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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

IN RE HEWLETT-PACKARD COMPANY SECURITIES LITIGATION	Case No. SACV 11-1404 AG (RNBx) **LEAD PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION** Judge: Hon. Andrew J. Guilford Dept.: Courtroom 10D Hearing Date: September 15, 2014 Hearing Time: 10:00 a.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

RULES & STATUES

OTHER AUTHORITY

I. PRELIMINARY STATEMENT

Lead Plaintiffs Arkansas Teacher Retirement System, Union Asset Management Holding AG, Labourers' Pension Fund of Central and Eastern Canada, LIUNA National (Industrial) Pension Fund, and LIUNA Staff & Affiliates Pension Fund (collectively, "Lead Plaintiffs"), respectfully submit this memorandum of law in support of their motion, pursuant to Fed. R. Civ. P. 23(e), for final approval of the settlement of this Action (the "Settlement") on the terms set forth in the Stipulation and Agreement of Settlement, dated as of March 31, 2014 (the "Stipulation"),[1] which was preliminarily approved by the Court on May 2, 2014. ECF No. 153.

The Settlement provides for the payment, on behalf of Defendants[2], of $57 million in cash and, if approved by the Court, will resolve this matter in its entirety. The Settlement is the result of extensive arm's-length negotiations between the parties with the assistance of The Honorable Judge Layn Phillips (Ret.) ("Judge Phillips"), a highly respected and experienced mediator. As discussed herein and in the Joint Declaration of Jonathan Gardner and Gregg S. Levin in Support of (a) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (b) Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Joint Declaration"), Lead Plaintiffs and their counsel have obtained an excellent result for the Settlement Class.[3]

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[1] All capitalized terms used herein are defined in the Stipulation and have the same meaning as set forth therein.

[2] "Defendants" means Hewlett-Packard Company ("HP" or the "Company"), Léo Apotheker ("Apotheker"), and R. Todd Bradley ("Bradley").

[3] The Court is respectfully referred to the accompanying Joint Declaration for a more detailed history of the Action, the extensive efforts of Plaintiffs' Counsel, and the factors bearing on the reasonableness of the Settlement, Plan of Allocation of Settlement proceeds, and Plaintiffs' Counsel's request for an award of attorneys' fees and expenses.

This case was carefully investigated and vigorously litigated. Defendants asserted strong defenses, adamantly denied liability, and were firm in their belief that Lead Plaintiffs could not prevail. Plaintiffs' Counsel spent a considerable amount of time and resources on this case. The Settlement was achieved only after Plaintiffs' Counsel: (i) conducted a thorough pre-filing investigation of Lead Plaintiffs' claims, including reviewing and analyzing publicly available information and data concerning HP, interviewing almost 60 former HP employees and other persons with relevant knowledge after locating almost 200 potential witnesses and contacting more than 150 of them, and consulting with experts in the technology, web-based data, and communications industries, as well as forensic econometric experts in damages evaluation and related causation issues in shareholder securities actions; (ii) filed a detailed first amended complaint; (iii) briefed and argued in opposition to Defendants' first motion to dismiss; (iv) filed a detailed second amended complaint after further investigation; (v) briefed and argued in opposition to Defendants' second motion to dismiss; (vi) conducted months of intense, focused, and extensive discovery, which involved obtaining, reviewing, and analyzing more than 314,000 pages of core documents produced by Defendants; and (vii) prepared for and attended mediation with Judge Phillips. *See generally* Joint Decl. During the settlement negotiations, Lead Plaintiffs made it clear that, while they were prepared to fairly assess the strengths and weaknesses of their case, they would continue to litigate rather than settle for less than an amount that was in the Settlement Class's best interest.

The Settlement takes into account the specific risks and obstacles that Lead Plaintiffs and the Settlement Class would face if litigation were to continue. Plaintiffs' Counsel are highly experienced in prosecuting securities class actions, and have concluded that the Settlement is an excellent recovery. This conclusion is based on, among other things, the substantial and certain recovery obtained

when weighed against the significant risk, expense, and delay presented in continuing the Action through the completion of discovery, class certification, motion(s) for summary judgment, trial, and probable post-trial motions and appeal(s); a complete analysis of the facts adduced to date; past experience in litigating complex actions similar to the present Action; and the serious disputes between the parties concerning the merits and damages. *Id*. Section VI.

Accordingly, Lead Plaintiffs respectfully request that the Court: (i) finally approve the Settlement by entry of an order substantially in the form of the proposed Order and Final Judgment (the "Judgment"), which was negotiated by the Settling Parties as an Exhibit to the Stipulation;[4] (ii) find that notice to the Settlement Class was provided as required and to the satisfaction of due process and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), 15 U.S.C. §§ 78u-4 *et seq*.; (iii) finally certify, for settlement purposes only, the Settlement Class of all non-excluded Persons who purchased the publicly traded common stock of HP in the open market during the period between November 22, 2010 through August 18, 2011, inclusive, and were damaged thereby; (iv) appoint Lead Plaintiffs as Class Representatives and Co-Lead Counsel as Class Counsel; and (v) approve the Plan of Allocation for distributing the Net Settlement Fund.

