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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SEB INVESTMENT MANAGEMENT AB, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SYMANTEC CORPORATION and GREGORY S. CLARK,

Defendants.

Case No. 3:18-cv-02902-WHA

ECF CASE

LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Dept.: Courtroom 12, 19th Floor
Judge: Honorable William Alsup
Date: February 10, 2022
Time: 11:00 a.m.

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NOTICE OF MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure and the Court's Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 411) ("Preliminary Approval Order"), Lead Plaintiff SEB Investment Management AB ("SEB" or "Lead Plaintiff") will and hereby does move the Court, before the Honorable William Alsup, on February 10, 2022, at 11:00 a.m. in Courtroom 12 of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or at such other location and time as set by the Court, for (1) entry of a judgment granting final approval of the proposed settlement of this Action (the "Settlement") and (2) entry of an order granting approval of the proposed plan of allocation of the net proceeds of the Settlement (the "Plan of Allocation").

This Motion is based on the following Memorandum of Points and Authorities, the accompanying Declaration of Jeremy P. Robinson in Support of: (A) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Robinson Declaration" or "Robinson Decl.") and its exhibits, all other prior pleadings and papers in this Action, arguments of counsel, and any additional information or argument that may be required by the Court. The proposed Judgment and a proposed Order approving the Plan of Allocation will be submitted with Lead Plaintiff's reply submission.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should approve the proposed Settlement of this securities class action as fair, reasonable, and adequate under Rule 23(e)(2); and

2. Whether the Court should approve the Plan of Allocation as fair and reasonable.

MEMORANDUM OF POINTS AND AUTHORITIES

Lead Plaintiff, on behalf of itself and the Class, respectfully submits this memorandum in support of its motion for final approval of the proposed Settlement and the plan of allocation of the settlement proceeds.[1]

PRELIMINARY STATEMENT

Lead Plaintiff is pleased to present for the Court's approval its agreement to settle this securities class action in exchange for a cash payment of $70,000,000.00 for the benefit of the Class. Lead Plaintiff respectfully submits that the proposed Settlement is an excellent result for the Class in light of the serious risks that it faced in proving the securities fraud claims at issue, including the substantial risks to proving falsity, materiality, scienter, loss causation and damages at summary judgment or trial, as well as the delays attendant to continued litigation. The proposed Settlement was achieved after three years of vigorous litigation, which included the Court's initial dismissal of the entire case and extended through class certification, completed fact and expert discovery, and full briefing on Defendants' summary judgment motion. It is also the product of two settlement conferences held months apart and extensive arm's-length negotiations between experienced and well-informed counsel, which were closely supervised by the Court-appointed and experienced mediator, Magistrate Judge Donna M. Ryu ("Judge Ryu"). As detailed in the accompanying Robinson Declaration and summarized herein, the proposed Settlement provides a substantial, certain, and immediate recovery for the Class while avoiding the significant risks of continued litigation, including the risk that the Class could recover significantly less than the Settlement amount—or nothing at all—after years of additional litigation, appeals and delay.

The proposed Settlement is the direct product of Plaintiffs' substantial litigation effort. That effort started over three years ago when Plaintiffs began investigating the securities law

[1] Unless otherwise defined in this memorandum, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated June 8, 2021 (ECF No. 394-1) (the "Stipulation") or in the Robinson Declaration. "Plaintiffs" refers to Lead Plaintiff, on behalf of the Class, and Lead Counsel, collectively. Unless otherwise noted, citations to "¶ __" herein refer to paragraphs in the Robinson Declaration, which is an integral part of this motion, and citations to "Ex. __" refer to exhibits to the Robinson Declaration.

claims at issue through the review of hundreds of SEC filings, conference calls, analyst reports, and news articles. Lead Counsel located and interviewed 155 former Symantec employees regarding the events at issue. Using this vast trove of information, Plaintiffs prepared a detailed 119-page Consolidated Complaint, which significantly expanded upon the factual allegations and claims advanced in the 13-page initial complaint filed in May 2018. ¶¶ 37-38. Plaintiffs then opposed Defendants' extensive motions to dismiss. ¶¶ 40-42. Next, after the Court dismissed the case on materiality and scienter grounds, Plaintiffs prepared another detailed amended complaint based on their continued investigation. ¶¶ 45-60. This dedication paid off for the Class, as the Court subsequently granted Lead Plaintiff's motion for leave to amend and sustained the amended complaint.[2] ¶ 61. Plaintiffs then filed for and briefed class certification, which involved the submission and analysis of extensive expert reports and three depositions—and ultimately successfully certified the Class in full. ¶¶ 64-75. Plaintiffs also completed fact discovery, which was extensive and wide-ranging as it involved Lead Counsel obtaining and analyzing more than 2.1 million pages of documents produced by Defendants and third parties and depositions of 20 fact witnesses. ¶¶ 79-110. Next, Plaintiffs completed extensive expert discovery, which included nine expert reports from the Parties' collective six experts in the fields of accounting, damages, and executive compensation, as well as six depositions (for a total of 29 depositions in the case). ¶¶ 111-118. Plaintiffs also fully briefed Defendants' wide-ranging summary judgment motion, which included the submission or review of 130 pages of briefing and several thousand pages of exhibits. ¶¶ 119-124. Given their massive litigation effort, Plaintiffs zealously represented the Class throughout the litigation. Plaintiffs also possessed a very well-developed understanding of the strengths and weaknesses of the claims when the Settlement was reached.

The proposed Settlement resulted from extensive arm's-length negotiations, including two settlement conferences held several months apart, which were closely supervised by the Court-appointed and experienced mediator, Judge Ryu. The first settlement conference was held on

[2] In connection with Plaintiffs' motion for leave to amend, the Court dismissed two individual defendants, Nicholas Noviello (former CFO) and Mark Garfield (former CAO), as well as alleged misstatements concerning the success of integrating Blue Coat.

