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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

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IN RE WAGEWORKS, INC., SECURITIES
LITIGATION

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	CASE NO.: 4:18-CV-01523-JSW
	DEFENDANT COLM M. CALLAN'S NOTICE OF JOINDER AND JOINDER IN WAGEWORKS, INC.'S AND JOSEPH L. JACKSON'S MOTIONS TO DISMISS PLAINTIFFS' CONSOLIDATED AMENDED CLASS ACTION COMPLAINT
	Hearing Date: November 22, 2019 Time: 9:00 a.m. Courtroom: Courtroom 5, 2nd Floor Judge: Hon. Jeffrey S. White

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NOTICE OF JOINDER AND JOINDER IN WAGEWORKS, INC.'S AND JOSEPH L. JACKSON'S MOTIONS TO DISMISS PLAINTIFFS' CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant Colm M. Callan hereby joins the motions to dismiss Plaintiffs' Consolidated Amended Class Action Complaint for Violation of the Federal Securities Laws ("CAC") filed by Defendant WageWorks, Inc. ("WageWorks") and by Defendant Joseph L. Jackson ("Jackson") (collectively, the "Motions to Dismiss") as they relate to Counts I, II, III, and V of the CAC. Defendant Callan likewise joins all pertinent notices, memoranda, and evidentiary submissions filed by Defendants WageWorks and Jackson, and oral argument, in support of those portions of their motions to dismiss.

For the reasons set forth in the Motions to Dismiss, Plaintiffs' claim against Mr. Callan in Count I of the CAC for violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder should be dismissed for failure to plead particularized facts that give rise to a strong inference of his scienter. *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir. 2009). In addition, Plaintiffs' Section 10(b) claim should also be dismissed for failure to adequately plead loss causation because Plaintiffs fail to plead facts to show that public discovery of the alleged misconduct caused the relevant declines in WageWorks' stock price. *See Loos v. Immersion Corp.*, 762 F.3d 880, 887 (9th Cir. 2014). In light of Plaintiffs' failure to plead a Section 10(b) claim in Count I, Plaintiffs' "control person" claim against Mr. Callan in Count II of the CAC pursuant to Section 20(a) of the Exchange Act also fails. *See Webb v. SolarCity Corp.*, 884 F.3d 844, 858 (9th Cir. 2018).

For the reasons set forth in the Motions to Dismiss, the claim by Plaintiff Public Employees Retirement Association ("PERA") against Mr. Callan in Count III of the CAC pursuant to Section 11 of the Securities Act of 1933 ("Securities Act") should be dismissed for lack of standing due to PERA's failure to adequately plead that its WageWorks shares are traceable to the relevant public offering. *See Thomas v. Magnachip Semiconductor Corp.*, 167 F. Supp. 3d 1029, 1055-56 (N.D. Cal. 2016). In light of PERA's failure to plead a Section 11 claim in Count III, PERA's "control

1 person" claim against Mr. Callan in Count V of the CAC pursuant to Section 15 of the Securities

2 Act also fails. *See Backe v. Novatel Wireless, Inc.*, 642 F. Supp. 2d 1169, 1192 (S.D. Cal. 2009).

3   Accordingly, Mr. Callan joins and adopts by reference the arguments and authorities set

4 forth in the Motions to Dismiss as they relate to Counts I, II, III, and V of the CAC, and such other

5 evidence or argument as may be presented to the Court.

6   For the foregoing reasons, Mr. Callan respectfully requests that the Court dismiss the CAC

7 with prejudice.

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9 Dated: July 26, 2019   **KANE+KIMBALL LLP**

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11   By: */s/ William H. Kimball*
                                                  William H. Kimball

12   Attorneys for Defendant Colm M. Callan

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