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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE HP SECURITIES LITIGATION,

This Document Relates To: All Actions

MASTER FILE NO. 3:12-CV-05980-CRB

CLASS ACTION

LEAD PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: November 13, 2015
Time: 10:00 a.m.
Judge: Hon. Charles R. Breyer
Courtroom: 6, 17th Floor

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 13, 2015, at 10:00 a.m. in Courtroom 6 on the 17th Floor of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Ave., San Francisco, California 94102, before the Honorable Charles R. Breyer, United States Senior District Judge, Court-appointed Lead Plaintiff PGGM Vermogensbeheer B.V. ("PGGM" or "Lead Plaintiff") will and hereby does move the Court for an Order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure ("Rule 23"), granting: (i) final approval of the proposed settlement in the above-captioned action, on the terms set forth in the Stipulation of Settlement and Release dated as of June 8, 2015 and filed previously with the Court (ECF No. 258) (the "Stipulation")[1]; (ii) final certification of the Settlement Class that was preliminarily certified in the Court's July 20, 2015 Order granting preliminary approval of the Settlement (ECF No. 265) (the "Preliminary Approval Order"); and (iii) final approval of the proposed plan for allocating the net settlement proceeds to eligible Settlement Class Members (the "Plan of Allocation" or "Plan").

This motion is based upon: (i) this Notice of Motion and Motion, and the Memorandum of Points and Authorities set forth below; (ii) the accompanying Declaration of Eli R. Greenstein in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation, and Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Greenstein Declaration" or "Greenstein Decl."), and the exhibits thereto; (iii) the Affidavit of Jose C. Fraga on behalf of Court-appointed Claims Administrator, Garden City Group, LLC ("GCG"), attached as Exhibit A to the Greenstein Declaration ("Fraga Aff."), and the exhibits thereto; (iv) the Declaration of Marcel Jeucken submitted on behalf of PGGM, attached as Exhibit B to the Greenstein Declaration ("Jeucken Decl."), and the exhibits thereto; (v) the Declaration of David Kessler on behalf of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), attached as Exhibit C to the Greenstein Declaration (the "Kessler Declaration" or "Kessler Decl."), and the exhibits

[1] All capitalized terms that are not defined herein are defined in the Stipulation.

thereto; (vi) the Stipulation; (vii) the pleadings and records on file in this Action; and (ix) other such matters and argument as the Court may consider at the hearing of this motion.[2]

[2] This motion is currently unopposed. The deadline for filing any objections to the Settlement or Plan of Allocation, or submitting a request for exclusion from the Settlement Class, expires on October 14, 2015. Lead Plaintiff will address any objections or requests for exclusion received after the date of this motion in its reply submission to be filed on or before November 3, 2015. A list of those Persons seeking exclusion from the Settlement Class will be included in Exhibit 1 to the [Proposed] Final Judgment and Order Approving Settlement that, along with a proposed order approving the Plan of Allocation, will be submitted to the Court with Lead Plaintiff's reply. Lead Counsel is also submitting a separate Notice of Motion, Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and Memorandum of Points and Authorities in Support Thereof concurrently herewith.

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether the proposed $100 million Settlement is fair, reasonable, and adequate.

2. Whether the Settlement Class should be finally certified for purposes of effectuating the Settlement.

3. Whether the proposed Plan of Allocation is fair, reasonable, and adequate.

SUMMARY OF ARGUMENT

Pursuant to the terms of the Stipulation, Lead Plaintiff has obtained a recovery of $100 million in cash for the Settlement Class in exchange for the dismissal of all claims brought in the Action and a full release of claims against the Released Parties. This Settlement is an excellent result for the Settlement Class and falls squarely within the Ninth Circuit's standard for settlement approval, which requires a proposed settlement to be "fundamentally fair, adequate and reasonable." *See Officers for Justice v. Civil Serv. Comm'n of City and Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

In assessing whether approval is warranted, courts in the Ninth Circuit consider the following factors, among others: (1) the amount offered in settlement; (2) the strength of the plaintiff's case; (3) the risk, expense, complexity, and likely duration of further litigation; (4) the risk of maintaining class action status throughout the trial; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the absence of fraud or collusion; and (8) the reaction of the class members to the proposed settlement. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). As more fully discussed below and in the accompanying Greenstein Declaration, these factors favor the Court's final approval of the Settlement.

First, the amount obtained for the Settlement Class—representing over 26% of the likely recoverable damages in this Action, as estimated by Lead Plaintiff's damages expert—far exceeds the median settlement amount recovered in securities cases, which was only 2.2% in 2014 and did

not exceed 3.1% in the last decade.[3] Notably, the Settlement, if approved, will rank among the top 15 securities class action recoveries in the history of this District.

Second, with respect to the strength of the case, while Lead Plaintiff believes its claims are meritorious, the Settlement Class would face serious risks if litigation continued. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015) ("One important consideration is the strength of the plaintiff's case on the merits balanced against the amount offered in the settlement."). For example, the Settling Defendants have consistently maintained that they were victims of fraud by Autonomy, and that numerous third-party auditors, accounting firms and due diligence consultants failed to discover Autonomy's accounting improprieties prior to and during the Settlement Class Period. They also argued that a "Demand Review Committee" and outside law firms conducted a thorough investigation of the Autonomy issues and found no wrongdoing on the part of HP or Whitman. Based on these defenses and others, the Settling Defendants have aggressively challenged every element of Lead Plaintiff's claims, including scienter, falsity, loss causation and damages. Moreover, following the Court's Order on Defendants' eight motions to dismiss, only two Defendants and three allegedly misleading statements and/or omissions remained in the case. Thus, to the extent the Court and/or a jury found the Settling Defendants' defenses to be more credible at summary judgment or trial, Lead Plaintiff risked losing the entire case.

Third, the risk, expense, complexity, and likely duration of further litigation strongly support final approval of the Settlement. *See, e.g.*, *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993); *Nobles v MBNA Corp.*, 2009 U.S. Dist. LEXIS 59435, at *5 (N.D. Cal. 2009) (Breyer, J.) (finding proposed settlement proper "given the inherent difficulty of prevailing in class action litigation"). Notwithstanding the risks described above, further litigation of this Action would undoubtedly be costly to both sides, and years could pass before the Settlement Class would

[3] *See* Laarni T. Bulan et al., *Securities Class Action Settlements: 2014 Review and Analysis* (Cornerstone Research 2015), at 8-9; *see also In re Ecotality, Inc. Sec. Litig.*, 2015 U.S. Dist. LEXIS 114804, at *8-9 (N.D. Cal. 2015) (finding a "settlement of at least 10% of the expected recovery" reasonable).

receive a recovery, if any. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (concluding that "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."); *Bellinghausen*, 306 F.R.D. at 255 ("In light of the risks and costs of continued litigation, the immediate rewards to class members are preferable.").

Fourth, at the time the Settlement was reached, Lead Plaintiff's motion for class certification was *sub judice*. An order denying class certification effectively would have prevented any recovery for the vast majority of Settlement Class Members. *See In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2007) (noting that, if class certification is denied, "the unrepresented potential plaintiffs would likely lose their chance at recovery entirely"). In contrast, the certainty of a class settlement provides "much less risk of anyone who may have actually been injured going away empty-handed." *Id*. at 1042. Even if the Court granted Lead Plaintiff's motion for class certification, moreover, there is no guarantee that certification would survive through trial. *See* Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment.").

