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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 In re THE PMI GROUP, INC. SECURITIES)
LITIGATION)

Master File No. 3:08-cv-01405-SI

14

) CLASS ACTION

15 This Document Relates To:)

16 ALL ACTIONS.)

) PLAINTIFFS' NOTICE OF MOTION AND
) MOTION FOR CLASS CERTIFICATION;
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF MOTION
17 FOR CLASS CERTIFICATION

18

DATE: August 13, 2010

19

TIME: 9:00 a.m.

20

COURTROOM: The Honorable Susan Illston

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, on August 13, 2010, at 9:00 a.m., before the Honorable Susan Illston, movant herein will ask this Court for an order certifying this matter as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3), appointing Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust (“Plaintiff” or the “Trust”) as class representative and Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as class counsel. This motion is supported by the following memorandum of points and authorities, all pleadings and papers filed herein, arguments of counsel, and any other matters properly before the Court.

STATEMENT OF ISSUES TO BE DECIDED

- 1. Whether this matter should be certified as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3).
- 2. Whether the Trust should be appointed as class representative.
- 3. Whether Robbins Geller should be appointed as class counsel.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Lead Plaintiff Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust brings this motion to certify this securities litigation as a class action on behalf of those persons who purchased PMI Group, Inc. (“PMI” or the “Company”) common stock between November 2, 2006 to March 3, 2008 (the “Class Period”).¹ In addition, Plaintiff requests that the Court appoint Plaintiff as class representative and its counsel,

¹ Excluded from the Class are Defendants, as defined *infra*, members of the immediate family of the Defendants, the directors, officers, subsidiaries and affiliates of PMI, any person, firm, trust, corporation, officer, director or other individual or entity in which any defendant has a controlling interest, and the legal representatives, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

1 Robbins Geller, as class counsel.² During the Class Period, Plaintiff purchased 54,411 shares of
2 PMI stock and lost more than \$760,000.

3 During the Class Period, PMI and the Individual Defendants³ (collectively, “Defendants”)
4 violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) by making
5 false and misleading statements about PMI’s business and financial results, which artificially inflated
6 PMI’s stock price throughout the Class Period. By certifying this case as a class action, Plaintiff,
7 and thousands of other investors similarly situated who suffered substantial damages when they
8 purchased PMI stock at artificially inflated prices, will be permitted to efficiently and effectively
9 prosecute this action.

10 In a long and virtually unbroken line of cases, the Ninth Circuit and district courts in
11 California and elsewhere have endorsed the use of class action procedures in adjudicating claims
12 under the federal securities laws:

13 [C]lass actions commonly arise in securities fraud cases as the claims of separate
14 investors are often too small to justify individual lawsuits, making class actions the
only efficient deterrent against securities fraud.

15 *In re Worlds of Wonder Sec. Litig.*, No. C 87 5491 SC, 1990 U.S. Dist. LEXIS 8511, at *4-*5 (N.D.
16 Cal. Mar. 26, 1990) (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir.
17 1964)); *see generally Crossen v. CV Therapeutics*, No. C 03-03709 SI, 2005 U.S. Dist. LEXIS
18 41396 (N.D. Cal. Aug. 10, 2005) (Illston, J.); *In re Connectics Corp., Sec. Litig.*, 257 F.R.D. 572
19 (N.D. Cal. 2009) (Illston, J.). The “overwhelming weight of authority” holds that securities fraud
20 actions are properly certifiable as class actions. *See Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir.
21 1975). Indeed, courts throughout the United States have consistently recognized the necessity for
22 class actions such as this one in order to enforce the federal securities laws. *See, e.g., Basic Inc. v.*
23 *Levinson*, 485 U.S. 224, 230-31 (1988); *Blackie*, 524 F.2d at 903. In recognition of their significant

25 ² By Order dated June 20, 2008, the Court appointed the Trust as Lead Plaintiff pursuant to 15
26 U.S.C. §78u-4(a)(3)(B).

27 ³ The “Individual Defendants” are L. Stephen Smith, Bradley M. Shuster, David H. Katkov
28 and Donald P. Lofe, Jr.

1 role in protecting investors, courts liberally construe the requirements of Rule 23 of the Federal
2 Rules of Civil Procedure in favor of class certification. “[T]he ultimate effectiveness of [the anti-
3 fraud provisions of the securities laws] may depend on the applicability of the class action device.”
4 *Blackie*, 524 F.2d at 903.⁴

5 This action satisfies all of the requirements of Federal Rule of Civil Procedure 23. The
6 proposed Class is so numerous that joinder of all members is impracticable; there are questions of
7 fact and law common to the Class which predominate; the claims or defenses of the representative
8 party are typical of the claims or defenses of the Class; the representative will fairly and adequately
9 protect the interests of the Class; questions of law or fact common to the members of the Class
10 predominate over any questions affecting only individual members; and a class action is the superior
11 means to resolve the issues raised by this case. Accordingly, this case should be certified as a class
12 action.

13 **II. FACTUAL SUMMARY**

14 This is a securities class action brought on behalf of all persons who purchased or otherwise
15 acquired PMI common stock between November 2, 2006 and March 3, 2008, inclusive, against PMI
16 and certain of its officers for violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5
17 promulgated thereunder. On November 2, 2009, this Court denied Defendants’ motion to dismiss
18 the First Amended Complaint for Violation of the Federal Securities Laws (the “Complaint”). The
19 allegations in the Complaint are summarized herein.

20 Founded in 1972, PMI was historically a conservative insurer of full documentation home
21 loans. ¶30.⁵ Mortgage insurance was typically purchased by borrowers making less than a 20%
22 down payment on a home. In the event of default, mortgage insurance covered the gap between the
23 amount put down by the borrower and 20% of the home purchase price. *Id.* PMI developed
24 proprietary computer systems to evaluate home loans based on a variety of factors which made
25

26 ⁴ Here, as elsewhere, citations are omitted and emphasis is added unless otherwise noted.

27 ⁵ Paragraph references (“¶” or “¶¶”) are to the Complaint, unless otherwise noted.

1 underwriting essentially formulaic. ¶32. In fact, the process was so straightforward that the
2 Company used approved lenders to sell PMI’s insurance by simply applying PMI’s underwriting
3 guidelines and software. ¶58.

4 In the booming housing market of the early 2000s, PMI was marginalized as low interest
5 rates and new loan products eliminated the need for mortgage insurance. ¶¶37-44. For instance,
6 piggy-back loans replaced mortgage insurance with a second smaller, higher risk loan, which
7 together avoided the mortgage insurance requirement. *See* ¶44. Faced with a steadily declining
8 persistency⁶ rate, Defendants abandoned their conservative underwriting practices and began
9 insuring riskier loans, including: more sub-prime loans, loans with loan-to-value ratios exceeding
10 95% or even 97%; loans with exotic payment structures, including interest-only loans, payment
11 option adjustable rate mortgages (“ARMs”) and 2/28 hybrid ARMs; and loans with increasingly
12 large principal amounts. ¶¶45, 59, 61. Defendants also started insuring loans with reduced
13 documentation, meaning that the borrower’s information was either not verified (for instance, by a
14 W-2 Form) or not provided at all. ¶45. Further increasing PMI’s risk exposure, many loans
15 contained more than one of these risk factors. *Id.* In 2003, Defendants also purchased a controlling
16 share of Financial Guaranty Insurance Company, Inc. (“FGIC”), a subsidiary through which it sold
17 financial guarantees on the market’s most toxic and complex investment vehicles, including
18 residential mortgage-backed securities. ¶¶46-54. Defendants’ decision to drastically shift PMI’s
19 business practices and abandon its historical underwriting practices significantly increased PMI’s
20 risk exposure. ¶¶3-5, 45, 89, 96. Ultimately, this caused PMI to incur massive losses from insuring
21 risky loans. *See, e.g.*, ¶¶115, 125, 131, 147.

