777)
 REGIS C. WORLEY, JR. (234401)
 4 AUSTIN P. BRANE (286227)
 655 West Broadway, Suite 1900
 5 San Diego, CA 92101
 Telephone: 619/231-1058
 6 619/231-7423 (fax)
 tedp@rgrdlaw.com
 7 llargent@rgrdlaw.com
 jonahg@rgrdlaw.com
 8 rworley@rgrdlaw.com
 abrane@rgrdlaw.com

9 Lead Counsel for Plaintiffs

10
 11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA

13 In re BRIDGEPOINT EDUCATION,)
 14 INC. SECURITIES LITIGATION)

No. 3:12-cv-01737-JM-JLB

CLASS ACTION

15 This Document Relates To:)
 16)

17 ALL ACTIONS.)

DECLARATION OF JONAH H. GOLDSTEIN IN SUPPORT OF MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND REIMBURSEMENT OF LEAD PLAINTIFF'S EXPENSES PURSUANT TO 15 U.S.C. §78u-4(a)(4)

DATE: April 25, 2016
 TIME: 10:00 a.m.
 CTRM: 5D, The Honorable Jeffrey T. Miller

TABLE OF CONTENTS

1					Page
2					
3	I.	PRELIMINARY STATEMENT.....			1
4	II.	LEAD PLAINTIFFS’ AND LEAD COUNSEL’S VIGOROUS PROSECUTION OF THIS CASE.....			7
5		A.	The Commencement of the Action and the Appointment of Lead Plaintiffs.....		7
6		B.	Defendants’ Motion to Dismiss the Consolidated Complaint.....		9
7		C.	Defendants’ Answer to the Consolidated Complaint		11
8		D.	Class Certification Briefing		11
9		E.	Merits Discovery.....		13
10			1. Written Discovery.....		15
11			2. Depositions		16
12		F.	Experts and Consultants.....		18
13			1. Market Efficiency, Loss Causation and Damages Expert.....		18
14			2. Insider Trading Expert.....		20
15		G.	Summary Judgment Briefing		20
16		H.	Settlement Negotiations		21
17	III.	THE SETTLEMENT IS A GOOD RESULT FOR THE CLASS IN LIGHT OF THE CONTINUING RISKS OF LITIGATION			24
18	IV.	NOTICE TO MEMBERS OF THE CLASS.....			26
19	V.	THE PLAN OF ALLOCATION.....			27
20	VI.	LEAD COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND EXPENSES IS REASONABLE			31
21		A.	A Reasonable Percentage of the Settlement Amount Recovered Is the Appropriate Method to Use in Awarding Attorneys’ Fees in Common Fund Cases Such as This Litigation.....		31
22		B.	Consideration of Relevant Factors Justify an Award of the Attorneys’ Fees Requested by Lead Counsel in This Case.....		32
23			1. The Result Achieved Justifies the Award Sought		32
24			2. The Diligent Prosecution of this Case		32
25					
26					
27					
28					

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

3. The Complexity of the Litigation’s Factual and Legal Questions 33

4. The Risks of Litigation and the Contingent Nature of Lead Counsel’s Representation 33

VII. CONCLUSION 35

1 I, JONAH H. GOLDSTEIN, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the
3 State of California. I am a member of Robbins Geller Rudman & Dowd LLP (“Lead
4 Counsel”), Court-approved counsel for City of Atlanta General Employees Pension
5 Fund (“Atlanta GEPF”), and Teamsters Local 677 Health Services & Insurance Plan
6 (“Local 677 Plan”) (together, “Lead Plaintiffs”) and the Class. I have been actively
7 involved in the prosecution and resolution of this Action, am familiar with its
8 proceedings, and have personal knowledge of the matters set forth herein due to my
9 active supervision and participation in all material aspects of the Action.

10 2. I submit this declaration in support of Lead Plaintiffs’ application,
11 pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the
12 Stipulation and Agreement of Settlement, dated October 30, 2015 (“Stipulation” or
13 “Settlement”) (Dkt. No. 96-2)¹; (b) the Plan of Allocation; (c) Lead Counsel’s
14 application for an award of attorneys’ fees and expenses; and (d) reimbursement of
15 Lead Plaintiff Local 677 Plan’s time and expenses incurred in prosecuting the
16 litigation on behalf of the Class.

17 **I. PRELIMINARY STATEMENT**

18 3. Lead Counsel diligently litigated this case since its commencement in
19 2012 and such efforts have resulted in an all cash settlement of \$15,500,000 (the
20 “Settlement Amount”). Indeed, the Settlement was only achieved after Lead Counsel,
21 *inter alia*: (a) oversaw a detailed investigation that included interviews of several
22 former employees of Defendant Bridgepoint Education, Inc. (“Bridgepoint” or the
23 “Company”); (b) drafted a comprehensive consolidated complaint; (c) overcame, in
24 part, Defendants’ motion to dismiss the consolidated complaint; (d) obtained
25 certification of the Class; (e) conducted extensive fact and expert discovery, which
26 included the review of nearly two million pages of documents; (f) took or defended 25

27 _____
28 ¹ All capitalized terms, if not otherwise defined herein, shall have the same meaning as is set forth in the Stipulation.

1 fact and expert depositions; (g) prepared comprehensive responses to multiple sets of
2 discovery propounded by the Defendants, which included interrogatories, requests for
3 admission and requests for production of documents; and (h) engaged in two lengthy
4 and productive mediation sessions before the Honorable Layn R. Phillips (Ret.), a
5 well-respected and highly experienced mediator.

6 4. The Settlement is the product of hard-fought litigation and is the result of
7 extensive arm's-length negotiations between the parties. It was negotiated by highly
8 experienced and capable counsel for Lead Plaintiffs and Defendants with a full
9 understanding of the strengths and weaknesses on both sides.

10 5. Lead Plaintiffs believe the \$15,500,000 Settlement is a very good result
11 for the Class. Lead Plaintiffs' diligent investigation and prosecution of this matter, as
12 outlined herein, confirmed that while their case had numerous strengths, they also
13 faced significant obstacles in ultimately achieving a successful result. After carefully
14 evaluating both the strengths and weaknesses of their claims, Lead Plaintiffs are
15 confident the Settlement represents a favorable resolution of the Action that is in the
16 best interests of the Class. And, as set forth below, although Lead Plaintiffs' claims
17 had significant evidentiary support, the risk remained that they may fall short of
18 prevailing on the merits at summary judgment or at trial, particularly with respect to
19 establishing loss causation and damages.

20 6. Lead Plaintiffs alleged Defendant Bridgepoint and its three top
21 executives violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the
22 "Exchange Act") and Rule 10b-5 promulgated thereunder. More specifically, Lead
23 Plaintiffs alleged that during the period from May 3, 2011, through and including
24 July 13, 2012 (the "Class Period"), Defendants made materially false and misleading
25 statements about student persistence and retention rates at Bridgepoint's Ashford
26 University ("Ashford"), as well as Defendants' efforts to improve those rates to obtain
27 accreditation for Ashford by the Western Association of Schools and Colleges
28 ("WASC").

1 7. Lead Plaintiffs asserted that Defendants’ allegedly false and misleading
2 statements and material omissions relating to Defendants’ ability to retain students
3 and keep students persisting towards completion of a degree caused the Company’s
4 stock price to be artificially inflated during the Class Period. When the truth about
5 Ashford’s student persistence and retention and initiatives to improve these rates
6 finally reached the market, Bridgepoint’s stock price experienced significant declines,
7 resulting in damages to Lead Plaintiffs and the Class.

8 8. Prior to deciding to settle the Action on the terms set forth in the
9 Stipulation, Lead Plaintiffs and their counsel carefully considered the significant risks
10 associated with litigating the case through summary judgment and trial. For example,
11 Defendants argued in a pending summary judgment motion that Lead Plaintiffs would
12 be unsuccessful in proving loss causation as to the July 13, 2012 announcement on the
13 grounds that the July 13, 2012 announcement did not reveal the falsity of Defendants’
14 statements concerning student persistence and retention, which if true would shorten the
15 Class Period and significantly reduce the amount of damages. Further, Defendants
16 asserted that with regard to the July 9, 2012 announcement, Lead Plaintiffs’ loss
17 causation and damages expert did not offer opinions that disaggregated non-fraud
18 related influences on the price of Bridgepoint stock, and consequently Lead Plaintiffs
19 could not establish loss causation, which if accepted by the Court would preclude a
20 majority of the damages recoverable at trial. Additionally, there was conflicting
21 evidence regarding the meaning of the term “persistence,” a term used by Defendants
22 and the resolution of that issue would directly bear on Lead Plaintiffs’ ability to show
23 that Defendants’ statements were false when made. Also present was the risk that the
24 Court or a jury might find – as Defendants had asserted throughout this Action – that
25 Lead Plaintiffs failed to meet their burden of proving scienter. Furthermore, there was a
26 significant risk that any fact-finder could conclude – as Defendants had also argued –
27 that certain of their allegedly false and misleading statements were protected from
28 liability by the Safe Harbor provision of the Private Securities Litigation Reform Act of

1 1995 (the “PSLRA”). *See, e.g., In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486
2 CW (EDL), Corrected Final Judgment (N.D. Cal. Mar. 28, 2008) (case dismissed and
3 judgment entered in favor of defendants after jury trial rejecting plaintiffs’ federal
4 securities laws violations).