Fifth, after more than two years of intensive litigation, Lead Plaintiff and Lead Counsel had a firm understanding of both the strengths and weaknesses of Lead Plaintiff's case. Indeed, the parties reached the Settlement only after Lead Plaintiff had, *inter alia*, researched and briefed Defendants' eight motions to dismiss; consulted extensively with experts; developed a detailed record through contested fact discovery, including preparation of four critical discovery motions and the review and analysis of over 80,000 pages of documents produced by the Settling Defendants and various third parties; briefed and argued class certification; and engaged in over a year of arm's-length negotiations overseen by the Honorable Layn R. Phillips (Ret.). *See DIRECTV*, 221 F.R.D. at 528 ("A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair."); *Mego*, 213 F.3d at 459 (finding settlement proper where the plaintiffs had sufficient information to make an informed decision thereon). Thus, the extent of discovery and the stage of the proceedings weigh in favor of the Settlement.

Sixth, the Settlement is the product of informed and extensive arm's-length negotiations between skilled, knowledgeable, and experienced counsel on both sides, who have devoted significant efforts to prosecuting the Action and reaching a well-considered resolution. This Court has held that in such circumstances counsel's recommendations are entitled to "great weight," *Nobles*, 2009 U.S. Dist. LEXIS 59435, at *6, and the proposed settlement should be given "a presumption of fairness." *Ramirez v. Ghilotti Bros Inc.*, 2014 U.S. Dist. LEXIS 56038, at *3 (N.D. Cal. 2014) (Breyer, J.) (finding a proposed settlement presumptively fair where "class counsel is experienced and supports the settlement, and the agreement was reached after arm's length negotiations"); *Cal. v. eBay, Inc.*, 2015 U.S. Dist. LEXIS 118060, at *15 (N.D. Cal. 2015) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation.").

Seventh, this Settlement is free of fraud or collusion. The parties' settlement negotiations were hard-fought, spanned the course of over one year—including two formal, in-person mediation sessions and the submission of detailed mediation briefing—and were completed under the guidance of a highly-respected and experienced mediator and former federal judge. *See Vincent v. Reser*, 2013 U.S. Dist. LEXIS 22341, at *12 (N.D. Cal. 2013) (Breyer, J.) (Two days of mediation and subsequent negotiations with an experienced mediator "strongly suggest that the settlement agreement was reached through arm's length negotiations."); *Officers for Justice*, 688 F.2d at 627 (finding that "long and careful negotiations" between the parties indicate an absence of collusion); *see also Satchell v. Fed. Express Corp.*, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. 2007) (same). Nor are any of the Ninth Circuit's three indicia of collusion present here. *See Vincent*, 2013 U.S. Dist. LEXIS 22341, at *11 (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). In particular, Lead Counsel will request fees well below the Ninth Circuit's 25% benchmark, there is no clear sailing agreement, and any fees not awarded will be added to the class fund, rather than reverting to the Settling Defendants.

Finally, to date, there have been no objections to any aspect of the Settlement which lends further support to the reasonableness and fairness of the Settlement.

Lead Plaintiff also respectfully submits that the proposed Plan of Allocation is a fair and reasonable method for equitably allocating the proceeds of the Net Settlement Fund to eligible Settlement Class Members and should be approved by the Court. *See Class Plaintiffs*, 955 F.2d at 1284-85 (holding that the standard for approval of a proposed plan of allocation is the same as the standard for approving the settlement as a whole—the plan must be fair, reasonable, and adequate); *see also In re High-Tech Emp. Antitrust Litig.*, 2015 U.S. Dist. LEXIS 118051, at *29 (N.D. Cal. 2015) (same).

In sum, as set forth in further detail below, Lead Plaintiff—a large, sophisticated institutional investor—and Lead Counsel firmly believe that the Settlement is eminently fair, reasonable, and adequate, and provides a substantial result for the Settlement Class. Accordingly, Lead Plaintiff respectfully requests that the Court grant final approval of this Settlement, certify the Settlement Class for purposes of Settlement, and deem the Plan of Allocation a fair and reasonable method for allocating the Net Settlement Fund to the Settlement Class.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

After nearly three years of intensive, hard-fought litigation, Lead Plaintiff respectfully requests final approval of the $100 million Settlement now before the Court. This Settlement is an outstanding result for the Settlement Class—representing over 26% of the Settlement Class's likely recoverable damages in this case as estimated by Lead Plaintiff's damages expert. Greenstein Decl., ¶77. The Settlement also provides the *only* financial recovery to date for HP's investors arising from the Autonomy allegations, as neither the SEC nor any other private litigant has recovered compensation on behalf of the proposed Settlement Class. *Id*. Moreover, if approved, this Settlement will rank among the top 15 securities fraud recoveries in the history of this District. *Id*. ¶7. Notably, during the July 17, 2015 preliminary approval hearing, this Court recognized the quality of the Settlement based on the preliminary record:

> I would say that it seems extremely good. And I want to thank the parties for obviously treating it seriously; working through the issues. Everything about it has the appearance of being measured, and appropriate.
>
> * * *
>
> So, while this is preliminary approval, and I know that I'm not really commenting on the merits, I am commenting on the merits. I thought you really did a great job. And I want to thank the parties for doing that.

ECF No. 264 at 2:22-3:4.[1]

As described herein and in the accompanying Greenstein Declaration, Lead Plaintiff, through Lead Counsel, vigorously litigated this Action from the outset and performed a substantial investigation into the Settlement Class's claims; comprehensively researched and opposed

[1] On July 20, 2015, the Court preliminarily certified for settlement purposes only, pursuant to Rules 23(a) and 23(b)(3), the proposed Settlement Class (*i.e.*, all persons who purchased or otherwise acquired HP's publicly traded common stock between August 19, 2011 and November 20, 2012, inclusive). ECF No. 265. Excluded from the Settlement Class are all Released Parties and any persons or entities who submit a timely request for exclusion in accordance with the requirements set forth in the Notice. Nothing has changed to alter the propriety of the Court's certification pursuant to the Preliminary Approval Order and, for all the reasons stated in Lead Plaintiff's Notice of Motion, Unopposed Motion for Preliminary Approval of Proposed Settlement and Memorandum of Points and Authorities in Support Thereof (ECF No. 257), incorporated herein by reference, Lead Plaintiff now requests that the Court grant final certification of the Settlement Class for purposes of carrying out the Settlement.

Defendants' eight motions to dismiss; engaged in detailed and disputed fact discovery; consulted with multiple experts; extensively briefed and argued the motion for class certification; and participated in formal mediation before successfully negotiating the Settlement. *See* Greenstein Decl., §III. At every stage of the Action, Defendants aggressively defended the case. *See id.* Had the Settlement not been reached, Lead Plaintiff would have faced considerable hurdles in proving its case, particularly in overcoming the Settling Defendants' defenses to scienter, falsity, loss causation, and establishing the Settlement Class's full amount of damages at trial. *Id.* ¶¶76-87, 115.

