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Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re UBIQUITI NETWORKS, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Master File No. 12-cv-04677-YGR CLASS ACTION NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF DATE: December 19, 2017 TIME: 2:00 p.m. JUDGE: The Honorable Yvonne Gonzalez Rogers, Oakland Courthouse, Courtroom 1, 4th Floor

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TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 19, 2017, at 2:00 p.m., in the Courtroom of the Honorable Yvonne Gonzales Rogers, United States District Judge, at the United States District Court for the Northern District of California, Oakland Division, 1301 Clay Street, Oakland, California 94621, Lead Plaintiffs Bristol County Retirement System and Inter-Local Pension Fund GCC/IBT ("Lead Plaintiffs") will respectfully move, pursuant to Fed. R. Civ. P. 23(e), for orders: (1) granting final approval of the proposed Settlement of the Action; and (2) approving the proposed Plan of Allocation for the net proceeds of the Settlement. Lead Plaintiffs' motion is based on the following Memorandum in support thereof; the Joint Declaration of Jonathan Gardner and Daniel J. Pfefferbaum in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Joint Declaration" or "Joint Decl.") with annexed exhibits; the Stipulation and Agreement of Settlement, dated as of August 4, 2017 (ECF No. 113-1) ("Stipulation" or "Settlement")[1]; all of the prior pleadings and papers in this Action; and such additional information or argument as may be required by the Court.

STATEMENT OF ISSUES TO BE DECIDED

Whether the Court should grant final approval to the proposed class action Settlement and Plan of Allocation.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs submit this memorandum in support of their motion for final approval of the Settlement of this securities class action for $6,800,000 in cash (plus interest), and for approval of the Plan of Allocation of the Settlement proceeds. The terms of the Settlement are set forth in the Stipulation, which was previously filed with the Court. ECF No. 113-1. As set forth in the Joint Declaration, the Settlement comes after some five years of hard fought litigation, as well as arm's-length settlement

[1] All capitalized terms not defined herein shall have the same meanings set forth in the Stipulation.

negotiations.[2] Ultimately, the Parties reached an agreement-in-principle to settle the Action on June 22, 2017, with the substantial assistance of Robert A. Meyer, a highly respected and experienced mediator, and continued to finalize the terms of the Settlement until the Stipulation was executed on August 4, 2017. The $6.8 million recovery represents 35% of the maximum estimated damages of approximately $19 million by Lead Plaintiffs' consulting damages experts, an outstanding result under any measure. *See* Joint Decl., ¶¶5, 69. Lead Counsel, who have extensive experience and expertise in prosecuting securities class actions, believe that the Settlement represents a highly favorable resolution of this complex litigation in light of the recovery obtained, and specific risks of continued litigation. Lead Plaintiffs, who were actively involved in the Action, have approved the Settlement. *See* Declaration of Lawrence C. Mitchell on Behalf of Inter-Local Pension Fund GCC/IBT (Ex. 1) and Declaration on Behalf of Bristol County Retirement System (Ex. 2).[3]

From the outset, this case was carefully investigated and vigorously litigated. Defendants, who are represented by some of the most experienced and formidable securities litigators in the country, have asserted strong defenses, adamantly denied liability, convinced the Court to dismiss all claims in the detailed Consolidated Amended Complaint for Violation of the Federal Securities Laws (the "CAC"), and were firm in asserting their belief that Lead Plaintiffs could not prevail on the claims under Sections 11 and 15 of the Securities Act of 1933 ("1933 Act") that remained after Lead Plaintiffs' appeal to the Ninth Circuit Court of Appeals ("Ninth Circuit") of the Court's dismissal of the CAC. While the case settled at a relatively early stage of the Action, a result consistent with the

[2] The Court is respectfully referred to the accompanying Joint Declaration for a summary of Lead Plaintiffs' claims, the risks presented by continued litigation, the procedural and factual history of the Action, the settlement negotiations, and why the Settlement, Plan of Allocation and Lead Counsel's request for an award of attorneys' fees and expenses are fair and reasonable.

[3] All exhibits herein are annexed to the Joint Declaration submitted herewith. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. ___ - ___." The first numerical reference refers to the designation of the entire exhibit attached to the Joint Declaration and the second reference refers to the exhibit designation within the exhibit itself.

purposes of the Federal Rules of Civil Procedure,[4] Lead Counsel devoted a considerable amount of time and resources prior to the resolution of the Action.

