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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 In re UBIQUITI NETWORKS, INC.)
 SECURITIES LITIGATION)

Master File No. 12-cv-04677-YGR

17 _____)
)

CLASS ACTION

18 This Document Relates To:)

NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION

19 ALL ACTIONS.)

SETTLEMENT AND PLAN OF
ALLOCATION OF SETTLEMENT
PROCEEDS AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF

20 _____)
)

DATE: December 19, 2017

TIME: 2:00 p.m.

JUDGE: The Honorable Yvonne Gonzalez
Rogers, Oakland Courthouse,
Courtroom 1, 4th Floor

28

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1 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on December 19, 2017, at 2:00 p.m., in the Courtroom of the
3 Honorable Yvonne Gonzales Rogers, United States District Judge, at the United States District Court
4 for the Northern District of California, Oakland Division, 1301 Clay Street, Oakland, California
5 94621, Lead Plaintiffs Bristol County Retirement System and Inter-Local Pension Fund GCC/IBT
6 (“Lead Plaintiffs”) will respectfully move, pursuant to Fed. R. Civ. P. 23(e), for orders: (1) granting
7 final approval of the proposed Settlement of the Action; and (2) approving the proposed Plan of
8 Allocation for the net proceeds of the Settlement. Lead Plaintiffs’ motion is based on the following
9 Memorandum in support thereof; the Joint Declaration of Jonathan Gardner and Daniel J.
10 Pfefferbaum in Support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement
11 and Plan of Allocation and Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of
12 Expenses (“Joint Declaration” or “Joint Decl.”) with annexed exhibits; the Stipulation and
13 Agreement of Settlement, dated as of August 4, 2017 (ECF No. 113-1) (“Stipulation” or
14 “Settlement”)¹; all of the prior pleadings and papers in this Action; and such additional information
15 or argument as may be required by the Court.

16 **STATEMENT OF ISSUES TO BE DECIDED**

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

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. PRELIMINARY STATEMENT**

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

27 _____
28 ¹ All capitalized terms not defined herein shall have the same meanings set forth in the Stipulation.

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

12 From the outset, this case was carefully investigated and vigorously litigated. Defendants,
13 who are represented by some of the most experienced and formidable securities litigators in the
14 country, have asserted strong defenses, adamantly denied liability, convinced the Court to dismiss all
15 claims in the detailed Consolidated Amended Complaint for Violation of the Federal Securities Laws
16 (the "CAC"), and were firm in asserting their belief that Lead Plaintiffs could not prevail on the
17 claims under Sections 11 and 15 of the Securities Act of 1933 ("1933 Act") that remained after Lead
18 Plaintiffs' appeal to the Ninth Circuit Court of Appeals ("Ninth Circuit") of the Court's dismissal of
19 the CAC. While the case settled at a relatively early stage of the Action, a result consistent with the
20
21
22

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

27 ³ All exhibits herein are annexed to the Joint Declaration submitted herewith. For clarity, citations
28 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.

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

3 The Settlement was achieved only after Lead Counsel: (i) conducted a thorough and wide-
4 ranging investigation concerning the allegedly fraudulent misrepresentations/omissions made by
5 Defendants; (ii) prepared and filed a detailed CAC; (iii) researched and drafted an omnibus
6 opposition to Defendants' comprehensive motions to dismiss the CAC; (iv) prevailed, in part, on
7 their appeal to the Ninth Circuit of the Court's order granting Defendants' motions to dismiss the
8 CAC; (v) prepared and filed a detailed Consolidated Second Amended Complaint for Violations of
9 the Federal Securities Laws (the "SAC") following the Ninth Circuit's opinion and remand; and (vi)
10 engaged in extensive mediation efforts, which included the review and analysis of approximately
11 60,000 pages of core documents produced by Defendants prior to mediation, the exchange of
12 comprehensive mediation statements (with exhibits), a full-day mediation session, and follow-up
13 negotiations with the substantial assistance of Mr. Meyer.

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

25
26
27 ⁴ See *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn. 2005) (noting that early
28 resolution of the case is consistent with Rule 1 of the Federal Rules of Civil Procedure).