September 14, 2020 by videoconference (due to the COVID-19 pandemic). In advance, the Parties exchanged detailed mediation statements regarding the strengths and weaknesses of the claims, which were submitted to Judge Ryu along with private submissions for Judge Ryu's eyes only. Despite a full day session and several weeks of negotiations, the Parties remained far apart. As such, Plaintiffs continued to litigate for the next eight months, completing fact and expert discovery and fully briefing Defendants' summary judgment motion. On May 24, 2021, the Parties engaged in a second settlement conference before Judge Ryu by videoconference. In advance, the Parties submitted to Judge Ryu their summary judgment papers and each side made additional private submissions. After another full day of arm's length negotiations in which Judge Ryu was actively involved, the Parties ultimately agreed to resolve all claims in exchange for a cash payment of $70 million. ¶¶ 125-128.

The proposed Settlement is an excellent result for the Class given the significant risks that Lead Plaintiff faced in proving its securities fraud claims, as well as the costs and delays that would accompany continued litigation. As discussed below and in the Robinson Declaration, Plaintiffs faced meaningful risks in establishing each element of their securities fraud claims. As noted, the Court initially dismissed all of the securities claims at issue on materiality and scienter grounds. Then, in sustaining Lead Plaintiff's amended complaint, the Court noted that it would revisit some of these issues at summary judgment or trial. Throughout the litigation, Plaintiffs faced risk in establishing that Defendants made materially false and misleading statements regarding Symantec's revenues and "transition and transformation" (T&T) expenses. For example, Defendants vigorously disputed that the $12 million in prematurely booked revenue was material to Symantec—a company that regularly booked over $1 billion in revenue per quarter and over $4 billion per year—which was an issue that originally caused this Court to dismiss the case. Defendants also argued vehemently that Symantec did not misclassify any expenses. For example, Defendants argued in their summary judgment motion that, at their depositions, Symantec's former accounting staff responsible for classifying the T&T expenses "testified uniformly and unambiguously that th[eir] classifications were proper" *and* that "they…were solely responsible for determining the classifications." Plaintiffs also faced significant risk in proving scienter.

Indeed, Defendants asserted that scienter could only be proved through former CEO Gregory Clark, which Defendants argued was impossible because he relied on Symantec's accountants, was unaware of any misclassifications and, when issues did arise, he promptly tried to address them. Further, Defendants pointed to clean audit opinions issued by Symantec's outside auditor, KPMG, and the Company's conduct of a full Audit Committee investigation led by outside advisors, which they claimed found no material wrongdoing.

In addition, Defendants vigorously disputed loss causation and damages. For example, Defendants insisted that the alleged corrective disclosures on May 10 and August 2, 2018 merely discussed the existence of an investigation—but did not correct any alleged misrepresentations or admit to any wrongdoing. As such, Defendants contended that damages were zero. Defendants also challenged the August 2018 alleged corrective disclosure as revealing no "new" information about the alleged fraud. Moreover, Defendants would have raised several challenges to the calculation of damages based on the opinions of their expert economist. If successful, Defendants' many loss causation and damages arguments would have significantly reduced compensable damages—or eliminated them entirely. In sum, while Plaintiffs believe in the merits of the Action, they nevertheless recognized the substantial risks, costs and delays associated with continued litigation, including at the summary judgment stage, at trial, and on any appeals.

Further, the Settlement has the full support of Lead Plaintiff, which is a sophisticated institutional investor that took an active role in supervising the litigation and participated directly in the arm's length settlement negotiations. Further, although the deadline to object to the Settlement has not yet passed, to date, no Class Members have objected to the Settlement.[3]

In light of these considerations and the other factors discussed below, Lead Plaintiff respectfully submits that the Settlement is fair, reasonable, and adequate and warrants final approval by the Court. Additionally, Lead Plaintiff requests that the Court approve the Plan of Allocation, which was set forth in the Notice mailed to potential Class Members. The Plan of

[3] The Court-ordered deadline for submission of objections is January 13, 2022. Should any objections be received, Plaintiffs will address them in their reply papers.

Allocation, which was developed by Lead Counsel in consultation with Lead Plaintiff's damages expert, provides a reasonable method for allocating the Net Settlement Fund among Class Members who submit valid claims based on damages they suffered on purchases of Symantec common stock that were attributable to the alleged fraud.

ARGUMENT

I. The Proposed Settlement Warrants Final Approval

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise or settlement of class-action claims. *See* Fed. R. Civ. P. 23(e). A class-action settlement should be approved if the court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

The Ninth Circuit recognizes "a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) ("Ninth Circuit[] policy favor[s] settlement, particularly in class action law suits"). Class actions readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. The settlement of complex cases like this one also promotes efficient utilization of scarce judicial resources and the speedy resolution of claims. *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010) ("Settlement avoids the complexity, delay, risk and expense of continu[ed] … litigation" and "produce[s] a prompt, certain, and substantial recovery for the … class.").

In determining whether a proposed settlement is "fair, reasonable, and adequate," the Court should consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account, [among other things,] the costs, risks, and delay of trial and appeal […]; and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

In addition, the Ninth Circuit has held that district courts should consider the following factors in evaluating the fairness of a class action settlement:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Village L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004); *accord Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2019 WL 2077847, at *1 (N.D. Cal. May 10, 2019) (approving settlement after considering both the "Rule 23(e)(2) factors … and the factors identified in" Ninth Circuit case law).

The Ninth Circuit has explained that courts' review of settlements should be "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027. Thus, a settlement hearing should "not to be turned into a trial or rehearsal for trial on the merits," *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir. 1982), and a court "need not 'reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.'" *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

A. Plaintiffs Have Adequately Represented the Class

At the settlement approval stage, the first Rule 23 consideration is whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). To determine adequacy, "courts consider two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *See, e.g., In re LendingClub Sec. Litig.*, 282 F. Supp. 3d 1171, 1182 (N.D. Cal. 2017) (Alsup, J.).