The Settlement was achieved only after Lead Counsel: (i) conducted a thorough and wide-ranging investigation concerning the allegedly fraudulent misrepresentations/omissions made by Defendants; (ii) prepared and filed a detailed CAC; (iii) researched and drafted an omnibus opposition to Defendants' comprehensive motions to dismiss the CAC; (iv) prevailed, in part, on their appeal to the Ninth Circuit of the Court's order granting Defendants' motions to dismiss the CAC; (v) prepared and filed a detailed Consolidated Second Amended Complaint for Violations of the Federal Securities Laws (the "SAC") following the Ninth Circuit's opinion and remand; and (vi) engaged in extensive mediation efforts, which included the review and analysis of approximately 60,000 pages of core documents produced by Defendants prior to mediation, the exchange of comprehensive mediation statements (with exhibits), a full-day mediation session, and follow-up negotiations with the substantial assistance of Mr. Meyer.

The Settlement takes into account the specific risks and obstacles that Lead Plaintiffs and the Settlement Class would face if litigation were to continue. If not for this Settlement, the case would likely remain fiercely contested by the Parties with the ultimate outcome uncertain. Lead Counsel are highly experienced in prosecuting securities class actions, and have concluded that the Settlement is a highly favorable recovery in the light of risk, delay, and expense of continued litigation. This conclusion is based on, among other things, the substantial and certain recovery obtained when weighed against the significant risk, expense, and delay presented in continuing the Action through the completion of fact and expert discovery, class certification, Defendants' anticipated motion(s) for summary judgment, trial, and probable post-trial motion(s) and appeal(s); analysis of the facts and evidence adduced to date; past experience in litigating complex securities actions; and the serious disputes between the Parties concerning the merits and damages.

[4] *See In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn. 2005) (noting that early resolution of the case is consistent with Rule 1 of the Federal Rules of Civil Procedure).

For all of the reasons discussed herein and in the Joint Declaration, it is respectfully submitted that the Settlement should be finally approved by the Court. Moreover, the Plan of Allocation was developed with one of Lead Plaintiffs' consulting damages experts and is consistent with an assessment of the potential damages that the Settlement Class may have recovered had liability been successfully established at trial. As a result, the Plan of Allocation provides a fair and reasonable basis for allocating the Net Settlement Fund among Settlement Class Members, and therefore should be approved.

II. THE STANDARDS GOVERNING JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS

It is well-established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *see also In re Omnivision Techs*., 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) ("[T]he court must also be mindful of the Ninth Circuit's policy favoring settlement, particularly in class action law suits."). Class actions readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. It is beyond question that "the public has an overriding interest in securing 'the just, speedy, and inexpensive determination of every action.'" *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006);[5] Fed. R. Civ. P. 1. It is also beyond question that "there is an overriding public interest in settling and quieting litigation," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).[6]

In deciding whether to approve a proposed settlement of a stockholders' class action under Federal Rule of Civil Procedure 23(e), the court must first find that the proposed settlement is "fundamentally fair, adequate, and reasonable." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,

[5] Internal citations are omitted and emphasis is added throughout unless otherwise indicated.

[6] The law consistently favors the compromise of disputed class action claims. *See Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *MWS Wire Indus., Inc. v. Cal. Fine Wire Co.*, 797 F.2d 799, 802 (9th Cir. 1986).

458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The Ninth Circuit has provided factors that may be considered in evaluating the fairness of a class action settlement:

> Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable. The district court's ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Officers for Justice, 688 F.2d at 625; *accord Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Woo v. Home Loan Grp., L.P.*, No. 07-CV-202 H (POR), 2008 WL 3925854, at *3 (S.D. Cal. Aug. 25, 2008). Courts have also considered "the role taken by the lead plaintiff in [the settlement] process, a factor somewhat unique to the PSLRA." *In re Postal Software, Inc. Sec. Litig.*, No. 03-5138 VRW, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007). "'The relative degree of importance to be attached to any particular factor will depend upon . . . the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case.'" *Woo*, 2008 WL 3925854, at *3 (quoting *Officers for Justice*, 688 F.2d at 625).

The district court must exercise "sound discretion" in approving a settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Torrisi*, 8 F.3d at 1375. In exercising its discretion:

> the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Officers for Justice, 688 F.2d at 625. The Ninth Circuit defines the limits of the inquiry to be made by the court in the following manner:

> [T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of

> wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what ***might*** have been achieved by the negotiators.

Id. (emphasis in original).

