

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 BRADLEY COOPER, Individually and
5 on Behalf of all Others Similarly
6 Situated; TODD LABAK,
7
8 Plaintiffs,

No. 14-cv-0360 CW
ORDER GRANTING
MOTION FOR CLASS
CERTIFICATION

7 v.

8 THORATEC CORPORATION; GERALD F.
9 BURBACH; TAYLOR C. HARRIS; and
10 DAVID SMITH,
11
12 Defendants.

11 _____/
12 Plaintiffs Bradley Cooper and Todd Labak are investors in
13 Thoratec Corporation, a medical device company that manufactures
14 the HeartMate II. They allege that Thoratec and certain of its
15 officers, Gerhard F. Burbach, Taylor C. Harris, and David V.
16 Smith, made various misrepresentations in order to hide from its
17 investors and the public that the HeartMate II's rates of
18 thrombosis were increasing, which would have adversely affected
19 the stock price of Thoratec. They bring this suit for damages on
20 behalf of themselves and a putative class, alleging violations of
21 Sections 20(a) and 10(b) of the Securities Exchange Act, 15 U.S.C.
22 § 78j(b), and Rule 10b-5 promulgated thereunder. Now before the
23 Court is Plaintiffs' Motion for Class Certification. For the
24 reasons stated below, the Court grants Plaintiffs' motion.

25 BACKGROUND

26 Thoratec is a medical device company that manufactures and
27 markets a Ventricular Assist System (VAS), the HeartMate II.
28 Second Amended Complaint (SAC) (Dkt. No. 49) ¶¶ 34-35. During the

1 relevant period between May 11, 2011 and August 6, 2014 (the Class
2 Period), Thoratec's common stock traded on the NASDAQ Global
3 Market under the ticker symbol "THOR." Id. ¶ 29. Individual
4 defendants Burbach, Harris, and Smith were directors or officers
5 of Thoratec during the Class Period.¹

6 On April 21, 2008, HeartMate II received approval from the
7 FDA for certain applications. SAC ¶ 41. The FDA published a
8 summary of safety and effectiveness data for the HeartMate II,
9 which demonstrated a two percent rate of thrombosis for all
10 patients as of September 14, 2007. Id.

11 Thoratec was the sole manufacturer of VAS until the HeartWare
12 VAS came on the European market in 2009, and reported thrombosis
13 rates as low as 3.1 percent. SAC ¶¶ 48, 50. HeartWare earned FDA
14 approval on November 12, 2012. Id. ¶ 52. It represented a
15 serious threat to Thoratec's monopoly, especially because
16 HeartWare had been disclosing decreasing rates throughout the
17 Class Period. Id. ¶¶ 50-56. Defendants thus "knew that if they
18 did not maintain thrombosis rates at the clinical trial rate of 2%
19 that HeartWare would end up with the lion share of the market."
20 Id. ¶ 57.

21 By 2011, Thoratec became aware of problems with rising
22 thrombosis rates in patients receiving the HeartMate II. See,
23 e.g., SAC ¶¶ 8, 88, 92, 142, 145, 165. Despite this, Defendants
24

25 ¹ Specifically, Burbach was Thoratec's President and Chief
26 Executive Officer during the Class Period, Harris was the Vice
27 President and Chief Financial Officer beginning in October 11,
28 2012, and Smith was the Executive Vice President and Chief
Financial Officer between December 2006 and July 2011. SAC ¶¶ 30-
32.

1 made various false and misleading statements regarding the
2 HeartMate II's thrombosis rates. On May 11, 2011, for example,
3 Smith spoke at a health care conference and stated that HeartMate
4 II's rates of thrombosis were between 0.02 and 0.03, the clinical
5 trial rates, despite knowledge at that time that they had risen
6 well above that level. Id. ¶¶ 90-92. The individual Defendants
7 continued to make similar statements throughout the Class Period.

8 On November 27, 2013, external studies and articles
9 published, including a study by the New England Journal of
10 Medicine (NEJM), concluded that the occurrence of thrombosis
11 associated with the HeartMate II had significantly increased,
12 causing Thoratec stock to drop by approximately six percent. Id.
13 ¶¶ 128-29. Thoratec hid from its investors its own internal data
14 confirming such reports and the related financial risk, and did
15 not correct its prior disclosures. Id. ¶ 129. Thoratec did not
16 disclose the extent of the impact that the reported increases had
17 on HeartMate II's commercial viability until August 6, 2014,
18 causing its stock to drop some twenty-five percent. Id. ¶¶ 166-
19 68.