Here, Lead Plaintiff's claims are typical of and coextensive with those of the Class, and it does not have any interests that are antagonistic to the interest of other members of the Class. *See*

Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978); *Hanlon*, 150 F.3d at 1020. Lead Plaintiff—like all other Class Members—has an interest in obtaining the largest possible recovery from Defendants. *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members."). Indeed, in granting class certification, the Court found that Lead Plaintiff was adequate to serve as Class Representative, and Lead Counsel was fit to serve as Class Counsel. *See* ECF No. 227, at 10-13.

Further, Plaintiffs have adequately represented the Class in both their vigorous prosecution of the Action during the past three years and in the negotiation and achievement of the proposed Settlement. The institutional investor Lead Plaintiff played an active role in supervising and participating in the litigation, attended both settlement conferences before Judge Ryu, and retained counsel who are highly experienced in securities litigation and have successfully prosecuted many complex class actions throughout the United States. S*ee* Ex. 6 (Lead Counsel's firm resume). Plaintiffs also vigorously prosecuted the Class's claims, which included (by way of brief summary) (i) conducting an extensive investigation into the alleged fraud, including interviews of 155 former Symantec employees; (ii) drafting two detailed complaints based on the investigation; (iii) opposing Defendants' motion to dismiss through briefing and argument; (iv) successfully moving for leave to amend the complaint, after the case was initial dismissed; (v) successfully moving for certification of the Class; (vi) completing fact discovery, including obtaining and reviewing more than 2.1 million pages of documents produced by Defendants and third parties; (vii) taking or defending a total of 29 depositions, including of fact and expert witnesses; (viii) producing and analyzing a total of nine expert reports submitted by the Parties collectively in the fields of accounting, damages, and executive compensation; (ix) fully briefing summary judgment; and (ix) participating in two full-day settlement conferences and extensive arm's length negotiations closely supervised by Judge Ryu. ¶¶ 30-130.

Accordingly, Plaintiffs respectfully submit that they have adequately—indeed, zealously—represented the Class.

B. The Settlement Was Reached After Substantial Discovery, Arm's-Length Negotiations Between Experienced Counsel, and Two Settlement Conferences with an Experienced Mediator

The next Rule 23 consideration is whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). This includes consideration of related circumstances bearing on the procedural fairness of the settlement, including (i) counsel's understanding of the strengths and weakness of the case based on factors such as "the extent of discovery completed and the stage of the proceedings," *Hanlon*, 150 F.3d at 1026; (ii) the presence or absence of any indicia of collusion, *see In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011); and (iii) the involvement of a mediator.

Here, the proposed Settlement was reached only after several months of arm's-length negotiations between the Parties, including two settlement conferences held many months apart, which were closely supervised by and actively involved Judge Ryu. ¶¶ 12, 13, 125-128. The Parties prepared and exchanged detailed mediation statements before participating in the mediation sessions and exchanged their views on the merits and risks of the case. ¶¶ 126, 260.

As courts in this District have explained, the fact that the Parties reached a settlement through arm's-length negotiations between experienced counsel after discovery was completed creates a presumption of its fairness. *See In re Netflix Privacy Litig.*, 2013 WL 1120801, at *4 (N.D. Cal. Mar. 18, 2013) ("Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive, arms' length negotiations conducted by capable and experienced counsel"); *Linney v. Cellular Alaska P'ship*, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997) ("The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair."), *aff'd*, 151 F.3d 1234 (9th Cir. 1998). The involvement of an experienced mediator in the settlement process, like Judge Ryu here, further "confirms that the settlement is non-collusive." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 327 (N.D. Cal. 2018); *see also Trabakoolas v. Watts Water Techs., Inc.*, 2014 WL 12641599, at *2 (N.D. Cal. Aug. 5, 2014) (finding that settlement "resulted from extensive, good-faith, arm's-length negotiations between experienced counsel" where a

former federal judge "presided during two in-person mediation sessions and follow-up negotiations between the parties over several months, which ultimately resulted in the settlement before the Court").

In addition, as noted above, Plaintiffs possessed a thorough understanding of the strengths and weaknesses of the case before reaching the proposed Settlement. As detailed in the Robinson Declaration and summarized in the preceding section, Lead Counsel conducted a detailed, substantive investigation, resurrected the Action after the Court initially dismissed it, filed a successful motion for class certification, completed extensive fact and expert discovery, including the review and analysis of 2.1 million pages of documents and a total of 29 depositions, and fully briefed Defendants wide-ranging motion for summary judgment. Finally, the Parties engaged in extensive settlement negotiations assisted by Judge Ryu, which further informed the Parties of the strength of each side's arguments. ¶¶ 30-128.

Further, the proposed Settlement has none of the indicia of possible collusion identified by the Ninth Circuit, such as a "clear-sailing" fee agreement or a provision that would allow settlement proceeds to revert to Defendants.[4] *See Bluetooth Headset*, 654 F.3d at 947. In short, the Settlement was reached after extensive arm's-length negotiations supervised by an experienced mediator who was appointed by the Court and conducted by well-informed counsel after the completion of extensive fact and expert discovery and was not a product of fraud, overreaching, or collusion among the Parties.

C. The Relief that the Settlement Provides for the Class Is Adequate, Taking into Account the Costs and Risks of Further Litigation and All Other Relevant Factors

Next, Rule 23 requires courts to determine whether a class-action settlement is "fair, reasonable, and adequate," including by "taking into account . . . the costs, risks, and delay of trial

[4] *See* Stipulation ¶ 15 ("Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Lead Plaintiff other than what is set forth in this Stipulation."); Stipulation ¶ 12 ("The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Defendant, Defendants' Releasee, or any other person or entity who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever").

and appeal," as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This analysis essentially encompasses four of the seven factors of the traditional *Hanlon* analysis: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class-action status throughout the trial; and (4) the amount offered in settlement. *See Hanlon*, 150 F.3d at 1026. Here, each of these factors supports approval.

