

**Gary M. Berne**, OSB No. 774077  
gberne@stollberne.com  
**Jennifer S. Wagner**, OSB No. 024470  
jwagner@stollberne.com  
**Lydia Anderson-Dana**, OSB No. 166167  
landersondana@stollberne.com  
STOLL STOLL BERNE LOKTING  
& SHLACHTER P.C.  
209 SW Oak Street, Suite 500  
Portland, OR 97204  
Telephone: 503/227-1600  
503/227-6840 (fax)

*Local Counsel for Plaintiffs*

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

NECA-IBEW PENSION TRUST FUND (The Decatur Plan), and ANN F. LYNCH, AS TRUSTEE FOR THE ANGELA LOHMANN REVOCABLE TRUST, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

PRECISION CASTPARTS CORP., MARK DONEGAN, DON R. GRABER, LESTER L. LYLES, DANIEL J. MURPHY, VERNON E. OECHSLE, ULRICH SCHMIDT, RICHARD L. WAMBOLD and TIMOTHY A. WICKS,

Defendants.

No. 3:16-cv-01756-YY

CLASS ACTION

NOTICE OF NON-OPPOSITION AND REPLY IN FURTHER SUPPORT OF: (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD OF LEAD PLAINTIFF'S COSTS AND EXPENSES

Telephonic Final Approval Hearing

Date: May 7, 2021

Time: 1:00 p.m.

Lead Plaintiffs NECA-IBEW Pension Trust (“The Decatur Plan”) and Ann F. Lynch, as Trustee for the Angela Lohmann Revocable Trust (the “Trust”) (“Lead Plaintiffs”), through Lead Counsel Robbins Geller Rudman & Dowd LLP and Berger Montague PC, respectfully submit this notice of non-opposition and reply in further support of: (i) Lead Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (ii) Lead Counsel’s Motion for Award of Attorneys’ Fees and Expenses and Award of Lead Plaintiff’s Cost and Expenses. ECF Nos. 160, 161.<sup>1</sup>

## I. PRELIMINARY STATEMENT

Following four years of determined and vigorous litigation against similarly determined defendants who spared no expense in their defense of the case, and with the assistance of an experienced mediator, Lead Counsel achieved an outstanding \$21 million Settlement for the benefit of the Class. As detailed herein, the Settlement, proposed Plan of Allocation and fee and expense request have been overwhelmingly accepted by the Class, and should be approved in their entirety. It is noteworthy that no objections were filed and only a handful of valid opt-outs were received. Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice (the “Notice Order”) (ECF No. 157), 117,513 Notice and Proof of Claim and Release forms were mailed to potential Class Members and nominees and the Summary Notice was published in the national edition of *The Wall Street Journal* and electronically via *Business Wire*. See Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date (ECF No. 162-1) (“Murray Decl.”), ¶¶4-12; Supplemental Declaration of Ross D. Murray Regarding

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<sup>1</sup> All capitalized terms not defined herein shall have the same meanings set forth in the Stipulation of Settlement, dated January 8, 2021 (“Stipulation”). ECF No. 154.

Notice Dissemination and Requests for Exclusion Received to Date (“Suppl. Murray Decl.”), ¶4, submitted herewith. In addition, a settlement-specific website was created on February 5, 2021 (www.PrecisionShareholderLitigation.com), where key documents were posted, including the Stipulation, Notice, Proof of Claim and Release and Preliminary Approval Order. Murray Decl., ¶14.

The widely disseminated Notice advised Class Members: (1) that a proposed Settlement for \$21 million in cash had been reached; (2) the reasons why the parties proposed the Settlement; (3) the estimated average recovery per share of Precision common stock; (4) the maximum amount of attorneys’ fees and expenses that would be sought; (5) the name, telephone number, and address of representatives of Lead Counsel who would be reasonably available to answer questions from Class Members concerning matters contained in the Notice; (6) the right of Class Members to object to the Settlement or seek exclusion from the Class, and the consequences thereof; and (7) the dates and deadlines for certain Settlement-related events.