22 Having expanded PMI’s business into areas beyond PMI’s traditional business, Defendants
23 could no longer adequately evaluate risk. ¶65. Moreover, as the housing market collapsed and
24 Defendants learned that more and more of PMI’s insured loans were procured by fraud and were
25 underperforming, Defendants’ ability to generate revenue and the quality of its business became

26
27 ⁶ “Persistency” refers to the degree to which existing insurance policies remain in force and
28 generate premiums. ¶31.

1 diminished. ¶¶55-59. Defendants were desperate to find ways to convince the market that PMI’s
2 business was sound. *See, e.g.*, ¶¶67-68. There was simply no way to do so legitimately given the
3 risks and the reality of the mortgage and housing markets and Defendants’ knowledge about the
4 performance of PMI’s portfolio. ¶¶69-82. Toward the end of 2006, the situation was critical and
5 Defendants, in an effort to attempt to ride out the crisis, engaged in a scheme to defraud investors
6 regarding PMI’s revenues and income as well as the health of the business.

7 Plaintiff alleges that Defendants knowingly or recklessly made material false and misleading
8 statements throughout the Class Period. For example, Defendants falsely assured the market that
9 their core strength was credit risk management, despite the fact that PMI’s systems could no longer
10 adequately evaluate the exotic loan products and reduced documentation loans it was insuring.
11 ¶¶66-68. Causing the market to believe that Defendants were successfully managing PMI’s risk
12 portfolio was essential to convincing investors that PMI was able to create true value for investors.
13 *Id.* In virtually every conference call throughout the Class Period, Defendants sought to convince
14 the market that they were effectively managing risk: “We watch [Alt-A] like a hawk. . . . We’re
15 professional risk managers. It’s what we do day [in] and day out.” *See, e.g.*, ¶¶67-68. Moreover,
16 Defendants assured the market that they had not changed their risk tolerances despite ample internal
17 evidence to the contrary. ¶¶70-71, 77-80, 83-88, 97. Defendants falsely assured investors that they
18 were adequately managing risk and avoiding risk layering,⁷ “We are keenly aware of[risk layering]
19 in our own risk management and portfolio.” ¶113. In fact, risk layering in Defendants’ portfolio
20 was growing and presented a substantial credit risk. ¶89. Defendants manipulated loss reserves and
21 loss adjustment expenses (“LAEs”) by deliberately underestimating PMI’s loan portfolio
22 delinquencies and using improper economic assumptions to present a misleadingly positive
23 projection of PMI’s risk exposure. ¶¶205-230. Defendants also failed to timely write down their
24 investment in FGIC which should have been written off entirely by 3Q07 based on Generally

26 ⁷ “Risk layering” refers to loans which had more than one factor indicative of increased risk,
27 including, for instance, low FICO score, large principal amount and interest-only payment structure.
28 *See* ¶89.

1 Accepted Accounting Principles and Securities and Exchange Commission (“SEC”) guidance.
2 ¶¶167-204. These false statements appear in press releases, investor conference call transcripts and
3 SEC filings and caused PMI’s stock to trade at inflated values throughout the Class Period.⁸

4 The truth regarding PMI’s business operations, finances, metrics and future prospects were
5 revealed through a series of partial disclosures, often coupled with new (or an affirmation of prior)
6 false statements. See ¶¶231-235. Beginning on July 31, 2007, Defendants announced 2Q07
7 earnings of \$0.95 per share but revealed increased quarterly losses and increased full year guidance
8 for losses, which Defendants attributed to “deteriorating market conditions.” ¶¶115, 117.
9 Nonetheless, Defendants remained bullish – “we’re seeing significant and positive long term trends
10 that will bode well for our business.” ¶117. On this news, the stock declined 8.6% in heavy trading.
11 ¶119. On October 18, 2007, Defendants pre-announced a 3Q07 loss of \$1.05 per share and
12 withdrew previously-announced full year guidance, causing the stock price to fall 12.9% on heavy
13 trading. ¶¶125-126. On October 30, 2007, the Company announced 3Q07 losses of \$1.04 per share,
14 which it attributed to continued deterioration of the housing and mortgage market, but failed to write
15 down its investment in FGIC and made further false and misleading statements. ¶¶131-134. Finally
16 on March 3, 2008, the Company announced a net loss of \$236M in 4Q07 and delay in the filing of
17 its year-end 2007 SEC Form 10-K due to a delay in FGIC reporting its financials. ¶¶147-149. On
18 March 17, 2008, PMI announced a net loss of over \$915.3M as of December 31, 2007 – a decline of
19 318% from PMI’s reported income of \$419M a year earlier. ¶¶155-156. The Company also
20 estimated that 2007 losses and LAE would approximate \$1.1B. Finally, PMI wrote down its
21 investment in FGIC from \$884M at the close of 3Q07 to \$103.6M. *Id.*

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25
26 ⁸ Plaintiff alleges that Defendants made false and misleading statements of material fact on the
27 following dates: 11/2/06, 2/5/07, 2/12/07, 2/14/07, 3/15/07, 4/30/07, 6/26/07, 7/31/07, 8/20/07,
28 9/10/07, and 10/30/07.

1 **III. ARGUMENT**

2 **A. This Case Appropriately Calls for Class Action Treatment Under**
3 **Rule 23**

4 Plaintiff's Complaint details a scheme that defrauded thousands of similarly situated
5 individuals. The Ninth Circuit and district courts within it have repeatedly endorsed the use of class
6 action procedures to resolve claims under the federal securities laws.⁹ As one court has stated, "[t]he
7 law in the Ninth Circuit is very well established that the requirements of Rule 23 should be liberally
8 construed in favor of class action cases brought under the federal securities laws." *Schneider v.*
9 *Traweek*, No. CV 88-0905 RG (Kx), 1990 U.S. Dist. LEXIS 15596, at *16 (C.D. Cal. Aug. 7, 1990)
10 (citing *Blackie*, 524 F.2d at 902). Indeed, "the Ninth Circuit has stated a preference for resolving
11 securities fraud claims via class action as a means of deterring fraud." *McPhail v. First Command*
12 *Fin. Planning, Inc.*, 247 F.R.D. 598, 615 (S.D. Cal. 2007). Courts recognize that any doubt as to the
13 propriety of certification should be resolved in favor of certifying the class because denying class
14 certification will almost certainly terminate the action and be detrimental to the members of the
15 class. *Blackie*, 524 F.2d at 901. "[C]lass actions commonly arise in securities fraud cases as the
16 claims of separate investors are often too small to justify individual lawsuits, making class actions
17 the only efficient deterrent against securities fraud. Accordingly, the Ninth Circuit and courts in this
18 district hold a liberal view of class actions in securities litigation." *In re Adobe Sys., Inc. Sec. Litig.*,
19 139 F.R.D. 150, 152-53 (N.D. Cal. 1991).¹⁰

20 ⁹ The passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA") has not
21 changed the standard for certifying a class action. See *In re THQ, Inc. Sec. Litig.*, No. CV 00-1783
22 AHM (Ex), 2002 U.S. Dist. LEXIS 7753, at *8-*9 (C.D. Cal. Mar. 22, 2002) ("[L]ower courts have
23 recognized that '***the law in the Ninth Circuit is very well established that the requirements of Rule***
24 ***23 should be liberally construed in favor of class action cases brought under the federal securities***
laws."); *In re Blech Sec. Litig.*, 187 F.R.D. 97, 102 (S.D.N.Y. 1999) ("[I]n an alleged securities
fraud case, when a court is in doubt as to whether or not to certify a class action, the court should err
in favor of allowing the class to go forward.").