20 Plaintiffs Cooper and Labak are investors in Thoratec stock
21 who purchased shares on July 15, 2013 and August 2, 2013,
22 respectively. See Goldberg Decl. Ex. B (Movant Certification)
23 (Dkt. No. 12-2); SAC ¶ 27. They move for certification of the
24 following class:

25 all persons or entities that purchased or otherwise acquired
26 the common stock of Thoratec Corporation between May 11, 2011
27 and August 6, 2014, both dates inclusive. Excluded from the
28 Class are any parties who are or have been Defendants in this
litigation, the present and former officers and directors of
Thoratec and any subsidiary thereof, members of their
immediate families and their legal representatives, heirs,

1 successors or assigns and any entity in which any current or
former Defendant has or had a controlling interest.

2 Mot. at ii.

3 LEGAL STANDARD

4 Plaintiffs seeking to represent a class first must satisfy
5 the threshold requirements of Rule 23(a). Rule 23(a) provides
6 that a case is appropriate for certification as a class action if:

7 (1) the class is so numerous that joinder of all members
8 is impracticable;

9 (2) there are questions of law or fact common to the
class;

10 (3) the claims or defenses of the representative parties
11 are typical of the claims or defenses of the class; and

12 (4) the representative parties will fairly and
adequately protect the interests of the class.

13 Fed. R. Civ. P. 23(a).

14 Plaintiffs must also meet the requirements of one of the
15 subsections of Rule 23(b). In this motion, Plaintiffs seek
16 certification pursuant to Rule 23(b)(3), which permits
17 certification where common questions of law and fact "predominate
18 over any questions affecting only individual members" and class
19 resolution is "superior to other available methods for the fair
20 and efficient adjudication of the controversy." Fed. R. Civ. P.
21 23(b)(3). These requirements are intended "to cover cases 'in
22 which a class action would achieve economies of time, effort, and
23 expense . . . without sacrificing procedural fairness or bringing
24 about other undesirable results." Amchem Prods. v. Windsor, 521
25 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23(b)(3) adv. comm.
26 notes to 1966 amendment).

1 Plaintiffs seeking class certification bear the burden of
2 demonstrating that they satisfy each Rule 23 requirement at issue.
3 Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 158-61 (1982);
4 Doninger v. Pac. Nw. Bell, Inc., 564 F.2d 1304, 1308 (9th Cir.
5 1977). The court must conduct a "rigorous analysis," which may
6 require it "to probe behind the pleadings before coming to rest on
7 the certification question." Wal-Mart Stores, Inc. v. Dukes, 564
8 U.S. 338, 350-51 (2011) (internal quotation marks omitted).
9 "Frequently that 'rigorous analysis' will entail some overlap with
10 the merits of the plaintiff's underlying claim. That cannot be
11 helped." Id. at 2551. "Merits questions may be considered to the
12 extent--but only to the extent--that they are relevant to
13 determining whether the Rule 23 prerequisites for class
14 certification are satisfied." Amgen Inc. v. Conn. Ret. Plans &
15 Trust Funds, 568 U.S. 455, 466 (2013). This determination is
16 committed to the district court's discretion. Califano v.
17 Yamasaki, 442 U.S. 682, 703 (1979).

18 DISCUSSION

19 I. Plaintiffs Meet Rule 23(a)'s Requirements, Including Adequacy
20 Defendants do not dispute that Plaintiffs have satisfied Rule
21 23(a)'s requirements of numerosity, commonality, and typicality,
22 and instead focus only on adequacy. They argue that Plaintiffs
23 are not adequate class representatives because they purchased
24 shares only prior to November 27, 2013, and thus have no incentive
25 to pursue claims on behalf of post-November 27, 2013 investors.
26 In order to establish adequacy under Rule 23(a)(4), named
27 plaintiffs must show that they "will fairly and adequately protect
28 the interests of the class." Fed. R. Civ. P. 23(a)(4). "To

1 determine whether named plaintiffs will adequately represent a
2 class, courts must resolve two questions: (1) do the named
3 plaintiffs and their counsel have any conflicts of interest with
4 other class members and (2) will the named plaintiffs and their
5 counsel prosecute the action vigorously on behalf of the class?"
6 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 985 (9th Cir. 2011)
7 (internal quotation marks omitted).