Therefore, courts have taken a liberal approach toward approval of class action settlements, recognizing that the settlement process involves the exercise of judgment and that the concept of "reasonableness" can encompass a broad range of results. "'In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.'" *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). "As the Ninth Circuit has noted, 'Settlement is the offspring of compromise; the question . . . is not whether the final product could be prettier, smarter, or snazzier, but whether it is fair, adequate, and free from collusion.'" *In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. MDL C-07-1841 (EMC), 2011 WL 3352460, at *4 (N.D. Cal. Aug. 2, 2011) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026-27 (9th Cir. 1998)).

When examined under the foregoing criteria, this Settlement is a highly favorable result for the Settlement Class. Lead Counsel believe there are serious questions as to whether a more favorable result could be attained after the completion of discovery, summary judgment, trial, and the inevitable post-trial motions and appeals. As discussed below, an analysis of relevant factors demonstrates that the Settlement merits this Court's final approval.

III. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Enjoys a Presumption of Reasonableness Because It Is the Product of Arm's-Length Settlement Negotiations

The Settlement, which was negotiated between the Parties with the substantial assistance of Mr. Meyer, provides a substantial and certain cash benefit to the Settlement Class in the amount of $6,800,000. The Ninth Circuit "put[s] a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution" in approving a class action settlement. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Here, the Settlement enjoys a presumption of fairness because it is the product of arm's-length negotiations conducted by experienced and capable counsel

with a firm understanding of the strengths and weaknesses of their respective client's positions. *See generally* Joint Decl. *See Linney v. Cellular Alaska P'ship*, No. C-96-3008 DLJ, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997) ("the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery ha[s] taken place create[s] a presumption that the agreement is fair"), *aff'd*, 151 F.3d 1234 (9th Cir. 1998); *Ellis*, 87 F.R.D. at 18.

The settlement negotiations were at all times hard-fought and at arm's length. During these negotiations, Lead Counsel zealously advanced Lead Plaintiffs' positions and were fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of the Settlement Class.

On May 15, 2017, the Parties participated in a formal mediation session with Mr. Meyer that involved an in-depth analysis of the Settlement Class' claims and the defenses that would be asserted by Defendants. Joint Decl., ¶37. Prior to the mediation, Defendants produced approximately 60,000 pages of core documents requested by Lead Counsel, which were reviewed and analyzed. *Id.*, ¶35. In addition, Lead Plaintiffs and Defendants submitted and exchanged comprehensive mediation statements (with exhibits). *Id.*, ¶37. Nevertheless, an agreement to settle was not reached at the mediation despite diligent and good faith efforts. It was only after further settlement negotiations through Mr. Meyer and a mediator's proposal that an agreement-in-principle was reached. *Id.*, ¶38. Courts have recognized that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non collusive." *Satchell v. Fed. Express Corp.*, No. 03-cv-2659, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007). Here, Mr. Meyer played a very active role in bringing about the Settlement.

The settlement process, and the parties involved in that process, have established that the Settlement is an "arms-length, non-collusive, negotiated resolution." *Rodriguez*, 563 F.3d at 965. It is clearly "not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Officers for Justice*, 688 F.2d at 625. Thus, the Settlement here enjoys the presumption of correctness and should be finally approved.

B. Application of Ninth Circuit Precedent Supports Final Approval of the Settlement

1. The Strength of Lead Plaintiffs' Case Supports Final Approval When Balanced Against the Risks of Continued Litigation

In determining whether the Settlement is fair, reasonable, and adequate, the Court should balance the continued risks of litigation, the benefits afforded to the Settlement Class, and the certainty of a substantial recovery. *See Officers for Justice*, 688 F.2d at 625; *Mego*, 213 F.3d at 488 In other words:

> "The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect 'It has been held proper to take the bird in hand instead of a prospective flock in the bush.'"

Nat'l Rural, 221 F.R.D. at 526.

As in every complex case of this kind, Lead Plaintiffs faced formidable obstacles to recovery if the Action were to continue. The remaining claims in the Action are based upon Sections 11 and 15 of the 1933 Act. Section 11 of the 1933 Act creates a private remedy for any purchase of a security if "any part of the registration . . . contain[s] an untrue statement of a material fact or omit[s] to state a material fact required to be stated therein or necessary to make the statements therein not misleading." 15 U.S.C. §77k(a).