Pursuant to the Court's Preliminary Approval Order, 680,679 copies of the Notice have been mailed to potential Settlement Class Members and nominees. *Id.* ¶75, 90; Fraga Aff., ¶11. To date, there have been no objections to the Settlement or Plan of Allocation and only twelve requests for exclusion from the Settlement Class. Greenstein Decl., ¶92; Fraga Aff., ¶15.[2] In addition, the Settlement is fully supported by Lead Plaintiff, PGGM, a large, sophisticated investor who was actively involved in the prosecution and resolution of this Action—precisely the result intended by Congress when passing the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Greenstein Decl., ¶15, 76; Jeucken Decl., ¶¶1, 5-7.

Lead Plaintiff and Lead Counsel recognize the risk and expense of continued litigation and believe that the Settlement represents an outstanding result for the Settlement Class. Greenstein Decl., ¶76-87; Jeucken Decl., ¶12. In addition, the Plan of Allocation is a fair and reasonable method for allocating the Net Settlement Fund to the Settlement Class. Greenstein Decl., ¶13, 100. Accordingly, Lead Plaintiff respectfully requests that the Court grant final approval of this Settlement and Plan of Allocation.

II. HISTORY OF THE ACTION

This Action involves allegedly misleading statements and omissions of material facts arising from HP's $11 billion acquisition of U.K.-based Autonomy Corporation plc ("Autonomy"). Greenstein Decl., ¶¶18-19. Following adverse news related to the Autonomy deal (*e.g.*, that the

[2] Lead Plaintiff will address any objections and additional exclusion requests received after the date of this submission in its reply brief to be filed on or before November 3, 2015—which is after the deadline for objections and requests for exclusion.

acquisition price was written down in substantial part due to purported accounting fraud), the price of HP's common stock fell, causing members of the Settlement Class to suffer damages. *Id*. ¶20. Lead Plaintiff then brought claims against Defendants on behalf of purchasers of HP's common stock between August 19, 2011 and November 20, 2012, for alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. *Id*. ¶17.

The factual and procedural background of this case is well known to the Court. For a more detailed history of the litigation, Lead Plaintiff respectfully refers the Court to the pleadings on file, the detailed record in the Action, and the Greenstein Declaration.[3]

III. THE SETTLEMENT WARRANTS FINAL APPROVAL UNDER RULE 23

A. Legal Standards for Judicial Approval of Class Action Settlements

A class action settlement should be approved if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The authority to grant such approval lies within the sound discretion of the reviewing court. *See Class Plaintiffs*, 955 F.2d at 1276. In exercising its discretion, however, the reviewing court must be mindful of the "strong judicial policy that favors settlements." *Id.* In particular, it is well-established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice*, 688 F.2d at 625; *In re Syncor ERISA Litig*., 516 F.3d 1095, 1101 (9th Cir. 2008).

The court's role in reviewing a proposed settlement is essentially twofold—it must determine whether the settlement is: (i) fair, reasonable, and adequate; and (ii) untainted by fraud or collusion. *See Officers for Justice*, 688 F.2d at 625; *Ramirez*, 2014 U.S. Dist. LEXIS 56038, at *2. A 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." *Nobles*, 2009 U.S. Dist. LEXIS 59435, at *4.

[3] The Greenstein Declaration also details, *inter alia*, the efforts undertaken by Lead Plaintiff and Lead Counsel on behalf of the Settlement Class; the value of the Settlement to the Settlement Class, as compared to the risks and uncertainties of continued litigation; and the terms of the Plan of Allocation.

Recognizing that a proposed settlement represents a consensual agreement by the negotiating parties, the reviewing court need not "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." *Officers for Justice*, 688 F.2d at 625; *see also Ecotality*, 2015 U.S. Dist. LEXIS 114804, at *7 ("The Court, in evaluating the agreement of the parties, is not to reach the merits of the case or to form conclusions about the underlying questions of law or fact."). The ultimate question is whether, after reviewing the proposed settlement "as a whole," it is "fundamentally fair within the meaning of Rule 23(e)"—not "whether the settlement is perfect in the estimation of the reviewing court." *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

Here, the proposed $100 million Settlement is an exceptional result by any measure. It is the product of vigorously-contested litigation and protracted arm's-length negotiations by experienced counsel with a firm understanding of both the strengths and weaknesses of the case, and takes into consideration the significant risks specific to this Action. Greenstein Decl., ¶¶67-68, 76-77, 106. It is the considered judgment of Lead Plaintiff and its counsel that the Settlement and Plan of Allocation represent a fair, reasonable, and adequate resolution of the litigation for the Settlement Class, and warrant this Court's final approval. *Id.* ¶16.

B. The Settlement Is Fair, Reasonable, and Adequate

A proposed settlement is fair, reasonable, and adequate when "the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *Create-A-Card, Inc. v. INTUIT, Inc.*, 2009 U.S. Dist. LEXIS 93989, at *7 (N.D. Cal. 2009). To that end, the Ninth Circuit has identified eight factors for assessing whether a proposed settlement is proper: (1) the amount offered in settlement; (2) the strength of the plaintiff's case; (3) the risk, expense, complexity, and likely duration of further litigation; (4) the risk of maintaining a class action status throughout the trial; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the absence of fraud or collusion; and (8) the reaction of the class members to the proposed settlement. *See Mego*, 213 F.3d at 458-59. This list of factors is

neither exhaustive nor in any specific order of significance. *See Officers for Justice*, 688 F.2d at 625; *Torrisi*, 8 F.3d at 1375-76. In fact, the "relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claims advanced, the types of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, 688 F.2d at 625. As demonstrated herein and in the Greenstein Declaration, the Settlement readily satisfies each of these factors.

1. The Settlement Provides a Favorable Recovery for the Settlement Class

The determination of a "reasonable" settlement is not susceptible to a mathematical formula yielding a particularized sum; indeed, a settlement is acceptable even if it amounts to only a fraction of the potential recovery that might be available at trial. *Mego*, 213 F.3d at 458. As "[s]ettlement is the offspring of compromise[,] the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon* v. *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). "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.

Here, the Settlement Class will receive $100 million less Court-awarded attorneys' fees and expenses. The recovery provides an immediate and tangible benefit to the Settlement Class and eliminates the significant risk that the Settlement Class could recover less, or even nothing at all, if the Action continued. Greenstein Decl., ¶68. Moreover, the Settlement represents approximately 26.5% of the likely recoverable damages in this Action, as estimated by Lead Plaintiff's damages expert[4]—an eminently fair and adequate amount. *Id.* ¶77.[5] As noted above, this recovery vastly

[4] Lead Plaintiff's damages expert has calculated the likely recoverable damages of the Settlement Class to be approximately $390 million. *Id.* ¶77.

[5] *See, e.g.*, *Ecotality*, 2015 U.S. Dist. LEXIS 114804, at *8-9 (finding a "settlement of at least 10% of the expected recovery" reasonable); *OmniVision*, 559 F. Supp. 2d at 1042 (approving a settlement representing 6% of potential damages); *Mego*, 213 F.3d at 459 (deeming a settlement amount of roughly one-sixth of the potential recovery "fair and adequate").

exceeds the median securities class action settlement as a percentage of estimated damages, which was only 2.2% in 2014. *See* Bulan, *supra* note 4, at 8-9.