5 9. To meet their burden of proof at trial, Lead Plaintiffs retained an expert
6 to present testimony concerning, *inter alia*, the issues of loss causation and damages.
7 However, reliance on this testimony would not guarantee that Lead Plaintiffs would
8 prevail on either liability *or* damages, as Defendants retained their own expert to
9 counter Lead Plaintiffs’ expert opinions. The experts in this Action prepared reports
10 describing their opinions and defended those opinions under oath during depositions,
11 setting the stage for a potential “battle of the experts” at trial.

12 10. Finally, even if Lead Plaintiffs prevailed on any or all of their claims at
13 trial and were awarded damages by a jury, Defendants would have likely filed post-
14 trial motions and/or appeal any such verdict or award. *See, e.g., In re Apollo Grp.,*
15 *Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 U.S. Dist. LEXIS 61995 (D. Ariz.
16 Aug. 4, 2008), *rev’d*, No. 08-16971, 2010 U.S. App. LEXIS 14478 (9th Cir. 2010).
17 The appeals process could take years, during which time the Class would receive no
18 compensation at all. For instance, in *Household*, a large securities class action case
19 filed in 2002 in which Robbins Geller Rudman & Dowd is serving as lead counsel, on
20 May 7, 2009, after a month-long trial and years of costly and contentious litigation,
21 plaintiffs obtained a jury verdict and judgment in their favor. *Jaffe v. Household Int’l,*
22 *Inc.*, No. 1:02cv05893 (N.D. Ill.) (Dkt. No. 1611). The judgment was overturned on
23 appeal, and a retrial on certain issues will take place. *See Glickenhous & Co. v.*
24 *Household Int’l, Inc.*, 787 F.3d 408 (7th Cir. 2015). Thus, any appeal would also
25 present the risk of reversal, in which case the Class would receive nothing even after
26 prevailing at trial.

27 11. After considering the circumstances and risks the parties would face were
28 they to litigate this case through summary judgment and trial, Lead Plaintiffs, through

1 Lead Counsel, and Defendants mutually concluded that settling the Action on the
2 terms set forth in the Stipulation was in their respective best interests.

3 12. Leading up to and continuing through the settlement process, Lead
4 Counsel has prosecuted this case on behalf of Lead Plaintiffs and the Class on a
5 wholly contingent basis and has advanced or incurred all litigation expenses. By
6 doing so, Lead Counsel shouldered the entirety of the substantial risk of an
7 unfavorable result, yet has not received any compensation, to date, for its diligent
8 efforts in litigating this case.

9 13. Lead Counsel's fee application for 25% of the Settlement Amount, plus
10 interest thereon, is fair both to the Class and Lead Counsel, and thus warrants the
11 Court's approval. As discussed in the accompanying Memorandum of Points and
12 Authorities in Support of Motion for an Award of Attorneys' Fees and Expenses and
13 Reimbursement of Lead Plaintiff's Expenses Pursuant to 15 U.S.C. §78u-4(a)(4) (the
14 "Fee Memorandum"), Lead Counsel's fee request is within the range of fee percentages
15 frequently awarded in this type of action and given the particular facts of this case, is
16 fully justified in light of the substantial benefits conferred on the Class, the risks
17 undertaken, the quality of representation by Lead Counsel, the nature and extent of legal
18 services performed by Lead Counsel, and the fact that a settlement of \$15.5 million was
19 achieved in the face of significant risks on the issues of falsity, scienter, loss causation
20 and damages that Lead Plaintiffs faced in pursuing this Action on behalf of the Class.
21 Both the Settlement and the fee request have been considered and approved by Lead
22 Plaintiffs. *See* Declaration of John Capobianco ("Local 677 Plan Decl."), ¶¶4-5, and
23 Declaration of Douglas Strachan ("Atlanta GEPF Decl."), ¶¶4-5, submitted herewith.
24 Because this is precisely the type of result envisioned by Congress when it enacted the
25 PSLRA, this approval is entitled to significant weight by the Court in awarding fees to
26 counsel.

27 14. Lead Counsel also seeks an award of expenses in the amount of
28 \$509,940.07, plus interest thereon, reasonably and necessarily incurred as part of the

1 prosecution of this Action over the last three-and-a-half years on behalf of Lead
2 Plaintiffs and the Class. These expenses include, *inter alia*: (a) the fees of
3 independent investigators whose services Lead Counsel relied upon during its
4 investigation of this case; (b) the costs associated with managing an extensive
5 database of nearly two million documents that included documents produced to Lead
6 Plaintiffs by Defendants and non-party witnesses, and costs associated with
7 photocopying and imaging the documents; (c) expert witness fees associated with
8 expert reports and depositions to establish complex issues, including loss causation,
9 damages and insider trading; (d) costs associated with taking and defending 25
10 depositions, including transcript, video and travel costs; (e) online factual and legal
11 research conducted; and (f) mediation fees. The efforts required by Lead Counsel to
12 achieve the Settlement, that are set forth in detail below, confirm these expenses were
13 reasonable and necessary to obtain the successful result now before the Court. The
14 expenses are set forth in greater detail in the Declaration of Jonah H. Goldstein Filed
15 on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for
16 Award of Attorneys' Fees and Expenses ("Lead Counsel's Fee and Expense Decl."),
17 submitted herewith.

18 15. Also, as permitted by the PSLRA, Lead Plaintiff Local 677 Plan seeks
19 reimbursement for its time and expenses in the amount of \$3,622. *See* Local 677 Plan
20 Decl., ¶¶6-7. Its investment of time, effort, and expense greatly contributed to the
21 successful result of the litigation.

22 16. The following is a summary of the principal events that occurred during
23 the Action, the legal services provided by Lead Counsel to Lead Plaintiffs and the
24 Class, and the relevant factors bearing on the reasonableness of the Settlement, the
25 Plan of Allocation and the application for an award of attorneys' fees and expenses.
26
27
28

1 **II. LEAD PLAINTIFFS' AND LEAD COUNSEL'S VIGOROUS**
2 **PROSECUTION OF THIS CASE**

3 **A. The Commencement of the Action and the Appointment of**
4 **Lead Plaintiffs**

5 17. On July 13, 2012, this securities class action alleging violations of
6 §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder was
7 filed by Donald K. Franke in the United States District Court for the Southern District
8 of California. Dkt. No. 1. Shortly thereafter, two other securities class action
9 complaints were filed titled *Sacharczyk v. Bridgepoint Education, Inc.*, No. 12-cv-
10 01759, and *Stein v. Bridgepoint Education, Inc.*, No. 12-01841.

11 18. On September 11, 2012, Lead Plaintiffs filed a Motion for Consolidation,
12 Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Counsel.
13 Dkt. No. 13. In that motion, Lead Plaintiffs argued they deserved appointment
14 because they timely filed their motion, it was believed that they had the largest
15 financial loss, and because they were committed to fairly and adequately representing
16 the interests of the Class.

17 19. Following a competing movant's recognition that the Atlanta GEPF and
18 Local 677 Plan ("Pension Plans") were in fact the most adequate Lead Plaintiffs, the
19 Court issued an Order on October 22, 2012 consolidating the actions, and appointing
20 the Pension Plans as Lead Plaintiffs and Robbins Geller Rudman & Dowd LLP as
21 Lead Counsel. Dkt. No. 21.

22 20. Following the Court's October 22, 2012 Order, Lead Plaintiffs continued
23 their extensive investigation into their claims, which included: (a) conducting
24 interviews of former Bridgepoint employees through outside private investigators;
25 (b) a thorough review and analysis of Defendants' public disclosures, including:
26 (i) transcripts of Bridgepoint's quarterly conference calls held to discuss the
27 Company's financial results and other presentations made by top Bridgepoint
28 management at investor conferences; and (ii) the Company's periodic filings with the
SEC, including reports on Forms 10-K, filed annually, and Forms 10-Q, filed

1 quarterly; (c) records reflecting the Individual Defendants’ and other Company
2 insiders’ trades involving Bridgepoint shares in Form 4s filed with the SEC; and
3 (d) an examination and analysis of industry and Company stock price reactions to
4 Defendants’ alleged misstatements and corrective disclosures, including detailed
5 reports discussing Bridgepoint and its public disclosures issued by industry analysts
6 on a regular basis.

7 21. With respect to Lead Counsel’s use of outside investigators, they assisted
8 in gathering detailed and specific information critical to pleading facts sufficient to
9 meet the heightened pleading standards mandated by the PSLRA. This included
10 retaining experienced private investigators from Jason Rowe Investigations and L.R.
11 Hodges & Associates, Ltd. (“L.R. Hodges”) to perform investigative and consulting
12 services relating to the Action. Both Jason Rowe Investigations and L.R. Hodges
13 have significant experience in investigations involving federal and state securities,
14 derivative, antitrust, and consumer class action cases.