While Lead Counsel believe that the Action has significant merit and they would be able to prove the Registration Statement contained untrue statements of material facts and omitted statements of material fact, they recognize that numerous risks and uncertainties existed and were well aware that many other similar actions have been prosecuted in the belief that they were meritorious, only to be lost on dispositive motions, at trial, or on appeal. The Settlement recognizes the risks of complex litigation involving difficult legal and factual issues. As discussed herein and in the Joint Declaration, the risks of continued litigation, when weighed against the substantial and certain recovery for the Settlement Class, confirms the reasonableness of the Settlement. The Settlement is unquestionably better than another distinct possibility – little or no recovery for the Settlement Class.

a. Risks of Establishing Liability

As discussed above, in order for Lead Plaintiffs to prevail on their Sections 11 and 15 claims at summary judgment or at trial, they would first have to prove facts showing that the Registration Statement contained material omissions or false statements of material fact. While Lead Plaintiffs believe that the evidence would show that the Registration Statement contained materially false statements and/or omissions, they recognized that Defendants would raise arguments at summary judgment and at trial that might find favor with the Court or the jury.

Defendants would likely argue that the Registration Statement accurately disclosed a persistent problem with counterfeiting – consistent with the facts existing at the time of the IPO – and that none of the additional detail that Ubiquiti knew about the counterfeiting problem caused its disclosures in the Registration Statement to be materially misleading. Joint Decl., ¶49. At summary judgment, Defendants would likely rely on *In re Convergent Technologies Securities Litigation*, 948 F.2d 507 (9th Cir. 1991), where the defendants' prospectus provided extensive risk warnings about its product. In affirming summary judgment in defendants' favor, the Ninth Circuit rejected plaintiffs' argument that the disclosure was false for describing problems with the product as mere contingencies. *Id.* at 515-16. Defendants would likely contend that the facts here are analogous to the facts in *Convergent* and that the Court should find, on summary judgment, that in light of the evidence, the Registration Statement disclosed a "present problem" with counterfeiting that accurately reflected the facts existing at the time of the IPO. Joint Decl., ¶49.

In addition, Defendants would likely argue that Lead Plaintiffs' allegations vastly overstate the actual extent of counterfeiting as of the IPO and that such counterfeiting was not having a devastating impact on the Company at that time. *Id.*, ¶50. Among other things, Defendants would likely point to the fact that the counterfeit goods represented just a fraction of the Company's world-wide sales. Defendants would also point to the Company's $79 million in revenue for the quarter preceding the IPO (an all-time high for the Company and representing an increase of 132% year-over-year) and $87.8 million in revenue during the quarter in which the IPO occurred (another all-time high). *Id.*

Defendants would also likely contend that Lead Plaintiffs' claims would not survive summary judgment on standing grounds arguing that neither Bristol County nor Inter-Local could trace their shares to the IPO because the Registration Statement indicated that approximately 26,000 shares not issued as part of the IPO were outstanding at the time of the IPO. *Id.*, ¶51. Defendants would argue that although Lead Plaintiffs survived this issue at the motion to dismiss stage, at summary judgment, Lead Plaintiffs would need to affirmatively prove their shares are traceable to the IPO – and they would not be able to do so. *Id.*

The Underwriter Defendants would likely raise additional arguments at summary judgment, including that they conducted a robust and thorough due diligence investigation during the IPO process to confirm the accuracy and truthfulness of Ubiquiti's disclosures, including participation in extensive meetings with key management at Ubiquiti, reviewing key documents, and conducting numerous calls with auditors, distributors, suppliers, and customers. *Id.*, ¶52.

While Lead Plaintiffs believe they would be successful at summary judgment and subsequently at trial, they also recognize that Defendants would put up a vigorous defense and there were significant hurdles to proving Defendants' liability. *See Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *10 (N.D. Cal. Feb. 11, 2016) (approving settlement and noting that the risks of proving liability weigh in favor of approval where proving the falsity of the alleged misstatements will be difficult).

b. Risks of Establishing Damages

Even if Lead Plaintiffs successfully established liability, they faced substantial risks in proving damages. Lead Plaintiffs' consulting damages experts estimated that aggregate damages are approximately $19 million, if Lead Plaintiffs were to prevail on their remaining 1933 Act claims. Joint Decl., ¶53. This figure includes shares traded through May 3, 2012, the first date that non-IPO appear to have traded in the market. *Id.* Defendants would argue that damages in the Action are smaller because only investors who purchased shares on the day of the IPO should be able to claim Section 11 damages. *Id.* Defendants would also dispute Lead Plaintiffs' damages methodology.