Had this Action proceeded, there was a real possibility that a recovery in an amount greater than the Settlement Amount would not be achieved. Greenstein Decl., ¶68, 76-77, 87, 115. For instance, the Settling Defendants would likely have argued that the Settlement Class's losses were caused in whole or large part by factors other than the alleged misleading statements and omissions (*i.e.*, purportedly "confounding information" released on the same day as the two corrective disclosures), and that the Settlement Class was entitled to substantially less than the recoverable damages estimated by Lead Plaintiff's damages expert. *Id*. ¶¶82-85. These issues of loss causation and damages would have inevitably come down to a "'battle of experts' . . . with no guarantee whom the jury would believe." *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001); *id*. ¶86. In fact, during the class certification phase, the Settling Defendants used expert testimony to argue that complex issues involving disaggregation and confounding information precluded Lead Plaintiff from reliably establishing damages at all. Greenstein Decl., ¶57.

2. The Strength of Lead Plaintiff's Case

Courts evaluating proposed class action settlements consider the strength of the plaintiffs' case and the risks of further litigation. *See, e.g.*, *Torrisi*, 8 F.3d at 1376; *Bellinghausen*, 306 F.R.D. at 254. While Lead Plaintiff and Lead Counsel believe that they could ultimately prevail against the Settling Defendants, they recognize that numerous risks and uncertainties accompany further litigation of the Settlement Class's claims.[6] Lead Plaintiff and Lead Counsel also recognize that plaintiffs have prosecuted many securities class actions believing their cases to be meritorious, only to lose on summary judgment, at trial or on appeal. *See Nobles*, 2009 U.S. Dist. LEXIS 59435, at *5 (noting that, although "Plaintiff's claim has survived a motion to dismiss, [] success is not guaranteed if this matter were to proceed to jury trial.").[7]

[6] *See* Greenstein Decl., ¶¶76-87, 114-119 (detailing the risks of continued litigation).

[7] *See, e.g.*, *In re Pfizer Sec. Litig.*, 2014 U.S. Dist. LEXIS 92951 (S.D.N.Y. 2014) (dismissing ten-year-old litigation based on a *Daubert* ruling just before trial); *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (overturning jury verdict and award in favor of plaintiff on the basis of loss causation); *In re Apollo Grp., Inc. Sec. Litig.*, 2010 U.S. App. LEXIS

Indeed, if the Action continued, Lead Plaintiff would have faced significant challenges in proving the elements of its claims. With respect to scienter, for example, Defendants have repeatedly argued that they were victims of fraud by Autonomy and its executives, and that Autonomy went to great lengths to conceal its improper accounting practices from HP personnel. Greenstein Decl., ¶78. Thus, proving that the Settling Defendants either knew or were reckless in not knowing the facts that rendered their representations and omissions allegedly false and misleading would not be an easy task. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) (noting that scienter is a "complex and difficult [element] to establish at trial"). Furthermore, Defendants have repeatedly asserted that the whistleblower who purportedly revealed Autonomy's accounting improprieties to HP came forward after Defendants' first actionable statement on May 23, 2012, allegedly undermining scienter for that representation. *Id.* ¶79. Defendants have also maintained that numerous independent accounting, consulting and audit firms reviewed and blessed Autonomy's financial results prior to and during the Settlement Class Period, thus undermining the inference that Autonomy's accounting improprieties were either known or easily detected by Defendants and HP personnel. *Id.* ¶78. Moreover, relying on *In re Yahoo! Inc. Sec. Litig.*, 2012 U.S. Dist. LEXIS 113036 (N.D. Cal. 2012) (Breyer, J.)—a decision recently affirmed by the Ninth Circuit—Defendants contended that they were entitled to investigate and determine the reliability or extent of Autonomy's alleged misconduct for a reasonable amount of time before disclosing it to shareholders, rendering two of the three remaining statements arguably inactionable on the basis of scienter, materiality and falsity. Greenstein Decl., ¶80.

The elements of loss causation and damages also presented significant risks for Lead Plaintiff. *See id.* ¶¶82-87. As discussed above, Lead Plaintiff faced the very real possibility that either the Court or a jury would find its losses were caused in whole or large part by factors other than the alleged misleading statements and omissions. *Id.* ¶¶82-85. Lead Plaintiff also faced risks associated with issues of "disaggregation" (*i.e.*, the jury would not be able to untangle losses

14478 (9th Cir. 2010) (granting judgment to defendants and nullifying a unanimous jury verdict for plaintiffs following a two-month trial).

attributable to the alleged misrepresentations and omissions from those tied to other non-fraud factors, if any) and proportional fault (*i.e.*, the Settling Defendants would attempt to shift blame to third parties, including legacy Autonomy management and Autonomy's auditor). *Id.*

Had the Action proceeded, it is clear that there existed substantial risks and uncertainties concerning liability and damages. Instead, by this Settlement, the Settlement Class will receive a significant recovery without undertaking these risks.

3. The Risk, Expense, Complexity and Likely Duration of the Litigation

Courts consistently recognize that the risk, expense, complexity, and possible duration of the litigation are key factors in evaluating the reasonableness of a settlement. *See, e.g., Torrisi*, 8 F.3d at 1375-76 (finding that "the inherent risks of litigation . . . and the cost, complexity and time of fully litigating the case" rendered the settlement fair). Thus, a 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." *DIRECTV*, 221 F.R.D. at 526.

It is well known that class action litigation is inherently complex. *See Nobles*, 2009 U.S. Dist. LEXIS 59435, at *5 (finding a proposed settlement proper "given the inherent difficulty of prevailing in class action litigation"). Certainly, this securities class action, prosecuted under the more restrictive provisions of the PSLRA and involving complex issues such as goodwill and software revenue recognition, is no exception. *See* Greenstein Decl., ¶114-115.[8] Moreover, as set forth above and in the Greenstein Declaration, Lead Plaintiff faced severe risks to continued litigation, including successfully establishing falsity, scienter, loss causation and damages. *Id.* ¶¶78-87, 115; *see In re Magma Design Automation, Inc. Sec. Litig.*, Case No. 3:05-cv-02394-CRB,

[8] As retired Supreme Court Justice Sandra Day O'Connor aptly recognized, "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009). Similarly, retired Chief Judge Walker noted that the "heightened pleading requirement of the PSLRA and the application of *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 [(2005)], . . . which poses significant risks to plaintiffs' ability to survive . . . summary judgment and prevailing at trial," suggests that settlement is often prudent. *In re Portal Software, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 88886, at *8 (N.D. Cal. 2007).

slip op. at 3-4 (N.D. Cal. Mar. 27, 2009) (Ex. 1 hereto) (recognizing the "inherent difficulty of establishing liability and damages in securities litigation").[9] Lead Plaintiff also faced the risks inherent in taking a case to trial, where it is impossible to predict how a trier of fact will construe conflicting evidence and testimony. *See Fernandez v. Victoria Secret Stores, LLC*, 2008 U.S. Dist. LEXIS 123546, at *18-19 (C.D. Cal. 2008) ("Because both parties faced extended, expensive future litigation, and because both faced the very real possibility that they would not prevail, this factor supports approval of the settlement.").

