

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 [Additional counsel appear on signature page.]

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.

18 LEAD PLAINTIFFS' STATEMENT
 19 OF NON-OPPOSITION IN FURTHER
 20 SUPPORT OF MOTION FOR (1)
 21 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)

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

1 Lead Plaintiffs City of Atlanta General Employees Pension Fund and Teamsters
2 Local 677 Health Services & Insurance Plan (“Local 677 Plan”) (together, “Lead
3 Plaintiffs”) and their counsel respectfully submit this Statement of Non-Opposition in
4 Further Support of the Motion for (1) Final Approval of Class Action Settlement and
5 Plan of Allocation of Settlement Proceeds (Dkt. Nos. 101 and 101-1); and (2) an
6 Award of Attorneys’ Fees and Expenses and Reimbursement of Lead Plaintiff’s
7 Expenses Pursuant to 15 U.S.C. §78u-4(a)(4) (Dkt. Nos. 101 and 101-2).

8 Pursuant to the Court’s Amended Order Preliminarily Approving Settlement
9 and Providing for Notice and Approving Proposed Request for Exclusion Form
10 (“Notice Order”) (Dkt. No. 100), the Court set a deadline of March 3, 2016 for Lead
11 Plaintiffs to reply to any Class Member objections to the Settlement, Plan of
12 Allocation and/or request for attorneys’ fees and expenses and reimbursement of Lead
13 Plaintiff’s expenses. However, no objections have been made, and the February 17,
14 2016 deadline for objections has since passed. Accordingly, this submission reports
15 on the implementation and results of the class notice program set out in the Notice
16 Order and further demonstrates that final approval of the Settlement, Plan of
17 Allocation and request for attorneys’ fees and expenses and reimbursement of Lead
18 Plaintiff’s expenses is warranted under the facts here.

19 **I. LEAD PLAINTIFFS HAVE COMPLIED WITH THE NOTICE**
20 **ORDER**

21 The Court-appointed Claims Administrator, Gilardi & Co. LLC (“Gilardi”), has
22 complied with the Notice Order’s provisions regarding notice to Class Members. As
23 set forth in the Declaration of Carole K. Sylvester filed with Lead Plaintiffs’ final
24 approval motion, as of February 1, 2016, Gilardi had mailed or otherwise provided a
25 total of 11,927 copies of the Court-approved Notice of Pendency and Proposed
26 Settlement of Class Action (the “Notice”), the Request for Exclusion Form (the
27 “Exclusion Form”), and the Proof of Claim and Release form (the “Proof of Claim”)
28 (collectively, the “Claim Package”) to potential Class Members and nominees. *See*

1 Declaration of Carole K. Sylvester Regarding (A) Mailing of the Notice of Pendency
2 and Proposed Settlement of Class Action, the Request for Exclusion Form and the
3 Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C)
4 Internet Posting, and (D) Requests for Exclusion Received to Date, dated February 1,
5 2016 (“Sylvester Decl.”), ¶¶4-11. Dkt. No. 101-6. Since that time, Gilardi has mailed
6 an additional 19,068 Claim Packages to potential Class Members and nominees for a
7 total mailed to date of 30,995. *See* Supplemental Declaration of Carole K. Sylvester
8 Regarding (A) Further Mailing of the Notice of Pendency and Proposed Settlement of
9 Class Action, the Request for Exclusion Form and the Proof of Claim and Release
10 Form and (B) Requests for Exclusion Received to Date (“Suppl. Sylvester Decl.”), ¶3,
11 submitted herewith.

12 In addition, the Summary Notice was transmitted over the *PR Newswire* and
13 published in *Investor’s Business Daily* on January 12, 2016. Sylvester Decl., ¶14.
14 The Notice, Exclusion Form, Proof of Claim, Stipulation and Agreement of
15 Settlement, and Notice Order were also posted on a website dedicated to the litigation
16 (www.bridgpointsecuritieslitigation.com) on December 29, 2015. *Id.*, ¶13.