Now that the April 16, 2021 deadline for filing objections or submitting exclusion requests has passed, Lead Plaintiffs and Lead Counsel are pleased to report that no Class Members objected to the Settlement, the Plan of Allocation, or the fee and expense allocation, and only 2 Class Members, representing only 380 of the 130 million eligible shares, validly sought exclusion from the Class.<sup>2</sup>

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<sup>2</sup> A total of 34 Requests for Exclusion were timely sent to the Claims Administrator. Many of them did not provide the information required by the Court in the Preliminary Approval Order (*see* ECF No. 157 at ¶22), and many were submitted by individuals and entities who are not part of the Class.

## **II. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION**

The “reaction of the class members to the proposed settlement” is a factor to be considered in assessing the adequacy of the settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Indeed, “the reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy.” *In re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 WL 166689, at \*3 (N.D. Cal. Jan. 20, 2009) (citation omitted); *see also Lane v. Brown*, 166 F. Supp. 3d 1180, 1191 (D. Or. 2016) (“The absence of significant numbers of objectors weighs in favor of finding the settlement to be fair, reasonable and adequate.”).

“[T]hat the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.” *Hanlon*, 150 F.3d at 1027. Accordingly, and for the reasons set forth in the opening memorandum (ECF No. 160), the Settlement is fair, reasonable, and adequate and should be approved.

## **III. THE REACTION OF THE CLASS STRONGLY SUPPORTS APPROVAL OF LEAD COUNSEL’S REQUEST FOR ATTORNEYS’ FEES AND EXPENSES AND LEAD PLAINTIFF’S AWARD**

“[D]istrict courts in the Ninth Circuit also traditionally consider the reaction of the class when deciding whether to award the requested fee.” *Cagle v. Anti-Aging Essentials, Inc.*, No. CV 11-02940 (AHM) (JEMx), 2012 WL 12883828, at \*5 (C.D. Cal. June 6, 2012); *see also In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX), 2005 WL 1594389, at \*15 (C.D. Cal. June 10, 2005) (“The presence or absence of objections from the class is also a factor in determining the proper fee award.”).

The Notice reported that Lead Counsel would request a fee award of 33.33% of the Settlement Amount (plus interest), as well as the payment of litigation expenses totaling no more than \$936,700 (plus interest), and that Lead Counsel would request up to \$5,000 for each of the Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) for their representation of the Class. *See* Murray Decl., Exhibit A at 2. Lead Counsel has requested an award of attorneys' fees of 33.33% of the Settlement Amount (plus interest), payment of litigation expenses of \$867,891.13 (plus interest), and an award to Lead Plaintiff Ann F. Lynch, as Trustee for the Angela Lohmann Revocable Trust, and by Angela Lohmann, the former trustee of the Trust, for their costs and expenses incurred in their representation of the Class, including lost wages and mileage, of \$349.80.

As detailed in Lead Counsel's opening memorandum (ECF No. 161), the fee request of 33.33% is well within the acceptable range of awards for similar class action litigations and is both fair and reasonable under the circumstances, as it represents only 80% of counsel's lodestar following four years of vigorous litigation efforts undertaken on behalf of the Class on a fully contingent basis. *See* ECF No. 162. That no objections to the requested fee and expense application have been filed following the Court-approved notice program bolsters the argument in support of the award. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2008) (noting that class members' reaction may be "a determining factor in . . . determining the fee award" and holding that this factor supported the requested award where no objection "raised any concern about the amount of the fee"); *Heritage Bond*, 2005 WL 1594389, at \*16 (concluding "that the lack of significant objections to the requested fees" supported the requested 33.3% fee award).

Finally, the lack of any objection to Lead Plaintiff's modest request for an award of her costs and expenses under 15 U.S.C. §78u-4(a)(4) also supports the approval of that request. *See*

*Omnivision*, 559 F. Supp. 2d at 1049 (finding it “appropriate to reimburse Lead Plaintiffs for their reasonable costs and expenses” where “[t]he Notice adequately informed all potential Class Members that the Lead Plaintiffs would seek to recover these costs, and no one objected”).