The amount of damages incurred by Settlement Class Members would be vigorously disputed at trial. The determination of damages is a complicated and uncertain process involving conflicting expert testimony. Expert testimony rests on many subjective assumptions that a jury could reject as speculative or unreliable. The reaction of a jury to battling expert testimony is highly unpredictable. *See, e.g.*, *Nguyen v. Radient Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014) (approving settlement in securities case where "[p]roving and calculating damages required a complex analysis, requiring the jury to parse divergent positions of expert witnesses in a complex area of the law" and "[t]he outcome of that analysis is inherently difficult to predict and risky") (citation omitted); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744 (S.D.N.Y. 1985) (approving settlement where "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to be caused by actionable, rather than the myriad of nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Lead Counsel recognize the possibility that a jury could be swayed by convincing experts for the Defendants, and find that there were little or no damages. *See, e.g.*, *In re Veeco Instruments Sec. Litig.*, No. 05 MDL 0165 (CM), 2007 U.S. Dist. LEXIS 85629, at *30 (S.D.N.Y. Nov. 7, 2007) ("The jury's verdict with respect to damages would depend on its reaction to the complex testimony of experts, a reaction which at best is uncertain."); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) ("even if the jury agreed to impose liability, the trial would likely involve a confusing 'battle of the experts' over damages").

Furthermore, in order to recover any damages at trial, Lead Plaintiffs would have to prevail at many stages in the litigation – namely, Defendants' motion(s) for summary judgment and then establishing liability at trial and, even if the Lead Plaintiffs prevailed at those stages, appeals would likely follow. At each of these stages, there would be significant risks attendant to the continued prosecution of the Action, and no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

Even if Lead Plaintiffs prevailed and obtained a substantial judgment after trial, there is little doubt that Defendants would have filed post-trial motions and/or appeals, raising three significant risks for the Settlement Class. First, the Settlement Class could receive nothing during the post-trial motions and appeals process, which would have likely spanned several years. Second, they could ultimately receive no recovery given that post-trial motions or appeals of any verdict carry the risk of reversal. Finally, even with a judgment in hand, there is no guarantee that a significant judgment entered years down the road would be collectable. Therefore, the amount of damages the Settlement Class would actually recover even if successful at trial is uncertain. The Settlement eliminates all of these risks and provides a certain and substantial recovery for the Settlement Class.

2. The Expense, Complexity, and Likely Duration of the Action Supports Final Approval of the Settlement

The immediacy and certainty of a recovery is a factor for the Court to balance in determining whether this proposed Settlement is fair, adequate, and reasonable. Here, final approval is supported by the expense and likely duration of continued litigation. *See Torrisi*, 8 F.3d at 1376 ("the cost, complexity and time of fully litigating the case all suggest this settlement is fair").

Absent this Settlement, the time and expense of continued litigation would have been substantial, without the Settlement Class receiving the certain and significant benefit of the Settlement, thus creating the possibility that the Settlement Class would ultimately receive less or no recovery at all. Defendants have demonstrated a commitment to defend this case through and beyond trial, if necessary, and are represented by well-respected and highly capable counsel from two of the most prominent law firms in the nation. As the court noted in *Ikon*, which is applicable here:

> In the absence of a settlement, this matter will likely extend for . . . years longer with significant financial expenditures by both defendants and plaintiffs. This is partly due to the inherently complicated nature of large class actions alleging securities fraud: there are literally thousands of shareholders, and any trial on these claims would rely heavily on the development of a paper trial [sic] through numerous public and private documents.

In re Ikon Office Sols., Inc., 194 F.R.D. 166, 179 (E.D. Pa. 2000).

As the securities claims advanced, they would involve complex legal and factual issues, substantial additional document discovery, numerous depositions, and expert discovery and testimony. Moreover, the expense and duration of trying the case before a jury would be significant, and there is no question that this Action would be litigated for years at significant expense without any guarantee that the recovery for the Settlement Class would be better than the current $6.8 million Settlement. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) (settlement was favored where "the trial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court").

As the Ninth Circuit has made clear, the very essence of a settlement agreement is compromise, "'a yielding of absolutes and an abandoning of highest hopes'": "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation." *Officers for Justice*, 688 F.2d at 624; *Ellis*, 87 F.R.D. at 19 (as a *quid pro quo* for not having to undergo the uncertainties and expenses of litigation, the plaintiffs must be willing to moderate the measure of their demands). The certain and substantial result achieved for the Settlement Class here is eminently reasonable in light of the time, expense, and uncertainly associated with continued litigation.

3. The Risk of Maintaining Class Action Status Through Trial Supports Final Approval of the Settlement

While Lead Plaintiffs are confident that they would have prevailed on their yet to be filed motion for class certification, it is likely that Defendants would have vigorously contested such motion, with the outcome of such a contested motion far from certain. Even if Lead Plaintiffs prevailed, it is likely that Defendants would have filed a Rule 23(f) petition for an interlocutory appeal of the decision. Even if Lead Plaintiffs defeated Defendants' Rule 23(f) petition, under Rule 23(c)(1)(C), a Court's prior grant of certification "may be altered or amended before final judgment." It is possible, therefore, that the class could be decertified or modified if the litigation were to continue. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008)

(noting that even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class").

4. The Amount Offered in Settlement Supports Final Approval of the Settlement

In evaluating the fairness of a settlement, a fundamental question is how the value of the settlement compares to the amount the class potentially could recover at trial, discounted for risk, delay and expense. In this regard, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *Mego*, 213 F.3d at 459 (citation omitted). Indeed, "[t]here is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion[.]" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005).

The proposed $6.8 million Settlement is well within the range of reasonableness in light of the best possible recovery at trial and the risks of continued litigation. As noted above, according to analyses prepared by Lead Plaintiffs' consulting damages experts, the Settlement Class sustained estimated maximum damages of approximately $19 million, which results in a recovery of approximately 35%. Joint Decl., ¶¶5, 69. This 35% recovery of estimated damages is nearly five times greater than the median recovery of 7.4% of estimated damages for Section 11 and/or Section 12(a)(2) claims that settled between 1996-2016, according to a recent Cornerstone Research study.[7] Defendants maintained that no damages could be established.

Courts have generally approved settlements in cases since the passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA") that recover a far smaller percentage of maximum damages. *See, e.g.*, *McPhail v First Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement recovering 7% of estimated damages was fair and adequate); *Int'l Bd. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct.

[7] *See* Ex. 8, Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2016 Review and Analysis*, at 11, Fig. 10 (Cornerstone Research 2017).

19, 2012) (approving $12.5 million settlement recovering about 3.5% of the maximum damages that plaintiffs believe could be recovered at trial and noting that the amount is within the median recovery in securities class actions settled in the last few years).

5. The Extent of Discovery Completed and the Stage of the Proceeding Supports Final Approval of the Settlement

While the Settlement comes before the start of formal discovery, both the knowledge of Lead Counsel and the proceeding itself have reached a stage where an intelligent evaluation of the Action and the propriety of settlement could be made. *See Officers for Justice*, 688 F.2d at 625; *Mego Fin.*, 213 F.3d at 458. As discussed above and in the Joint Declaration, Lead Counsel conducted an extensive investigation of the facts alleged, reviewed and analyzed pleadings and internal Company documents from the Kozumi litigation, reviewed and analyzed witness accounts, consulted with experts on damages, fully briefed Defendants' motions to dismiss and the appeal to the Ninth Circuit, and reviewed and analyzed some 60,000 pages of core documents produced by Defendants prior to the mediation. The Parties also participated in extensive settlement negotiations, including an all-day mediation session where the parties' claims and defenses were fully vetted. Prior to the mediation, the Parties submitted to Mr. Meyer and exchanged detailed mediation statements (with exhibits), which further highlighted the factual and legal issues in dispute. As a result, Lead Counsel were able to assess the strengths and weaknesses of the claims asserted and resolve the Action on a highly favorable basis for the Settlement Class. *See Mego Fin.*, 213 F.3d at 459 ('"formal discovery is not a necessary ticket to the bargaining table" where the parties have sufficient information to make an informed decision about settlement'"); *see also Zynga*, 2016 WL 537946, at *12 (noting that the extent of discovery completed and stage of proceedings supports final approval of settlement where plaintiffs engaged in a pre-filing investigation, opposed defendants' motions to dismiss and a motion for reconsideration, worked with consultants, propounded and responded to some discovery, and prepared and participated in mediation session); *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement where record established that "all counsel had ample information and opportunity to assess the strengths and weaknesses of their claims and defenses"); *Redwen v. Sino Clean Energy, Inc.*, No. 11-

3936, 2013 U.S. Dist. LEXIS 100275, at *22 (C.D. Cal. July 9, 2013) (settlement approved when, as here, "the parties have spent a significant amount of time considering the issues and facts in this case and are in a position to determine whether settlement is a viable alternative").