A. History Of The Litigation

This Action began on September 13, 2011, when an initial class action complaint alleging violations of the federal securities laws against Defendants, captioned *Gammell v. Hewlett-Packard Company*, No. SACV 11-1404 AG

[4] Pursuant to local rule, the proposed Judgment is being filed herewith. However, because the August 25, 2014 deadline for exclusion requests and objections has not passed, a revised proposed Judgment will be re-submitted to the Court on or before September 8, 2014, together with Lead Plaintiffs' reply papers in further support of approval of the Settlement, in order to accurately reflect objections and a table of timely and valid exclusion requests.

(RNBx), was filed in this Court. By Order entered December 19, 2011, the Court appointed the Lead Plaintiffs, and approved Lead Plaintiffs' selection of Labaton Sucharow LLP ("Labaton Sucharow") and Motley Rice LLC ("Motley Rice") to serve as Co-Lead Counsel. ECF No. 42 at 5.

On February 10, 2012, Lead Plaintiffs filed the First Amended Class Action Complaint for Violation of the Federal Securities Laws (the "FAC"). ECF No. 45. The FAC was based upon Plaintiffs' Counsels' extensive factual investigation, which included, among other things: (i) review and analysis of documents filed by HP with the SEC; (ii) review and analysis of press releases, news articles, and other public statements issued by or concerning HP; (iii) review and analysis of research reports issued by financial analysts concerning HP's securities and business; (iv) locating and contacting dozens of former HP employees and witnesses, the accounts of four of whom were included in the FAC as confidential witness accounts; and (v) review and analysis of news articles, media reports, and other publications concerning the "web," the "cloud," and related web-based information, including such topics as notebooks, smartphones, and PCs. Joint Decl. ¶ 19.

The FAC alleged that Defendants made materially false and misleading statements regarding HP's mobile operating system, webOS, and the Company's ability to develop and extend webOS across an "ecosystem" of tablets, smartphones, personal computers ("PCs"), and printers. FAC ¶ 7. The FAC alleged that these misrepresentations rendered Defendants' Class Period public statements and the Company's periodic reports filed with the SEC materially false and misleading in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder. *Id.* ¶¶ 216-30. The FAC further alleged that, as a result of Defendants'

misrepresentations, the price of HP's common stock was artificially inflated during the Class Period. *Id*. ¶ 180.

On August 29, 2012, after extensive briefing and oral argument, the Court granted Defendants' motion to dismiss the FAC in its entirety. ECF No. 82; Joint Decl. ¶ 28. The Court permitted Lead Plaintiffs to file an amended pleading. On October 19, 2012, Lead Plaintiffs filed a Second Amended Class Action Complaint for Violation of the Federal Securities Laws (the "Complaint"). ECF No. 89. The Complaint was bolstered by the accounts of numerous additional confidential witnesses. Joint Decl. ¶ 34. That pleading focused on Defendants' repeated statements during the putative class period that HP had invested in, and currently possessed, the technological and operational capability to expand its nascent webOS "mini-ecosystem" (consisting of the TouchPad and two smartphones) to a full-fledged ecosystem of hundreds of millions of "seamlessly" connected webOS-enabled PCs and printers, all within the short timeframe of less than two years. *Id.* ¶ 36.

Defendants moved to dismiss the Complaint on December 3, 2012. ECF No. 96. On May 8, 2013, after extensive briefing and oral argument (*see* Joint Decl. ¶¶ 35-39), the Court granted in part and denied in part Defendants' motion, finding that Lead Plaintiffs had adequately pled that several actionable false and misleading statements were made by Apotheker or Bradley during June and July 2011 in violation of Section 10(b) and Rule 10b-5. ECF No. 110; Joint Decl. ¶¶ 39-45. Defendants subsequently moved for reconsideration of the May 8, 2013 Order, ECF No. 113, which the Court denied on June 17, 2013, ECF No. 120; Joint Decl. ¶ 46.

Defendants answered the Complaint on July 17, 2013, ECF Nos. 124, 127-28 (Joint Decl. ¶ 47), and Lead Plaintiffs served their initial discovery requests in the Action in June of 2013 (*id* ¶ 53).