#### IV. CONCLUSION

For the foregoing reasons, as well as those set out in Lead Plaintiffs’ opening memoranda, the Court should approve the Settlement and Plan of Allocation as fair, reasonable, and adequate and in the best interests of the Class, grant Lead Counsel’s application for attorneys’ fees of 33.33% of the Settlement Amount and expenses of \$867,891.13, and award Lead Plaintiff \$349.80.

DATED: April 30, 2021

Respectfully Submitted,

**ROBBINS GELLER RUDMAN  
& DOWD LLP**

/s/A. Rick Atwood, Jr.

**Randall J. Baron** (*admitted pro hac vice*)  
randyb@rgrdlaw.com  
**A. Rick Atwood, Jr.** (*admitted pro hac vice*)  
ricka@rgrdlaw.com  
655 West Broadway, Suite 1900  
San Diego, CA 92101-8498  
Telephone: 619/231-1058  
619/231-7423 (fax)

***Lead Counsel for Plaintiffs***

**BERGER MONTAGUE PC**  
Lawrence Deutsch (*admitted pro hac vice*)  
ldeutsch@bm.net  
Jacob M. Polakoff (*admitted pro hac vice*)  
jpolakoff@bm.net  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
Telephone: 267/979-8961  
215/875-4604 (fax)

***Lead Counsel for Plaintiffs***

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4823-6753-0471.v1

**STOLL BERNE LOKTING  
& SHLACHTER P.C.**

Gary M. Berne, OSB No. 774077  
gberne@stollberne.com  
Jennifer S. Wagner, OSB No. 024470  
jwagner@stollberne.com  
Lydia Anderson-Dana, OSB No. 166167  
landersondana@stollberne.com  
209 S.W. Oak Street, 5th Floor  
Portland, OR 97204  
Telephone: 503/227-1600  
503/227-6840 (fax)

*Local Counsel for Plaintiffs*

**CAVANAGH & O'HARA**

PATRICK J. O'HARA  
patrick@cavanagh-ohara.com  
2319 West Jefferson Street  
Springfield, IL 62702  
Telephone: 217/544-1771  
217/544-9894 (fax)

*Of Counsel for Plaintiff NECA-IBEW Pension  
Trust Fund*

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4823-6753-0471.v1

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 30, 2021, 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 on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ A. Rick Atwood, Jr.

A. RICK ATWOOD, JR.

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: RickA@rgrdlaw.com



## Mailing Information for a Case 3:16-cv-01756-YY NECA-IBEW Pension Trust Fund et al v. Precision Castparts Corp., et al

### Electronic Mail Notice List

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

- **Lydia Anderson-Dana**  
landersondana@stollberne.com,ahowell@stollberne.com
- **A. Rick Atwood , Jr**  
ricka@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Randall J. Baron**  
randyb@rgrdlaw.com
- **Robert H. Baron**  
rbaron@cravath.com,sbui@cravath.com,mao@cravath.com,kwaters@cravath.com,tcameron@cravath.com,mgrealish@cravath.com,mzaken@cravath.com,dmong@cr
- **Gary M. Berne**  
gberne@stollberne.com,gseaman@stollberne.com
- **Justin C. Clarke**  
jcclarke@cravath.com
- **Brad S. Daniels**  
brad.daniels@stoel.com,dmholland@stoel.com,docketclerk@stoel.com
- **Lawrence Deutsch**  
ldeutsch@bm.net,jpolakoff@bm.net
- **Eun Jin Lee**  
elee@rgrdlaw.com,eleeRGRD@ecf.courtdrive.com,jaimem@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Joel A. Mullin**  
joel.mullin@stoel.com,docketclerk@stoel.com,jen.dinucci@stoel.com
- **Danielle S. Myers**  
danim@rgrdlaw.com
- **Omid H. Nasab**  
onasab@cravath.com,mao@cravath.com
- **Patrick J. O'Hara**  
patrick@cavanagh-ohara.com
- **Jacob M. Polakoff**  
jpolakoff@bm.net
- **Jennifer S. Wagner**  
jwagner@stollberne.com,gseaman@stollberne.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)