15 22. At the direction of Lead Counsel, Jason Rowe Investigations and L.R.
16 Hodges helped identify, locate and interview former Bridgepoint employees and other
17 knowledgeable percipient witnesses likely to have information pertinent to the claims
18 alleged. Under the direction and supervision of Lead Counsel, these investigators
19 interviewed several potential witnesses and discussed their findings and research with
20 Lead Counsel.

21 23. On December 21, 2012, Lead Plaintiffs filed the Consolidated Complaint
22 for Violation of the Federal Securities Laws (the “Consolidated Complaint”). Dkt.
23 No. 26. The Consolidated Complaint alleged that Defendants violated §§10(b) and
24 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder, and additionally
25 alleged that the Individual Defendants violated §20A of the Exchange Act. The
26 Consolidated Complaint named as defendants Bridgepoint and its three top
27 executives: (a) President, Chief Executive Officer and member of the Board of
28

1 Directors Andrew S. Clark; (b) Chief Financial Officer and Executive Vice President
2 (“EVP”) Daniel J. Devine; and (c) Chief Academic Officer and EVP Jane McAuliffe.

3 24. The Consolidated Complaint alleged that Defendants made
4 misrepresentations regarding Ashford’s student retention and persistence, Ashford’s
5 application for WASC accreditation, Ashford’s quality of education, and
6 Bridgepoint’s financial projections during the Class Period of May 3, 2011, through
7 and including July 13, 2012. The Consolidated Complaint alleged that Defendants
8 knew, but concealed, the fact that Ashford could not meet the standards for the WASC
9 accreditation. The Consolidated Complaint further alleged that throughout the Class
10 Period Defendants assured investors and the market that Ashford would receive
11 accreditation, while omitting other material information regarding Ashford’s current
12 and future ability to meet the WASC standards necessary for accreditation. The
13 Consolidated Complaint additionally asserted that these alleged false statements and
14 omissions regarding accreditation also rendered Bridgepoint’s financial projections
15 throughout the Class Period similarly false because without accreditation Bridgepoint
16 simply would not be able to continue to receive the federal financial aid which made
17 up 90% of its revenues, and thus, would not achieve its financial projections. Lead
18 Plaintiffs alleged that Defendants made the above misrepresentations with scienter and
19 that Lead Plaintiffs and the Class suffered damages when the previously concealed truth
20 finally became known to the market.

21 **B. Defendants’ Motion to Dismiss the Consolidated Complaint**

22 25. On February 19, 2013, Bridgepoint and the Individual Defendants filed a
23 motion to dismiss the Consolidated Complaint. Dkt. No. 28. Defendants filed
24 numerous exhibits in support of their motion, which totaled nearly 500 pages. *Id.*
25 Defendants argued that Lead Plaintiffs failed to plead any false statements and that
26 Lead Plaintiffs did not allege facts showing either an inference of scienter or that
27 Defendants believed that Ashford’s accreditation application would be rejected. *Id.*
28 Defendants further argued that their personal stock sales were made pursuant to

1 automatic trading plans that were established before any feedback was received from
2 WASC regarding Ashford's application and that as a result, their sales were not
3 evidence of scienter. *Id.*

4 26. On April 22, 2013, Lead Plaintiffs filed their opposition to Defendants'
5 motion to dismiss the Consolidated Complaint. Dkt. No. 30. Lead Plaintiffs'
6 opposition identified specific allegations that supported the alleged false statements
7 and omissions. Ashford's accreditation was necessary in order for Bridgepoint to
8 continue receiving over 90% of its annual revenues from Title IV funds, to meet its
9 earnings projections, and to keep its stock price up. *Id.* Lead Plaintiffs also identified
10 allegations that showed Defendants were aware of the WASC accreditation criteria,
11 including Ashford's specific deficiencies regarding persistence and other issues and
12 whether Ashford could meet WASC's criteria for accreditation. *Id.* Lead Plaintiffs
13 also identified false statements and omissions concerning Bridgepoint's core
14 operations, including persistence, retention, completion, student support, faculty,
15 academic rigor, and Bridgepoint's financial projections. *Id.* And finally, Lead
16 Plaintiffs identified the materiality of each of the identified false statements and
17 omissions and further identified alleged facts from which scienter could be inferred,
18 including for example, the timing of the Individual Defendants' insider selling. *Id.*

19 27. On May 22, 2013, Defendants filed a reply memorandum in further
20 support of their motion to dismiss the Consolidated Complaint, as well as a
21 declaration attaching ten additional exhibits. Dkt. Nos. 33, 34. Defendants' reply
22 reiterated their positions raised in the motion to dismiss with respect to a lack of
23 sufficiently alleged facts to show their knowledge that WASC would deny Ashford's
24 application, as well as a lack of sufficient facts to show each Defendant's state of
25 mind. Dkt. No. 33.

26 28. On September 13, 2013, the Court issued an Order granting in part and
27 denying in part Defendants' motion to dismiss the Consolidated Complaint. Dkt.
28 No. 39. In denying part of Defendants' motion to dismiss, the Court refused to

1 dismiss the portion of the Consolidated Complaint relating to statements regarding
2 Ashford's student persistence initiatives. *Id.* In making this determination, the Court
3 found that "acceptable levels of persistence were crucial to obtaining accreditation,
4 thereby rendering any statements about persistence potentially material," and that
5 "WASC, a third party, confirmed that Defendants' statements regarding persistence
6 were unsubstantiated." *Id.* at 28-29. Further, "[i]f Defendants were aware that
7 persistence could not be adequately measured and yet made representations indicating
8 that persistence was improving, then scienter could be reasonably inferred." *Id.* at 39.
9 The Court found that Lead Plaintiffs sufficiently met the heightened pleading standard
10 regarding Defendants' scienter relating to persistence. *Id.* In granting in part
11 Defendants' motion to dismiss the Consolidated Complaint, the Court found that some
12 of the statements alleged by Lead Plaintiffs to be false and misleading were actually
13 puffery, and that other challenged statements lacked sufficiently pleaded facts. *Id.* at
14 33. The Court also found that scienter was not sufficiently pled for certain allegedly
15 false statements, including for example, facts showing Defendants knew that WASC
16 accreditation denial was a certainty. *Id.* at 38.

17 **C. Defendants' Answer to the Consolidated Complaint**

18 29. On December 19, 2013, Defendants filed an Answer to the Consolidated
19 Complaint. Dkt. No. 43. Defendants' Answer, which spanned nearly 50 pages,
20 denied each substantive allegation in the Consolidated Complaint. The Answer also
21 set forth 14 separate affirmative defenses.

22 **D. Class Certification Briefing**

23 30. On June 23, 2014, Lead Plaintiffs moved the Court to certify the case as a
24 class action and appoint Lead Plaintiffs as class representatives under Federal Rule of
25 Civil Procedure 23. Dkt. No. 59. Concurrently with the motion, the parties filed a
26 joint amended motion seeking to extend the deadline for filing Lead Plaintiffs' class
27 certification brief from June 23, 2014 to August 6, 2014 in light of the United States
28 Supreme Court's pending decision of *Halliburton Co. v. Erica P. John Fund*, No. 13-

1 317 (“*Halliburton II*”), which might have had significant implications for class
2 certification. Dkt. No. 58.

3 31. In support of the motion for class certification, Lead Plaintiffs submitted
4 a declaration of Jonah H. Goldstein, which included ten attached exhibits. Dkt. No.
5 59. The motion, declaration, and attached exhibits exceeded 250 pages, took Lead
6 Counsel a significant amount of effort and time to prepare, and provided a detailed
7 description of why class certification was appropriate. *Id.*

8 32. On August 6, 2014, Lead Plaintiffs filed an Amended Motion for Class
9 Certification. Dkt. No. 70. The amended motion was accompanied by a declaration
10 of Jonah H. Goldstein, which included four attached exhibits – including the expert
11 report of Steven P. Feinstein on market efficiency – providing support for Lead
12 Plaintiffs’ renewed request for class certification. *Id.*

13 33. Thereafter, Defendants served each Lead Plaintiff with a Notice of
14 Deposition and took the depositions of both in September 2014. Defendants deposed
15 the Atlanta GEPF through its designee Douglas Strachan on September 4, 2014 in
16 Atlanta, Georgia and the Local 677 Plan through its designee Dennis Raymond on
17 September 10, 2014 in New York, New York. Lead Counsel met the Lead Plaintiffs’
18 designees on multiple separate occasions to prepare them for their depositions and
19 defended their depositions. Defendants also noticed the deposition of the Atlanta
20 GEPF’s investment manager responsible for the fund’s investment in Bridgepoint,
21 which they took on September 30, 2014 in New York, New York.

22 34. On October 7, 2014, Defendants filed their Opposition to Lead Plaintiffs’
23 Amended Motion for Class Certification. Dkt. No. 72. In their Opposition,
24 Defendants primarily argued that the Class Period should be shortened to the first
25 disclosure date of July 9, 2012 rather than July 13, 2012, because July 13, 2012 was
26 not a curative disclosure linked to Lead Plaintiffs’ claims that Defendants misled
27 investors about Ashford’s retention and persistence rates.