B. Settlement Negotiations

After the initiation of fact discovery by Lead Plaintiffs, the Settling Parties agreed to mediate this Action before Judge Phillips, a former federal judge now associated with Irell & Manella LLP in Newport Beach, California. *Id.* ¶ 54. A mediation conference was scheduled for December 3, 2013. Prior to this conference, the Company produced, and Plaintiffs' Counsel reviewed, over 314,000 pages of core documents identified by HP as relating to the allegations in the Complaint. These documents included, *inter alia*: (i) Company emails; (ii) internal memoranda from HP; (iii) corporate minutes of the Company's board of directors; (iv) spreadsheets from HP regarding webOS-related projects; (v) Company submissions to the SEC; (vi) the source materials utilized by HP in connection with the Company's webOS development; (vii) slide show presentations concerning HP's financial, operations, and project planning; and (viii) draft public statements concerning webOS projects. *Id.* Plaintiffs' Counsel also fashioned, propounded, and secured written discovery from Defendants via interrogatories. *Id.*

Plaintiffs' Counsel also consulted with several experts to advise them regarding the feasibility of HP producing webOS-enabled PCs and printers in the timeframe Defendants touted to the market, as well as the damages attributable to the Company's August 18, 2011 announcement that it was abandoning webOS. *Id.* ¶¶ 61, 66-68. These experts analyzed a variety of materials and provided Plaintiffs' Counsel with a thorough understanding of issues related to liability and damages.

As might be expected, prior to the mediation there were numerous issues about which the Settling Parties disagreed, including: (i) whether the statements made or facts allegedly omitted were material, false, misleading, or actionable; (ii) whether Lead Plaintiffs could prove that Defendants acted with scienter; and

(iii) whether Lead Plaintiffs could prove loss causation or recoverable damages given the numerous and disparate pieces of news that entered the market on the corrective disclosure date of August 18, 2011. *Id*. ¶ 93.

On December 3, 2013, after the exchange of extensive pre-mediation statements that detailed the relative strengths and weaknesses of their respective positions, the parties attended a mediation before Judge Phillips. *Id*. ¶¶ 94-95. While the December 3, 2013 mediation did not produce a settlement, Lead Plaintiffs and Defendants developed a better understanding of each other's positions by the end of the session. *Id*. ¶ 95. With Judge Phillips' involvement, settlement discussions continued over the next several weeks and on January 15, 2014, the Settling Parties reached an agreement-in-principle to settle the Action. *Id*. ¶ 96.

C. Preliminary Approval And The Notice Program

On May 2, 2014, this Court granted preliminary approval to the Settlement and approved the Notice, Proof of Claim, and Summary Notice for dissemination to the Settlement Class. ECF No. 153. A copy of the Preliminary Approval Order is attached as Ex. 1 to the Joint Declaration. A copy of the Notice and Proof of Claim is attached as Ex. A to the Affidavit Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of Summary Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusions Received to Date, dated August 8, 2014 ("Mailing Aff."), Ex. 3.[5] *See also* Joint Decl. ¶ 99. The Court also approved The Garden City Group, Inc. ("GCG") as the Claims

[5] All exhibits referenced in Lead Plaintiffs' submissions in connection with approval of the Settlement are annexed to the Joint Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. __ - __." The first numerical reference refers to the designation of the entire exhibit attached to the Joint Declaration and the second reference refers to the exhibit designation within the exhibit itself.

Administrator for the Settlement and set a hearing for September 15, 2014 (the "Settlement Hearing") to consider the fairness, reasonableness, and adequacy of the Settlement and the Plan of Allocation.

In compliance with the Preliminary Approval Order, under the supervision of Co-Lead Counsel, GCG mailed copies of the Notice and Proof of Claim to: (i) all potential members of the Settlement Class who could be reasonably identified; and (ii) known brokers/nominees who may have purchased HP stock for the beneficial interest of individual investors. Ex. 3 ¶¶ 3-5; Joint Decl. ¶ 100. To date, GCG has mailed 800,314 notice packets containing the Notice and Proof of Claim forms to potential Settlement Class Members and brokers/nominees. Ex. 3 ¶ 6; Joint Decl. ¶ 100. In addition, the Summary Notice was published in *The Wall Street Journal* and disseminated on *PR Newswire*. Ex. 3 ¶ 7; Joint Decl. ¶ 101. The Notice and Proof of Claim form were also posted on the websites of Co-Lead Counsel and GCG for easy downloading by interested investors. Ex. 3 ¶ 8; Joint Decl. ¶ 102.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Settling Parties, the course of the litigation, the terms of the Settlement, the attorneys' fees and expense request, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 3 - A. The Notice also gave the deadlines for objecting or seeking exclusion from the Settlement Class and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. at 1, 6-8. The Notice specifically notified Settlement Class Members that Plaintiffs' Counsel's request for attorneys' fees would not exceed 25% of the Settlement Fund (including accrued interest) and their request for reimbursement of expenses would not exceed $525,000, plus interest at the same rate as earned on

the Settlement Fund. *Id*. at 2, 7.[6] The Notice further provided that such application for fees and expenses may also include a request for a separate award to Lead Plaintiffs for reimbursement of their reasonable costs and expenses, including lost wages, directly relating to their representation of the Settlement Class in an amount not to exceed $75,000. *Id.* at 2.

The Settlement Class's reaction to the proposed Settlement has been extremely positive. While the date (August 25, 2014) to opt-out from or object to the Settlement has not yet passed, to date there have only been 25 requests for exclusion, submitted by individual investors who purchased fewer than 2,500 shares, and one objection to the proposed Settlement and Plan of Allocation. Joint Decl. ¶¶ 104; *see also* discussion *infra* Section II.A.7. These facts underscore the Settlement Class's overwhelming satisfaction with the result achieved.