6. The Recommendations of Experienced Counsel Support Final Approval of the Settlement

As the Ninth Circuit observed in *Rodriquez*, "[t]his circuit has long deferred to the private consensual decision of the parties" and their counsel in settling an action. 563 F.3d at 965. Courts have recognized that "'[g]reat weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural*, 221 F.R.D. at 528; *see also Omnivision*, 559 F. Supp. 2d at 1043 ("[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness").

Lead Counsel, having carefully considered and evaluated, *inter alia*, the relevant legal authorities and evidence to support the claims asserted against Defendants, the likelihood of prevailing on these claims, the risk, expense, and duration of continued litigation, and the likely appeals and subsequent proceedings necessary even if Lead Plaintiffs did prevail against Defendants at trial, have concluded that the Settlement is a highly favorable result for the Settlement Class. Lead Counsel are highly skilled and have significant experience in securities class action litigation. *See* www.rgrdlaw.com, www.labaton.com. As a result, "[t]here is nothing to counter the presumption that Lead Counsel's recommendation is reasonable." *Omnivision*, 559 F. Supp. 2d at 1043.

7. Reaction of the Settlement Class to Date Supports Final Approval of the Settlement

Pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement, Approving Form of Notice and Manner of Notice, and Setting Date for Final Approval of Settlement ("Preliminary Approval Order"), the Court-approved Notice of Pendency of Class Action, Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and Proof of Claim and Release form (the "Claim Form") were mailed to potential Settlement Class Members who could be identified with reasonable effort. *See* Affidavit of Jose C. Fraga Regarding (A) Mailing of the

Notice and Proof of Claim form; (B) Publication of Summary Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusions Received to Date ("Mailing Decl."), ¶¶4-8 (Ex. 3). In addition, the Summary Notice was transmitted over the *Business Wire* on October 11, 2017 and published in *The Wall Street Journal* on October 11, 2017 (*id.*, ¶9), and the Stipulation, Notice, Claim Form and Preliminary Approval Order were posted to a website dedicated to the Settlement (www.ubiquitisecuritieslitigation.com), which became operational on September 27, 2017 (*id.*, ¶10). In addition, Lead Counsel have made relevant documents concerning the Settlement available on their firm websites. Joint Decl., ¶44. The Notice advised the Settlement Class of the terms of the Settlement, the Plan of Allocation, and counsel's request for an award of attorneys' fees and expenses, as well as the procedure and deadline for filing objections and opting out of the Settlement Class. *See generally* Ex. 3-A. To date, 12,572 Notices and Claim Forms have been mailed to potential Settlement Class Members and nominees. Ex. 3 ¶8. While the objection deadline – November 27, 2017 – has not yet passed, to date, not a single Settlement Class Member has submitted an objection to the Settlement, the Plan of Allocation, or counsel's request for an award of attorneys' fees and expenses. In addition, not a single request for exclusion has been received to date. Ex. 3 ¶¶14-15.

Each of the above factors fully supports a finding that the Settlement is fair, reasonable, and adequate, and therefore deserves this Court's final approval.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Lead Plaintiffs also seek approval of the Plan of Allocation of the Settlement proceeds. The Plan of Allocation is set forth in full in the Notice mailed to potential Settlement Class Members.

Assessment of a plan of allocation of settlement proceeds in a class action under Rule 23 of the Federal Rules of Civil Procedure is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair and reasonable. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class

counsel. *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005).

The proposed Plan of Allocation provides an equitable basis to allocate the Net Settlement Fund among all Settlement Class Members who submit acceptable Claim Forms. Here, the Plan of Allocation was developed by Lead Counsel with the assistance of one of their consulting damages experts and is consistent with the assessment of the damages that could have been recovered at trial under the theories asserted in the case by Lead Plaintiffs.

Individual claimants' recoveries will depend upon when they bought Ubiquiti stock and whether they bought, sold, or held the stock after the Class Period. Eligible claimants will recover their proportioned "*pro rata*" amount of the Net Settlement Fund based on their "Recognized Loss," as set forth in the Plan of Allocation. The Claims Administrator will calculate claimants' Recognized Losses using the transactional information provided by claimants in their Claim Forms. Because most securities are held in "street name" by the brokers that buy them on behalf of clients, the Claims Administrator, Lead Counsel, and Defendants do not have class members' transactional data.