25 ¹⁰ See also *Epstein v. MCA, Inc.*, 50 F.3d 644, 668 (9th Cir. 1995), *rev'd on other grounds sub*
26 *nom.*, *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367 (1996); *Yamner v. Boich*, No. C-92-
27 20597 RPA, 1994 U.S. Dist. LEXIS 20849, at *6 (N.D. Cal. Sept. 15, 1994) ("The Ninth Circuit
28 favors a liberal use of class actions to enforce federal securities laws."); *In re Seagate Tech. II Sec.*
Litig., 843 F. Supp. 1341, 1350 (N.D. Cal. 1994) (finding that doubts should be resolved in favor of
class certification).

1 The Supreme Court has long recognized, and Congress has affirmed, that private actions are
2 also an important enforcement mechanism to supplement governmental administrative regulation of
3 the securities markets. “Private enforcement . . . provides a necessary supplement to [SEC] action,”
4 by both affording relief to those injured by violations of the securities laws and serving as a deterrent
5 to future wrongdoing. *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964); *see also Basic*, 485 U.S. at
6 231 (private actions for violations of the Exchange Act “constitute[] an essential tool for
7 enforcement of the [Exchange] Act’s requirements”).

8 In enacting the PSLRA, Congress reaffirmed the importance of private enforcement of the
9 securities laws:

10 Private securities litigation is an indispensable tool with which defrauded investors
11 can recover their losses without having to rely upon government action. Such private
12 lawsuits promote public and global confidence in our capital markets and help to
deter wrongdoing and to guarantee that corporate officers, auditors, directors,
lawyers and others properly perform their jobs.

13 H.R. Conf. Rep. No. 104-369, at 31 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 730. Thus, this
14 Court should liberally construe the requirements of Rule 23 in favor of certifying this securities fraud
15 case as a class action.

16 Nothing in the Ninth Circuit’s recent en banc decision in *Dukes v. Wal-Mart Stores, Inc.*, No.
17 04-16688, 2010 U.S. App. LEXIS 8576 (9th Cir. Apr. 26, 2010), alters Plaintiff’s burden under Rule
18 23 or this Court’s analysis of the present motion. *Id.* at *43 (“In short, the explanation we provide
19 today is not a new standard at all.”). In *Dukes*, a case brought under Title VII of the Civil Rights Act
20 of 1964, the Ninth Circuit surveys the judicial landscape with regard to what extent, if any, a court
21 may evaluate the underlying merits of a case at the class certification stage. *Id.* at *3, *13-*44.
22 *Dukes* holds that “[a] district court must sometimes resolve factual issues related to the merits to
23 properly satisfy itself that Rule 23’s requirements are met, but the purpose of the district court’s
24 inquiry at this stage remains focused on, for example, common *questions* of law or fact under Rule
25 23(a)(2), or predominance under Rule 23(b)(3), **not the proof of answers to those questions or the**
26 **likelihood of success on the merits.**” *Id.* at *43-*44 (citing *Gen. Tel. Co. of the Sw. v. Falcon*, 457
27 U.S. 147, 158 (1982)); *see also id.* at *28 (“this does not mean a district court should put the actual
28

1 resolution of the merits cart before the motion to dismiss, summary judgment, and trial horses by
2 reaching out to decide issues unnecessary to the Rule 23 requirements”).

3 *Dukes* also touches upon the application of the Rule 23 standard to securities cases. *Id.* at
4 *46-*51. In a fraud-on-the-market case, where a plaintiff must establish the six elements set forth in
5 *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005), the court states that only “the efficient
6 market component of the causation element overlaps with the merits.” *Dukes*, 2010 U.S. App.
7 LEXIS 8576, at *47. Thus, the clear indication is that an analysis of any of the other merits
8 underlying Plaintiff’s securities fraud claim – including falsity, scienter and loss causation – is
9 improper at the class certification stage.

10 **B. The Proposed Class Satisfies the Prerequisites of Rule 23(a)**

11 A review of the requirements of Federal Rule of Civil Procedure 23 and the relevant case law
12 demonstrates that this lawsuit should be certified as a class action. Rule 23(a) enumerates the
13 prerequisites of a class action:

14 One or more members of a class may sue or be sued as representative parties on
15 behalf of all only if:

- 16 (1) the class is so numerous that joinder of all members is impracticable;
- 17 (2) there are questions of law or fact common to the class;
- 18 (3) the claims or defenses of the representative parties are typical of the
19 claims or defenses of the class; and
- 20 (4) the representative parties will fairly and adequately protect the
21 interests of the class.

22 Fed. R. Civ. P. 23(a). Thus, this case may proceed as a class action once Plaintiff establishes that the
23 securities fraud claims satisfy the four prerequisites of Rule 23(a): numerosity, commonality,
24 typicality and adequacy of representation. *See Hernandez v. Alexander*, 152 F.R.D. 192, 193 (D.
25 Nev. 1993); *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, 122 F.R.D.
26 251, 253 (C.D. Cal. 1988); *Connectics*, 257 F.R.D. at 575; *Crossen*, 2005 U.S. Dist. LEXIS 41396,
27 at *7. The proposed Class in this case easily satisfies each of these prerequisites.

1 **1. The Class Is so Numerous that Joinder of All Members of the**
2 **Class Is Impracticable**

3 Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is
4 “impracticable.” Impracticable does not mean impossible, only that it would be difficult or
5 inconvenient to join all members of the class. *Harris*, 329 F.2d at 913-14; *see also Wehner v. Syntex*
6 *Corp.*, 117 F.R.D. 641, 643 (N.D. Cal. 1987). There is no fixed number of class members which
7 precludes the certification of a class. *Arnold v. United Artists Theatre Circuit*, 158 F.R.D. 439, 448
8 (N.D. Cal. 1994). Indeed, classes consisting of 25 members have been held large enough to justify
9 certification. *See In re Cirrus Logic Sec.*, 155 F.R.D. 654, 656 (N.D. Cal. 1994); *Perez-Funez v.*
10 *Dist. Dir., Immigration & Naturalization Serv.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984). Courts
11 have certified classes whose membership sizes range from less than 100 to over 100,000. *In re*
12 *Verisign, Inc. Sec. Litig.*, No. C 02-02270 JW, 2005 U.S. Dist. LEXIS 10438, at *12 (N.D. Cal.
13 Jan. 13, 2005). Additionally, the exact size of the class need not be known so long as general
14 knowledge and common sense indicate that the class is large. *Id.*; *see also Schwartz v. Harp*, 108
15 F.R.D. 279, 281-82 (C.D. Cal. 1985) (“A failure to state the exact number in the proposed class does
16 not defeat class certification and plaintiff’s allegations plainly suffice to meet the numerosity
17 requirement of Rule 23.”). Indeed, courts have assumed that the numerosity requirement is satisfied
18 in securities cases involving nationally-traded stocks. *Yamner*, 1994 U.S. Dist. LEXIS 20849, at *7-
19 *8.