II. ARGUMENT

A. The Settlement Merits Final Approval

Strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Indeed, "there is an overriding public interest in settling and quieting litigations," and this is "particularly true in class action suits." *Van*

[6] The Ninth Circuit has held that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351 (9th Cir. 1980). Lead Plaintiffs respectfully submit that the notice program utilized here readily meets this standard. *See, e.g.*, *Nat'l Rural Telcomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (finding notice sufficient when, as here, it described the background of the case and the terms of the proposed settlement, and provided class members with "clear instructions about to how object").

Bronkhorst v. Safeco Corp., 529 F.2d 943, 950 (9th Cir. 1976); *see also Barbosa v. Cargill Meat Solutions Corp.*, No. 1:11-cv-00275-SKO, 2013 WL 3340939, at *13 (E.D. Cal. July 2, 2013) ("[S]ettlement is encouraged in class actions where possible."). Class-action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. Settlements of complex cases such as this one greatly contribute to the efficient utilization of scarce judicial resources and achieve the speedy resolution of claims. *See, e.g., Garner v. State Farm Mut. Auto Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and will produce a prompt, certain and substantial recovery for the Plaintiff class.") (citation and internal quotation marks omitted).

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of the compromise of claims brought on a class basis. The standard for determining whether to grant final approval to a class action settlement is whether the proposed settlement is "fundamentally fair, adequate, and reasonable." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The Ninth Circuit has provided the following framework for a court to determine whether a settlement is "fair, adequate, and reasonable" in a class action:

> "Assessing a settlement proposal requires a district court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining a class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; . . . and the reaction of the class members to the proposed settlement. . . . In addition, the

settlement may not be the product of collusion among the negotiating parties."

Mego Fin., 213 F.3d at 458 (quoting *Hanlon*, 150 F.3d at 1026) (alteration in original). Courts have also considered "the role taken by the lead plaintiff in [the settlement] process, a factor somewhat unique to the PSLRA." *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *3 (N.D. Cal. Nov. 26, 2007) (internal citation omitted). Not all of these factors will apply to every class action settlement; under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

"[T]he settlement hearing is not meant to be conducted as a trial or rehearsal for trial on the merits." *Barbosa*, 2013 WL 3340939, at *11 (citation omitted). "It is neither for the court to reach any ultimate conclusions regarding the merits of the dispute, nor to second guess the settlement terms." *Evans v. Linden Research Inc.*, No. C-11-01078 DMR, 2014 WL 1724891, at *3 (N.D. Cal. Apr. 29, 2014). Significantly, a strong initial presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations and great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the litigation. *See, e.g.*, *Ramirez v. Ghilotti Bros. Inc.*, No. C 12-04590, 2014 WL 1607448, at *1 (N.D. Cal. Apr. 21, 2014) ("When 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.").

As discussed below, the proposed Settlement meets these standards and thus merits final approval.

1. The Strength of Lead Plaintiffs' Case and Risks Associated with Continued Litigation

To determine whether the proposed Settlement is fair, reasonable, and adequate, the Court must balance the continuing risks of litigation against the benefits afforded to the Settlement Class and the immediacy and certainty of a substantial recovery. *Mego Fin.*, 213 F.3d at 458. Although Lead Plaintiffs believe that the case they have developed to date against the Defendants is strong, that confidence must be tempered by the fact that the Settlement is extremely beneficial (providing a significant immediate return) and that there were significant risks of less or no recovery, particularly in a complex case such as this. Joint Decl. Section VI.[7]

In order to prove liability under the Exchange Act, a plaintiff must prove, *inter alia*, that: (i) defendants were responsible for materially false or misleading representations entering the market; (ii) defendants acted with scienter (i.e., that defendants made their misrepresentations knowingly or recklessly); (iii) that plaintiff's losses were caused by defendants' misrepresentations (i.e., "loss causation"); and (iv) that plaintiff and the class members suffered damages. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005). In the case at bar, proving each of these requirements posed significant risks. First, Lead Plaintiffs faced substantial risks in proving that Defendants' statements and omissions were false and misleading at the time that they were made or occurred. Joint Decl. ¶¶ 71-78.

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[7] In the context of approving class action settlements, "[c]ourts experienced with securities fraud litigation, 'routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear.'" *Redwen v. Sino Clean Energy, Inc.*, No. CV 11-3936 PA (SSx), 2013 U.S. Dist. LEXIS 100275, at *19-20 (C.D. Cal. July 9, 2013) (quoting *In re Flag Telecom Holdings*, No. 02-CV-3400 (CM) (PED), 2010 U.S. Dist. LEXIS 119702, at *48 (S.D.N.Y. Nov. 8, 2010)). Indeed here, the Court twice granted, at least in part, Defendants' motions to dismiss the complaints.