28

1 35. Lead Plaintiffs filed their Reply in Support of Amended Motion for Class
2 Certification on November 19, 2014. Dkt. No. 75. Their Reply explained why
3 Defendants' arguments were inappropriate at the class certification stage and should
4 instead be raised at summary judgment or trial. It also emphasized that class
5 certification was proper as Lead Counsel had satisfied each element of Rules 23(a)
6 and 23(b)(3). *Id.*

7 36. On January 15, 2015, the Court issued its Order Granting Motion for
8 Class Certification. Dkt. No. 77. This Order found that Lead Plaintiffs demonstrated
9 satisfaction of the requirements of Rule 23(a): numerosity, commonality, typicality,
10 and adequacy of representation. *Id.* The Order further found that Lead Plaintiffs
11 demonstrated satisfaction of Rule 23(b)(3)'s requirements "that 'the questions of law
12 or fact common to class members predominate over any questions affecting only
13 individual members, and that a class action is superior to other available methods for
14 fairly and efficiently adjudicating the controversy.'" *Id.*, quoting Fed. R. Civ. P.
15 23(b)(3). The Court appointed Lead Plaintiffs as class representatives and appointed
16 Lead Counsel as class counsel. *Id.*

17 **E. Merits Discovery**

18 37. Discovery in this Action was comprehensive. Lead Plaintiffs
19 propounded numerous document requests and requests for admissions, as well as
20 document subpoenas to several non-party witnesses. In response to Lead Plaintiffs'
21 document requests and subpoenas, nearly two million pages of documents were
22 ultimately produced, which were carefully reviewed and analyzed by Lead Counsel.

23 38. In connection with discovery, the parties negotiated at length over the
24 language that should be included in a confidentiality order issued pursuant to Rule
25 26(c). Lead Plaintiffs and Defendants ultimately reached an agreement, and on
26 January 22, 2014, filed a Joint Motion for Entry of a Stipulated Protective Order
27 Regarding Confidentiality. Dkt. No. 47. This agreed-upon Protective Order was
28 approved and entered by the Court on January 23, 2014. Dkt. No. 48.

1 39. During the merits discovery phase, Lead Counsel engaged in numerous
2 meet-and-confer discussions with Defendants' counsel to discuss their objections to
3 Lead Plaintiffs' document requests (relevancy, burden and privilege), to negotiate the
4 scope of the discovery, and to arrange for the production of documents. Given the
5 scope of discovery sought and nature of the disputes, these efforts were extensive and
6 required the expenditure of substantial time by Lead Counsel.

7 40. For example, Defendants contested the scope of production of
8 documents, arguing that by virtue of the Court's motion to dismiss order production
9 should be limited to only those documents dealing with persistence and not
10 accreditation. Defendants also contested production of documents relating to
11 Defendants' alleged insider trading and the time frame of Lead Plaintiffs' document
12 request. As a result of these issues, Lead Counsel was required to engage in extensive
13 meet-and-confer discussions with Defendants' counsel and to seek court intervention.
14 The parties prepared detailed letter briefing on these issues and attended a telephonic
15 discovery conference with Judge Burkhardt on June 27, 2014.

16 41. After the discovery disputes with Defendants were resolved, Lead
17 Counsel was required to establish an extremely large and complex database to manage
18 the millions of pages produced through Lead Counsel's efforts. By July 23, 2015,
19 Lead Counsel had reviewed nearly two million pages of documents, including
20 1,745,600 pages of documents produced by Defendants and 157,000 pages of
21 documents produced in response to the non-party subpoenas.

22 42. In addition to disputes with Defendants, Lead Counsel also devoted
23 substantial time to negotiating subpoenas served on non-parties who objected to
24 producing documents. With most of these non-parties, Lead Counsel was able to
25 successfully resolve discovery issues without the Court's intervention; however, these
26 efforts required considerable time by Lead Counsel. For example, Lead Counsel
27 worked with counsel for non-party WASC to alleviate WASC's concerns about
28 releasing sensitive information concerning its accreditation process. As a result, Lead

1 Counsel and WASC agreed to the review of certain documents on a separately hosted
 2 database so as to limit production to only those documents that were highly relevant to
 3 Lead Plaintiffs' claims.

4 **1. Written Discovery**

5 43. Lead Plaintiffs served the following written discovery requests on
 6 Defendants and subpoenas on key non-party witnesses:

7 Propounding/Responding	Type	Set No.	Served
8 Lead Plaintiffs/ Bridgepoint	Request for Production (1-69)	1	12/20/2013
9 Lead Plaintiffs/ Individual Defendants	Request for Production of Documents (1-69)	1	12/20/2013
10 Lead Plaintiffs/ Bridgepoint	Request for Admissions	1	06/27/2014

12 Subpoenaed Party	Type	Served
13 WASC	Document	01/29/2014
14 Parthenon Group	Document	05/07/2014
15 National Center for Higher Education	Document	05/08/2014

16
 17 44. Lead Plaintiffs also responded to the many written discovery requests
 18 served on them by Defendants:

19 Propounding/Responding	Type	Set No.	Served
20 Bridgepoint/ Atlanta GEPF	Request for Production	1	01/16/2014
21 Bridgepoint/ Local 677 Plan	Request for Production	1	01/16/2014
22 Bridgepoint/ Atlanta GEPF	Request for Production	2	04/02/2014
23 Bridgepoint/ Local 677 Plan	Request for Production	2	04/02/2014
24 Bridgepoint/ Lead Plaintiffs	Interrogatories	1	02/24/2015
25 Bridgepoint/ Lead Plaintiffs	Request for Admissions	1	03/30/2015

Propounding/Responding	Type	Set No.	Served
Bridgepoint/ Lead Plaintiffs	Interrogatories	2	03/30/2015
Defendant Andrew Clark/ Lead Plaintiffs	Interrogatories	1	03/30/2015

2. Depositions

45. Lead Counsel took the following 14 fact witness depositions, which include the depositions of Defendants, current and former Bridgepoint employees, as well as non-party witnesses:

Fact Witness	Date of Deposition	Location
Dave Hoverman (Parthenon 30(b)(6))	02/18/2015	San Francisco, CA
Kristina Powers	02/19/2015	San Diego, CA
Elizabeth Tice	02/26/2015	Phoenix, AZ
Bryan Talbot	03/05/2015	San Diego, CA
Amber Eckert	03/11/2015	San Diego, CA
Sheri Jones	03/18/2015	San Diego, CA
Therese Cannon (WASC)	03/26/2015	San Francisco, CA
Jane McAuliffe	04/10/2015	San Diego, CA
Doug Abts	04/15/2015	San Diego, CA
Daniel Devine	04/23/2015	San Diego, CA
Joseph Hoey	04/28/2015	San Diego, CA
Andrew Clark	04/29/2015	San Diego, CA
Ralph Wolff (WASC)	05/20/2015	San Francisco, CA
Michael Offerman (WASC)	06/26/2015	Tucson, AZ

46. These depositions required the commitment of a significant amount of time, effort and expense on the part of Lead Counsel due to the necessary attorney preparation, travel (for those non-local depositions) and court reporting and video recording services. These depositions were required in order to illicit relevant

1 testimony, authenticate key documents and to develop a factual record of events
2 relevant to Lead Plaintiffs' claims.

3 47. These depositions were also significant because they developed evidence
4 relating to key allegations that: (a) Defendants misled investors about Bridgepoint's
5 student retention, persistence and graduation rates during the Class Period;
6 (b) Defendants' inability to track and analyze student retention and persistence rates
7 and the impact initiatives were having on those rates; and (c) Bridgepoint's failure to
8 have concerted and systematic approaches to improve student retention and
9 persistence with evidence-based plans and timelines before and during the Class
10 Period.

11 48. Lead Counsel also attended and actively participated in depositions of
12 non-party analysts that covered Bridgepoint during the Class Period that were noticed
13 by Defendants' counsel. Certain of these depositions resulted in key evidence
14 favoring Lead Plaintiffs. These non-party depositions included the following:

Fact Witness	Date of Deposition	Location
Andrew Steinerman	04/15/2015	New York, NY
Brandon Dobell	04/16/2015	Chicago, IL
Jeffrey Silber	04/20/2015	New York, NY
Trace Urdan	04/24/2015	San Francisco, CA

15
16
17
18
19
20 49. Lead Counsel also took or defended the following expert depositions:

Deponent	Date of Deposition	Location
Watson Swail (Defendant Expert)	07/09/2015	Norfolk, VA
Amaury Nora (Defendant Expert)	07/13/2015	Palo Alto, CA
Steven Feinstein (Plaintiff Expert)	07/16/2015	Boston, MA
David Tabak (Defendant Expert)	07/20/2015	New York, NY

1 50. Lead Counsel was required to spend substantial time preparing to take or
2 defend the expert depositions listed above. For example, in order to prepare an
3 effective cross-examination of the defense experts, Lead Counsel: (a) analyzed the
4 expert's reports; (b) reviewed all documents cited in the expert reports; (c) reviewed
5 articles published by the experts and conducted internet research; and (d) in
6 connection with David Tabak's deposition, consulted with Lead Plaintiffs' damages
7 and loss causation expert Steven Feinstein to understand complex economic issues
8 and to prepare examinations that would support Lead Plaintiffs' case.