20 In securities litigation, district courts regularly find the numerosity requirement satisfied with
21 respect to a purported class of purchasers or resellers of nationally traded securities on the basis of
22 the number of shares sold during the class period. *See In re Emulex Corp.*, 210 F.R.D. 717, 719
23 (C.D. Cal. 2002) (“[T]he Class would include hundreds or thousands of purchasers since
24 approximately five million shares of Emulex stock were traded daily during the Class Period.
25 Individual joinder of members of a class this size would be impracticable.”); *Worlds of Wonder*,
26 1990 U.S. Dist. LEXIS 8511, at *8 (holding that class of 71 debenture holders was sufficiently
27 numerous); *Greenspan v. Brassler*, 78 F.R.D. 130, 132 n.4 (S.D.N.Y. 1978) (964,000 shares traded
28 during class period); *Trattner v. Am. Fletcher Mortgage Investors*, 74 F.R.D. 352, 356 (S.D. Ind.

1 1976) (mere fact that stock volume was sufficient to be traded on New York Stock Exchange);
2 *Brady v. Lac, Inc.*, 72 F.R.D. 22, 27 (S.D.N.Y. 1976) (1.3 million outstanding shares); *In re Penn*
3 *Cent. Sec. Litig.*, 62 F.R.D. 181, 188 (E.D. Pa. 1974) (1.5 million outstanding shares); *Jacobs v. Paul*
4 *Hardeman, Inc.*, 42 F.R.D. 595, 598 (S.D.N.Y. 1967) (7,000 outstanding indentures); *Verisign*, 2005
5 U.S. Dist. LEXIS 10438, at *12-*13.

6 While Plaintiff has not yet obtained PMI's stock transfer records for the time period in
7 question, PMI had approximately 81 million shares of common stock outstanding during the Class
8 Period, such that there were undoubtedly thousands, if not tens of thousands, of purchasers of PMI
9 shares on the New York Stock Exchange during the 17-month Class Period. ¶13. In order to meet
10 the numerosity requirement for class certification, Plaintiff may rely on reasonable inferences drawn
11 from available facts in order to demonstrate that the Class is so numerous that joinder of all class
12 members is impracticable. *Blech*, 187 F.R.D. at 103.¹¹ With 81 million shares of PMI common
13 stock outstanding, it is clear that a class of this size is so numerous as to make individual joinder
14 impracticable, if not logistically impossible, especially where members of the Class are located
15 throughout the country. Plainly, the proposed Class satisfies the numerosity requirement of Rule
16 23(a). See *Freedman v. Louisiana-Pacific Corp.*, 922 F. Supp. 377, 398 (D. Or. 1996); *Wehner*, 117
17 F.R.D. at 643; *In re Seagate Techs. Sec. Litig.*, 115 F.R.D. 264, 267 (N.D. Cal. 1987); *Weinberger v.*
18 *Jackson*, 102 F.R.D. 839, 844 (N.D. Cal. 1984).

19 2. Questions of Law and Fact Are Common to Members of the 20 Class

21 The proposed Class also satisfies the "commonality" requirement of Rule 23(a)(2). The
22 Complaint describes a "common course of conduct" which is the hallmark of securities fraud actions
23 brought and certified as class actions under Rule 23. As the Ninth Circuit stated in *Blackie*:

24 The overwhelming weight of authority holds that repeated misrepresentations of the
25 sort alleged here satisfy the "common question" requirement. Confronted with a

26 ¹¹ *Accord Sherman v. Griepentrog*, 775 F. Supp. 1383, 1389 (D. Nev. 1991) ("It is not
27 necessary that the members of the class be so clearly identified that any member can be presently
28 ascertained.' The court may draw a reasonable inference of the size of the class from the facts
before it.") (quoting *Carpenter v. Davis*, 424 F.2d 257, 260 (5th Cir. 1970)).

1 class of purchasers allegedly defrauded over a period of time by similar
2 misrepresentations, courts have taken the common sense approach that the class is
3 united by a common interest in determining whether a defendant’s course of conduct
is in its broad outlines actionable, which is not defeated by slight differences in class
members’ positions, and that the issue may profitably be tried in one suit.

4 524 F.2d at 902.¹² Not all questions of fact and law need be common to satisfy Rule 23(a)(2).
5 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *Dukes*, 2010 U.S. App. LEXIS
6 8576, at *72-*73. “Rather, ‘the existence of shared legal issues with divergent factual predicates is
7 sufficient, as is a common core of salient facts coupled with disparate legal remedies within the
8 class.’” *THQ*, 2002 U.S. Dist. LEXIS 7753, at *11 (quoting *Hanlon*, 150 F.3d at 1019). In fact,
9 several courts have found that a single issue common to the proposed class satisfies Rule 23(a)(2).
10 *See, e.g., THQ*, 2002 U.S. Dist. LEXIS 7753, at *11; *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 648
11 (C.D. Cal. 1996); *see also In re Am. Med. Sys.*, 75 F.3d 1069, 1080 (6th Cir. 1996). The
12 commonality requirement “has been construed permissively.” *Hanlon*, 150 F.3d at 1019; *Dukes*,
13 2010 U.S. App. LEXIS 8576, at *72.

14 Here, the nature and existence of material omissions and misrepresentations detailed in the
15 Complaint – the most crucial issues in a securities fraud case – present questions of fact and law
16 common to all members of the Class. Defendants’ false representations appeared in a number of
17 statements, transcripts, reports and documents disseminated to the investing public. As a result,
18 class certification is appropriate because the claims against Defendants “arise out of the same set of
19 operative facts and are based on common legal theories.” *Schneider*, 1990 U.S. Dist. LEXIS 15596,
20 at *18.¹³

22 ¹² In *Blackie*, the class was composed of purchasers of Ampex Corporation stock over a two-
23 year period. Plaintiffs alleged that they purchased at an artificially inflated price due to defendants’
24 misrepresentations of Ampex Corporation’s financial status. The Ninth Circuit reasoned that
25 although the alleged misrepresentations were contained in 45 different documents issued over a two-
26 year period and each purchaser relied on “a different set of accounting facts,” defendants
consistently misrepresented the adequacy of reserves, thereby creating a source of price inflation
common to each purchaser. *Blackie*, 524 F.2d at 904-05. The court found that plaintiffs alleged a
common course of conduct by defendants that presented common questions of law and fact. *Id.* at
902-04.

27 ¹³ *Accord In re MDC Holdings Sec. Litig.*, 754 F. Supp. 785, 801 (S.D. Cal. 1990) (“[T]he
28 existence, nature, and significance of material omissions and misrepresentations are issues common

1 Common questions of fact and law are clear from Plaintiff’s allegations, including: (i)
2 whether Defendants violated the Exchange Act; (ii) whether Defendants falsely represented or
3 omitted material facts; (iii) whether the Individual Defendants caused PMI to issue false and
4 misleading statements during the Class Period; (iv) whether Defendants knew or recklessly
5 disregarded that their statements were false and misleading; (v) whether the price of PMI’s publicly-
6 traded securities was artificially inflated; and (vi) the extent of damage sustained by class members
7 and the appropriate measure of damages. *See, e.g.*, ¶244.

8 Securities fraud complaints alleging such common questions have consistently been held to
9 be prime candidates for class certification. *See, e.g., Blackie*, 524 F.2d at 902-05; *Schaefer v.*
10 *Overland Express Family of Funds*, 169 F.R.D. 124, 128 (S.D. Cal. 1996); *Cirrus Logic*, 155 F.R.D.
11 at 657; *Schneider*, 1990 U.S. Dist. LEXIS 15596, at *18-*21. “Class securities fraud cases
12 involving a class of purchasers allegedly defrauded over a period of time by similar
13 misrepresentations satisfy the common questions requirement.” *In re Alco Int’l Group, Sec. Litig.*,
14 158 F.R.D. 152, 154 (S.D. Cal. 1994). Plaintiff alleges that Defendants’ public statements, press
15 releases and announcements falsely represented PMI’s financial performance, thereby deceiving
16 each purchaser as to the Company’s true business condition and the value of PMI’s common stock
17 throughout the Class Period. These issues present quintessential examples of “common questions”
18 of law and fact requiring class certification.