1. The Amount of the Proposed Settlement

The amount of a settlement "is generally considered the most important [factor], because the critical component of any settlement is the amount of relief obtained by the class." *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *11 (N.D. Cal. Feb. 11, 2016). However, "[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." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). In assessing the recovery, 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. "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation." *Officers for Justice*, 688 F. 2d at 624; *see also Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014) (holding that a settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case").

Here, the proposed Settlement amount—$70 million in cash, plus interest—represents a favorable recovery for the Class in light of the risks of the claims. To start, just in terms of the amount alone, the Settlement is approximately ten times the size of the median securities class-action settlement in the Ninth Circuit between 2011 and 2020—*i.e.*, $7.3 million. *See* Cornerstone Research, Securities Class Action Settlements: 2020 Review and Analysis, at 20 (2021) (Ex. 13). Thus, even leaving aside the risks, the proposed Settlement constitutes a substantial recovery for Class members.

Moreover, the recovery under the proposed Settlement provides a substantial financial benefit to the Class in comparison to overall potential damages and eliminates the significant risk

that the Class could recover less, or even nothing at all, if the Action continued through summary judgment, trial, and appeals. Lead Plaintiff's damages expert has estimated that the maximum possible damages here, assuming complete success in proving liability and 100% valid claims from the Class post-trial, would be approximately $1 billion in total Class-wide damages for Lead Plaintiff's claims under Sections 10(b) and/or 20(a) of the Exchange Act.[5] While that is a very large number, it assumes Plaintiffs would have complete success in proving all claims and damages calculations in dispute. For example, if Class Members' gains on shares owned prior to the Class Period but sold for a profit during the Class Period were deducted (as several courts have required at trial), then the maximum possible damages would be reduced to $679.6 million—still assuming Plaintiffs' complete success in proving liability, loss causation, and damages at trial. Thus, the $70 million Settlement represents approximately 6.9% to 10.2% of the absolute maximum theoretical damages (depending on whether gains on pre-Class Period holdings are netted) that could be recovered for the Class, if Lead Plaintiff prevailed at trial on *all* issues of falsity, materiality, scienter, loss causation and damages. *Id*. Importantly, such success was far from certain. Indeed, as discussed further below and detailed in the Robinson Declaration, Defendants advanced substantial arguments regarding all elements of liability, loss causation, and damages that, if accepted, would have substantially lowered the maximum damages or ***eliminated them entirely***.

Nevertheless, the recovery under the proposed Settlement is reasonable even when considered in light of the absolute maximum damages. Courts have routinely approved and lauded settlements with comparable or lower percentage recoveries than obtained here as fair and reasonable. *See, e.g.*, *In re Biolase, Inc. Sec. Litig.*, 2015 WL 12720318, at *4 (C.D. Cal. Oct. 13, 2015) (finding that settlement recovery of 8% of estimated damages "equals or surpasses the recovery in many other securities class actions"); *Omnivision*, 559 F. Supp. 2d at 1042 (finding that

[5] The insider trading claims under Section 20A of the Exchange Act had damages that ranged, depending on methodology, from $772,000 (based on inflation, which would overlap with 10(b) damages) to $6 million (based on sale prices assuming a cost of zero). To err on the side of caution, the percentage recovery figures herein use the maximum $6 million to calculate the totals.

settlement yielding 9% of potential damages was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *McPhail v. First Command Fin. Planning, Inc.*, 2009 WL 839841, at *5 (S.D. Cal. Mar. 30, 2009) (finding that securities-class-action settlement recovery of 7% of estimated damages "weigh[s] in favor of final approval"); *IBEW v. Int'l Game Tech.,* 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving settlement representing "about 3.5% of the maximum damages that Plaintiffs believe[d] could be recovered" and finding it "within the median recovery in securities class actions settled in the last few years").

2. The Strengths and Weaknesses of Plaintiffs' Case and the Significant Risks of Continued Litigation

Courts evaluating proposed class action settlements consider the strength of the plaintiff's case and the risks of further litigation. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). To determine whether the proposed Settlement is fair, reasonable, and adequate, the Court "must balance the risks of continued litigation, including the strengths and weaknesses of plaintiff's case, against the benefits afforded to class members, including the immediacy and certainty of a recovery." *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017).

In considering whether to agree to the proposed Settlement, Lead Plaintiff, represented by Lead Counsel with considerable experience in securities litigation, weighed the risks inherent in establishing the elements of its claims, including risks at trial of proving to a jury the elements of falsity, scienter, loss causation, and full damages. Each of these elements is addressed below.

Falsity. Plaintiffs recognize that they faced challenges in proving that Defendants' statements were materially false and misleading when made. Defendants have consistently asserted that their statements were accurate and that they did not engage in any accounting misconduct. ¶¶ 140-145. For example, Defendants argued in their summary judgment motion that no witness testified at deposition that any specific T&T expenses were misclassified. Further, Defendants argued that the two whistleblowers "lack[ed] personal knowledge" of the allegations and, as such, their accounts were inadmissible and "should be ignored." *See, e.g.,* ECF No. 360 at 15. Defendants also argued that several former employees in Symantec's technical accounting group testified that they carefully reviewed T&T expense classifications, were not aware of any specific misclassified T&T expenses, and resisted pressure to misclassify such expenses. For

example, Defendants specifically pointed to testimony from Symantec's former Chief Accounting Officer, who testified that "we never reported amounts incorrectly." ¶ 142. Defendants also relied on their accounting expert to defend Symantec's accounting practices as consistent with GAAP and SEC guidance. ¶ 143. While Plaintiffs had counterarguments that they believed in, there was a significant risk that the Court or a jury could accept Defendants' arguments and evidence.

Materiality. Further, Defendants argued at summary judgment that Plaintiffs would be unable to establish materiality. For example, Defendants argued that the Oracle transaction, which accounted for $12 million in revenue booked prematurely, was immaterial because it accounted for less than 1% of 2018 Q4 revenues and 0.25% of FY 2018 revenues. ¶ 146. This was an issue that caused the Court to initially dismiss the case. In addition, Defendants noted that Lead Plaintiff's expert was able to quantify only $58.3 million in alleged specific misstated T&T expenses. Defendants would have argued that this specific amount was immaterial to Symantec. ¶ 147. While Plaintiffs believe that they had strong rebuttal arguments, they also acknowledge the risk of the Court or the jury crediting Defendants' arguments on these points at summary judgment or trial.

Scienter. Assuming Plaintiffs were able to prove to a jury that Defendants' statements were materially false, they would still need to prove that Defendants made the alleged false statements with the intent to mislead investors or with deliberate recklessness. As courts have recognized, defendant's state of mind in a securities case "is the most difficult element of proof and one that is rarely supported by direct evidence." *See, e.g., In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *3 (C.D. Cal. Oct. 25, 2016).; *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) (noting that scienter is a "complex and difficult [element] to establish at trial").

Here, Defendants contended at summary judgment that Symantec's processes and procedures for reviewing T&T expenses, including Board-level review; Clark's decision to hire EY to review the T&T expenses; and Symantec's decision to voluntarily undertake the Audit Committee investigation constituted evidence of Defendants' good faith and demonstrated the lack of any intent to defraud. ¶ 149. They further argued that scienter could only be proved through

former CEO Clark, which they claimed would be impossible because he did not approve and was not aware of any misclassified T&T expenses, he relied on the Company's accounting staff to handle such matters and, when issues arose, he promptly tried to address them in good faith, including by hiring outside consultants. ¶ 150. Thus, there was a significant risk that the Court or a jury could agree with Defendants. Defendants also argued that they had no intent to mislead investors regarding increasing contract duration because they were investigating the issue during the Class Period and, once they understood what was happening, they promptly disclosed the truth. While Plaintiffs disputed that claim, again, there was a significant risk that the Court or a jury could side with Defendants. ¶ 151.

Loss Causation and Damages. Defendants also vigorously disputed loss causation and damages. For example, Defendants argued at summary judgment that damages were ***zero*** because the alleged corrective disclosures merely discussed the existence of an investigation, without any admission of wrongdoing or correction of an alleged misrepresentation. ¶ 153. Defendants also argued that the conclusions of the Audit Committee investigation also contained no admission of wrongdoing or correction of any misrepresentations. If successful, Defendants' arguments would have eliminated damages entirely. *Id*. Defendants also continued to argue that the August 2018 alleged corrective disclosure could not have caused any losses because it revealed no "new" information about the fraud. ¶ 154. On the contract duration claims, Defendants argued that Symantec disclosed in January 2018 that contract duration was increasing, which precluded any damages for this claim because, according to Defendants, investors always knew the truth. *Id*.

While Defendants' main argument was that no damages were recoverable at all, Defendants' expert did calculate damages based on the assumption that Defendants would prevail on certain disputed arguments regarding loss causation, including elimination of the August 2018 corrective disclosure, as well as certain offsets, including removal of the contract duration claim. According to Defendants and their expert, if they had prevailed on only those arguments, they would reduce aggregate damages to $126 million after netting of gains on sales of Symantec purchased before the Class Period (based on Lead Plaintiff's expert's calculations using Defendants' expert's figures and conclusions). ¶ 155.

The resolution of these disputed issues regarding damages and loss causation would have boiled down to a "battle of experts," and Defendants presented an expert economist who opined that the Class's damages were nonexistent or very low. ¶ 155. As Courts have long recognized, the uncertainty as to which side's expert's view might be credited by the jury presents a substantial litigation risk in securities actions. *See In re Celera Corp. Sec. Litig.*, U.S. Dist. LEXIS 157408, at *17 (N.D. Cal. Nov. 20, 2015) (finding that risks related to the "battle of experts" weighed in favor of settlement approval); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004) ("[P]roof of damages in securities cases is always difficult and invariably requires expert testimony which may, or may not be, accepted by a jury.").

3. The Duration and Costs of Continued Litigation

Courts consistently recognize that the likely duration and costs of continued litigation are key factors in evaluating the reasonableness of a settlement. *See, e.g.*, *Torrisi*, 8 F.3d at 1376 (finding that "the cost, complexity and time of fully litigating the case" rendered the settlement fair). "Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015). Due to the "notorious complexity" of securities class actions in particular, settlement is often appropriate because it "circumvents the difficulty and uncertainty inherent in long, costly trials." *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *6 (C.D. Cal. June 10, 2005) (finding that securities class actions have well-deserved reputation for complexity).

Here, without the proposed Settlement, continued litigation would have required (i) resolution of Defendants' pending summary judgment motion; and then—assuming Plaintiffs prevailed—(ii) extensive pre-trial motion practice such as motions *in limine* and *Daubert* motions; (iii) a trial requiring a substantial amount of detailed factual and expert testimony; (iv) likely post-verdict challenges to individual Class Members' damages; and (v) appeals from any verdict in favor of the Class. The continued litigation and appeals would have been costly and would have substantially delayed any recovery for Class Members, possibly for years. *See Zynga*, 2016 WL

537946, at *10; *Amgen*, 2016 WL 10571773, at *3 ("A trial of a complex, fact-intensive case … [as here] … could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation."). And even if a favorable trial verdict was affirmed on appeal, the Class would have faced a potentially complex, lengthy, and contested claims-administration process.[6] Absent the proposed Settlement, there is no question that resolution of this case would take considerable time and require additional expenses, with the end result not remotely certain. *See Hartless v. Clorox Co.*, 273 F.R.D. 630, 640 (S.D. Cal. 2011) ("Considering these risks, expenses and delays, an immediate and certain recovery for class members . . . favors settlement of this action.").

Thus, the risk, complexity, and likely duration of further litigation support approval of the proposed Settlement. The present value of a certain and substantial recovery now, as opposed to the mere chance of a possibly greater one many months or even years later, supports approval of a settlement that eliminates the expense and delay of continued litigation and the risk that the Class could receive no recovery. *See Velazquez v. Int'l Marine & Indus. Applicators, LLC*, 2018 WL 828199, at *4 (S.D. Cal. Feb. 9, 2018) (holding that courts "shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation").

4. All Other Factors in Rule 23(e)(2)(C) Support Approval of the Settlement

Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," "the terms of any proposed award of attorney's fees, including timing of payment," and "any agreement required to be identified under

[6] In other securities-fraud class actions that have gone to trial, the time from a verdict to a final judgment has been as long as seven years. *See Jaffe Pension Plan v. Household Int'l, Inc.*, No. 1:-02-cv-05893, Verdict Form, ECF No. 1611 (N.D. Ill. May 7, 2009) & Final Judgment and Order of Dismissal With Prejudice, ECF No. 2267 (N.D. Ill. Nov. 10, 2016); *see also Vivendi Universal, S.A. Sec. Litig.*, Civ. No. 02-5571 (RJH/HBP), Verdict Form, ECF No. 998 (S.D.N.Y. Feb. 2, 2010) (jury verdict issued on Jan. 29, 2010) & Final Judgment Approving Class Action Settlement of All Remaining Claims, ECF No. 1317 (S.D.N.Y. May 9, 2017).

Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors also supports approval of the proposed Settlement or is neutral and does not suggest any basis for a finding that the Settlement is inadequate.

First, the procedures for processing Class Members' claims and distributing the proceeds of the Settlement to eligible claimants are well-established, effective methods that have been widely used in securities class action litigation. The proceeds of the Settlement will be distributed to Class Members who submit eligible Claim Forms with required documentation to the Court-approved Claims Administrator, A.B. Data, Ltd. ("A.B. Data"). A.B. Data, an independent company with extensive experience administering securities class actions, will review and process the claims under Lead Counsel's supervision, provide claimants with an opportunity to cure any deficiencies in their claims or request review of the denial of their claims by the Court, and then mail or wire claimants their *pro rata* share of the Net Settlement Fund (as calculated under the Plan of Allocation) upon approval of the Court.[7] This type of claims processing is standard in securities class actions and has long been used and found to be effective. This claim procedure is necessary because neither Lead Plaintiff nor Defendants possess data regarding investors' transactions in Symantec common stock that would allow the Parties to create a claims-free process to distribute Settlement funds.

Second, the relief provided for the Class in the Settlement is also adequate when the terms and timing of the proposed award of attorney's fees are taken into account. Lead Counsel requests a fee of 19% of the Settlement Fund. As discussed in the Fee Memorandum, the requested fee is well below the 25% benchmark for percentage fee awards in the Ninth Circuit and well within the range of percentages that courts within this Circuit award for similarly sized settlements. Also, the requested fee represents a "negative lodestar" multiplier and, as such, represents a significant discount to Lead Counsel's total lodestar devoted to the prosecution of this Action. Importantly, with respect to the Court's consideration of the fairness of the Settlement, the approval of the

[7] The Settlement is not a claims-made settlement. If the Settlement is approved, Defendants will have no right to the return of any portion of the Settlement based on the number or value of claims submitted. *See* Stipulation ¶ 16.

requested attorneys' fees is entirely separate from approval of the Settlement, and neither Lead Plaintiff nor Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees. *See* Stipulation ¶ 16.

With respect to timing, and consistent with the Court's practices, Lead Counsel will request that 100% of the Litigation Expenses and 50% of the attorney's fees be paid upon approval of the Court and 50% of the fees be paid when the distribution of the Net Settlement Fund to Authorized Claimants has occurred.

Lastly, Rule 23(e)(2)(C) asks the Court to consider the proposed Settlement's fairness in light of any agreements required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). As previously disclosed, the only agreement the Parties entered into in addition to the Stipulation itself was a confidential Supplemental Agreement regarding requests for exclusion (*see* Stipulation ¶ 36)—which was provided to the Court *in camera* on September 1, 2021. *See* ECF No. 403-3. The Supplemental Agreement gives Symantec the right to terminate the Settlement if the valid requests for exclusion received from persons and entities entitled to be members of the Class exceeds an amount agreed to by Lead Plaintiff and Symantec. *Id*. This type of agreement is standard in securities class actions and has no negative impact on the fairness of the Settlement. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4. 2018) ("The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.").

D. The Settlement Treats Class Members Equitably

In determining whether a class action settlement is "fair, reasonable, and adequate," the Court must also consider whether the Settlement treats class members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(D). Here, the proposed Settlement does so. As discussed below in Part II (discussing the Plan of Allocation), eligible claimants approved for payment by the Court will receive their *pro rata* share of the recovery based on damages they suffered that were attributable to the alleged fraud. No subset of the Class is receiving any special treatment and Lead Plaintiff will receive the same level of *pro rata* recovery under the Plan of Allocation (based on its Recognized Claims as calculated under the Plan) as all other Class Members.

E. Additional Factors Considered by the Ninth Circuit Support Approval of the Settlement

Two additional factors considered by the Ninth Circuit in assessing a proposed settlement are "the experience and views of counsel" and "the reaction of the class members to the proposed settlement." *Churchill*, 361 F.3d at 575. Each of these factors also supports the Settlement.

As courts in this Circuit have explained, "[t]he recommendation of experienced counsel carries significant weight in the court's determination of the reasonableness of the settlement." *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *see Nat'l Rural Telecommc'ns Coop. v. DIRECTTV*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'Great weight' is accorded to the recommendation of counsel . . . because 'parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation'"). Here, Lead Counsel—based on a thorough understanding of the strengths and weaknesses of the Action—concluded that the proposed Settlement represents an excellent outcome for Class Members given the risks and the range and probability of potential outcomes.

Likewise, the positive reaction of the Class to the Settlement to date is another factor that favors approval of the Settlement. *See Amgen*, 2016 WL 10571773, at *4. Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, A.B. Data, has mailed a total of 169,578 copies of the Court-approved Settlement Notice and Claim Form (collectively, the "Notice Packet") to potential Class Members and nominees as of December 29, 2021. *See* Miller Decl. (Ex. 2) ¶ 5. In addition, the Court-approved Summary Settlement Notice was published in the *Financial Times* on October 5, 2021, and in *The Wall Street Journal* and over the *PR Newswire* on October 8, 2021. *See id.* ¶ 6. The Settlement Notice set out the essential terms of the Settlement and informed potential Class Members of, among other things, their additional opportunity to request exclusion from the Class or object to any aspect of the proposed Settlement. While the January 13, 2022 deadline for Class Members to exclude themselves or object has not yet passed, to date, no objections to the Settlement or the Plan of Allocation have been received. *See* Robinson Decl. ¶ 165. In addition, to date, only eight additional requests for exclusion from the Class have been received. Lead Plaintiff will discuss all requests for exclusion and any objections that may be received, its reply papers, to be filed by February 3, 2022.

In sum, all of factors to be considered under Rule 23(e)(2) support a finding that the proposed Settlement is fair, reasonable, and adequate.

II. The Plan of Allocation Is Fair and Reasonable

In addition to seeking final approval of the Settlement, Lead Plaintiff seeks approval of the proposed Plan of Allocation for the Settlement proceeds. The Plan of Allocation is set forth at pages 11 to 15 of the Settlement Notice mailed to Class Members. It is the same Plan of Allocation as that which was contained in the Settlement Notice approved by the Court in its Preliminary Approval Order. ECF No. 411 at 26-31.

The standard for approval of a plan of allocation in a class action under Rule 23 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 1284-85; *see also Omnivision*, 559 F. Supp. 2d at 1045. An allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel, as here. *See Heritage Bond*, 2005 WL 1594403, at *11. Courts hold that "[a] plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable." *In re Oracle Sec. Litig.*, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994).

Lead Counsel developed the Plan of Allocation with the assistance of Lead Plaintiff's damages expert. ¶ 168. The Plan provides for the distribution of the Net Settlement Fund to Class Members on a *pro rata* basis based on the extent of their injuries attributable to the alleged fraud. ¶ 172. In developing the Plan of Allocation, Lead Plaintiff's expert calculated the estimated amount of artificial inflation in the per-share closing prices of Symantec's common stock that was allegedly proximately caused by Defendants' alleged false and misleading statements and omissions. ¶ 168. To calculate the estimated artificial inflation, Lead Plaintiff's expert considered the price changes in Symantec common stock in reaction to the public disclosures that allegedly corrected the alleged misrepresentations and omissions, adjusting for price changes attributable to market or industry factors. *Id*.

The Plan of Allocation calculates a "Recognized Loss Amount" for each purchase of Symantec common stock during the Class Period that is listed in the Claim Form and for which adequate supporting documentation is provided. The calculation of Recognized Loss Amounts

will depend upon several factors, including when the claimant's stock was purchased and sold and the purchase or sale price. In general, Recognized Loss Amounts will be the lower of: (i) the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale, and (ii) the difference between the actual purchase price and sales price. Settlement Notice ¶¶ 57, 61. For shares sold during or after the 90-day period following the end of the Class Period, the Plan also limits Recognized Loss Amounts based on the average price of the stock during that 90-day period, consistent with the PSLRA. *Id.* ¶¶ 61(c)(iii), 61(d)(ii). Under the Plan of Allocation, claimants who purchased shares during the Class Period but did not hold those shares through at least one of the alleged corrective disclosures will have no Recognized Loss Amount as to those transactions because any loss they suffered would not have been caused by revelation of the alleged fraud. *Id.* ¶ 60.

Claimants who purchased their shares "contemporaneously" with sales of Symantec common stock by Defendant Clark during the Class Period (defined as within nine trading days after Defendant Clark's sales) will be entitled to a relatively small increase in their Recognized Loss Amount on those purchases to reflect that they had claims against Defendant Clark under Section 20A of the Exchange Act that were not possessed by all other members of the Class. *See* Settlement Notice ¶ 62. Specifically, all Claimants who purchased shares of Symantec common stock from August 28, 2017 through September 14, 2017 (the "20A Period") will be entitled to an additional 2% enhancement of their Recognized Loss Amount. *Id.* The 2% enhancement was determined by considering (a) the amount of additional incremental (non-overlapping) damages that might have been recovered from Defendant Clark under the Section 20A claims at trial; (b) the estimated litigation risks of succeeding on those claims; and (c) the percentage of eligible Class purchases estimated to have occurred during the 20A Period.

The sum of a Claimant's Recognized Loss Amounts for all their Class Period purchases is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Settlement Notice ¶¶ 64, 71.

One hundred percent of the Net Settlement Fund will be distributed to Class Members who submit eligible claims. If any funds remain after an initial distribution to Authorized Claimants, as a result of uncashed or returned checks or other reasons, subsequent cost-effective distributions will also be conducted. Settlement Notice ¶ 73. In the event any residual funds remain after all cost-effective distributions of the Net Settlement Fund to Eligible Claimants have been completed, the Plan of Allocation identifies the Investor Protection Trust as the proposed *cy pres* recipient. Settlement Notice ¶ 83. Here, the Investor Protection Trust is a 501(c)(3) nonprofit organization devoted to investor education (Robinson Decl. ¶ 173) and is an appropriate *cy pres* recipient because its mission relates to the nature of the securities fraud claims asserted in the Action, and courts in this District have approved it as a *cy pres* recipient in other securities fraud class actions in recent years. *See, e.g.*, *Fleming v. Impax Laboratories Inc.*, 2021 WL 5447008, *9 (N.D. Cal. Nov. 22, 2021) ("The Court preliminarily finds that the Investor Protection Trust shares the interests of the class members in protecting investors and preventing fraud. Accordingly, the Court preliminarily finds that there is a sufficient nexus between the *cy pres* recipient and the Settlement Class."); *Hefler v. Wells Fargo & Company*, 2018 WL 6619983, at *11 (N.D. Cal. Dec. 17, 2018) ("the Court concludes that the Investor Protection Trust's mission of educating investors makes it an appropriate *cy pres* beneficiary"); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 2018 WL 6198311, at *5 (N.D. Cal. Nov. 28, 2018) (finding the Trust an appropriate *cy pres* beneficiary because "[a] savvy, educated investor is hopefully more likely to identify signs of securities fraud, which furthers the Exchange Act's purpose of maintaining 'fair and honest markets'"). As noted, payment will only be made to this charity when the residual amount left for re-distribution to Class Members is so small that a further re-distribution would not be cost effective—for example, in the event the administrative costs of conducting an additional distribution would largely subsume the funds available.

Notably, as of December 29, 2021, more than 169,000 copies of the Settlement Notice, which contains the Plan of Allocation and advises Class Members of their right to object to the Plan, have been mailed to potential Class Members. *See* Miller Decl. ¶ 5. To date, no objections to the Plan of Allocation have been received. *See* Robinson Decl. ¶ 165.

In sum, Lead Plaintiff respectfully submits that the proposed Plan of Allocation is fair and reasonable and should be approved.

III. Notice to the Class Satisfied the Requirements of Rule 23 and Due Process

In accordance with the Court's Preliminary Approval Order, A.B. Data, the Court-approved Claims Administrator, began mailing copies of the Notice Packet to potential Class Members and nominees on September 24, 2021. *See* Miller Decl. ¶¶ 4-5. The initial mailing on September 24, 2021, to all Class Members who were identified in the previous Class Notice and Supplemental Class Notice mailings, was made to 162,865 potential Class Members and nominees. As of December 29, 2021, A.B. Data had mailed a total of 169,578 copies of the Notice Packet by first-class mail to potential Class Members and nominees. *See id*. ¶ 5. In addition, A.B. Data arranged for the Summary Settlement Notice to be published in the *Financial Times* on October 5, 2021, and in *The Wall Street Journal* and transmitted over the *PR Newswire* on October 8, 2021. *See id.* ¶ 6. A.B. Data also updated the dedicated settlement website, www.SymantecSecuritiesLitigation.com, to provide potential Class Members with information concerning the Settlement and access to downloadable copies of the Settlement Notice, Claim Form, and Stipulation, among other documents. *See id*. ¶ 7. Copies of the Settlement Notice and Claim Form were also made available on Lead Counsel's website, www.blbglaw.com. *See* Robinson Decl. ¶ 164.

The Settlement Notice provided to the Class in accordance with the Court's Preliminary Approval Order satisfied all the requirements of due process, Rule 23, and the PSLRA. Notice of a class action settlement must be directed "in a reasonable manner to all class members who would be bound" by the Settlement. Rule 23(e)(1)(B). The notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *See Churchill*, 361 F.3d at 575; *Luna v. Marvell Tech. Grp.*, 2018 WL 1900150, at *2 (N.D. Cal. Apr. 20, 2018) (same); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 330 (C.D. Cal. 2016) ("Settlement notices must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.").

The notice program's combination of individual first-class mail to all Class Members who could be identified with reasonable effort, supplemented by notice in widely circulated publications, transmission over a business newswire, and publication on internet websites, satisfied all requirements of Rule 23 and due process. *See, e.g.*, *Hayes v. MagnaChip Semiconductor Corp.*, 2016 WL 6902856, at *4-5 (N.D. Cal. Nov. 21, 2016) (approving similar notice program); *Zynga*, 2016 WL 537946, at *7 (finding individual notice mailed to class members combined with summary publication constituted "the best form of notice available under the circumstances").

The contents of the Settlement Notice, which was approved by the Court in the Preliminary Approval Order, provided the necessary information for Class Members to make an informed decision regarding the Settlement and contained all of the information required by Rule 23(c)(2)(B), the PSLRA (15 U.S.C. § 78u-4(a)(7)), and this District's Procedural Guidelines for Class Action Settlements. The Settlement Notice informed Class Members of, among other things, (1) the nature of the Action and the claims asserted; (2) the definition of the Class; (3) the amount of the Settlement; (4) the reasons why the parties are proposing the Settlement; (5) the estimated average recovery per affected class member; (6) the maximum amount of attorneys' fees and expenses that will be sought; (7) the identity and contact information for the representatives of Lead Counsel who are reasonably available to answer questions from Class Members; (8) Class Members' right to opt out of the Class or to object to the Settlement, the Plan of Allocation, or the requested attorneys' fees or expenses; (9) the binding effect of a judgment on Class Members; and (10) the dates and deadlines for Settlement-related events. The Settlement Notice also contained the Plan of Allocation and provided Class Members with information on how to submit a Claim Form in order to be eligible to receive a distribution from the Net Settlement Fund.

In sum, the Settlement Notice fairly apprised Class Members of their rights with respect to the Settlement and complied with the Court's Preliminary Approval Order, the Federal Rules of Civil Procedure, the PSLRA, and due process.

CONCLUSION

For these reasons, Lead Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement and approve the Plan of Allocation.

Dated: December 30, 2021

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