9 51. With regard to the deposition of Lead Plaintiffs' expert, Steven Feinstein,
10 who provided expert opinion and testimony concerning loss causation and damages,
11 Lead Counsel carefully reviewed his expert reports and documents produced by him
12 and met with Dr. Feinstein in advance of the deposition to prepare him for his
13 deposition.

14 **F. Experts and Consultants**

15 52. To assist Lead Counsel in investigating and proving Lead Plaintiffs'
16 claims and navigating the complex issues involved in this matter, the services of the
17 following experts and consultants were required.

18 **1. Market Efficiency, Loss Causation and Damages** 19 **Expert**

20 53. Lead Plaintiffs utilized the services of the well-known economic
21 consulting firm, Crowninshield Financial Research, Inc. ("CFR"), to: (a) examine and
22 explain how Bridgepoint's stock trades in an efficient market; (b) conduct a thorough
23 event study examining all industry, market and Company specific news during the
24 Class Period; (c) review and analyze documents related to events surrounding
25 Bridgepoint's disclosures on July 9 and 13, 2012; and (d) provide analyses in
26 connection with determining and proving loss causation and damages. CFR's
27 economic analysis was integral to demonstrating that Bridgepoint stock traded in an
28 efficient market (for purposes of class certification), eliminating non-fraud related

1 factors from the decline in Bridgepoint's stock price and quantifying damages
2 suffered by the Class.

3 54. Dr. Feinstein, founder and President of CFR, is an Associate Professor of
4 Finance at Babson College and has published extensively regarding corporate
5 valuation, derivatives and investments. Prior to entering academia, Dr. Feinstein was
6 an economist at the Federal Reserve Bank of Atlanta. He has provided analysis and
7 testimony in numerous class action securities lawsuits, ERISA cases, the *qui tam* yield
8 burning cases, derivatives valuations and complex business litigation. Initially,
9 Dr. Feinstein provided a declaration in support of Lead Plaintiffs' motion for class
10 certification. In connection with that declaration he examined: (a) the Consolidated
11 Complaint; (b) Bridgepoint's public filings with the SEC; (c) transcripts of
12 Bridgepoint's conference calls with analysts; (d) press releases issued by Bridgepoint;
13 (e) securities analyst reports regarding Bridgepoint; (f) price and volume data for
14 Bridgepoint common stock, as well as for industry and market indices; (g) other
15 relevant public information; and (h) a selection of legal documents filed in this Action.
16 Dr. Feinstein provided evidence that Lead Counsel believed was instrumental to the
17 Court's order granting the motion for class certification.

18 55. Later, during expert discovery, Lead Plaintiffs offered Dr. Feinstein as a
19 loss causation and damages expert to opine that Lead Plaintiffs' allegations of fraud
20 were the proximate cause of Lead Plaintiffs' losses. Dr. Feinstein provided two
21 detailed reports: a 66-page opening report opining on loss causation and damages and
22 a 27-page rebuttal report that evaluated the arguments and conclusions in the report by
23 Defendants' rebuttal loss causation and damages expert – Dr. David Tabak, a highly
24 regarded expert in the area of economics with significant experience and expertise in
25 the area of securities class actions. Dr. Feinstein found Tabak's analysis and
26 conclusion regarding the lack of evidence of inflation or loss causation to be
27 unfounded and erroneous based upon the abundant evidence to the contrary.

28

1 56. Dr. Feinstein and his staff at CFR spent many hours preparing his class
2 certification declaration and expert reports, as well as preparing for and providing
3 deposition testimony. Further, Dr. Feinstein and his staff spent significant time
4 assisting Lead Counsel in analyzing Defendants' expert's reports and preparing
5 counsel to depose David Tabak.

6 **2. Insider Trading Expert**

7 57. Lead Plaintiffs retained Back Bay Management Corporation, dba The
8 Michel-Shaked Group ("Back Bay"), to provide analysis and testimony on the issue of
9 insider trading. Back Bay and its staff reviewed hundreds of pages of documents
10 relevant to Defendants' alleged insider trading in this case and prepared a report of
11 their findings. Back Bay's opinions were instrumental in assisting Lead Counsel in
12 preparation for Defendants' depositions and for the mediations and settlement
13 discussions in this case.

14 **G. Summary Judgment Briefing**

15 58. On August 31, 2015, after the completion of discovery, Defendants filed
16 three motions: a Motion for Summary Judgment by Daniel J. Devine, a Motion for
17 Summary Judgment by Bridgepoint, Andrew Clark and Jane McAuliffe, and a Motion
18 to Exclude the Testimony of Steven P. Feinstein, Lead Plaintiffs' expert. *See* Dkt.
19 Nos. 85, 86, 87. Defendants argued throughout that there was no triable issue of fact,
20 as Defendants' statements concerning Ashford's retention and persistence rates, as
21 well as their statements concerning implementation of retention initiatives, were true
22 and not misleading. Defendants also argued that Lead Plaintiffs could not prove loss
23 causation for either the July 9 or July 13, 2012 disclosures because Lead Plaintiffs
24 could not disaggregate the causes of Bridgepoint's stock price declines and because
25 the July 13 disclosure was not a corrective disclosure for which Lead Plaintiffs could
26 recover damages. While Lead Plaintiffs believed they had sufficient evidence to
27 defeat Defendants' motions, if any portion of Defendants' loss causation arguments
28

1 were determined in their favor, the damages in this case would have been greatly
2 reduced.

3 59. On September 15, 2015, following a successful settlement mediation,
4 Defendants withdrew their motions for summary judgment and motion to exclude
5 Dr. Feinstein's testimony. *See* Dkt. Nos. 92, 93, 94.

6 **H. Settlement Negotiations**

7 60. On March 31, 2015, the parties attended the first of two all-day
8 mediations before the Honorable Layn R. Phillips (Ret.) in Newport Beach,
9 California. Prior to the March 31, 2015 mediation, on March 3, 2015, the parties
10 submitted detailed opening mediation statements to Judge Phillips and also provided
11 them to one another. Lead Plaintiffs submitted a comprehensive mediation statement,
12 as well as several exhibits that set forth Lead Plaintiffs' view of the case – including
13 with respect to the false statements and omissions – and position on recoverable
14 damages. On March 17, 2015, the parties additionally submitted reply mediation
15 briefs to Judge Phillips and also exchanged them with one another. Lead Plaintiffs
16 prepared and submitted a thorough reply statement that largely focused on addressing
17 Defendants' positions taken in their March 3, 2015 opening statement. Lead
18 Plaintiffs' reply mediation statement also included numerous exhibits that were
19 primarily comprised of documents obtained during the discovery process. While the
20 parties negotiated the potential resolution of the Action diligently and in good faith at
21 the March 31, 2015 mediation session, they were unable to reach an agreement at that
22 time.

23 61. Judge Phillips issued a mediator's recommendation, but the parties did
24 not mutually agree to that recommendation during this period. Judge Phillips
25 continued communications among the parties in furtherance of their settlement efforts.
26 Following the results of additional discovery, which included 11 percipient witness
27 depositions and four expert depositions, the parties agreed to a second mediation
28 before Judge Phillips.

1 62. The second mediation occurred on September 4, 2015, again before
2 Judge Phillips in Newport Beach, California. This second mediation involved
3 vigorous negotiations between Lead Counsel and Defendants' counsel throughout
4 most of the day. By the day's end, the parties reached an agreement-in-principle to
5 settle for an amount recommended by Judge Phillips. This mediator's proposal
6 ultimately led to the Settlement currently before the Court.

7 63. I led the settlement negotiations and have several years of experience in
8 prosecuting and resolving complex class actions. Nina F. Locker and Ignacio E.
9 Salceda of Wilson Sonsini Goodrich & Rosati led the defense team. Defense
10 counsel's credentials in defending class actions are similarly unquestionable.

11 64. Lead Counsel is actively engaged in complex civil litigation, particularly
12 the litigation of securities class actions. We have demonstrated in numerous cases,
13 litigated in courts nationwide, our commitment to the diligent investigation and
14 prosecution of claims by shareholders that publicly traded companies and their top
15 management violated the federal securities laws. It is Lead Plaintiffs' belief that Lead
16 Counsel's experience and reputation as attorneys who aggressively litigate a
17 meritorious case through trial and any subsequent appeals process put Lead Plaintiffs
18 in as strong a position as possible throughout settlement negotiations with Defendants.
19 And the strength and quality of representation provided by Lead Counsel ultimately
20 led to the Settlement of this Action that was approved by Lead Plaintiffs on behalf of
21 the Class.