Judging from the vigorous motion practice, the volume of documents produced in the initial stages of this Action and the disputes among the parties regarding the scope of discovery, resolving this case through continued litigation would have undoubtedly been a long and expensive endeavor. *See id*. ¶106, 119. Notably, despite litigating this case reasonably and efficiently, Lead Counsel has incurred expenses of over $860,000 to date. *Id*. ¶116; Kessler Decl. ¶8. Thus, the cost of completing merits discovery, expert discovery, summary judgment briefing, *Daubert* motion practice, preparation for trial, completing trial and the inevitable post-trial appeals, would be exorbitant. *IBEW Local 697 Pension Fund v. Int'l Game Tech., Inc*., 2012 U.S. Dist. LEXIS 151498, at *7 (D. Nev. 2012) ("The action was filed in 2009 and, but for the settlement, would require additional discovery, court intervention to resolve discovery disputes, extensive briefings, and possibly a protracted, expensive and lengthy trial in order to reach resolution.").

Moreover, this Action, if taken to trial, would have expended substantial party and judicial resources. *See Browne v. Am. Honda Motor Co.*, 2010 U.S. Dist. LEXIS 145475, at *36-38 (C.D. Cal. 2010) ("Had the parties aggressively litigated class certification and tried the case, it could have consumed substantial party and court resources. There is a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'"). As a result, and given the post-trial appeals that would likely follow, years could pass before the Settlement Class

[9] *See also In re Charles Schwab Corp. Sec. Litig*., 2011 U.S. Dist. LEXIS 44547, at *19 (N.D. Cal. 2011) ("[P]rosecuting these claims through trial and subsequent appeals would have involved significant risk, expense, and delay to any potential recovery . . . risks included proving loss causation and the falsity of the representations at issue.").

would receive a recovery, even if successful at trial. Under these circumstances, it is "proper to take the bird in hand instead of a prospective flock in the bush." *DIRECTV*, 221 F.R.D. at 526.

4. The Risk of Maintaining Class Action Status Throughout the Trial

A pending class certification motion may justify approval of a final settlement where, as here, the motion "may be outcome-determinative in itself[.]" *OmniVision*, 559 F. Supp. 2d at 1041. When the Settlement was reached, Lead Plaintiff's class certification motion—which the Settling Defendants vigorously opposed—was pending before the Court. Greenstein Decl., ¶¶55-61. The Settlement avoids any uncertainty with respect to certification and, thus, supports approval of the Settlement. *See OmniVision*, 559 F. Supp. 2d at 1041-42 ("If the Court were to refuse certification, the unrepresented potential plaintiffs would likely lose their chance at recovery entirely . . . As Defendants agree to the class certification for the purposes of the Settlement, there is much less risk of anyone who may have actually been injured going away empty-handed.").[10]

5. The Extent of Discovery Obtained and the Stage of the Proceedings

The stage of proceedings and the amount of information available to the parties to assess the strengths and weaknesses of their case is another factor that courts consider in determining the adequacy of a settlement. *See, e.g.*, *Mego*, 213 F.3d at 459; *In re Rambus Inc. Derivative Litig.*, 2009 U.S. Dist. LEXIS 131845, at *8 (N.D. Cal. 2009). Specifically, a settlement following sufficient discovery and investigation, and genuine arm's-length negotiations is presumed fair. *See DIRECTV*, 221 F.R.D. at 527 ("The extent of discovery may be relevant in determining the adequacy of the parties' knowledge of the case."). Given the significant discovery conducted and the stage of the litigation, Lead Counsel and Lead Plaintiff were both sufficiently familiar with the strengths and weaknesses of the case to make informed decisions regarding settlement.

[10] This factor would support Settlement even if the Court granted Lead Plaintiff's motion for class certification, as the Court may exercise its discretion to re-evaluate the appropriateness of class certification at any time. Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."); *see also OmniVision*, 559 F. Supp. 2d at 1041 ("[T]here is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class.").

As detailed in Section III of the Greenstein Declaration, the parties have been actively litigating this case since November 2012, during which time Lead Counsel has, among other things: (i) reviewed voluminous publicly available information regarding HP; (ii) conducted (through its investigators or agents) detailed investigative interviews of over 15 former HP and Autonomy employees and relevant witnesses; (iii) developed and filed a comprehensive amended complaint; (iv) conducted extensive research of the claims in this Action and the potential defenses thereto; (v) opposed eight motions to dismiss; (vi) consulted with multiple experts; (vii) researched and filed extensive class certification briefing, and expert market efficiency and damages analysis; (viii) responded to substantial discovery requests propounded by the Settling Defendants; (ix) deposed the Settling Defendants' economics expert and defended the depositions of Lead Plaintiff and its damages expert; (x) conducted significant discovery, including issuing substantial party and non-party discovery requests, engaging in numerous comprehensive meet-and-confer sessions with the Settling Defendants and the subpoenaed non-parties, and reviewing and analyzing approximately 80,000 pages of documents produced by the Settling Defendants and various non-party witnesses; and (xi) researched and briefed four separate discovery motions which were due to be filed had the Settlement not been reached. In addition, prior to reaching a resolution of this Action, the parties had engaged in settlement negotiations spanning the course of one year, including two formal mediation sessions with Judge Phillips. *Id*. ¶¶69-73.

In sum, the knowledge and insight gained by Lead Plaintiff and Lead Counsel following nearly three years of hard-fought litigation and year-long settlement negotiations confirm the reasonableness of the Settlement. Indeed, Lead Plaintiff and Lead Counsel were well-apprised of the strengths and weaknesses of the Settlement Class's claims, the Settling Defendants' defenses, and the likelihood of obtaining a larger recovery from the Settling Defendants had the Action continued towards trial. *See Immune Response*, 497 F. Supp. 2d at 1171 (finding even informal discovery and investigation sufficient for the parties to have a "clear view" of their case).[11]

[11] *See also Mego*, 213 F.3d at 459 (approving settlement where counsel "conducted significant investigation, discovery and research, [] presented the court with documentation supporting those services [and] . . . worked with damages and accounting experts throughout the litigation").

6. Experienced Counsel Supports Settlement

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *DIRECTV*, 221 F.R.D. at 528; *see also Nobles*, 2009 U.S. Dist. LEXIS 59435, at *6 (same). As this Court has held, "[w]hen class counsel is experienced and supports the settlement, and the agreement was reached after arm's length negotiations, courts should give a presumption of fairness to the settlement." *Ramirez*, 2014 U.S. Dist. LEXIS 56038, at *3. This is because "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *eBay*, 2015 U.S. Dist. LEXIS 118060, at *15.

Lead Counsel has extensive experience prosecuting complex securities class actions, is intimately familiar with the facts of this Action and believes that the Settlement is fair, reasonable, and in the best interests of the Settlement Class. *See* Greenstein Decl., ¶¶16, 76, 112.[12] Furthermore, "[b]oth Parties are represented by experienced counsel and their mutual desire to adopt the terms of the proposed settlement, while not conclusive, is entitled to great deal of weight." *Immune Response*, 497 F. Supp. 2d at 1174; *see id*. ¶112-113.