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

8 **II. THE STANDARDS GOVERNING JUDICIAL APPROVAL OF CLASS**
 9 **ACTION SETTLEMENTS**

10 It is well-established in the Ninth Circuit that "voluntary conciliation and settlement are the
 11 preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
 12 625 (9th Cir. 1982); *see also In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008)
 13 ("[T]he court must also be mindful of the Ninth Circuit's policy favoring settlement, particularly in
 14 class action law suits."). Class actions readily lend themselves to compromise because of the
 15 difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. It is
 16 beyond question that "the public has an overriding interest in securing 'the just, speedy, and
 17 inexpensive determination of every action.'" *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*,
 18 460 F.3d 1217, 1227 (9th Cir. 2006);⁵ Fed. R. Civ. P. 1. It is also beyond question that "there is an
 19 overriding public interest in settling and quieting litigation," and this is "particularly true in class
 20 action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Util.*
 21 *Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).⁶

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

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

26 ⁶ The law consistently favors the compromise of disputed class action claims. *See Williams v.*
 27 *First Nat'l Bank*, 216 U.S. 582, 595 (1910); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir.
 28 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).

1 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The
2 Ninth Circuit has provided factors that may be considered in evaluating the fairness of a class action
3 settlement:

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

14 *Officers for Justice*, 688 F.2d at 625; accord *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375
15 (9th Cir. 1993); *Woo v. Home Loan Grp., L.P.*, No. 07-CV-202 H (POR), 2008 WL 3925854, at *3
16 (S.D. Cal. Aug. 25, 2008). Courts have also considered "the role taken by the lead plaintiff in [the
17 settlement] process, a factor somewhat unique to the PSLRA." *In re Postal Software, Inc. Sec.*
18 *Litig.*, No. 03-5138 VRW, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007). "The relative
19 degree of importance to be attached to any particular factor will depend upon . . . the nature of the
20 claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by
21 each individual case." *Woo*, 2008 WL 3925854, at *3 (quoting *Officers for Justice*, 688 F.2d at
22 625).

23 The district court must exercise "sound discretion" in approving a settlement. *Ellis v. Naval*
24 *Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Torrisi*,
25 8 F.3d at 1375. In exercising its discretion:

26 the court's intrusion upon what is otherwise a private consensual agreement
27 negotiated between the parties to a lawsuit must be limited to the extent necessary to
28 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.

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

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

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

3 *Id.* (emphasis in original).

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

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

19 **III. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND**
20 **ADEQUATE**

21 **A. The Settlement Enjoys a Presumption of Reasonableness Because It Is**
22 **the Product of Arm’s-Length Settlement Negotiations**

23 The Settlement, which was negotiated between the Parties with the substantial assistance of
24 Mr. Meyer, provides a substantial and certain cash benefit to the Settlement Class in the amount of
25 \$6,800,000. The Ninth Circuit “put[s] a good deal of stock in the product of an arms-length, non-
26 collusive, negotiated resolution” in approving a class action settlement. *Rodriguez v. W. Publ’g*
27 *Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Here, the Settlement enjoys a presumption of fairness
28 because it is the product of arm’s-length negotiations conducted by experienced and capable counsel

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

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

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

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

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

3 **1. The Strength of Lead Plaintiffs’ Case Supports Final Approval**
4 **When Balanced Against the Risks of Continued Litigation**

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

8 In other words:

9 “The Court shall consider the vagaries of litigation and compare the significance of
10 immediate recovery by way of the compromise to the mere possibility of relief in the
11 future, after protracted and expensive litigation. In this respect ‘It has been held
12 proper to take the bird in hand instead of a prospective flock in the bush.’”

13 *Nat’l Rural*, 221 F.R.D. at 526.

14 As in every complex case of this kind, Lead Plaintiffs faced formidable obstacles to recovery
15 if the Action were to continue. The remaining claims in the Action are based upon Sections 11 and
16 15 of the 1933 Act. Section 11 of the 1933 Act creates a private remedy for any purchase of a
17 security if “any part of the registration . . . contain[s] an untrue statement of a material fact or omit[s]
18 to state a material fact required to be stated therein or necessary to make the statements therein not
19 misleading.” 15 U.S.C. §77k(a).

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

1 **a. Risks of Establishing Liability**

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

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

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

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

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

13 While Lead Plaintiffs believe they would be successful at summary judgment and
14 subsequently at trial, they also recognize that Defendants would put up a vigorous defense and there
15 were significant hurdles to proving Defendants' liability. *See Destefano v. Zynga, Inc.*, No. 12-cv-
16 04007-JSC, 2016 WL 537946, at *10 (N.D. Cal. Feb. 11, 2016) (approving settlement and noting
17 that the risks of proving liability weigh in favor of approval where proving the falsity of the alleged
18 misstatements will be difficult).

19 **b. Risks of Establishing Damages**

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

1 The amount of damages incurred by Settlement Class Members would be vigorously
2 disputed at trial. The determination of damages is a complicated and uncertain process involving
3 conflicting expert testimony. Expert testimony rests on many subjective assumptions that a jury
4 could reject as speculative or unreliable. The reaction of a jury to battling expert testimony is highly
5 unpredictable. *See, e.g., Nguyen v. Radiant Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx),
6 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014) (approving settlement in securities case where
7 “[p]roving and calculating damages required a complex analysis, requiring the jury to parse
8 divergent positions of expert witnesses in a complex area of the law” and “[t]he outcome of that
9 analysis is inherently difficult to predict and risky”) (citation omitted); *In re Warner Commc’ns Sec.*
10 *Litig.*, 618 F. Supp. 735, 744 (S.D.N.Y. 1985) (approving settlement where “it is virtually impossible
11 to predict with any certainty which testimony would be credited, and ultimately, which damages
12 would be found to be caused by actionable, rather than the myriad of nonactionable factors such as
13 general market conditions”), *aff’d*, 798 F.2d 35 (2d Cir. 1986). Lead Counsel recognize the
14 possibility that a jury could be swayed by convincing experts for the Defendants, and find that there
15 were little or no damages. *See, e.g., In re Veeco Instruments Sec. Litig.*, No. 05 MDL 0165 (CM),
16 2007 U.S. Dist. LEXIS 85629, at *30 (S.D.N.Y. Nov. 7, 2007) (“The jury’s verdict with respect to
17 damages would depend on its reaction to the complex testimony of experts, a reaction which at best
18 is uncertain.”); *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007)
19 (“even if the jury agreed to impose liability, the trial would likely involve a confusing ‘battle of the
20 experts’ over damages”).

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

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

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

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

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

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

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

1 As the securities claims advanced, they would involve complex legal and factual issues,
2 substantial additional document discovery, numerous depositions, and expert discovery and
3 testimony. Moreover, the expense and duration of trying the case before a jury would be significant,
4 and there is no question that this Action would be litigated for years at significant expense without
5 any guarantee that the recovery for the Settlement Class would be better than the current \$6.8 million
6 Settlement. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318
7 (3d Cir. 1998) (settlement was favored where “the trial of this class action would be a long, arduous
8 process requiring great expenditures of time and money on behalf of both the parties and the court”).

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

18 3. The Risk of Maintaining Class Action Status Through Trial 19 Supports Final Approval of the Settlement

20 While Lead Plaintiffs are confident that they would have prevailed on their yet to be filed
21 motion for class certification, it is likely that Defendants would have vigorously contested such
22 motion, with the outcome of such a contested motion far from certain. Even if Lead Plaintiffs
23 prevailed, it is likely that Defendants would have filed a Rule 23(f) petition for an interlocutory
24 appeal of the decision. Even if Lead Plaintiffs defeated Defendants’ Rule 23(f) petition, under Rule
25 23(c)(1)(C), a Court’s prior grant of certification “may be altered or amended before final
26 judgment.” It is possible, therefore, that the class could be decertified or modified if the litigation
27 were to continue. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008)

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

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

5 In evaluating the fairness of a settlement, a fundamental question is how the value of the
6 settlement compares to the amount the class potentially could recover at trial, discounted for risk,
7 delay and expense. In this regard, “[i]t is well-settled law that a cash settlement amounting to only a
8 fraction of the potential recovery does not per se render the settlement inadequate or unfair.” *Mego*,
9 213 F.3d at 459 (citation omitted). Indeed, “[t]here is a range of reasonableness with respect to a
10 settlement – a range which recognizes the uncertainties of law and fact in any particular case and the
11 concomitant risks and costs necessarily inherent in taking any litigation to completion[.]” *Wal-Mart*
12 *Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005).

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

21 Courts have generally approved settlements in cases since the passage of the Private
22 Securities Litigation Reform Act of 1995 (“PSLRA”) that recover a far smaller percentage of
23 maximum damages. *See, e.g., McPhail v First Command Fin. Planning, Inc.*, No. 05cv179-IEG-
24 JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a \$12 million settlement recovering
25 7% of estimated damages was fair and adequate); *Int’l Bd. of Elec. Workers Local 697 Pension Fund*
26 *v. Int’l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct.

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

1 19, 2012) (approving \$12.5 million settlement recovering about 3.5% of the maximum damages that
2 plaintiffs believe could be recovered at trial and noting that the amount is within the median
3 recovery in securities class actions settled in the last few years).

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

6 While the Settlement comes before the start of formal discovery, both the knowledge of Lead
7 Counsel and the proceeding itself have reached a stage where an intelligent evaluation of the Action
8 and the propriety of settlement could be made. *See Officers for Justice*, 688 F.2d at 625; *Mego Fin.*,
9 213 F.3d at 458. As discussed above and in the Joint Declaration, Lead Counsel conducted an
10 extensive investigation of the facts alleged, reviewed and analyzed pleadings and internal Company
11 documents from the Kozumi litigation, reviewed and analyzed witness accounts, consulted with
12 experts on damages, fully briefed Defendants' motions to dismiss and the appeal to the Ninth
13 Circuit, and reviewed and analyzed some 60,000 pages of core documents produced by Defendants
14 prior to the mediation. The Parties also participated in extensive settlement negotiations, including
15 an all-day mediation session where the parties' claims and defenses were fully vetted. Prior to the
16 mediation, the Parties submitted to Mr. Meyer and exchanged detailed mediation statements (with
17 exhibits), which further highlighted the factual and legal issues in dispute. As a result, Lead Counsel
18 were able to assess the strengths and weaknesses of the claims asserted and resolve the Action on a
19 highly favorable basis for the Settlement Class. *See Mego Fin.*, 213 F.3d at 459 (“formal discovery
20 is not a necessary ticket to the bargaining table” where the parties have sufficient information to
21 make an informed decision about settlement”); *see also Zynga*, 2016 WL 537946, at *12 (noting
22 that the extent of discovery completed and stage of proceedings supports final approval of settlement
23 where plaintiffs engaged in a pre-filing investigation, opposed defendants' motions to dismiss and a
24 motion for reconsideration, worked with consultants, propounded and responded to some discovery,
25 and prepared and participated in mediation session); *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-
26 cv-09405-CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement
27 where record established that “all counsel had ample information and opportunity to assess the
28 strengths and weaknesses of their claims and defenses”); *Redwen v. Sino Clean Energy, Inc.*, No. 11-

1 3936, 2013 U.S. Dist. LEXIS 100275, at *22 (C.D. Cal. July 9, 2013) (settlement approved when, as
 2 here, “the parties have spent a significant amount of time considering the issues and facts in this case
 3 and are in a position to determine whether settlement is a viable alternative”).

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

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

12 Lead Counsel, having carefully considered and evaluated, *inter alia*, the relevant legal
 13 authorities and evidence to support the claims asserted against Defendants, the likelihood of
 14 prevailing on these claims, the risk, expense, and duration of continued litigation, and the likely
 15 appeals and subsequent proceedings necessary even if Lead Plaintiffs did prevail against Defendants
 16 at trial, have concluded that the Settlement is a highly favorable result for the Settlement Class.
 17 Lead Counsel are highly skilled and have significant experience in securities class action litigation.
 18 *See* www.rgrdlaw.com, www.labaton.com. As a result, “[t]here is nothing to counter the
 19 presumption that Lead Counsel’s recommendation is reasonable.” *Omnivision*, 559 F. Supp. 2d at
 20 1043.

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

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

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

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

19 **IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE**

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

22 Assessment of a plan of allocation of settlement proceeds in a class action under Rule 23 of
23 the Federal Rules of Civil Procedure is governed by the same standards of review applicable to the
24 settlement as a whole – the plan must be fair and reasonable. *See Class Plaintiffs v. Seattle*, 955 F.2d
25 1268, 1284 (9th Cir. 1992); *Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only
26 have a reasonable, rational basis, particularly if recommended by experienced and competent class
27

28

1 counsel. *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594403, at *11 (C.D. Cal. June
2 10, 2005).

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

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

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

28

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

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

25 Consumer Federation of America (CFA) is a non-profit, consumer advocacy organization
26 established in 1968 to advance consumer interests through policy research, advocacy, and education
27 before the judiciary, Congress, the White House, federal and state regulatory agencies, and state
28

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

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

11 The Court previously granted preliminary certification to the Settlement Class under Rules
12 23(a) and (b)(3). *See* Preliminary Approval Order, ¶¶3-4. Because nothing has occurred since then
13 to cast doubt on the propriety of class certification for settlement purposes, and no objections have
14 been received to date, the Court should grant final class certification.

15 **VI. CONCLUSION**

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

18 DATED: November 13, 2017

Respectfully submitted,

19 **LABATON SUCHAROW LLP**
20 JONATHAN GARDNER
21 MICHAEL P. CANTY
22 ROGER W. YAMADA

23 */s/Jonathan Gardner*
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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

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

2 *In re Ubiquiti Networks, Inc. Securities Litigation*

3 **Electronic Mail Notice List**

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

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22 **Manual Notice List**

23 The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case
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