22 65. In light of the parties' agreement-in-principle to settle the Action
23 pursuant to Judge Phillips' mediator's proposal, on October 28, 2015, Lead Plaintiffs
24 and Defendants informed the Court that they had reached an agreement-in-principle to
25 settle the case. Dkt. No. 95. Accordingly, the Court vacated the Mandatory
26 Settlement Conference that had been scheduled for November 4, 2015. *Id.*
27 Defendants also withdrew their pending summary judgment motions and motion to
28 exclude Dr. Feinstein's testimony without prejudice. Dkt. Nos. 92, 93, 94.

1 66. Following the parties' acceptance of Judge Phillips' mediator's proposal
2 on September 4, 2015, they engaged in extensive negotiations concerning the terms of
3 the Settlement. During this time, Lead Plaintiffs and Defendants also conferred at
4 length concerning the appropriate details to include in the Notice, Plan of Allocation,
5 and Proof of Claim form prior to reaching an agreement. This process included the
6 exchange of multiple drafts of the parties' respective, proposed revisions of both the
7 Stipulation ultimately dated October 30, 2015, as well as the attached exhibits.

8 67. On October 30, 2015, Lead Plaintiffs filed a Motion for Preliminary
9 Approval of Class Action Settlement. Dkt. No. 96. In support of that motion, Lead
10 Plaintiffs submitted supporting documentation, including: a memorandum of points
11 and authorities that demonstrated how the terms of the proposed Settlement were fair,
12 reasonable, and in the best interests of the Class; and the parties' Stipulation and
13 Agreement of Settlement, dated October 30, 2015, which set forth the terms of the
14 Settlement and also attached for the Court's approval the Notice of Pendency and
15 Proposed Settlement of Class Action (to be mailed as specified in the Stipulation), a
16 Proof of Claim and Release form, and a Summary Notice (to be published as specified
17 in the Stipulation). *See* Dkt. No. 96.

18 68. On December 14, 2015, Lead Counsel and Defendants' counsel attended
19 a hearing before the Court regarding the motion for preliminary approval of
20 settlement. Dkt. No. 98. The Court granted the motion and vacated the Final Pretrial
21 Conference scheduled for December 18, 2015, and also vacated the jury trial set for
22 January 25, 2016. *Id.* In a subsequent Order Preliminarily Approving Settlement and
23 Providing for Notice, dated December 14, 2015, the Court preliminarily approved the
24 Settlement and scheduled a Settlement Hearing for April 25, 2016. Dkt. No. 99. On
25 December 21, 2015, the Court issued its Amended Order Preliminarily Approving
26 Settlement and Providing for Notice and Approving Proposed Request for Exclusion
27 Form ("Notice Order"). Dkt. No. 100. As is detailed herein, Lead Plaintiffs have
28 followed the mandates of the Notice Order with respect to, *inter alia*, providing notice

1 to the Class and preparing materials for the Court to consider in determining final
2 approval of the Settlement.

3 **III. THE SETTLEMENT IS A GOOD RESULT FOR THE CLASS**
4 **IN LIGHT OF THE CONTINUING RISKS OF LITIGATION**

5 69. The Settlement agreed to by the parties of \$15.5 million in cash (plus
6 interest) is a good result that provides an immediate and certain benefit to the Class.
7 The Settlement was achieved as a result of the extensive investigative and
8 prosecutorial efforts of Lead Counsel detailed herein. And as a result of this
9 Settlement, thousands of Class Members will receive compensation for their losses
10 while avoiding the tangible risk of recovering nothing in the absence of any
11 settlement.

12 70. This case posed significant risks to recovery concerning both Defendants'
13 liability and the damages suffered by the Class. Lead Plaintiffs' ability to achieve a
14 successful result was by no means assured, as both sides claimed the evidence
15 supported their positions. Any future recovery for the Class, had the Settlement not
16 been reached, would necessarily have depended on Lead Plaintiffs' ability to win
17 challenging arguments on each element of their claims. And were this Settlement not
18 achieved at this time and on the terms set forth in the Stipulation, Lead Plaintiffs faced
19 additional years of costly and risky litigation, with ultimate success at trial being far
20 from certain. Indeed, Defendants have adamantly denied liability and have also
21 argued Lead Plaintiffs' damages were miniscule.

22 71. Had the parties not agreed to the Settlement, they would have remained
23 embroiled in contested issues of both law and fact. These issues include: (a) whether
24 Defendants issued false or misleading statements to the public; (b) whether these
25 allegedly false and misleading statements were material; (c) whether Defendants had a
26 duty to disclose any concealed information; (d) whether certain of Defendants'
27 allegedly false and misleading statements were forward-looking and accompanied by
28 meaningful cautionary language, and thus statutorily protected by the Safe Harbor

1 provision of the PSLRA; (e) whether Defendants acted with scienter; (f) whether
2 Bridgepoint securities traded at artificially inflated prices; (g) whether Lead Plaintiffs
3 and the Class suffered damages that were caused by Defendants' wrongful conduct;
4 and (h) if so, the amount of damages suffered by the Class.

5 72. In reaching agreement as to the Settlement, Lead Plaintiffs have avoided
6 the meaningful risk that the Court or a jury might find, as Defendants had asserted
7 throughout this litigation, that they failed to meet their burden of proving falsity or
8 loss causation. Furthermore, there was a significant risk that any fact-finder could
9 conclude, as Defendants had also argued, that certain of their allegedly false and
10 misleading statements were protected from liability by the Safe Harbor provision of
11 the PSLRA. *See, e.g., JDS Uniphase*, No. C-02-1486 CW (EDL), Corrected Final
12 Judgment (case dismissed and judgment entered in favor of defendants after jury trial
13 rejecting plaintiffs' federal securities laws violations).

14 73. To meet their burden of proof at trial, Lead Plaintiffs retained expert
15 Steven Feinstein, who prepared a report of his expert testimony concerning the issues
16 of loss causation and damages. However, reliance on even the most competent
17 expert(s) in the field does not guarantee that Lead Plaintiffs would prevail on either
18 liability *or* damages. Indeed, Defendants responded by retaining David Tabak, a well-
19 respected expert in economics and securities class actions to counter Lead Plaintiffs'
20 expert's opinions. Additionally, Defendants proffered two student persistence and
21 retention experts, Dr. Watson Scott Swail and Dr. Amaury Nora, to rebut the falsity of
22 Defendants' statements and scienter. Therefore, each party's position was bolstered
23 by expert testimony, and the experts were prepared to present their opinions to the
24 jury.

25 74. Finally, even if Lead Plaintiffs prevailed on any or all of their claims at
26 trial and were awarded damages by a jury, they would still be faced with Defendants'
27 post-trial motions and/or appeal of any such verdict or award. *See, e.g., Apollo Grp.*,
28 2008 U.S. Dist. LEXIS 61995; *Household Int'l*, 787 F.3d 408. The appeals process

1 could take years, during which time the Class would receive no compensation at all.
2 And any appeal would also create the risk of reversal, in which case the Class would
3 receive nothing even after prevailing at trial.

4 **IV. NOTICE TO MEMBERS OF THE CLASS**

5 75. On December 21, 2015, as discussed above, the Court issued its Notice
6 Order granting preliminary approval of the Settlement, as well as the form and content
7 of the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”),
8 the Proof of Claim and Release form (the “Proof of Claim”), the Summary Notice and
9 the Request for Exclusion Form (“Exclusion Form”). Dkt. No. 100.

10 76. In the Notice, the Class is defined as:

11 [A]ll persons who purchased Bridgepoint common stock between May 3,
12 2011 and July 13, 2012, inclusive, excluding Defendants, directors and
13 officers of Bridgepoint, and their families and affiliates. Also excluded
14 are those Persons who timely and validly request exclusion from the
15 Class pursuant to [the] Notice.

16 77. As directed by the Notice Order, the Notice, Proof of Claim and
17 Exclusion Form (together, the “Claim Package”) were mailed to all identified Class
18 Members beginning on December 29, 2015. The Notice explains the litigation, the
19 Settlement, the Plan of Allocation, the fee and expense request intended to be made by
20 Lead Counsel and the rights and options of Class Members. As of February 1, 2016,
21 over 11,900 Claim Packages had been mailed to potential Class Members and
22 nominees.²

23 78. While the February 17, 2016 deadline for objections has not passed, not a
24 single objection has been received to date, to any aspect of the Settlement, Plan of
25 Allocation or Lead Counsel’s request for an award of attorneys’ fees and expenses.
26 This factor is relevant to a determination of the reasonableness of the requested relief,

27 ² See accompanying Declaration of Carole K. Sylvester, on behalf of Gilardi & Co.
28 LLC (“Sylvester Decl.”), ¶¶4-11.

1 especially in today’s environment of increased shareholder activism in securities class
2 action litigation.

3 79. The Summary Notice, in the form approved by the Court, was published
4 once in *Investor’s Business Daily* and once over the *PR Newswire* on January 12,
5 2016. Sylvester Decl., ¶13. The Summary Notice provided information about the
6 Settlement and how to obtain a copy of the Notice.