7. The Absence of Collusion Supports Settlement

The record shows that the Settlement is not a product of collusion. Indeed, "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell*, 2007 U.S. Dist. LEXIS 99066, at *17; *Vincent*, 2013 U.S. Dist. LEXIS 22341, at *12 (same).[13] Here, the parties' settlement negotiations were vigorously-contested, with the guidance of an experienced neutral, and the direct participation of Lead Plaintiff. *See* Greenstein Decl., ¶69-73.

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[12] Notably, Lead Counsel has litigated and recovered hundreds of millions of dollars in this District alone. *See, e.g., In re Wells Fargo Mortg. Backed Certificates Litig.*, 5:09-cv-01376-LHK (N.D. Cal. 2011) ($125 million); *In re Connetics Sec. Litig.*, 3:07-cv-02940-SI (N.D. Cal. 2009) ($12.75 million); *In re Brocade Sec. Litig.*, 3:05-cv-02042-CRB (N.D. Cal. 2009) ($160 million); *In re Marvell Tech. Grp. Ltd. Sec. Litig.*, 5:06-cv-6286-RMW (N.D. Cal. 2009) ($72 million). *See also* the firm resume of Kessler Topaz attached as Exhibit C to the Kessler Declaration.

[13] *See also Officers for Justice*, 688 F.2d at 627 (finding no collusion where the case had been aggressively litigated for several years, "the settlement proposal . . . was not hastily arrived at and . . . [t]he consent decree resulted only after long and careful negotiations"); *Hanlon*, 150 F.3d at 1027 (Proposed settlement was not collusive where there was "no evidence to suggest that the settlement was negotiated in haste or in the absence of information illuminating the value of

In particular, this Settlement was reached through the substantial assistance of a well-respected former federal judge, the Honorable Layn R. Phillips (Ret.). *Id.*[14] The parties engaged in two formal, in-person mediation sessions with Judge Phillips, and submitted comprehensive mediation briefs, reply papers and updated supplemental briefs. *Id.* At all times during the negotiations and drafting of the settlement papers, Lead Counsel zealously advocated for the best interests of the Settlement Class while counsel for the Settling Defendants fervently advanced their position. *See id.* But for the Settlement, Lead Counsel was prepared to continue prosecuting the Action to trial. *Id.* ¶5. In sum, as "[t]he arms-length, contentious negotiations that culminated in the settlement agreement indicate that the settlement was reached in a procedurally sound manner," there is "nothing in the record indicating any collusion or bad faith by the parties." *Portal*, 2007 U.S. Dist. LEXIS 88886, at *12.[15]

8. Reaction of the Settlement Class to the Proposed Settlement to Date

As of September 28, 2015, 680,679 copies of the Notice and Proof of Claim Form (together, the "Claim Packets") have been mailed to potential Settlement Class Members and nominees. Greenstein Decl., ¶75, 90; Fraga Aff., ¶11.[16] Pursuant to the Preliminary Approval Order and as set forth in the Notice, the deadline for Settlement Class Members to object to any aspect of the

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plaintiffs' claims."); *eBay*, 2015 U.S. Dist. LEXIS 118060, at *26 (same).

[14] *See, e.g.*, *Int'l Game Tech.*, 2012 U.S. Dist. LEXIS 151498, at *8 (Settlement was fair where it "was reached following arm's length negotiations between experienced counsel that involved the assistance of an experienced and reputable private mediator, retired Judge Phillips."); *High-Tech*, 2015 U.S. Dist. LEXIS 26635, at *7 (finding Judge Phillips to be "an experienced mediator"); *In re Bear Stearns Cos., Inc. Sec. Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (approving settlement where parties "engaged in extensive arm's length negotiations, which included multiple sessions mediated by retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases").

[15] Moreover, none of the three "signs of collusion" identified in *Bluetooth*, 654 F.3d at 947 are present here. First, Lead Counsel is not receiving a "disproportionate distribution of the settlement" nor will the "the class receive[] no monetary distribution." *Id.* Rather, the Settlement Class is receiving a Settlement that equals 26.5% of likely recoverable damages as estimated by Lead Plaintiff's damages expert, and Lead Counsel's requested attorneys' fees are well below the Ninth Circuit's 25% benchmark. Greenstein Decl., ¶¶77, 105. Second, the Stipulation does not contain a "clear sailing" provision, wherein a defendant agrees not to oppose a petition for a fee award. *Bluetooth*, 654 F.3d at 947; *Id.* ¶67. Third, unclaimed fees will not "revert to defendants rather than be added to the class fund." *Id.*

[16] To date, 4,819 Claim Packets have been returned as undeliverable. Fraga Aff., ¶11. Of this amount, 855 Claim Packets were re-mailed to updated addresses. *Id.*

Settlement, or to request exclusion from the Settlement Class, is October 14, 2015. Greenstein Decl., ¶92; Fraga Aff., ¶15. To date, there have been no objections, and only twelve requests for exclusion from the Settlement Class. *Id.*[17] These facts further demonstrate that the Settlement is fair and reasonable.

IV. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

The Court has broad discretion in approving a plan of allocation. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *37 (C.D. Cal. 2005). Such approval is governed by the same standard applicable to settlement approvals: the proposed plan must be fair, reasonable, and adequate. *See High-Tech*, 2015 U.S. Dist. LEXIS 118051, at *29-30. A plan of allocation that, for instance, "reimburses class members based on the extent of their injuries is generally reasonable." *Id.* at *29-30. Significantly, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *38. The Plan of Allocation here sufficiently meets these criteria.

The Plan, as fully set forth in Appendix A to the Notice, will govern the allocation of the Settlement Fund to eligible Settlement Class Members ("Authorized Claimants") after deduction of all appropriate taxes, administrative costs and Court-approved attorneys' fees and Litigation Expenses (the "Net Settlement Fund"). Greenstein Decl., ¶93. Each Authorized Claimant shall be allocated a percentage of the Net Settlement Fund based upon the relationship that each authorized claim bears to the total of all authorized claims as explained in the Plan. *Id.* ¶¶95, 98.[18] The Plan is designed to achieve an equitable and rational distribution of the Net Settlement Fund among those who suffered economic losses as a result of the alleged violations asserted in the Action. *Id.* ¶93. To date, there have been no objections to the Plan. *Id.* ¶100.

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[17] In GCG's experience, a large number of claims usually come in at or near the claim submission deadline which, in this case, is October 31, 2015. Fraga Aff., ¶¶16-17. As a result, GCG will provide the parties and the Court with claim filing information in their supplemental affidavit to be submitted in connection with Lead Plaintiff's reply papers, to be filed with the Court on or before November 3, 2015. *Id.* ¶17.

[18] *See High-Tech*, 2015 U.S. Dist. LEXIS 118051, at *29-30 (finding plan of allocation "fundamentally fair" and reasonable where the allocation was *pro rata* across the class).