19 Members of the Class will have varying damages because they purchased and sold the
20 securities at different times. However, this Court and other courts have noted that this does not
21 defeat commonality. *See Connetics*, 257 F.R.D. at 578; *Verisign*, 2005 U.S. Dist. LEXIS 10438, at
22 *17 (“commonality ‘is easily met in cases where class members all bought or sold the same stock in
23

24 to all class members.”); *United Energy*, 122 F.R.D. at 254; *Schwartz*, 108 F.R.D. at 282; *In re Unioil*
25 *Sec. Litig.*, 107 F.R.D. 615, 618-19 (C.D. Cal. 1985); *In re Jackpot Enters. Sec. Litig.*, No. CV-S-89-
26 805-LDG(RJJ), 1991 U.S. Dist. LEXIS 16353, at *24-*25 (D. Nev. Mar. 28, 1991) (“The main issue
27 in dispute here will be whether the defendants engaged in a pattern of activities and omissions which
28 violated their duties under the relevant statutes to honestly disclose all material information
concerning the securities in question. This issue is common to all of the named plaintiffs, and will
be necessarily decided in satisfying the claims of all potential plaintiffs within the proposed class.”).

1 reliance on the same disclosures made by the same parties, even when damages vary”); *see also In*
2 *re Micron Techs., Inc.*, 247 F.R.D. 627, 632 (D. Idaho 2007) (commonality is satisfied where
3 plaintiffs allege a single fraudulent scheme that affected each member of the class); *In re Cooper*
4 *Cos. Sec. Litig.*, No. SACV 06-00169-CJC(RNBx), 2009 U.S. Dist. LEXIS 3244, at *16 (C.D. Cal.
5 Jan. 6, 2009) (same). Thus, this action satisfies the commonality requirement of Fed. R. Civ. P.
6 23(a)(2).

7 **3. Plaintiff’s Claims Are Typical of Those of the Class**

8 Plaintiff’s claims satisfy the typicality requirement of Rule 23(a)(3) if they arise from the
9 same event or course of conduct that gives rise to claims of other class members and the claims
10 asserted are based on the same legal theory.

11 Plaintiffs have sufficiently demonstrated that the named class representatives’ claims
12 are typical of those of the entire “global” class because the “typicality” prerequisite
13 of Rule 23(a)(3) is satisfied when all members of the class are victims of the same
14 course of conduct.

15 *Schneider*, 1990 U.S. Dist. LEXIS 15596, at *21; *see also Alco*, 158 F.R.D. at 154 (finding typicality
16 where “claims arise from the same misrepresentations and omissions”). In *Hanlon*, the Ninth Circuit
17 explained that “[u]nder [Rule 23’s] permissive standards, representative claims are ‘typical’ if they
18 are reasonably co-extensive with those of absent class members; they need not be substantially
19 identical.” 150 F.3d at 1020; *Dukes*, 2010 U.S. App. LEXIS 8576, at *115-*116.

20 The purpose of the “typicality” requirement is to ensure that the named representative’s
21 interests “align” with those of the class. *Connetics*, 257 F.R.D. at 576; *Hanon v. Dataproducts*
22 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “The test for typicality is (1) whether other members have
23 the same or similar injury as the representative; (2) whether the action is based on conduct not
24 unique to the representative; and (3) whether other class members have been injured by the same
25 course of conduct.” *In re DJ Orthopedics, Inc.*, No. 01-CV-2238-K (RBB), 2003 U.S. Dist. LEXIS
26 21534, at *14 (S.D. Cal. Nov. 17, 2003) (citing *Hanon*, 976 F.2d at 508); *see A & J Deutscher*
27 *Family Fund v. Bullard*, No. CV 85-1850-PAR, 1986 U.S. Dist. LEXIS 20054, at *18 (C.D. Cal.
28 Sept. 22, 1986); *Cirrus Logic*, 155 F.R.D. at 657; *In re Infineon Techs. AG Sec. Litig.*, No. C 04-
04156 JW, 2009 U.S. Dist. LEXIS 103385, at *22 (N.D. Cal. Mar. 6, 2009).

1 Typicality does *not* require the representative’s claims to be identical – or even “substantially
2 identical” – to the class members’ claims:

3 ***“Typicality refers to the nature of the claim or defense of the class
4 representative, and not to the specific facts from which it arose or the relief sought.
5 Accordingly, differences in the amount of damage, the size or manner of [stock]
purchase, the nature of the purchaser, and even the specific document influencing
the purchase will not render a claim atypical in most securities cases.”***

6 *Weinberger*, 102 F.R.D. at 844 (quoting 5 Herbert B. Newberg & Alba Conte, *Newberg on Class*
7 *Actions* §8816, at 850 (1977)); *see also Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001) (“We
8 do not insist that the named plaintiffs’ injuries be identical with those of the other class members,
9 only that the unnamed class members have injuries similar to those of the named plaintiffs and that
10 the injuries result from the same, injurious course of conduct.”); *Schlagal v. Learning Tree Int’l*, No.
11 CV 98-6384 ABC (Ex), 1999 U.S. Dist. LEXIS 2157, at *12 (C.D. Cal. Feb. 23, 1999) (“Differences
12 in damage awards are inherent to almost any class action and, consequently cannot overcome a class
13 certification motion.”); *Yamner*, 1994 U.S. Dist. LEXIS 20849 (finding typicality in spite of
14 plaintiff’s purchase of stock after learning of fraudulent conduct).

15 This case satisfies the typicality requirement of Rule 23(a)(3) since the claims of all class
16 members derive from the same legal theories and allege the same set of operative facts. Plaintiff,
17 like the other class members, purchased PMI’s common stock and thereby suffered damages as a
18 consequence of Defendants’ false and misleading oral and written statements. Plaintiff purchased
19 24,100 PMI shares between March 21, 2007 and May 1, 2007. *See* Declaration of Malcolm J. Auble
20 in Support of Plaintiff’s Motion for Class Certification (“Auble Decl.”), Ex. A, filed herewith.
21 Plaintiff sold these shares on October 30 and 31, 2007.¹⁴ *Id.* Plaintiff purchased 30,311 additional
22 shares on February 26, 2008, which it held through the end of the Class Period.¹⁵ All members of

23 _____
24 ¹⁴ Plaintiff’s sale prior to the end of the Class Period does not render it atypical nor does it
25 make Lead Plaintiff’s interests adverse to those of the putative class. *Connectics*, 257 F.R.D. at 577-
26 78 (finding lead plaintiff typical despite sale of all shares prior to full disclosure; holding timing of
lead plaintiff’s stock sales relates to damages and does not create intra-class conflict nor warrant
denial of certification).

27 ¹⁵ This Court has rejected the argument “that in general, a plaintiff is atypical if it buys stock
28 after the disclosure of an alleged fraud. . . . [N]umerous cases . . . have held that the proposed class

1 the Class were victims of a common course of fraudulent conduct by Defendants throughout the
2 Class Period and sustained damages as a result. Because Plaintiff’s claims arise from the same
3 misrepresentations and omissions, Plaintiff’s claims are typical of those of the Class.

4 **4. Plaintiff Will Fairly and Adequately Protect the Interests of**
5 **the Class Members**

6 Rule 23(a)(4) permits the certification of a class action when “the representative parties will
7 fairly and adequately protect the interests of the class.” Courts have established a two-prong test for
8 this requirement. *See, e.g., Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.
9 1978); *Schaefer*, 169 F.R.D. at 130; *United Energy*, 122 F.R.D. at 257. First, counsel for the class
10 representatives must be competent to undertake the particular litigation at hand. Second, there can
11 be no antagonism or disabling conflict between the interests of the named class representatives and
12 the members of the class. A classic formulation of these elements was set forth in *Eisen v. Carlisle*
13 *& Jacquelin*, 391 F.2d 555 (2d Cir. 1968):

14 What are the ingredients that enable one to be termed “an adequate
15 representative of the class?” To be sure, an essential concomitant of adequate
16 representation is that the party’s attorney be qualified, experienced and generally able
17 to conduct the proposed litigation. Additionally, it is necessary to eliminate so far as
18 possible the likelihood that the litigants are involved in a collusive suit or that
19 plaintiff has interests antagonistic to those of the remainder of the class.

20 *Id.* at 562. “The burden is on the defendants to prove that the representation will be inadequate.”
21 *Epitope, Inc., Sec. Litig.*, No. 92-759-RE, 1992 U.S. Dist. LEXIS 22705, at *10 (D. Or. Nov. 30,
22 1992).

23 Both prongs of the “adequacy” test have been met in this case. First, there can be no
24 legitimate dispute that Plaintiff’s counsel is capable of prosecuting this litigation. Plaintiff’s counsel
25 possesses extensive experience in the area of securities litigation and has successfully prosecuted
26 numerous securities fraud class actions and other complex actions on behalf of injured investors in

27 representative’s purchases of stock after adverse disclosures do not destroy typicality.” *Connetics*,
28 257 F.R.D. at 576.

1 this District and across the country.¹⁶ Moreover, there should be no question this firm has the
2 necessary resources to rigorously represent the proposed class. The adequacy of Plaintiff's counsel
3 is beyond reproach.¹⁷

4 The second requirement is also satisfied here because there is no antagonism between the
5 representative plaintiff and the absent class members. *See Lubin v. Sybedon Corp.*, 688 F. Supp.
6 1425, 1461 (S.D. Cal. 1988); *Weinberger*, 102 F.R.D. at 844-45. The proposed class representative,
7 the Trust, manages the retirement and associated death benefits for its participants and their
8 beneficiaries. Auble Decl., ¶2. The Trust's assets as of March 31, 2010, were in excess of \$2
9 billion. *Id.* The Trust purchased a total of 54,411 shares of PMI stock between March 21, 2007 and
10 February 26, 2008. Auble Decl., Ex. A. The Trust is a large, sophisticated institutional investor who
11 is committed to vigorously prosecuting this litigation and will endeavor to obtain the largest
12 recovery for the Class consistent with good faith and sound judgment. *Id.* ¶6. The Trust's Chairman
13 of the Board, Michael J. Auble, has supervised and monitored the progress of this litigation and
14 actively participated in its prosecution. *Id.* ¶5. For example, Mr. Auble has reviewed various
15 pleadings submitted in the case, received and reviewed quarterly updates and other correspondence
16 from Lead Counsel, participated in discussions with Lead Counsel regarding significant
17 developments in the litigation and consulted with Lead Counsel regarding all settlement efforts. *Id.*

18 The Trust is committed to continuing to actively direct this litigation and maximize the
19 recovery for the Class by attending hearings, depositions and/or trial as well as overseeing the
20 preparation and filing of pleadings, as appropriate. *Id.* ¶¶6-7. Further, the Trust understands that it
21 owes a fiduciary duty to all members of the proposed Class to provide fair and adequate
22 representation and intends to continue to work with Lead Counsel to obtain the largest recovery for
23

24 _____
25 ¹⁶ See firm résumé of Robbins Geller Rudman & Dowd LLP, attached to the Declaration of
26 Daniel S. Drosman in Support of Plaintiff's Motion for Class Certification as Ex. 1, filed herewith.

27 ¹⁷ For this reason, Robbins Geller should be appointed as class counsel pursuant to Fed. R. Civ.
28 P. 23(g).

1 the whole class consistent with good faith and meritorious advocacy. *Id.* ¶8. Accordingly, Plaintiff
2 “will fairly and adequately protect the interests of the class.” *See* Fed. R. Civ. P. 23(a)(4).

3 **C. The Proposed Class Satisfies Rule 23(b)(3)**

4 In addition to meeting the prerequisites of Rule 23(a), the present action also satisfies the
5 requirements of Rule 23(b), which requires that the proposed class representatives establish that
6 common questions of law or fact predominate over individual questions and that a class action is
7 superior to other available methods of adjudication. *See Hernandez*, 152 F.R.D. at 193-94. As
8 shown above, common questions of law and fact predominate in this case and a class action is the
9 superior, if not the only, method available to fairly and efficiently litigate this securities action. *See*
10 *Epstein*, 50 F.3d at 668-69; *Schaefer*, 169 F.R.D. at 130-31.

11 **1. Common Questions of Law and Fact Predominate over** 12 **Individual Questions**

13 Where a complaint alleges a “common course of conduct” of misrepresentations, omissions
14 and other wrongdoings that affect all members of the class in the same manner, common questions
15 predominate. *Blackie*, 524 F.2d at 905-08; *Alco*, 158 F.R.D. at 154. In assessing whether common
16 questions predominate, the Court’s inquiry should be directed primarily toward the issue of liability.
17 *See Blackie*, 524 F.2d at 902; *In re Memorex Sec. Cases*, 61 F.R.D. 88, 103 (N.D. Cal. 1973).
18 Indeed, ““when determining whether common questions predominate courts “focus on the liability
19 issue . . . and if the liability issue is common to the class, common questions are held to predominate
20 over individual questions.””” *In re Indep. Energy Holdings PLC, Sec. Litig.*, 210 F.R.D. 476, 486
21 (S.D.N.Y. 2002) (citing *Genden v. Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 114 F.R.D. 48, 52
22 (S.D.N.Y. 1987) (quoting *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 93 (S.D.N.Y.
23 1981))).

24 As discussed above, there are a host of common questions of law and fact as to the Class
25 which Plaintiff seeks to certify. These questions clearly predominate over individual questions
26 because Defendants’ alleged conduct affected all class members in the same manner and, through
27 false statements, artificially inflated the price of PMI common stock. It is difficult to discern
28 liability issues in this case that are not common to all members of the Class. *See, e.g., Freedman*,

1 922 F. Supp. at 399-400; *Schaefer*, 169 F.R.D. at 130-31; *United Energy*, 122 F.R.D. at 256;
2 *Emulex*, 210 F.R.D. at 721 (granting motion for class certification where “[t]he predominant
3 questions of law or fact at issue in this case are the alleged misrepresentation Defendants made
4 during the Class Period and are common to the class”); *Unioil*, 107 F.R.D. at 622 (“As plaintiffs’
5 claim is based on a common nucleus of misrepresentations, material omissions and market
6 manipulations, the common questions predominate over any differences between individual class
7 members with respect to damages, causation or reliance.”). The critical issues of fact and law raised
8 in this action are common to all members of the Class and they will predominate in this case. Once
9 these common questions are resolved, all that will remain is the purely mechanical act of computing
10 the amount of damages suffered by each class member.