8 Defendants contend that investors who purchased stock after
9 the November 27, 2013 publications could not have relied on the
10 May 11, 2011 misrepresentation that thrombosis rates had not
11 increased above the clinical trial rates of two to three percent.
12 Because neither Labak nor Cooper purchased shares after November
13 27, 2013, they have no incentive to pursue vigorously the
14 divergent claims of "post-publication" investors. As discussed
15 further below, Defendants continued to make misrepresentations
16 about thrombosis rates after the November 27, 2013 publications
17 and undermined the studies' conclusions. Because class members
18 who purchased both before and after may rely on the same theory of
19 liability, there are no divergent claims, and Labak and Cooper are
20 adequate class representatives.

21 Because Labak and Cooper are adequate class representatives
22 and Defendants do not dispute the other factors, Plaintiffs have
23 met Rule 23(a)'s requirements.

24 II. Plaintiffs Meet Rule 23(b)(3)'s Requirements, Including
25 Predominance

26 Defendants most vigorously argue that Plaintiffs cannot show
27 predominance for two reasons. First, they argue that Plaintiffs
28 cannot rely on a presumption of reliance because they fail to show

1 front-end price impact. Second, they argue that Plaintiffs have
2 not demonstrated that damages are measurable on a class-wide
3 basis. Neither of Defendants' arguments is successful.

4 A. Plaintiffs Sufficiently Allege Reliance Based on the
5 Fraud-on-the-Market Theory

6 In order to bring a claim under Section 10(b), "the plaintiff
7 must show individual reliance on a material misstatement." Hanon
8 v. Dataproducts Corp., 976 F.2d 497, 506 (9th Cir. 1992). "The
9 reliance element 'ensures that there is a proper connection
10 between a defendant's misrepresentation and a plaintiff's
11 injury.'" Halliburton Co. v. Erica P. John Fund, Inc., 134 S. Ct.
12 2398, 2407 (2014) (quoting Amgen Inc. v. Conn. Ret. Plans & Trust
13 Funds, 568 U.S. 455, 488 (2013)).

14 In Basic Inc. v. Levinson, 485 U.S. 224 (1988), the Supreme
15 Court created a rebuttable presumption of reliance based on the
16 "fraud-on-the-market" theory, which holds that "the market price
17 of shares traded on well-developed markets reflects all publicly
18 available information, and, hence, any material
19 misrepresentations." Id. at 246. This presumption recognizes
20 that "the typical investor who buys or sells stock at the price
21 set by the market does so in reliance on the integrity of that
22 price--the belief that it reflects all public, material
23 information." Halliburton, 134 S. Ct. at 2408 (internal quotation
24 marks omitted). "As a result, whenever the investor buys or sells
25 stock at the market price, his reliance on any public material
26 misrepresentations . . . may be presumed for purposes of a Rule
27 10b-5 action." Id. (internal quotation marks omitted).
28

1 In order to establish the Basic presumption, a plaintiff must
 2 demonstrate: "(1) that the alleged misrepresentations were
 3 publicly known, (2) that they were material, (3) that the stock
 4 traded in an efficient market, and (4) that the plaintiff traded
 5 the stock between the time the misrepresentations were made and
 6 when the truth was revealed." Halliburton, 134 S. Ct. at 2408.
 7 "Any showing that severs the link between the alleged
 8 misrepresentation and either the price received (or paid) by the
 9 plaintiff, or his decision to trade at a fair market price, will
 10 be sufficient to rebut the presumption of reliance." Basic, 485
 11 U.S. at 248. For example, "evidence that the misrepresentation
 12 did not in fact affect the stock price" may be sufficient to rebut
 13 the presumption at the class certification stage. Halliburton,
 14 134 S. Ct. at 2414. It is Defendants' burden to show lack of
 15 price impact. See id. at 2417; Hatamian v. Advanced Micro
 16 Devices, Inc., No. 14-cv-00226 YGR, 2016 WL 1042502, at *7 (N.D.
 17 Cal. Mar. 16, 2016).

18 1. Defendants' Argument of Lack of Price Impact With
 19 Respect to the May 11, 2011 Alleged
 20 Misrepresentation Fails

21 Defendants argue that there was a lack of price impact, and
 22 thus Plaintiffs may not rely on the Basic presumption. In order
 23 to show price impact, Plaintiffs submit the expert report of Dr.
 24 Zachary Nye, who studied Thoratec common stock "to determine
 25 whether new material corporate events or financial releases
 26 promptly caused a measurable stock price reaction after accounting
 27 for contemporaneous market and industry effects." See Ludwig
 28 Decl. Ex. 1 (Nye Report) (Dkt. No. 99-1) at ¶¶ 51-55. His
 analysis concludes "(i) that a strong cause-and-effect

1 relationship existed between the information disclosed on the
2 events dates and resulting stock price movements; and (ii) that
3 the direction of the Company-specific return on event dates is
4 consistent with the information disclosed." Id. ¶ 54.

5 Defendants contend in opposition that Dr. Nye's analysis
6 actually demonstrates that there was no statistically significant
7 increase in Thoratec's stock price on May 11, 2011, the date that
8 Smith made the first allegedly false and misleading statement.
9 See Nye Report Ex. 11A at 1. Dr. Nye admitted as much at his
10 deposition, and Defendants' expert, Dr. Allen Ferrell, conducted
11 an analysis confirming the same. See Rawlinson Decl. Ex. 2 (Nye
12 Dep. Tr.) (Dkt. No. 107-2) at 104:8-17; Rawlinson Decl. Ex. 1
13 (Farrell Report) (Dkt. No. 107-1) at ¶ 26. Defendants argue that
14 this constitutes direct evidence that the alleged
15 misrepresentation did not actually affect the stock's market
16 price, and that Plaintiffs had not contended and cannot contend
17 for the first time on reply that they are instead alleging a price
18 maintenance theory.

19 Defendants' argument that Plaintiffs fail to allege a price
20 maintenance theory is not well-taken. A fair reading of the SAC
21 shows that Plaintiffs allege that Thoratec's claimed
22 misrepresentations led investors to believe that the HeartMate II
23 was reporting thrombosis rates consistent with the clinical
24 trials--e.g., that the product was maintaining the status quo.
25 Had Thoratec admitted that thrombosis rates were actually higher,
26 HeartMate II would not have been able to maintain its competitive
27 position in relation to HeartWare, and Thoratec's stock price
28 would not have remained afloat. Thus, that Smith's May 11, 2011

1 statement did not lead to any significant increase in stock price
2 is entirely consistent with Plaintiffs' theory that this
3 misrepresentation prolonged the artificial inflation of Thoratec's
4 stock price. See, e.g., In re Vivendi, S.A. Sec. Litig., 838 F.3d
5 223, 259 (2d Cir. 2016) ("[W]e agree with the Seventh and Eleventh
6 Circuits that securities-fraud defendants cannot avoid liability
7 for an alleged misstatement merely because the misstatement is not
8 associated with an uptick in inflation."); FindWhat Investor Grp.
9 v. FindWhat.com, 658 F.3d 1282, 1310 (11th Cir. 2011) ("A
10 corollary of the efficient market hypothesis is that disclosure of
11 confirmatory information--or information already known by the
12 market--will not cause a change in the stock price."); Schleicher
13 v. Wendt, 618 F.3d 679, 683 (7th Cir. 2010) ("[W]hen an unduly
14 optimistic statement stops a price from declining (by adding some
15 good news to the mix): once the truth comes out, the price drops
16 to where it would have been had the statement not been made.");
17 see also Ludwig Decl. Ex. 1 (Farrell Dep. Tr.) (Dkt. No. 113-1) at
18 52:3-6 ("Q. Would one necessarily expect the price of the security
19 to increase when a material false statement is reiterated to the
20 market? A. No."), 53:13-20 ("Q. So, generally speaking, can price
21 inflation exist during a class period when alleged
22 misrepresentations do not coincide with significant price
23 increases? A. It's possible.").² Defendants' proffered evidence
24 of lack of price impact is irrelevant to Plaintiffs' theory, which
25

26 ² Because the plaintiff in In re Finisar Corp. Sec. Litig.,
27 No. 5:11-cv-01252-EJD, 2017 WL 6026244, at *8 (N.D. Cal. Dec. 5,
28 2017), was "not proceeding on a price maintenance theory," that
case is inapposite.

1 is that the May 11, 2011 event would not have impacted Thoratec's
2 stock price by raising it, but rather prolonged its inflation.

3 Defendants' argument that Plaintiffs do not show that the May
4 11, 2011 statement "maintained" the price at a level already
5 inflated from some earlier misstatement has also been considered
6 and rejected by various courts. See, e.g., Vivendi, 838 F.3d at
7 259 ("[T]heories of 'inflation maintenance' and 'inflation
8 introduction' are not separate legal categories.") (internal
9 quotation marks and citation omitted); Glickenhau & Co. v.
10 Household Int'l, Inc., 787 F.3d 408, 418 (7th Cir. 2015) (same).
11 This Court finds the reasoning in those cases persuasive and
12 agrees that Plaintiffs here not need not allege separate theories
13 of inflation introduction and inflation maintenance.

14 2. Defendants Do Not Show Lack of Price Impact With
15 Respect to Corrective Disclosures

16 Defendants next argue that the alleged corrective disclosures
17 also fail to show price impact (1) because of the September 6,
18 2013 disclosure to the market and (2) because they were not
19 "corrective" of the May 11, 2011 misrepresentation. Defendants do
20 not dispute that on the dates of each of the corrective
21 disclosures alleged in the SAC, Thoratec's stock price saw
22 statistically significant declines, -6.81 percent on November 27,
23 2013, and -29.65 percent on August 6, 2014, according to their own
24 expert. See Farrell Report at ¶¶ 34, 38; accord Nye Report Ex.
25 11A at 18, 23.

26 On September 6, 2013, the Interagency Registry for
27 Mechanically Assisted Circulatory Support (INTERMACS) published
28 its Initial Analyses indicating that since 2011, the thrombosis

1 rate associated with the HeartMate II had increased beyond the
2 pre-approval clinical trial rate of two to three percent. See
3 Farrell Report Ex. C. There was no accompanying decline in the
4 price of Thoratec stock. This Initial Analyses as submitted by
5 Defendants, however, is a one-page web document that lists no
6 authors and is not a published study. Indeed, Plaintiffs contend
7 that it was merely web-published for physicians. The document
8 also states, "Note the significant increase in events after May,
9 2011, but the magnitude of increase was relatively small." Id.

10 The Court agrees with Plaintiffs that this document is
11 insufficient to establish that the market already knew of the
12 increased thrombosis rates associated with the HeartMate II prior
13 to the November 27, 2013 corrective disclosure. It is merely an
14 initial analysis by INTERMACS, not a peer-reviewed, published
15 study, undermining its authority on the topic. Moreover, the
16 document itself notes that while its numbers show a "significant
17 increase," the absolute "magnitude" of that increase was
18 "relatively small," dampening the overall impact of the analysis.
19 Farrell Report Ex. C. It is not surprising that, even if this
20 document had some viewership, it would not result in a meaningful
21 impact on the stock price because of its lack of authority and
22 cabined suggestion of increased rates of thrombosis. The
23 INTERMACS analysis is insufficient to sever the link between the
24 May 11, 2011 misrepresentation and the corrective disclosures.

25 Defendants' second theory is that neither the November 27,
26 2013 publications nor the August 6, 2014 announcement was
27 "corrective" of the May 11, 2011 alleged misrepresentation because
28 they did not disclose new information previously unknown to the

1 market, nor did the information disclosed in the August 6, 2014
2 announcement match the specific alleged misrepresentation on May
3 11, 2011.

4 With respect to Defendants' argument that the November 27,
5 2013 publication did not disclose any new information, this
6 argument fails for the same reasons that the September 6, 2013
7 "disclosure" argument fails. While Defendants point to analyst
8 reports that suggest that increase in thrombosis rates was not
9 unknown to the market prior to the November 27, 2013 publications,
10 Defendants do not dispute that there were no peer-reviewed,
11 published studies that confirmed these increases with scientific
12 authority. The November publications for the first time offered
13 evidence linking the HeartMate II to higher thrombosis rates, and
14 the market responded accordingly.

15 Plaintiffs also present a plausible theory, and sufficient
16 evidence, that the August 6, 2014 announcement disclosed new
17 information, even when considering the November 27, 2013
18 disclosures. Plaintiffs' SAC is rife with examples of the
19 individual Defendants making misrepresentations about the
20 thrombosis rates of increase, undermining the November 27, 2013
21 publications, misstating they had new clinical data exhibiting
22 lower rates of increase when they did not, and omitting the impact
23 of the increased rates on revenues. See, e.g., SAC ¶¶ 138, 140,
24 143, 146, 149, 151, 154, 156, 159, 162. These statements could
25 have reasonably misled investors to doubt the November 27, 2013
26 publications and instead believe that Thoratec's rates of
27 thrombosis were stable and no longer increasing, or even lower
28 than suggested by the earlier publications.