The Plan also reflects Lead Plaintiff's damages theory of the case based upon extensive investigation and discovery. Indeed, in developing the Plan, Lead Counsel worked closely with a well-regarded damages expert. *Id*. ¶94. To have a loss under the Plan, a claimant must have purchased or otherwise acquired HP common stock during the Settlement Class Period and held such stock through August 22, 2012 or November 20, 2012. *Id*. ¶¶95-96.[19] Under the Plan, a claimant's "Recognized Loss Amount" takes into account the PSLRA's statutory limitation on recoverable damages, and reflects discounts taken for the specific risks related to each of the two corrective disclosures as analyzed by Lead Plaintiff's expert. *Id*. In addition, because the Court's dismissal of all claims related to allegedly false and misleading statements made between August 19, 2011 and May 22, 2012 made it far less likely that Lead Plaintiff could prevail on those claims, Recognized Loss Amounts for purchases and acquisitions made during this time period are heavily discounted to reflect the increased litigation risks associated with those claims. *Id*. ¶97; *see OmniVision*, 559 F. Supp. 2d at 1045 (finding it reasonable to "allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits").

Lead Plaintiff and its counsel believe that the Plan provides a fair and reasonable method to allocate the settlement proceeds among Authorized Claimants. *Id*. ¶100. Accordingly, Lead Plaintiff respectfully submits that the Plan warrants the Court's approval.

V. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully submits that the Settlement and Plan of Allocation are fair, reasonable, and adequate, and requests that this Court grant final approval of the Settlement and Plan of Allocation, and finally certify the Settlement Class as preliminarily certified in the Court's Preliminary Approval Order.

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[19] The Complaint alleges that after the close of trading on August 22, 2012, the price of HP common stock fell approximately 11.5% from a closing price of $19.47 on August 21, 2012, to a closing price of $17.23 on August 23, 2012. ECF No. 100, ¶¶214-16. It further alleges that following HP's announcement of the Autonomy write-down on November 20, 2012, the price of HP common stock declined from a close of $13.09 on November 19, 2012, to a close of $11.53 on November 20, 2012, representing a decline of nearly 11.92%. *Id*. ¶¶217-18.

DATED: September 29, 2015

Respectfully submitted,

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE MAGMA DESIGN AUTOMATION, INC. SECURITIES LITIGATION

No. C 05-02394 CRB

ORDER OF FINAL APPROVAL

THIS DOCUMENT RELATES TO ALL ACTIONS

This matter comes before the Court for final approval of the parties' stipulated settlement agreement and an application for attorneys' fees and costs. A final fairness hearing was held on December 5, 2008, and the Court requested a supplemental declaration from Plaintiffs, which was submitted on March 20, 2009. After considering the arguments made in the pleadings and at oral argument, the Court hereby GRANTS final approval of the settlement. The Court GRANTS the reimbursement of $945,345.69 in costs and GRANTS reimbursement of Lead Plaintiff Frank Weiler in the amount of $32,600. After subtracting those costs from the gross settlement fund, the Court GRANTS Plaintiffs' Counsel twenty percent of the remaining net settlement fund in attorneys' fees.

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BACKGROUND

Defendant Magma Design Automation, Inc. ("Magma") is a technology company that produces software used in the process of designing integrated circuits. Defendant Rajeev Madhavan served as Magma's CEO. Founded in 1997, Magma went public in November 2001. Plaintiffs allege that Defendants defrauded investors by issuing a series of materially false and misleading public statements which concealed Magma's misappropriation of its core technology from its chief competitor, Synopsys. The alleged misleading statements include earnings reports and risk disclosures issued throughout the Class Period, as well as statements in response to a suit filed by Synopsys against Magma in September 2004. Plaintiffs further allege that Madhavan engaged in insider trading throughout the Class Period: from October 23, 2002, the date of the first earnings announcement after the first relevant patent at issue was approved, through April 12, 2005, the day before Magma publicized a declaration by its chief scientist, van Ginneken, stating that material elements of the inventions he created at Synopsys provided the technical foundation for the Magma patents. On April 13, 2005, the press reported the contents of this declaration, causing Magma's stock to fall by forty percent.

This lawsuit was filed on June 13, 2005. On August 18th, 2006, the Court granted a motion to dismiss as to several defendants but denied it as to the current Defendants. On August 16, 2007, the Court certified the Class. The parties then filed cross-motions for summary judgment. The case was settled "minutes before the Court took the bench" to rule on those motions, with the mediation assistance of Judge Edward A. Infante.

The Plaintiff Class originally sought damages of approximately $60.8 million. Under the terms of the Settlement, Defendants have agreed to pay $13.5 million in cash for the benefit of the Class. The Plan of Allocation provides for a pro rata distribution of the Net Settlement Fund. On July 7, 2008, the Court issued a preliminary approval of the Settlement.. Over 22,000 Notices were sent to members of the Class, and Summary Notices were published in a national newspaper and over a national newswire. No objections have been filed. The final fairness hearing was held on December 5, 2008.

DISCUSSION

I. Approval of the Settlement and Plan of Allocation

Under Federal Rule of Civil Procedure 23(e), the "claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." In order to approve a final settlement in a class action, the Court must find that the proposed settlement is fundamentally fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In making such a determination the Court may consider, inter alia, the following factors: (1) the strength of plaintiffs' case; (2) the risk, expense, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. See Officers for Justice v. Civil Serv. Comm'n of City and County of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982). The Court has discretion in evaluating a proposed settlement, but its "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." Id.

The fair, reasonable, and adequate standard is met here. The Settlement was negotiated after the matter had proceeded through significant discovery and motions practice. Over two million pages of documents have been produced and numerous depositions have taken place. Counsel therefore had sufficient information to make an informed decision regarding the merits of the Settlement at this stage in the litigation.

The Settlement is also appropriate given the inherent difficulty of establishing liability and damages in securities litigation. The risks and certainty of recovery in continued litigation are factors for the Court to balance in determining whether the Settlement is fair. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000). Plaintiffs' claim has survived a motion to dismiss on issues of scienter and causation, but success is not guaranteed if this matter were to proceed to jury trial. In particular, there could be

reasonable disagreement regarding what portion of losses incurred by Class Members was attributable to Defendants' conduct in relation to general market conditions. Although the Class potentially could have achieved a greater recovery, the Class is acting within its reasoned judgment in opting to settle the matter now.

The amount agreed to by the parties is within the range of reasonableness. A settlement may be approved even when it amounts to only a small percentage of the recovery sought. See, e.g., In re Mego Fin. Corp., 213 F.3d at 459 (one-sixth of original request). "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." Officers for Justice, 688 F.2d at 628. The Plaintiff Class originally sought approximately $60.8 million, but has agreed to settle for $13.5 million. The Settlement amount is about twenty-two percent of the original request. There is no reason to find that the Settlement amount agreed upon here is unreasonable so as to trump the parties' agreement.

The Settlement Agreement resulted from arm's-length negotiations between experienced counsel. The recommendation of Plaintiff's counsel following extensive negotiations is entitled to great weight. See 4 Alba Conte & Herbert Newberg, Newberg on Class Actions § 11:47, at 145-46 (4th ed. 2002). This action has been litigated by competent counsel on both sides. Milberg LLP, representing the Plaintiff Class, is well known for its experience in class action litigation. Defendants are similarly well-represented by O'Melveny & Myers LLP. The Settlement came about only after both sides placed significant resources into negotiations and preliminary motions. The parties also engaged in extensive mediation.