17 Notwithstanding the extensive notice program, not a single Class Member has
18 objected to the Plan of Allocation, the Settlement itself, Lead Counsel’s request for an
19 award of attorneys’ fees and expenses or the request for reimbursement of Lead
20 Plaintiff’s expenses and only 16 requests for exclusion from the Class have been
21 received. As discussed below, this response from the Class provides further support
22 for final approval of the Settlement, Plan of Allocation and request for attorneys’ fees
23 and expenses and reimbursement of Lead Plaintiff’s expenses in this case.

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1 **II. THE REACTION OF THE CLASS STRONGLY SUPPORTS**
2 **APPROVAL OF THE SETTLEMENT, THE PLAN OF**
3 **ALLOCATION, AND LEAD COUNSEL’S REQUEST FOR AN**
4 **AWARD OF ATTORNEYS’ FEES AND EXPENSES AND**
5 **REIMBURSEMENT OF LEAD PLAINTIFF’S EXPENSES**

6 The reaction of the Class to the Settlement is a factor to be weighed in
7 considering its adequacy. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
8 944 (9th Cir. 2015); *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004).
9 Moreover, as the Honorable Jeremy Fogel noted: “[T]he reaction of the class to the
10 proffered settlement . . . is perhaps the most significant factor to be weighed in
11 considering its adequacy.” *In re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF
12 (HRL), 2009 U.S. Dist. LEXIS 131845, at *10 (N.D. Cal. Jan. 20, 2009) (citation
13 omitted). “The presence or absence of objections from the class is also a factor in
14 determining the proper fee award.” *See In re Heritage Bond Litig. v. U.S. Trust Co. of*
15 *Tex., N.A.*, No. 02-ML-1475-DT(RCx), 2005 U.S. Dist. LEXIS 13627, at *48 (C.D.
16 Cal. June 10, 2005). Where no objection “raised any concern about the amount of the
17 fee . . . [t]his factor . . . also supports the requested award of 28% of the Settlement
18 Fund.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2007).

19 Here, after an extensive Court-approved notice program, the Class’ response to
20 the Settlement, Plan of Allocation, and Lead Counsel’s request for an award of
21 attorneys’ fees and expenses and reimbursement of Lead Plaintiff’s expenses has been
22 overwhelmingly positive. Indeed, in the response to the over 30,000 Claim Packages
23 sent out to date, no objections have been filed to date, and the cut off for objections
24 was February 17, 2016. The Notice informed Class Members of the terms of the
25 Settlement, the Plan of Allocation, and that Lead Counsel would be seeking an award
26 of 25% of the Settlement Amount and for payment of expenses of up to \$600,000.00.
27 Class Members were also advised of their right to object to the Settlement, the Plan of
28 Allocation, Lead Counsel’s request for an award of attorneys’ fees and expenses
and/or reimbursement of Lead Plaintiff’s expenses and the procedures for doing so, as
well as the deadline and procedure for opting out of the Class.

1 The absence of objections favors final approval. *Green v. Gino Morena*
2 *Enters., LLC*, No. 13cv1332 JM(NLS), 2014 U.S. Dist. LEXIS 156072, at *5 (S.D.
3 Cal. Nov. 4, 2014) (Miller, J.) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV,*
4 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“the absence of a large number of
5 objections to a proposed class action settlement raises a strong presumption the terms
6 of a proposed class settlement action are favorable to the class members’’)). In
7 addition, only 16 requests for exclusion from the Class have been received.
8 Accordingly, the reaction of the Class is strong evidence that the Class
9 overwhelmingly supports the Settlement, the Plan of Allocation, Lead Counsel’s fee
10 and expense request, the request for reimbursement of Lead Plaintiff Local 677 Plan’s
11 expenses and thus weighs strongly in favor of approval of each.