Defendants likely would argue that the alleged misrepresentations regarding webOS PC and printer development were truthful because HP was devoting substantial resources to develop these products and was on track to deliver them on the scale and in the timeframe claimed. *Id*.

Second, Lead Plaintiffs faced significant risks in proving that the alleged misstatements were made with scienter, as required by the federal securities laws. Joint Decl. ¶¶ 79-83. A defendant's state of mind in a securities case is often the most difficult element of proof and one which is rarely supported by direct evidence such as an admission. Indeed, only a subset of the misstatements alleged in the Complaint were found to have been pleaded with the required strong inference of scienter and the Court cautioned that scienter presented a "close question." *See* ECF No. 110 at 32.

Third, the question of whether the announcement of HP's abandonment of webOS caused a decline in HP's stock and, if so, whether it caused all or only a part of the decline would almost certainly be hotly contested by Defendants during class certification, summary judgment, pretrial *Daubert* motions, and trial. Joint Decl. ¶¶ 84-91. The United States Supreme Court has confirmed that the law requires that "a plaintiff prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss." *Dura Pharms.*, 544 U.S. at 346. Defendants likely would argue that HP's decision to discontinue webOS was only one of several pieces of news announced by the Company on August 18, 2011, and that Lead Plaintiffs would not be able to link any portion of the decline in HP's stock price to the webOS-related disclosure. Even assuming Lead Plaintiffs' claims survived class certification and summary judgment, Defendants' experts undoubtedly would have contended at trial that all of the losses experienced by the Settlement Class were due to factors unrelated to the webOS discontinuation announcement, preventing any potential recovery. *Id*.

see also New York City Emps.' Ret. Sys. v. Jobs, 593 F.3d 1018, 1024 (9th Cir. 2010) (affirming dismissal where plaintiffs failed to show actual economic loss). Thus, even if the Settlement Class prevailed in establishing liability, significant additional risks remain in establishing loss causation.

Finally, these complex questions of loss causation, as well as the technological questions involved in developing a mobile operating system, would have resulted in the testimony of various competing economic and technology expert witnesses at trial. In a "battle of experts" it is impossible to predict with any certainty which arguments would find favor with the jury. *See, e.g.*, *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 735 (2d Cir. 1986) (approving settlement where "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors"). The outcome could well have depended on whose testifying expert the jury believed or even whether the jury was able to follow the economic theories used by the experts. The Settlement eliminates the risk that the jury might award less than the amount of the Settlement or nothing at all to the Settlement Class. *See, e.g.*, *Nguyen v. Radient Pharms. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *2 (C.D. Cal. May 6, 2014) (approving settlement in securities case where "[p]roving and calculating damages required a complex analysis, requiring the jury to parse divergent positions of expert witnesses in a complex area of the law" and "[t]he outcome of that analysis is inherently difficult to predict and risky") (citation omitted).

2. The Expense and Likely Duration of Further Litigation

The expense and likely duration of further litigation provides strong support for approving the Settlement. Although a significant amount of key discovery

occurred to bring about the current Settlement, Joint Decl. ¶¶ 51-62, additional costly and time-consuming fact and expert discovery would be required by further litigation. Engaging in full-blown merits and class-certification discovery, certifying a class, completing expert discovery, defending against summary judgment, and preparing the case for trial would have required significant time and resources. A trial of a complex, fact-intensive case like this would have taken weeks and appeals of rulings on summary judgment or trial likely would add years to the litigation. Barring a settlement, there is no question that this case would be litigated for many years, taking a considerable amount of court time and costing millions of additional dollars, with the possibility that the end result would be no better for the Class, and might even be worse. Accordingly, this factor supports approval of the Settlement. *See, e.g.*, *Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D. Cal. July 11, 2014) ("[T]he high risk, expense, and complex nature of the case weigh in favor of approving the settlement."); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011), *aff'd in part*, 473 Fed. App'x. 716 (9th Cir. 2012) ("Considering these risks, expenses and delays, an immediate and certain recovery for class members . . . favors settlement of this action.").

3. The Risk of Maintaining Class-Action Status Through Trial

Absent the Settlement there would have been a contested motion for class certification. Class-certification discovery would have been conducted and Defendants, without doubt, would have opposed the motion. While Co-Lead Counsel were confident that they would have presented a compelling motion for certification of a litigation class, the process would have added time and expense to the proceedings, and the outcome of such a contested motion was far from certain. Moreover, throughout the remainder of the Action, as issues of loss

causation and class-wide reliance were resolved and the law evolved, it is possible that Defendants would have sought to decertify any class certified by the Court.