It is worth noting that no objectors have come forward to challenge the Settlement. In accordance with the Court's preliminary order, the claims administrator has mailed over 22,000 Notices and Proof of Claim forms to potential Class Members. Notice was also published in the *Investor's Business Daily* and transmitted over the *Business Wire*. The lack of opposition further suggests that the Settlement as a fair, reasonable, and adequate resolution of this matter. The Settlement is hereby APPROVED.

The Court will also approve the Plan of Allocation. Assessment of a plan of allocation is governed by the same standard of review applicable to the settlement as a whole; the plan must be fair, reasonable, and adequate. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1284-85 (9th Cir. 1992).

The Plan of Allocation was devised by Plaintiff's Lead Counsel based on its damages expert's report. The proposed Plan attempts to return Class Members to the position they held before the fraudulent acts by compensating them for the difference between the purchase price they paid for Magma securities and their trading prices following the corrective disclosure. This method of distribution has been expressly approved by the Ninth Circuit. See In re Mego Fin. Corp., 213 F.3d at 460. Furthermore, the Plan of Allocation is consistent with the methods of calculating damages under the Private Securities Litigation Reform Act ("PSLRA") because it takes account of the partial rebound in the price of Magma stock following the end of the Class Period. Accordingly, the Plan of Allocation is hereby APPROVED.

II. Application for Attorneys' Fees and Reimbursement of Expenses

Plaintiffs seek (1) reimbursement of $945,345.69 in expenses; (2) reimbursement of the Lead Plaintiff in the amount of $32,600 for his costs and expenses relating to his representation of the Class; and (3) an award of attorneys' fees of thirty percent of the Settlement Fund

A. Reimbursement of Costs

Plaintiffs' Counsel seeks reimbursement of $945,345.69 in expenses. These expenses include (1) printing; (2) postage and notice costs; (3) messengers and express services; (4) filing and witness fees; (5) legal research; (6) experts and consultants; (7) transportation costs; and (8) fascimile charges. The Court finds these expenses are reasonable and the type typically billed by attorneys in the marketplace, see Harris v. Marhoefer, 24 F.3d 16, 19-20 (9th Cir. 1994), and therefore shall be reimbursed out of the common fund. Counsel's request for reimbursement of costs is hereby APPROVED.

B. Lead Plaintiff's Expenses

Lead Plaintiff Frank Weiler seeks $32,600 in reimbursement for his reasonable costs and expenses relating to his representation of the Class. Such recovery is permitted by § 21D(a)(4) of the PSLRA, 15 U.S.C. § 78u-4(a)(4). Weiler has submitted a declaration detailing his lost wages and hours spent in this matter. Weiler attended Court hearings, participated in his deposition, reviewed pleadings, and committed his schedule to attend the scheduled trial. Accordingly, the request for reimbursement for the Lead Plaintiff's expenses is APPROVED.

C. Attorneys' Fees

To the certain behest of Plaintiffs' Counsel, the appropriate award of attorneys' fees is the issue where the Court deviates from Counsel's proposal. Counsel seeks thirty percent of the Settlement in attorneys' fees, but the Court determines that twenty percent is an appropriate award.

Under Ninth Circuit law, reasonable attorneys' fees may be based upon a percentage of the fund recovered for the class. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002). The "bench mark" recovery for attorneys' fees is twenty-five percent. Paul, Johnson, Alston & Hunt v. Graulty, 886 F.2d 268, 272 (1989). "That percentage amount can then be adjusted upward or downward to account for any unusual circumstances involved in [the] case." Id. "Ordinarily, however, such fee awards range from twenty percent to thirty percent of the fund created." Id.

The Ninth Circuit has set forth five factors as pertinent to evaluating the reasonableness of a fee request: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of the work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. See Vizcaino, 290 F.3d at 1048-50. After looking at these factors, the Court determines that an award of twenty percent of the net settlement fund is appropriate.

Counsel contends it "achieved a significant recovery" for the Class, and therefore is entitled to a higher fee award. The Court agrees that recovery was adequate, but not so

extraordinary as to warrant a thirty percent fee award. Plaintiffs' Counsel recovered $13.5 million for the Class in a suit that originally sought $60.8 million. This recovery amounts to twenty-two percent of the initial damages request. In a supplemental declaration requested by the Court, the Claims Administrator represented that a preliminary review of the submitted claims suggested that claimants would be compensated for approximately fifteen percent of their losses. The Settlement is a "good result" so as to justify approval, but it is not so outstanding as to warrant higher fees.

The same is true of Counsel's reliance on the "risks of litigation" as a basis for its request. Counsel points to the difficulties of sustaining suits under the PSLRA, which made it more difficult for investors to bring securities class actions. Of course, all securities class action litigation entails serious risks. However, there is nothing about this suit in particular that was unusually uncertain so as to justify greater fees. Indeed, Plaintiffs survived an initial motion to dismiss on the issues of scienter and loss causation, and successfully certified the class. The Class' prospects were bright. The Court will not second-guess Plaintiffs' decision to settle at this point, but there was nothing so risky about this case that warrants a higher fee award.

Counsel further points to its extensive experience and skill as a reason to award it higher fees. Counsel suggests "[s]uch quality, efficiency and dedication by Plaintiffs' Lead Counsel should be rewarded." The Court does not doubt Counsel's extraordinary skill. The Court also appreciates the risks involved in taking on securities cases on a contingency basis. The Court is not convinced, however, that Counsel's reputation in the class action world justifies its fee request. An award of twenty percent in fees will adequately reward Counsel for its efforts.

Finally, Plaintiffs' Counsel cites to a litany of cases where courts have awarded higher fees. The Court recognizes that it has the discretion to award greater recovery to Counsel, if the circumstances so warrant. Of course, there are also many cases where courts have properly decided that a fee award of twenty percent is appropriate. See, e.g., Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1272 (D.C. Cir. 1993) ("The twenty percent figure is well

within the range of reasonable fees in common fund cases."); Schwartz v. Citibank, 50 Fed. Appx. 832, 836 (9th Cir. 2002) (upholding award of twenty percent); Jones v. Dominion Res. Servs., Inc., __ F. Supp. 2d __, 2009 WL 585782, *9 (S.D.W.Va. Mar. 6, 2009) (awarding twenty percent); In re KeySpan Corp. Sec. Litig., 2005 WL 3093399, *1 (E.D.N.Y. Sept. 30, 2005) (same).

Under the circumstances of this case, the Court holds a fee award of twenty percent is appropriate. As is always the Court's practice, attorneys' fees are to be calculated from the net settlement fund, after reimbursement of the other approved costs have already been subtracted from the gross settlement fund.

CONCLUSION

Based on the foregoing, the Court Hereby GRANTS final approval of the Settlement, GRANTS reimbursement of expenses in the amount of $945,345.69, GRANTS reimbursement of the Lead Plaintiff in the amount of $32,600, and GRANTS approval of twenty percent of the net settlement fund for attorneys' fees.

IT IS SO ORDERED.

Dated: March 27, 2009

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE