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14

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

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

Master File No. 12-cv-04677-YGR

18

) CLASS ACTION

19 This Document Relates To:)

) REPLY MEMORANDUM OF POINTS AND
) AUTHORITIES IN FURTHER SUPPORT OF
 20) LEAD PLAINTIFFS' MOTION FOR FINAL
) APPROVAL OF CLASS ACTION
 21) SETTLEMENT AND PLAN OF
) ALLOCATION AND LEAD COUNSEL'S
 22) MOTION FOR AN AWARD OF
) ATTORNEYS' FEES AND EXPENSES

20 ALL ACTIONS.)

21

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23

DATE: December 19, 2017
 TIME: 2:00 p.m.
 JUDGE: The Honorable Yvonne Gonzalez
 Rogers, Oakland Courthouse,
 Courtroom 1, 4th Floor

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28 MASTER FILE NO. 12-CV-04677-YGR
 REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS
 ACTION SETTLEMENT AND PLAN OF ALLOCATION AND MOTION FOR AN AWARD OF ATTORNEYS'
 FEES AND EXPENSES

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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24
25
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27
28

	Page
I. PRELIMINARY STATEMENT	1
II. ARGUMENT	2
A. The Reaction of the Settlement Class Strongly Supports Approval of the Settlement and Plan of Allocation	2
1. Keane Objection to Plan of Allocation	3
B. The Lack of Objections Supports the Reasonableness of the Requested Attorneys’ Fees and Expenses	4
III. CONCLUSION.....	4

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Pursuant to Rules 23(e) and 54 of the Federal Rules of Civil Procedure, Court-appointed
4 Lead Plaintiffs Bristol County Retirement System and Inter-Local Pension Fund GCC/IBT
5 (“Lead Plaintiffs”), on behalf of the Settlement Class,¹ through their undersigned counsel,
6 respectfully submit this reply memorandum in further support of (i) Lead Plaintiffs’ Motion for
7 Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds (ECF
8 No. 125), and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Expenses (ECF
9 No. 126).

10 Now that the November 27, 2017 deadline for objections and exclusions has passed, Lead
11 Plaintiffs and Lead Counsel respectfully submit that the reaction of the Settlement Class to the
12 Settlement, Plan of Allocation, and Lead Counsel’s motion for attorneys’ fees and litigation
13 expenses has been overwhelmingly positive. Approximately 16,900 notice packets have been
14 mailed to potential Settlement Class members or their nominees as of December 5, 2017. *See*
15 Supplemental Affidavit of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of
16 Claim Form; and (B) Report on Requests for Exclusion, dated December 5, 2017 (“Supp.
17 Mailing Aff.”) ¶ 2, filed herewith. *No one* has objected to the Settlement or the requested
18 attorney’s fees and expenses, and there has been only *one* objection to the Plan of Allocation,
19 which should be overruled as discussed below. In addition, *no one* has requested exclusion from
20 the Settlement Class. *Id.* ¶ 3. As a result, Lead Plaintiffs and Lead Counsel respectfully submit
21 that the reaction of the Settlement Class strongly supports approval of the Settlement, the Plan of
22 Allocation, and the requested attorneys’ fees and expenses.

23 In addition to reporting the reaction of the Settlement Class, submitted herewith are tables
24 of settlement and fee-related data compiled by Lead Counsel from 10 securities settlements that
25

26 ¹ Capitalized terms not otherwise defined herein have the meanings set forth and defined in the
27 Stipulation and Agreement of Settlement, dated as of August 4, 2017 (ECF No. 113-1, the
“Stipulation”).

1 have been distributed to eligible class members, and one table summarizing the fee and expense
2 request in the instant case. See Exhibit 1 to Reply Declaration of Jonathan Gardner, dated
3 December 5, 2017 (“Reply Decl.”), submitted herewith. Although the Court did not request this
4 data at the September 5, 2017 preliminary approval hearing, Lead Counsel are aware of the
5 Court’s interest in this area and such a request recently was made of Labaton Sucharow LLP in
6 an unrelated case now pending before the Court.

7 **II. ARGUMENT**

8 **A. The Reaction of the Settlement Class Strongly Supports** 9 **Approval of the Settlement and Plan of Allocation**

10 The reaction of a class to a settlement is a significant factor in assessing its fairness and
11 adequacy. Indeed, “the absence of a large number of objections to a proposed class action
12 settlement raises a strong presumption that the terms of a proposed class settlement action are
13 favorable to the class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043
14 (N.D. Cal. 2008); *Destefano v. Zynga Inc.*, No. 12-cv-04007-JSC, 2016 WL 537946, at *10
15 (N.D. Cal. Feb. 11, 2016) (same). “Put another way, a ‘court may appropriately infer that a class
16 action settlement is fair, adequate, and reasonable when few class members object to it.’” *Id.*
17 (quoting *Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *5 (N.D.
18 Cal. July 11, 2014).

19 Here, no Settlement Class Member has objected to the Settlement. The absence of
20 objections to a settlement “speaks volumes with respect to the overwhelming degree of support
21 for the Proposed Settlement among the Class Members. That unanimous, positive reaction to the
22 Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable
23 and adequate.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.
24 Cal. 2004); see also *Arnold v. Fitflop USA, LLC*, No. 11-CV-0973 W(KSC), 2014 WL 1670133,
25 at *8 (S.D. Cal. Apr. 28, 2014) (reaction to the settlement “presents the most compelling
26 argument favoring settlement” where only one objection was filed “indicating that the vast
27

1 majority of Class Members and other concerned parties are likely satisfied with the resolution of
2 this case”).

3 Similarly, the fact that no requests for exclusion have been received in response to the
4 mailing of 16,944 Notices further supports approval of the Settlement. *See, e.g., Zynga, Inc.*,
5 2016 WL 537946, at *10 (noting that a low number of exclusions supports the reasonableness of
6 a securities class action settlement).

7 In addition, the fact that there has only been one objection to the Plan of Allocation,
8 which should be overruled for the reasons discussed below, supports its approval. *See Atlas v.*
9 *Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4
10 (S.D. Cal. Nov. 4, 2009) (noting the “predominantly positive response” to the plan of allocation
11 where only two objections to it were submitted).

12 **1. Keane Objection to Plan of Allocation**

13 Joseph Keane, who appears to be a member of the Settlement Class, has submitted an
14 objection to the proposed Plan of Allocation (ECF No. 129). *See also* Reply Decl. Exhibit 2.
15 Mr. Keane objects to the fact that the Recognized Loss formulas, in Section B of the Plan
16 appearing on page 8 of the Notice (ECF No. 127-3), cap purchase prices at the \$15.00 per share
17 IPO price. The formulas do not use purchase prices that are greater than \$15.00 per share and
18 Mr. Keane purchased 500 shares at \$32.85 and 500 shares at \$34.80. *See* Exhibit 2. He writes,
19 “Using the \$15 IPO price as a purchase price cap doesn’t fairly and fully reflect the actual
20 purchase prices.” *Id.* He sold his shares for a trading loss.

21 “The adequacy of a plan of allocation is governed by the same standards of review
22 applicable to the settlement as a whole—the plan must be fair, reasonable, and adequate.” *Atlas*,
23 2009 WL 3698393, at *4. While it is true that the Plan of Allocation formulas do not fully
24 reflect actual purchase prices, this is because the plan applies the statutory damages provisions of
25 Section 11 of the 1933 Act. The 1933 Act also caps purchase prices at the IPO price:

26 The suit authorized under subsection (a) may be to recover such
27 damages as shall represent the difference between *the amount paid*
for the security (not exceeding the price at which the security was

1 *offered to the public*) and (1) the value thereof as of the time such
2 suit was brought, or (2) the price at which such security shall have
3 been disposed of in the market before suit, or (3) the price at which
4 such security shall have been disposed of after suit but before
5 judgment if such damages shall be less than the damages
6 representing the difference between the amount paid for the
7 security (not exceeding the price at which the security was offered
8 to the public) and the value thereof as of the time such suit was
9 brought. . .

7 *See* 15 U.S.C. 77k(e) (emphasis added). Accordingly while Mr. Keane may object that his
8 purchase prices are not *fully* reflected, they are *fairly* reflected because the formulas follow the
9 statutory framework that would have governed class members' recoveries had the case
10 proceeded to trial. Mr. Keane is essentially objecting to the fact that he is not going to receive
11 his trading losses, but that is not the appropriate measure of loss in a Section 11 case.

12 Because the Plan of Allocation follows the statutory framework for establishing damages
13 under the 1933 Act, it is respectfully submitted that it provides a fair, reasonable, and adequate
14 process for determining claims and Mr. Keane's objection should be overruled.

15 **B. The Lack of Objections Supports the Reasonableness
16 of the Requested Attorneys' Fees and Expenses**

17 Not one Settlement Class Member has objected to Lead Counsel's motion for an award of
18 attorneys' fees and payment of litigation expenses. The fact that there have been no objections is
19 strong evidence that the requested fee is fair and reasonable. *See, e.g., Zynga*, 2016 WL 537946,
20 at *18 ("the lack of objection by any Class Members also supports the 25 percent fee"); *In re*
21 *Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) ("the lack of
22 objection from any Class Member supports the attorneys' fees award").

23 **III. CONCLUSION**

24 For the reasons set forth above and in Lead Plaintiffs' and Lead Counsel's November 13,
25 2017 submissions, Lead Plaintiffs and Lead Counsel respectfully request that the Court issue the
26 proposed Final Order and Judgment, submitted herewith; issue the proposed Order Approving
27 Plan of Allocation, submitted herewith; and issue the proposed Order Awarding Attorney's Fees

1 and Expenses, submitted herewith. On December 12, 2017, Lead Plaintiffs will file a submission
2 reporting on the Claims received to date.

3 DATED: December 5, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 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 December 5, 2017

/s/ Jonathan Gardner
JONATHAN GARDNER

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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
24 (who therefore require manual noticing).

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