4. The Amount Offered in the Settlement

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

Here, the proposed $57 million Settlement is well within the range of reasonableness in light of the most likely possible recovery at trial and the risks of continued litigation. According to analyses prepared by Lead Plaintiffs' consulting damages expert, the most likely aggregate damages the proposed class could have obtained at trial are estimated to be between $217 million (for a class period that starts on June 1, 2011) and $493 million (for a class period that starts on November 22, 2010), assuming that liability and loss causation for the alleged corrective disclosure were proven and based on various assumptions and modeling, including certain deductions for confounding information released on the corrective disclosure date. Joint Decl. ¶ 9. Defendants strenuously maintained, and continue to maintain, that no damages could be proven at trial. As such, the $57 million Settlement represents a gross recovery of approximately 12% to 26% of Lead Plaintiffs' consulting expert's most likely estimated damages. *Id.* This percentage is well within the range of reasonableness

approved by courts. *See McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG- JMA, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding a $12 million settlement recovering 7% of estimated damages was fair and adequate); *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) ($13.75 million settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *see also In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig*., No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) ("The Settlement Fund is approximately $40.3 million. The settlement thus represents a recovery of approximately 6.25% of estimated damages. This is "at the higher end of the range of reasonableness of recovery in class actions securities litigations.").

Although "the very essence of a settlement is compromise, a yielding of absolutes," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998), the $57 million Settlement also compares favorably as an absolute value. In that regard, the Settlement is well-above the $9.1 million median settlement amount of reported securities cases in 2013, and well above the median reported settlement amounts since the passage of the PSLRA, which have ranged from $3.7 million to a peak of $12.3 million in 2012. *See* Dr. Renzo Comolli & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review* (NERA Jan. 21, 2014). Joint Decl. ¶ 8; Ex. 2 at 28.

Therefore, viewed either as a percentage of the potential recovery at trial, or as an absolute value to securities class actions overall, the Settlement is an excellent result and falls well within the range of reasonableness.

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

The stage of the proceedings and the amount of discovery completed is also one of the factors courts consider in determining the fairness, reasonableness and

adequacy of a settlement. *Mego Fin.*, 213 F.3d at 459. Because of the stay on discovery imposed by the PSLRA, Lead Plaintiffs did not conduct formal discovery prior to filing the Complaint.[8] However, Lead Plaintiffs did, through their counsel, conduct their own investigation of HP and webOS in preparing the FAC and the Complaint. Indeed, as detailed in the Joint Declaration, Plaintiffs' Counsel conducted a thorough pre-filing investigation concerning Lead Plaintiffs' claims against Defendants. Joint Decl. ¶¶ 6, 19-20, 33.

Plaintiffs' Counsel also obtained and thoroughly examined the extensive pre-mediation discovery produced by Defendants, including over 314,000 pages of documents concerning development of webOS PCs, printers, and devices; internal projections for webOS; funding for webOS; and the decision to discontinue webOS development. *Id.* ¶¶ 7, 52-62. This discovery assisted Plaintiffs' Counsel in evaluating the strengths and weaknesses of the pending claims and further helped them, and their clients, confirm that the Settlement was fair, reasonable, and adequate to the Settlement Class.

As a result of these efforts, Lead Plaintiffs, through their counsel, had a comprehensive understanding of the Action and sufficient information to make a well-informed decision regarding the fairness of the Settlement. *See Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement where record established that "all counsel had ample information and opportunity to assess the strengths and weaknesses of their claims and defenses"); *Redwen*, 2013 U.S. Dist. LEXIS 100275, at *22 (settlement approved when, as here, "the parties have spent a

[8] "In the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." *Linney*, 151 F.3d at 1239.

significant amount of time considering the issues and facts in this case and are in a position to determine whether settlement is a viable alternative").

6. The Recommendations of Experienced Counsel

Experienced counsel, negotiating at arm's-length, have weighed the factors discussed above and endorse the Settlement. As courts have stated, the views of the attorneys actively conducting the litigation and who are most closely acquainted with the facts of the underlying litigation, are entitled to "great weight." *Nat'l Rural Telecomm.*, 221 F.R.D. at 528; *see also Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988) ("The recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement.").

Throughout the settlement negotiations, Lead Plaintiffs had the advice and counsel of Co-Lead Counsel, firms with extensive experience in class-action litigation. Labaton Sucharow is among the nation's most experienced law firms in this area of practice and has served as lead or co-lead counsel on behalf of major institutional investors in numerous class actions since the enactment of the PSLRA, including *In re American International Group, Inc. Securities Litigation*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re Countrywide Financial Corp. Securities Litigation*, No. C 07-5295 (C.D. Cal.) (representing the State of New York and New York City Pension Funds and reaching settlements of more than $600 million); and *In re HealthSouth Corp. Securities Litigation*, No. CV-03-1500 (N.D. Ala.) (representing New Mexico State Investment Council, the New Mexico Educational Retirement Board and the State of Michigan Retirement System and reaching settlements of more than $600 million). Joint Decl. ¶ 141; Ex. 9 - B.

Similarly, Motley Rice has represented institutional investors as lead or co-lead counsel in numerous securities fraud class actions, which during the last several years alone, have recovered hundreds of millions of dollars for investors. Motley Rice's recent class actions include *Alaska Electrical Pension Fund v. Pharmacia Corp.*, Consol. No. 03-1519 (AET) (D.N.J.) (representing PACE Industry Union-Management Pension Fund and reaching $164 million settlement); *Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc.*, No. 08-6324 (PAM/AJB) (D. Minn.) (representing Union Asset Management Holding AG and reaching $85 million settlement); *City of Sterling Heights General Employees' Retirement System v. Hospira, Inc.*, No. 11 C 8332 (N.D. Ill.) (representing KBC Asset Management NV and Sheet Metal Workers National Pension Fund and reaching $60 million settlement, pending court approval). Joint Decl. ¶ 142; Ex. 10 - B.

Based on their knowledge of the law, their experience litigating securities-fraud class actions, and their rigorous investigation and consultation with experts in this litigation, Co-Lead Counsel believe that the Settlement is a very favorable result which is in the best interests of the Settlement Class. Accordingly, this factor strongly weighs in favor of the Settlement. *See, e.g.*, *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 WL 5402120, at *5 (N.D. Cal. Sept. 26, 2013) ("Given the collective experience of the attorneys involved in this litigation, the Court credits counsels' view that the settlement is worthy of approval.").

7. The Reaction of Settlement Class Members to the Proposed Settlement

"The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of the settlement are favorable to the class members." *Eisen*, 2014 WL 439006, at *5. In the case at bar, the Claims Administrator mailed 800,314 copies of the Notice to potential class members, published the Summary Notice nationally in *The Wall Street*

Journal and over *PR Newswire*, and made information about the Settlement available to Settlement Class Members through its website. Joint Decl. ¶ 100-02; Ex. 3 ¶¶ 2-8. The Notice thoroughly described the case and the Settlement, provided detailed instructions for filing an exclusion request or objection to the Settlement, and also provided contact information for Settlement Class Members who wanted to obtain additional information. Joint Decl. ¶ 99; Ex. 3 - A.

To date, only 25 potential Settlement Class Members have elected to exclude themselves from the Settlement. Joint Decl. ¶ 104; Ex. 3 ¶ 12. Some of these requests are invalid and submitted by non-class members. The requests received to date represent approximately 2,110 shares of HP stock and no public pension fund or institutional investor has sought exclusion. *Id*.

Further, while the objection deadline has not yet passed, to date only one purported Settlement Class Member has submitted an objection to the Settlement, stating primarily that the estimated recovery per share is too small for him to complete a claim form and he would like to recover 20%-50% of his damages. Joint Decl. ¶ 105. Notably, no public pension fund or institutional investor has objected to any aspect of the Settlement, the Plan of Allocation, or the attorneys' fee request.[9]

8. The Settlement Is Not the Product of Collusion and Has the Support of Lead Plaintiffs

Another factor to be considered is whether there is any evidence that the settlement is the result of collusion. *Mego Fin.*, 213 F.3d at 458. As discussed above, this suit was initiated nearly three years ago. Following the denial in part of Defendants' motion to dismiss the Complaint (and the Court's subsequent

[9] Additional objections, if any, will be addressed in Lead Plaintiffs' reply papers, which pursuant to the Preliminary Approval Order, are due to be filed no later than seven days prior to the Settlement Hearing.

denial of a motion to reconsider same) and the commencement of fact discovery, the parties agreed to mediate. The mediation process demonstrates that the Settlement is the result of hard-fought and arm's-length negotiations. The mediation session was facilitated by an experienced mediator who has considerable knowledge and expertise in the field of federal securities law. *Id.* ¶¶ 54, 92-96.[10]

As courts in this district and elsewhere have found, "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007); *see also Eisen*, 2014 WL 439006, at *5 ("[W]here the services of a private mediator are engaged, this fact tends to support a finding that the settlement valuation by the parties was not collusive.").

Additionally, the recommendation of the Lead Plaintiffs, all sophisticated institutional investors, also supports the fairness of the Settlement. Joint Decl. ¶¶ 11, 114-118; *see also* Exs. 5-7. Lead Plaintiffs took an active role in the litigation, including the review of settlement materials, and Arkansas Teacher Retirement System attended the mediation. *Id.* Courts generally give weight to the lead plaintiffs in evaluating the process of the settlement as well as its substantive fairness. *See Portal Software*, 2007 WL 4171201, at *5 ("[F]actor (10), the role taken by the lead plaintiff in the settlement process, supports settlement because lead plaintiff was intimately involved in the settlement negotiations.").

For all of the foregoing reasons, Lead Plaintiffs respectfully urge the Court to grant final approval of the Settlement.

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[10] *See ATLAS v. Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *3 (S.D. Cal. Nov. 4, 2009) ("The settlement negotiations were also fair. They were closely supervised by the Honorable Layn Phillips (Ret.) and conducted at arm's length by experienced and competent counsel.").

B. The Plan Of Allocation Is Fair, Reasonable, And Adequate And Should Be Approved By The Court

The standard of approval of a plan of allocation in a class action under Rule 23 of the Federal Rules of Civil Procedure is the same as the standard applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs*, 955 F.2d at 1284 (9th Cir. 1992); *Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005). Here, Co-Lead Counsel prepared the Plan of Allocation after careful consideration and with the assistance of a consulting damages expert. Joint Decl. ¶¶ 107-12. The Plan of Allocation was fully disclosed in the Notice that was mailed to 800,314 potential Settlement Class Members and, as of the filing of this motion, only one purported Settlement Class Member has filed an objection to it. *See* Ex. 4. The objection is based a misunderstanding about the 90-day look back table in the plan and casts no doubt on the fairness and reasonableness of the proposed plan. Joint Decl. ¶ 105. *See ATLAS*, 2009 WL 3698393, at *4 (noting the "predominantly positive response" to the plan of allocation when only two objections were submitted).

"[A] plan of allocation . . . fairly treats class members by awarding a pro rata share to every Authorized Claimant, even as it sensibly makes interclass distinctions based upon, inter alia, the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue." *Redwen*, 2013 U.S. Dist. LEXIS 100275, at *29 (citation and internal quotation marks omitted). Here, the Plan of Allocation reflects the allegations that the price of HP common stock was artificially inflated during the Class Period and that the inflation was removed on August 19, 2011, and provides for the distribution of the Net Settlement Fund to Settlement Class Members who purchased or otherwise acquired HP common stock during the Class Period, based on their Recognized

Loss as calculated pursuant to the Plan of Allocation. Joint Decl. ¶¶ 108-12; Ex. 3 - A at 9-11.

Each Settlement Class Member's recovery under the Plan of Allocation is also based on Co-Lead Counsel's good-faith assessment of the relative strengths and weaknesses of Class Members' claims against Defendants in consideration of the Court's rulings on Defendants' motions to dismiss. ECF Nos. 82 & 110. To reflect this assessment, the Plan of Allocation provides for a 25% discount for Settlement Class Members who purchased or acquired HP common stock between February 9, 2011 and May 31, 2011; and for a 50% discount for Settlement Class Members who purchased or acquired HP common stock between November 22, 2010 and February 8, 2011. These discounts are consistent with plans of allocation developed and approved in prior cases. *See, e.g.*, *Nguyen*, 2014 WL 1802293, at *7 ("It is 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." (quoting *Omnivision*, 559 F. Supp. 2d at 1045)); *In re Portal Software, Inc. Sec. Litig*., 2007 WL 4171201, at *6 ("Courts endorse distributing settlement proceeds according to the relative strengths and weaknesses of the various claims.") (collecting cases).

C. The Court Should Certify The Settlement Class

In presenting the proposed Settlement to the Court for preliminary approval, Lead Plaintiffs requested that the Court preliminarily certify the Settlement Class for settlement purposes so that notice of the proposed Settlement, the final approval hearing and the rights of Settlement Class Members to request exclusion, object, or submit proofs of claim could be issued. In its Preliminary Approval Order, entered on May 2, 2014, this Court also preliminarily certified the Settlement Class. Nothing has changed to alter the propriety of the Court's certification and no potential Settlement Class Member has objected to class

certification. Accordingly, and for all the reasons stated in Lead Plaintiffs' Memorandum of Points and Authorities in Support of Their Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement (ECF No. 145), incorporated herein by reference, Lead Plaintiffs now request that the Court: (i) finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (ii) appoint Lead Plaintiffs as Class Representatives; and (iii) appoint Co-Lead Counsel as Class Counsel. *See, e.g.*, *Boring v. Bed Bath & Beyond of Cal. LLC*, No. 12-cv-05259-JST, 2014 WL 2967474, at *2 (N.D. Cal. June 30, 2014) ("For the reasons discussed in the Court's Preliminary Approval Order, the Court finds that the requirements for certification of the conditionally certified settlement class have been met, and that the appointment of . . . Class Representative and . . . Class Counsel is proper.").

III. CONCLUSION

The Settlement achieves substantial benefits for the Settlement Class, and is reasonable, fair, and adequate under any standard, but particularly when the risks, complexity, and likely duration of further litigation are considered. Lead Plaintiffs and Co-Lead Counsel support the Settlement after thorough investigation of the facts and the law and careful consideration of both the risks and the benefits. Judging by the very low level of objections and exclusion requests to date, the reaction of the Settlement Class to the Settlement has been very positive. Accordingly, for the reasons set forth above, Lead Plaintiffs respectfully request that the Court: (i) grant final approval of the Settlement; (ii) find that notice to the Settlement Class was provided as required and to the satisfaction of due process and the PSLRA; (iii) finally certify the Settlement Class; (iv) appoint Lead Plaintiffs as Class Representatives and Co-Lead Counsel as Class Counsel; and (v) approve the Plan of Allocation as fair, reasonable and adequate.

Dated: August 11, 2014

Respectfully submitted,

By: */s/ Jonathan Gardner*

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2014, 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 email addresses denoted on the attached Electronic Mail Notice 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 August 11, 2014.

By: */s/ Jonathan Gardner*

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