1 Defendants' argument that the information disclosed in the
2 August 6, 2014 announcement did not "match" the specific alleged
3 misrepresentation on May 11, 2011, on the other hand, deserves
4 more scrutiny. Plaintiffs allege that in the August 6, 2014
5 statement, Defendants disclosed missed earnings and revenues due
6 to concern over high thrombosis rates, lowered 2014 guidance, and
7 disclosed a label change. SAC ¶¶ 166-67. Burbach issued a
8 statement on that date explaining that the November 27, 2013
9 publications "along with greater scrutiny of clinical outcomes
10 overall continues to be the largest factor impacting our business
11 on a worldwide basis" and growth in overall referrals was down.
12 Id. at 166. Burbach explained, "While we expect that this would
13 be a headwind during the first half of the year is [sic] now
14 clearly the impact is persisting longer than expected. Id.

15 Defendants contend that these statements do not "match"
16 earlier alleged misrepresentations because they do not reveal any
17 fact known to Thoratec at the time of the May 11, 2011 statement,
18 nor the earlier statements regarding 2014 guidance. Instead,
19 these statements dealt only with the impact of the November 27,
20 2013 publications on the second half of 2014. Nor did the
21 announced "label change" correct any earlier misstatement.

22 While this is Defendants' strongest argument, Defendants'
23 statements in the period between November 27, 2013 and August 6,
24 2014 can reasonably be read to suggest that the impact of the
25 November 2013 publications on implanting physicians (and therefore
26 Thoratec's bottom line) would be minimal. Thus, Thoratec's August
27 2014 disclosure that the publications had in fact substantially
28 impacted earnings and revenues corrected the earlier misleading

1 statements, causing Thoratec's stock immediately to drop a
2 significant amount. Plaintiffs also argue that Thoratec's purpose
3 since May 11, 2011 was to hide the effect of the increased
4 thrombosis rates on the company's financials, which did not come
5 to light until August 6, 2014. While the Court is concerned about
6 a sufficient link between the May 11, 2011 misrepresentations and
7 the August 6, 2014 statement, Plaintiffs may proceed on their
8 theory at this early stage. In the future, a subclass based on
9 the misrepresentations made in 2013 and the August 2014 disclosure
10 may be appropriate.

11 Because the Court concludes that Defendants continued to make
12 material misrepresentations after the November 27, 2013
13 publications, and Plaintiffs may proceed on their August 24, 2014
14 corrective disclosure theory as well, Defendants' alternative
15 requests to end the Class Period on November 27, 2013 or to create
16 subclasses are denied at this time without prejudice.

17 B. Damages

18 As part of the predominance inquiry, Plaintiffs must
19 demonstrate that "damages are capable of measurement on a
20 classwide basis." Comcast Corp. v. Behrend, 569 U.S. 27, 34
21 (2013). "Calculations need not be exact," id. at 35, nor is it
22 necessary "to show that [the] method will work with certainty at
23 this time," Khasin v. R.C. Bigelow, Inc., No. 12-cv-02204-WHO,
24 2016 WL 1213767, at *3 (N.D. Cal. Mar. 29, 2016). Furthermore,
25 the Ninth Circuit has stated that "the presence of individualized
26 damages cannot, by itself, defeat class certification under Rule
27 23(b)(3)." Leyva v. Medline Indus. Inc., 716 F.3d 510, 514 (9th
28 Cir. 2013).

1 Plaintiffs argue that damages can be calculated through an
2 event study like that provided by their expert, Dr. Nye, which
3 quantifies Thoratec's per share price decline upon disclosure of
4 the fraud. Indeed, "[t]he event study method is an accepted
5 method for the evaluation of materiality damages to a class of
6 stockholders in a defendant corporation." In re Diamond Foods,
7 Inc. Sec. Litig., 295 F.R.D. 240, 251 (N.D. Cal. 2013) (citing In
8 re Imperial Credit Indus., Inc. Sec. Litig., 252 F. Supp. 2d 1005,
9 1014 (C.D. Cal. 2003)).

10 Defendants argue that this methodology is insufficient
11 because it fails to take into consideration what Defendants
12 characterize as competing sets of misrepresentations. For the
13 same reasons that the Court rejected Defendants' arguments
14 regarding the November 27, 2013 publication date, this argument
15 too fails. The Court concludes that Plaintiffs have sufficiently
16 shown, at this stage, that damages are capable of measurement on a
17 classwide basis.

18 For these reasons, Plaintiffs have satisfied Rule 23(b)(3)'s
19 requirements.

20 CONCLUSION

21 Because Plaintiffs have satisfied the requirements of Rules
22 23(a) and 23(b)(3), Plaintiffs' Motion for Class Certification is
23 granted.

24 IT IS SO ORDERED.

25 Dated: May 8, 2018



26 CLAUDIA WILKEN
27 United States District Judge
28