11 In addition, in this case, there are no individual issues related to the element of reliance
12 because reliance by all members of the class may be presumed under the fraud-on-the-market
13 doctrine. *Basic*, 485 U.S. at 243. The fraud-on-the-market presumption is “‘based on the hypothesis
14 that, in an open and developed securities market, the price of a company’s stock is determined by the
15 available material information regarding the company and its business Misleading statements
16 will therefore defraud purchasers of stock even if the purchasers do not directly rely on the
17 misstatements’” *Binder v. Gillespie*, 184 F.3d 1059, 1064 (9th Cir. 1999) (quoting *Basic*, 485
18 U.S. at 241-42). That investors presumably relied on the integrity of the market when making their
19 transactions is clear. Indeed, “it is hard to imagine that there ever is a buyer or seller who does not
20 rely on market integrity. Who would knowingly roll the dice in a crooked crap game?” *Schlanger v.*
21 *Four-Phase Sys., Inc.*, 555 F. Supp. 535, 538 (S.D.N.Y. 1982); *Basic*, 485 U.S. at 246-47.

22 While “[a] motion for class certification is an inappropriate forum” for a factual
23 determination regarding the efficiency or inefficiency of the market during the Class Period, it
24 nonetheless cannot be disputed that PMI traded on an efficient market. *In re Applied Micro Circuits*
25 *Corp. Sec. Litig.*, No. 01CV0649 K (AJB), 2003 U.S. Dist. LEXIS 14492, at *11-*12 (S.D. Cal.
26 July 15, 2003). “[T]he presumption of reliance is available only when a plaintiff alleges that a
27 defendant made material representations or omissions concerning a security that is actively traded in
28

1 an “efficient market,” thereby establishing a “fraud on the market.””” *In re LDK Solar Sec. Litig.*,
2 255 F.R.D. 519, 526 (N.D. Cal. 2009).

3 In *Binder*, the Ninth Circuit adopted the five-factor test for efficiency set forth in *Cammer v.*
4 *Bloom*, 711 F. Supp. 1264, 1286 (D.N.J. 1989), as follows:

5 [F]irst, whether the stock trades at a high weekly volume; second, whether securities
6 analysts follow and report on the stock; third, whether the stock has market makers
7 and arbitrageurs; fourth, whether the company is eligible to file SEC registration
8 form S-3, as opposed to form S-1 or S-2; and fifth, whether there are “empirical facts
9 showing a cause and effect relationship between unexpected corporate events or
10 financial releases and an immediate response in the stock price.”

11 *Binder*, 184 F.3d at 1065.

12 As alleged in ¶13 of the Complaint and as set forth in the Declaration of Bjorn I. Steinholt,
13 CFA (“Steinholt Decl.”), PMI stock traded in an efficient market throughout the Class Period. Mr.
14 Steinholt is a noted expert in the field of market efficiency. See Steinholt Decl., Ex. A; *In re*
15 *HealthSouth Corp. Sec. Litig.*, 257 F.R.D. 260, 281 (N.D. Ala. 2009). While not required at the
16 class certification stage, in a detailed declaration submitted herewith, Mr. Steinholt concludes that
17 the market for PMI securities, including options, was efficient during the Class Period. See Steinholt
18 Decl., ¶24.

19 The Company’s stock traded on the New York Stock Exchange (“NYSE”), which is
20 considered one of the most efficient markets. *Id.* ¶11; *Cammer*, 711 F. Supp. at 1292-93
21 (presumption of efficiency applies to NYSE). PMI had an average daily trading volume of 2.22
22 million shares and a weekly turnover of 13%. Steinholt Decl., ¶¶14-15; *Cammer*, 711 F. Supp. at
23 1286 (“Turnover measured by average weekly trading of two percent or more of the outstanding
24 shares would justify a strong presumption that the market for the security is an efficient one; one
25 percent would justify a substantial presumption[.]”); *In re TheMart.com, Inc. Sec. Litig.*, 114 F.
26 Supp. 2d 955, 965 n.6 (C.D. Cal. 2000) (average weekly trading volume of 272,989 shares during
27 class period, or “one percent of outstanding shares,” satisfied the “first factor in the *Cammer*
28 analysis”).

29 Significant analyst coverage supports a finding of market efficiency because it shows that the
30 company is closely reviewed by investment professionals, who in turn make buy/sell

1 recommendations to investors. *Cammer*, 711 F. Supp. at 1286. In fact, PMI was covered by at least
2 16 analysts who published more than 50 analyst reports during the Class Period. Steinholt Decl.,
3 ¶16. This is easily sufficient. See *Levine v. SkyMall, Inc.*, No. CIV 99-166-PHX-ROS, 2001 U.S.
4 Dist. LEXIS 24705, at *14-*19 (D. Ariz. May 24, 2001) (court found eight analysts sufficient); *In re*
5 *NetBank, Inc.*, 259 F.R.D. 656, 670-71 (N.D. Ga. 2009) (coverage by 14 analysts who published 114
6 analyst reports during the class period satisfied *Cammer* requirement); *In re Turbodyne Techs., Inc.*
7 *Sec. Litig.*, No. CV 99-00697 MMM (BQRx), 2002 U.S. Dist. LEXIS 25738, at *50-*51 (C.D. Cal.
8 Mar. 15, 2002) (coverage by three analysts during the class period satisfied *Cammer* analyst factor).
9 See also *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 499 (S.D. Fla. 2003) (coverage by two
10 analysts and news media sufficient); *Blatt v. Muse Techs., Inc.*, No. 01-11010-DPW, 2002 U.S. Dist.
11 LEXIS 18466, at *47 (D. Mass. Aug. 27, 2002) (coverage by one analyst who was not even
12 independent held to be sufficient); *In re Amerifirst Sec. Litig.*, 139 F.R.D. 423, 431 (S.D. Fla. 1991)
13 (six analysts sufficient); *In re Res. Am. Sec. Litig.*, 202 F.R.D. 177, 189 (E.D. Pa. 2001) (five
14 sufficient); *Tatz v. Nanophase Techs. Corp.*, No. 01 C 8840, 2003 U.S. Dist. LEXIS 9982, at *20-
15 *21 (N.D. Ill. June 12, 2003) (seven sufficient); *In re Accelr8 Tech. Corp. Sec. Litig.*, 147 F. Supp.
16 2d 1049, 1057 (D. Colo. 2001) (two sufficient). Further, the media extensively covered PMI during
17 the Class Period. Steinholt Decl., ¶16. *Bloomberg* alone issued 250 media reports during the Class
18 Period. *Id.* This, too, supports a finding of efficiency. See *Cheney*, 213 F.R.D. at 499.

19 The court in *Cammer* stated that market efficiency would be supported by the existence of
20 market makers because they “ensure completion of the market mechanism” by “react[ing] swiftly to
21 company news and reported financial results by buying or selling stock and driving it to a changed
22 price level.” 711 F. Supp. at 1286-87. Transactions on the NYSE go through designated specialists
23 (as opposed to market makers) who are responsible for maintaining a fair, competitive, orderly and
24 efficient market. Steinholt Decl., ¶17. This *Cammer* factor also relates to the presence of
25 sophisticated investors, including institutional investors, which are important in ensuring that the
26 security is traded in an efficient market. See *Cammer*, 711 F. Supp. at 1286. During the Class
27 Period, 379 institutions owned from 82.76 to 93.26 million shares of PMI, further demonstrating that
28 PMI stock traded in an efficient market. Steinholt Decl., ¶19.