7 **V. THE PLAN OF ALLOCATION**

8 80. If approved, the Plan of Allocation will govern how the proceeds of the
9 Net Settlement Fund will be distributed among Class Members who submit timely,
10 valid Proof of Claim forms. For purposes of determining the amount an Authorized
11 Claimant may recover under the Plan of Allocation, Lead Counsel has conferred with
12 its damages expert and the Plan of Allocation reflects an assessment of the damages
13 that it believes could have been recovered by Class Members had Lead Plaintiffs
14 prevailed at trial.

15 81. In the unlikely event there are sufficient funds in the Net Settlement
16 Fund, each Authorized Claimant will receive an amount equal to the Authorized
17 Claimant’s claim, as defined below. If, however, and as is more likely, the amount in
18 the Net Settlement Fund is not sufficient to permit payment of the total claim of each
19 Authorized Claimant, then each Authorized Claimant shall be paid the percentage of
20 the Net Settlement Fund that each Authorized Claimant’s claim bears to the total of
21 the claims of all Authorized Claimants. Payment in this manner shall be deemed
22 conclusive against all Authorized Claimants.

23 82. A “claim” will be calculated as follows:

24 The allocation below for common stock is based on market
25 adjusted price declines as well as the statutory Private Securities
26 Litigation Reform Act of 1995 (“PSLRA”) 90-day look-back amount.

27
28

1 The calculation of claims below is not an estimate of the amount
2 you will receive. It is the formula for allocating the Net Settlement Fund
3 among all Authorized Claimants.

4 1. For shares of Bridgepoint common stock ***purchased***
5 ***on or between May 3, 2011 through July 8, 2012***, the claim per share
6 shall be as follows:

7 (a) If sold on or between May 3, 2011 through
8 July 8, 2012, the claim per share shall be zero.

9 (b) If sold on or between July 9, 2012 through
10 July 12, 2012, the claim per share shall be the lesser of: (i) the purchase
11 price times the percent of inflation in Table A on the purchase date less
12 the sales price times the percent of inflation in Table A on the sale date;
13 and (ii) the difference between the purchase price and the sales price.

14 (c) If retained at the end of July 12, 2012 and sold
15 before October 10, 2012, the claim per share shall be the least of: (i) the
16 purchase price times the percent of inflation in Table A on the purchase
17 date; (ii) the difference between the purchase price and the sales price;
18 and (iii) the difference between the purchase price and the average
19 closing price up to the date of sale as set forth in Table B below.³

20 (d) If retained at the end of October 10, 2012, or
21 sold thereafter, the claim per share shall be the lesser of: (i) the purchase
22

23 ³ Pursuant to §21D(e)(1) of the PSLRA, “in any private action arising under this
24 chapter in which the plaintiff seeks to establish damages by reference to the market
25 price of a security, the award of damages to the plaintiff shall not exceed the
26 difference between the purchase or sale price paid or received, as appropriate, by the
27 plaintiff for the subject security and the mean trading price of that security during the
28 90-day period beginning on the date on which the information correcting the
misstatement or omission that is the basis for the action is disseminated to the
market.” \$10.12 was the mean (average) daily closing trading price of Bridgepoint
common stock during the 90-day period beginning on July 13, 2012 and ending on
October 10, 2012.

1 price times the percent of inflation in Table A on the purchase date; and
 2 (ii) the difference between the purchase price and \$10.12 per share.

3 2. For shares of Bridgepoint common stock *purchased*
 4 *on or between July 9, 2012 through July 12, 2012*, the claim per share
 5 shall be as follows:

6 (a) If sold on or between July 9, 2012 through
 7 July 12, 2012, the claim per share shall be zero.

8 (b) If retained at the end of July 12, 2012 and sold
 9 before October 10, 2012, the claim per share shall be the least of: (i) the
 10 purchase price times the percent of inflation in Table A on the purchase
 11 date; (ii) the difference between the purchase price and the sales price;
 12 and (iii) the difference between the purchase price and the average
 13 closing price up to the date of sale as set forth in Table B below.

14 (c) If retained at the end of October 10, 2012, or
 15 sold thereafter, the claim per share shall be the lesser of: (i) the purchase
 16 price times the percent of inflation in Table A on the purchase date; and
 17 (ii) the difference between the purchase price and \$10.12 per share.

18 3. For shares of Bridgepoint common stock *purchased*
 19 *on July 13, 2012*, the claim per share shall be zero.⁴

TABLE A		
Period Start Date	Period End Date	Inflation as Percent of Price
3-May-11	8-Jul-12	50.1%
9-Jul-12	12-Jul-12	25.3%
13-Jul-12	thereafter	0.0%

20
 21
 22
 23
 24
 25
 26 ⁴ Although the Class Period includes July 13, 2012, persons who purchased
 27 Bridgepoint common stock on July 13, 2012 are not recovering under the Plan of
 28 Allocation because the corrective information that affected the market price on this date
 was released prior to the market opening on July 13, 2012. In other words, the price of
 Bridgepoint common stock was no longer inflated on July 13, 2012 and persons who
 purchased on that date suffered no damages under the federal securities laws.

TABLE B

Date	Closing Price	Average Closing Price	Date	Closing Price	Average Closing Price
13-Jul-12	\$9.77	\$9.77	28-Aug-12	\$9.72	\$9.71
16-Jul-12	\$9.84	\$9.81	29-Aug-12	\$9.74	\$9.71
17-Jul-12	\$9.65	\$9.75	30-Aug-12	\$9.77	\$9.71
18-Jul-12	\$9.47	\$9.68	31-Aug-12	\$9.86	\$9.72
19-Jul-12	\$9.23	\$9.59	4-Sep-12	\$9.56	\$9.71
20-Jul-12	\$9.01	\$9.50	5-Sep-12	\$10.32	\$9.73
23-Jul-12	\$8.93	\$9.41	6-Sep-12	\$10.81	\$9.76
24-Jul-12	\$8.66	\$9.32	7-Sep-12	\$10.89	\$9.78
25-Jul-12	\$8.58	\$9.24	10-Sep-12	\$10.93	\$9.81
26-Jul-12	\$8.40	\$9.15	11-Sep-12	\$11.38	\$9.85
27-Jul-12	\$8.41	\$9.09	12-Sep-12	\$11.00	\$9.88
30-Jul-12	\$8.43	\$9.03	13-Sep-12	\$10.72	\$9.90
31-Jul-12	\$9.10	\$9.04	14-Sep-12	\$11.26	\$9.93
1-Aug-12	\$9.35	\$9.06	17-Sep-12	\$11.22	\$9.95
2-Aug-12	\$9.42	\$9.08	18-Sep-12	\$11.64	\$9.99
3-Aug-12	\$9.44	\$9.11	19-Sep-12	\$11.78	\$10.03
6-Aug-12	\$10.01	\$9.16	20-Sep-12	\$11.04	\$10.05
7-Aug-12	\$10.58	\$9.24	21-Sep-12	\$10.96	\$10.07
8-Aug-12	\$10.98	\$9.33	24-Sep-12	\$10.72	\$10.08
9-Aug-12	\$10.91	\$9.41	25-Sep-12	\$10.06	\$10.08
10-Aug-12	\$10.77	\$9.47	26-Sep-12	\$10.24	\$10.08
13-Aug-12	\$10.07	\$9.50	27-Sep-12	\$10.20	\$10.08
14-Aug-12	\$9.80	\$9.51	28-Sep-12	\$10.15	\$10.09
15-Aug-12	\$10.07	\$9.54	1-Oct-12	\$10.20	\$10.09
16-Aug-12	\$10.36	\$9.57	2-Oct-12	\$10.20	\$10.09
17-Aug-12	\$10.45	\$9.60	3-Oct-12	\$9.80	\$10.08
20-Aug-12	\$10.29	\$9.63	4-Oct-12	\$10.21	\$10.09
21-Aug-12	\$10.40	\$9.66	5-Oct-12	\$10.33	\$10.09
22-Aug-12	\$10.10	\$9.67	8-Oct-12	\$10.57	\$10.10
23-Aug-12	\$10.46	\$9.70	9-Oct-12	\$10.57	\$10.11
24-Aug-12	\$9.99	\$9.71	10-Oct-12	\$10.72	\$10.12
27-Aug-12	\$9.78	\$9.71			

83. For Class Members who held Bridgepoint common stock at the beginning of the Class Period or made multiple purchases or sales during the Class Period, the First-In, First-Out (“FIFO”) method will be applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO method, sales of Bridgepoint common stock during the Class Period will be matched, in chronological order, first against shares of common stock held at the beginning of the

1 Class Period. The remaining sales of common stock during the Class Period will then
2 be matched, in chronological order, against common stock purchased during the Class
3 Period.

4 84. A Class Member will be eligible to receive a distribution from the Net
5 Settlement Fund only if that Class Member had a net overall loss, after all profits from
6 transactions in all Bridgepoint common stock described above during the Class Period
7 are subtracted from all losses. However, the proceeds from sales of common stock
8 that have been matched against the common stock held at the beginning of the Class
9 Period will not be used in the calculation of such net loss. No distributions will be
10 made to Authorized Claimants who would otherwise receive a distribution of less than
11 \$10.00.

12 **VI. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES**
13 **AND EXPENSES IS REASONABLE**

14 **A. A Reasonable Percentage of the Settlement Amount**
15 **Recovered Is the Appropriate Method to Use in Awarding**
16 **Attorneys' Fees in Common Fund Cases Such as This**
17 **Litigation**

18 85. For Lead Counsel's efforts on behalf of Lead Plaintiffs and the Class,
19 Lead Counsel is respectfully applying for compensation from the Settlement Fund on
20 a percentage basis. The percentage method is the appropriate method for awarding
21 fees because, among other things, it aligns the lawyers' interest in being paid a fair fee
22 with the interest of the Class in achieving the maximum recovery in the shortest
23 amount of time required under the circumstances, is supported by public policy, has
24 been recognized as appropriate by the Supreme Court and Ninth Circuit for cases of
25 this nature, and represents the overwhelming trend in common fund actions in most
26 circuits (including the Ninth Circuit).

27 86. As set forth in the accompanying Fee Memorandum, a 25% fee is a fair
28 and reasonable attorneys' fee percentage request in common fund cases such as this
Action, and is the benchmark fee in the Ninth Circuit.

1 87. As is also more fully set forth in the Fee Memorandum, Lead Counsel
2 believes the fee request is reasonable given the recovery obtained for the benefit of the
3 Class, the risks of this litigation, the contingent nature of counsel's representation, the
4 complexity of the legal and factual questions at issue, and the extensive efforts of
5 counsel on behalf of Lead Plaintiffs and the Class.

6 88. Finally, each of the Lead Plaintiffs have approved Lead Counsel's 25%
7 fee request and in the post-PSLRA era, the support of the Court-appointed Lead
8 Plaintiffs is a significant consideration in awarding a fair fee.

9 **B. Consideration of Relevant Factors Justify an Award of the**
10 **Attorneys' Fees Requested by Lead Counsel in This Case**

11 **1. The Result Achieved Justifies the Award Sought**

12 89. The \$15.5 million cash Settlement here, achieved as a result of the
13 prosecutorial and investigative efforts of Lead Counsel, provides significant and
14 certain benefits to the Class. As a result of this Settlement, thousands of Class
15 Members will benefit and receive compensation for their losses and avoid the very
16 real risk of no recovery in the absence of any settlement.

17 **2. The Diligent Prosecution of this Case**

18 90. A 25% fee is also warranted in light of the extensive efforts on the part of
19 Lead Counsel, as outlined above, that were required to arrive at this Settlement. Lead
20 Counsel devoted significant resources to the case by, *inter alia*, mastering the relevant
21 facts and dynamics of Bridgepoint's business, drafting complaints and comprehensive
22 memoranda of law in connection with Defendants' motion to dismiss, propounding
23 discovery requests to Defendants, analyzing nearly two million pages of documents
24 produced by the Defendants and third parties, taking or defending the depositions of
25 25 witnesses, including four expert witnesses, formulating strategy, and otherwise
26 preparing this case to ultimately go to trial, if necessary.

1 **3. The Complexity of the Litigation's Factual and Legal**
2 **Questions**

3 91. Courts have consistently recognized the novelty and difficulty of the issues
4 in any given case are significant factors to be considered in awarding fees to counsel.
5 As demonstrated by the discussion above of the contested issues in this Action, had the
6 Settlement not been reached by the parties, the complex factual and legal questions at
7 issue would undoubtedly continue to be the subject of substantial analysis and dispute.
8 Numerous complex issues would necessarily be involved in Lead Plaintiffs' efforts to
9 prove liability, including whether Defendants' statements were false, whether
10 Defendants had a duty to disclose, whether Defendants acted with scienter, whether the
11 alleged false statements and omissions were the legal cause of Lead Plaintiffs' and the
12 Class' damages, whether Bridgepoint securities traded at artificially inflated prices, and
13 whether Lead Plaintiffs and the Class suffered damages as a result of Defendants'
14 wrongful conduct and, if they did, the amount of those damages.

15 **4. The Risks of Litigation and the Contingent Nature of**
16 **Lead Counsel's Representation**

17 92. The determination of a fair fee award to counsel should include careful
18 consideration of the contingent nature of the fee, the financial burden carried by
19 counsel, and the difficulties that were overcome in obtaining the settlement.

20 93. This Action was undertaken by Lead Counsel on a wholly contingent
21 basis. From the outset, Lead Counsel understood it was embarking on a complex,
22 expensive and lengthy case that presented no guarantee of any compensation for its
23 investment of time and money the action would require. In undertaking that
24 responsibility, Lead Counsel was obligated to assure sufficient attorney resources
25 were dedicated to the prosecution of the litigation, and that funds were available to
26 compensate staff and to pay for the considerable expenses a case such as this entails.

27 94. Because of the nature of a contingent practice where cases are typically
28 complex and last several years, not only do contingent law firms such as Lead
Counsel have to pay regular overhead, but they also have to advance the expenses of

1 the litigation. Given it often takes years for these cases to conclude, the financial
2 burden on contingent counsel is far greater than on a firm that is paid on an ongoing or
3 hourly basis.

4 95. As discussed above, this case had significant risks concerning liability,
5 causation, and damages. Lead Plaintiffs' success was by no means assured, as both
6 sides claimed the evidence supported their positions. Success hinged on Lead
7 Plaintiffs' ability to win challenging arguments on each element of their claims. Were
8 this Settlement not achieved, Lead Plaintiffs faced additional years of costly and risky
9 litigation, including potential appeals, with ultimate success being far from certain.

10 96. As discussed above, there was no guarantee Lead Plaintiffs would
11 succeed in convincing the Court or a jury that Defendants' statements were materially
12 false, or, if such statements were found to be materially false, that they were made
13 with scienter, or that the Class suffered substantial damages. Moreover, despite Lead
14 Plaintiffs' position that the Class Period properly extends to July 13, 2012, Defendants
15 would undoubtedly continue to challenge this position and present evidence in an
16 attempt to undermine Lead Plaintiffs' damages theories. Indeed, Defendants have
17 adamantly denied liability and loss causation.

18 97. Numerous examples exist where plaintiffs' counsel in contingent cases such
19 as this, after the expenditure of thousands of hours, have received no compensation. We
20 are aware of many hard-fought lawsuits where, because of the discovery of facts
21 unknown when the case was commenced, changes in the law during the pendency of the
22 case or a decision of a judge or jury following a trial on the merits, excellent professional
23 efforts of members of the plaintiffs' bar produced no fee for counsel.

24 98. Courts have repeatedly held it is in the public's best interest to have
25 experienced and capable counsel enforce the securities laws and regulations pertaining
26 to public companies. Vigorous private enforcement of the federal securities laws can
27 only occur if private plaintiffs are able to obtain parity in representation with that
28 available to large corporate interests. If this important public policy is to be carried

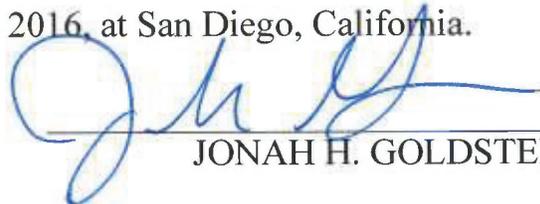
1 out, courts should award fees that will adequately compensate private plaintiffs’
2 counsel for their diligent efforts on a contingency basis, taking into account the
3 enormous risks undertaken and the time and effort devoted to the litigation.

4 99. Furthermore, using counsel’s aggregate “lodestar” as a cross check
5 confirms the reasonableness of the requested fee. The “lodestar” equates to the
6 number of hours worked – in this case 14,008.40 – multiplied by the applicable hourly
7 rate, which here totals \$6,232,838.00. The 25% fee requested by Lead Counsel
8 represents a negative multiplier of approximately 0.62 of counsel’s time, which, as the
9 Fee Memorandum explains, is within the range of multipliers that are typically
10 approved in cases similar to this Action.

11 **VII. CONCLUSION**

12 100. For the reasons set forth herein, in the Memorandum of Points and
13 Authorities in Support of Motion for Final Approval of Class Action Settlement and
14 Plan of Allocation of Settlement Proceeds, the Fee Memorandum, the Atlanta GEPF
15 Declaration, the Local 677 Plan Declaration, and in Lead Counsel’s Fee and Expense
16 Declaration, Lead Counsel respectfully requests the Court approve the Settlement and
17 Plan of Allocation, award Lead Counsel fees of 25% of the Settlement Amount and
18 \$509,940.07 in expenses, plus interest at the same rate, and for the same time as
19 earned by the Settlement Fund until paid, and reimburse Lead Plaintiff Local 677 Plan
20 for its time and expenses.

21 I declare under penalty of perjury that the foregoing is true and correct.
22 Executed this 2nd day of February, 2016, at San Diego, California.

23 
24 _____

JONAH H. GOLDSTEIN