12 **III. CONCLUSION**

13 For the reasons set forth herein and in previously submitted memoranda and
14 declarations, Lead Plaintiffs respectfully submit that the Settlement is a highly
15 favorable result for the Class, and the Plan of Allocation is a fair and equitable method
16 for distributing the Net Settlement Fund. Therefore, both should be approved as fair,
17 reasonable, and adequate. Finally, the attorneys’ fees of 25% of the Settlement
18 Amount and expenses in the amount of \$509,940.07, plus interest on both amounts
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1 earned at the same rate and for the same period of time as that earned on that portion
2 of the Settlement Fund until paid, plus the reimbursement of expenses in the amount
3 of \$3,622.00 to Local 677 Plan are reasonable under the circumstances and should be
4 awarded in the amounts sought.

5 DATED: March 3, 2016

Respectfully submitted,

6 ROBBINS GELLER RUDMAN
7 & DOWD LLP
8 THEODORE J. PINTAR
9 LAURIE L. LARGENT
10 JONAH H. GOLDSTEIN
11 REGIS C. WORLEY, JR.
12 AUSTIN P. BRANE

13 s/ THEODORE J. PINTAR

14 THEODORE J. PINTAR

15 655 West Broadway, Suite 1900
16 San Diego, CA 92101
17 Telephone: 619/231-1058
18 619/231-7423 (fax)

19 Lead Counsel for Plaintiffs

20 ROBERT M. CHEVERIE &
21 ASSOCIATES
22 GREGORY S. CAMPORA
23 Commerce Center One
24 333 E. River Drive, Suite 101
25 East Hartford, CT 06108
26 Telephone: 860/290-9610
27 860/290-9611 (fax)

28 JOHNSON & WEAVER, LLP
FRANK J. JOHNSON
600 West Broadway, Suite 1540
San Diego, CA 92101
Telephone: 619/230-0063
619/255-1856 (fax)

Additional Counsel for Plaintiff

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2
3
4
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CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 3, 2016.

s/ Theodore J. Pintar
THEODORE J. PINTAR

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: tedp@rgrdlaw.com

Mailing Information for a Case 3:12-cv-01737-JM-JLB Franke v. Bridgepoint Education, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Austin P. Brane**
ABrane@rgrdlaw.com,e_File_SD@rgrdlaw.com
- **Francis Anthony DiGiacco**
francis.digiacco@usdoj.gov,Kathleen.Thomason@usdoj.gov,Diana.Ortiz@usdoj.gov,Leilani.Lamontagne@usdoj.gov
- **Lionel Z Glancy**
info@glancylaw.com,lglancy@glancylaw.com
- **Jonah H. Goldstein**
JonahG@rgrdlaw.com,lmix@rgrdlaw.com,e_File_SD@rgrdlaw.com
- **Richard M Heimann**
rheimann@lchb.com,slee@lchb.com
- **Frank J. Johnson , Jr**
frankj@johnsonandweaver.com,paralegal@johnsonandweaver.com,michaelf@johnsonandweaver.com,ceciliar@johnsonandweaver.com
- **Laurie Largent**
llargent@rgrdlaw.com,jillk@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jeremy A. Lieberman**
jalieberman@pomlaw.com,disaacson@pomlaw.com,lpvega@pomlaw.com,jkehoe@pomlaw.com
- **Nina F Locker**
nlocker@wsgr.com,lkoontz@wsgr.com
- **Edmundo Clay Marquez**
emarquez@omm.com,lmorris@omm.com
- **Danielle Suzanne Myers**
dmyers@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Joni L. Ostler**
jostler@wsgr.com,pbaird@wsgr.com,eblackey@wsgr.com,dgavril@wsgr.com
- **Theodore Joseph Pintar**
TedP@rgrdlaw.com
- **Ignacio E. Salceda**
isalceda@wsgr.com,bbahns@wsgr.com
- **David C Walton**
davew@rgrdlaw.com,hstmartin@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jeff S Westerman**
jwesterman@jswlegal.com
- **Regis C Worley , Jr**
rworley@rgrdlaw.com,e_file_sd@rgrdlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)