1 “A company’s ability to file an S-3 Registration Statement is ‘an important factor’ because
2 ‘eligibility to file the S-3 form is predicated upon the SEC’s belief that the market for the company’s
3 stock already operates efficiently and that further disclosure is unnecessary, as the market price has
4 already accounted for relevant information.’” *In re Accredo Health, Inc.*, No. 03-2216 DP, 2006
5 U.S. Dist. LEXIS 97621, at *24 n.4 (W.D. Tenn. Mar. 7, 2006); *Cammer*, 711 F. Supp. at 1284
6 (same). PMI met the requirements for filing a Form S-3 (a company has to be a reporting company
7 for 12 months and have \$75 million in voting stock held by non-affiliates). Steinholt Decl., ¶20.

8 The “cause and effect” factor is the “essence of an efficient market and the foundation for the
9 fraud on the market theory.” *Cammer*, 711 F. Supp. at 1287. Here, there are empirical facts
10 showing a cause-and-effect relationship between unexpected corporate events or financial releases
11 and an immediate response in the stock price. Steinholt Decl., ¶¶21-23. Mr. Steinholt analyzed the
12 stock price reaction to disclosures of information regarding the Company. Steinholt Decl., Ex. D.
13 For example on July 31, 2007, following PMI’s earnings release below investor expectations, the
14 share price declined from \$37.27 to \$34.07, or 8.6%, a decline that was statistically significant.
15 Steinholt Decl., ¶22. Through a review and analysis of the public mix of information throughout the
16 Class Period, Mr. Steinholt “found that new material information was quickly incorporated in the
17 Company’s stock price during the relevant time period.” *Id.* ¶24. Mr. Steinholt “found no evidence
18 of market inefficiency.” *Id.*

19 Having satisfied each of the *Cammer* factors, it is clear that PMI stock traded in an efficient
20 market and that plaintiff may rely upon the “fraud on the market” presumption.

21 **2. A Class Action Is Superior to Other Available Methods for** 22 **Resolving This Controversy**

23 Rule 23(b)(3) also requires the Court to determine that “a class action is superior to other
24 available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).
25 Courts have recognized that the class action device is superior to other available methods for the fair
26 and efficient adjudication of controversies involving a large number of purchasers of securities
27 injured by violations of the securities laws. “[A] class action is clearly the preferred mechanism for
28 adjudicating these [securities fraud] cases.” *DJ Orthopedics*, 2003 U.S. Dist. LEXIS 21534, at *29;

1 *Alco*, 158 F.R.D. at 155 (“Class treatment has proven to be the most effective and efficient way of
2 bringing security fraud actions.”). Indeed, “[i]t is well settled that the class action device is the most
3 efficient means of litigating securities fraud suits, such as the one before us, where the class ‘consists
4 of numerous investors, many of whom in all likelihood have individual claims too small to warrant
5 an individual suit.’” *Knapp v. Gomez*, No. 87-0067-H(M), 1991 U.S. Dist. LEXIS 11012, at *9
6 (S.D. Cal. June 26, 1991). Here, class certification is both useful and necessary and the class action
7 device offers judicial efficiencies because it permits common claims and issues to be tried only once,
8 with binding effect on all parties. Class representation is the only way to afford relief to those whose
9 claims are too small to permit them to bring individual suits. To deny class certification would be to
10 “clos[e] the door of justice to all small claimants. This is what we think the class suit practice was to
11 prevent.” *Weeks v. Bareco Oil Co.*, 125 F.2d 84, 90 (7th Cir. 1941).

12 To determine the issue of “superiority,” Rule 23(b)(3) enumerates the following factors for
13 the court to consider:

- 14 (A) the class members’ interests in individually controlling the
15 prosecution . . . of separate actions;
- 16 (B) the extent and nature of any litigation concerning the controversy
17 already begun by . . . class members;
- 18 (C) the desirability . . . of concentrating the litigation of the claims in the
19 particular forum; and
- 20 (D) the likely difficulties in managing a class action.

21 Fed. R. Civ. P. 23(b)(3). Each of these factors is satisfied in this case. The number of class
22 members is far too numerous and the typical claim is too small for each individual class member to
23 maintain a separate action. *See DJ Orthopedics*, 2003 U.S. Dist. LEXIS 21534, at *29 (“[L]itigation
24 costs might dwarf potential recovery for many class members, thereby placing a significant burden
25 on plaintiffs.”).

26 The class action device is the only viable vehicle by which the vast majority of persons
27 injured by Defendants’ wrongful conduct may obtain a remedy. As the Ninth Circuit stated in
28 *Epstein*, “it is difficult to imagine a case where class certification would be more appropriate.
Without it, thousands of identical complaints by former MCA shareholders would have to be filed –

1 the very result the class action mechanism was designed to avoid.” 50 F.3d at 668; *see also Alco*,
2 158 F.R.D. at 155 (“The Ninth Circuit has repeatedly endorsed class actions for securities actions.”);
3 *Schaefer*, 169 F.R.D. at 130 (“Courts have generally found that actions for securities fraud actions
4 are usually best maintained as class actions.”).

5 Further, the nationwide geographical dispersion of the class members, based upon PMI’s sale
6 of the stock on a national exchange, makes it desirable that litigation of the claims involved be
7 concentrated in this forum. *See Alco*, 158 F.R.D. at 153-54 (“Whether or not the Class numbers in
8 the hundreds or in the thousands, joinder is clearly impractical where a large group of people,
9 dispersed all across the country, are involved.”).

10 Finally, Plaintiff can foresee no management difficulties which would preclude this action
11 from being maintained as a class action and is confident that any potential management problems
12 can be addressed and resolved by the parties or by this Court. In any event, possible management
13 problems are not, standing alone, grounds for denying this motion. In *In re Sugar Indus. Antitrust*
14 *Litig.*, No. 201, 1976 U.S. Dist. LEXIS 14955 (N.D. Cal. May 21, 1976), the court stated:

[D]enial of class certification because of conjured manageability problems is
disfavored among both the courts and the legal commentators because a court
refusing to certify a class action on the basis of vaguely perceived manageability
obstacles is acting counter to the policy behind Rule 23

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16
17 *Id.* at *75; *accord Yaffe v. Powers*, 454 F.2d 1362, 1365 (1st Cir. 1972).

18 The Supreme Court has endorsed the superiority of the class action device for resolving
19 securities claims:

The aggregation of individual claims in the context of a classwide suit is an
evolutionary response to the existence of injuries unremedied by the regulatory
action of government. Where it is not economically feasible to obtain relief within
the traditional framework of a multiplicity of small individual suits for damages,
aggrieved persons may be without any effective redress unless they may employ the
class-action device.

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24 *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 339 (1980). Here, too, judicial economy and the
25 best interests of the class members favor class certification. For the reasons enumerated above, the
26 proposed Class satisfies the requirements of Rule 23(b)(3).

27
28

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests entry of an order certifying this
3 action as a class action pursuant to Federal Rule of Civil Procedure 23, appointing Plaintiff as class
4 representative, and appointing Robbins Geller as class counsel.

5 DATED: May 6, 2010

Respectfully submitted,

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Lead Counsel for Plaintiffs

1 CERTIFICATE OF SERVICE

2 I hereby certify that on May 6, 2010, I electronically filed the foregoing with the Clerk of the
3 Court using the CM/ECF system which will send notification of such filing to the e-mail addresses
4 denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the
5 foregoing document or paper via the United States Postal Service to the non-CM/ECF participants
6 indicated on the attached Manual Notice List.

7 I further certify that I caused this document to be forwarded to the following Designated
8 Internet Site at: <http://securities.stanford.edu>.

9 I certify under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed on May 6, 2010.

11 s/ DANIEL S. DROSMAN
12 DANIEL S. DROSMAN

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