The proposed Plan of Allocation follows the statutory damages provision in the 1933 Act governing Section 11 claims. A claimant's Recognized Loss per share of common stock will be calculated as the difference between the purchase price and either (a) the actual sales price, if the share was sold ***before*** the Action was commenced on September 7, 2012, or (b) if the share was sold ***after*** the Action was commenced and on or before April 25, 2013 (the date Ubiquiti's share price went above the $15.00 offering price), the greater of the actual sales price or the value of the share on September 7, 2012, which is $12.03 (the closing price on September 7, 2012). The purchase price cannot exceed $15.00, a share's price in the IPO. Shares held after April 25, 2013 will have a Recognized Loss of zero, because on April 25, 2013, Ubiquiti's share price went above the $15.00 offering price and it has remained above $15.00 to date. As a result, the Plan of Allocation will result in a fair distribution of the available proceeds among Settlement Class Members who submit valid claims and therefore should be approved.

Once the Claims Administrator has processed all submitted claims, distributions will be made to eligible Authorized Claimants. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution, Lead Counsel will, if feasible and economical, re-distribute the balance among Authorized Claimants who have cashed their checks. Re-distributions will be repeated until the balance in the Net Settlement Fund is no longer economically feasible to distribute to Authorized Claimants. Lead Plaintiffs propose that any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of any outstanding Notice and Administration Expenses or Taxes, be donated in equal amounts to Bay Area Legal Aid and Consumer Federation of America—both of which have programs that assist consumers facing financial fraud. *See* Stipulation ¶26; Joint Decl., ¶¶60-61.

Bay Area Legal Aid (BayLegal) is a non-profit organization that provides free legal assistance to low income residents of the San Francisco Bay Area through offices in Santa Clara, San Mateo, San Francisco, Napa, Marin, Contra Costa, and Alameda Counties. *See* https://baylegal.org/who-we-are/our-mission/. BayLegal has a Consumer Protection project that advocates on behalf of allegedly wronged consumers by providing them with direct legal representation in cases concerning, among other things, fair credit reporting, fair debt collection practices, and unfair and deceptive advertising of financial products and services. *See* https://baylegal.org/what-we-do/stability/consumer-protections/. Cy pres funds from the Settlement can be earmarked for the Consumer Protection project so that they directly assist victims of financial fraud. BayLegal has been approved as a cy pres beneficiary in several securities cases in California, including *In re Celera Corp. Sec. Litig.*, No. 10-cv-02604-EJD (N.D. Cal.) and *Westley, et al. v. Oclaro, Inc., et al.*, No. 11-cv-02448-EMC (N.D. Cal.). Joint Decl., ¶60.

Consumer Federation of America (CFA) is a non-profit, consumer advocacy organization established in 1968 to advance consumer interests through policy research, advocacy, and education before the judiciary, Congress, the White House, federal and state regulatory agencies, and state

legislatures. *See* generally www.consumerfed.org. With respect to victims of financial fraud, CFA has an Investor Protection program that works nationwide to promote consumer-oriented policies that safeguard investors against fraud through: (i) the development of educational material for investors; (ii) drafting policies and legislation; (iii) and providing testimony and comments on legislation and regulations. *See* www.consumerfed.org/issues/investor-protection. CFA has been approved as a cy pres beneficiary in several securities cases in California, including *In re Vocera Commc'ns, Inc. Sec. Litig.*, No. 13-CV-03567-EMC (N.D. Cal.) and *In re Broadcom Corp. Sec. Litig.*, No. 01-CV-00275-MLR (C.D. Cal.). Joint Decl., ¶61.

V. THE COURT SHOULD GRANT FINAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

The Court previously granted preliminary certification to the Settlement Class under Rules 23(a) and (b)(3). *See* Preliminary Approval Order, ¶¶3-4. Because nothing has occurred since then to cast doubt on the propriety of class certification for settlement purposes, and no objections have been received to date, the Court should grant final class certification.

VI. CONCLUSION

For all the reasons set forth above, in the Joint Declaration, and the entire record, the Settlement and Plan of Allocation warrants this Court's final approval.

DATED: November 13, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 13, 2017

/s/ Jonathan Gardner
JONATHAN GARDNER

Mailing Information for a Case 12-cv-04677-YGR

In re Ubiquiti Networks, Inc. Securities Litigation

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