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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE FIREEYE, INC. SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.

Lead Case No.: 1-14-cv-266866
(Consolidated with Case No. 1-14-CV-268110)

DECLARATION OF WILLIAM C. FREDERICKS IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAINTIFF'S COUNSEL'S MOTION FOR AWARD OF FEES AND EXPENSES

Date: August 4, 2017
Time: 9:00 a.m.
Judge: Hon. Peter H. Kirwan
Dep't.: 19

Date Actions Filed: June 20, 2014
July 17, 2014

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I, WILLIAM C. FREDERICKS, declare as follows:

1. I am a partner with Scott+Scott, Attorneys at Law, LLP ("Scott+Scott"), lead counsel to the DeKalb County Employees Retirement Plan ("Lead Plaintiff" or "DeKalb County"), the Court-appointed Class Representative in this consolidated action. I make this declaration in support of (a) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds, and entry of the accompanying [proposed] Final Judgment and Order ("Final Judgment"); (b) Plaintiff's Counsel's Motion for Award of Attorneys' Fees and Expenses and of Lead Plaintiff's Request for a Service Award; and entry of the accompanying [Proposed] Order Granting Motion for Attorneys' Fees and Expenses, and of Lead Plaintiff's Request for a Service Award.

2. I have personal knowledge of the matters stated herein, and if called upon I could and would competently testify thereto under oath.

I. INTRODUCTION

3. Plaintiff DeKalb County and its counsel have achieved an excellent settlement on behalf of the Class.[1] The Stipulation of Settlement ("Stipulation") provides for the payment of $10,250,000 in cash (the "Settlement Amount") to a common fund for the benefit of the Class in exchange for the Class's release of all Released Claims against Defendant FireEye, Inc. ("FireEye"), the Individual Defendants (consisting of certain officers and/or directors of FireEye who signed the Offering Materials), and the Underwriter Defendants (consisting of the nine banks that underwrote the March 6, 2014 Secondary Offering of FireEye common shares at issue in this Action). The Settlement was achieved only after years of litigation, including multiple dispositive motions, extensive discovery, and contested class certification proceedings, and only after a subsequent arm's-length negotiation and mediation process conducted in December 2016 under the auspices of Judge Layn R. Phillips, a retired federal judge with extensive experience in mediating complex securities class actions such as this. Plaintiff's Counsel believes that the

[1] All capitalized terms not otherwise defined herein have the same meaning as set forth in the Stipulation, which was previously filed with the Court on February 6, 2017, in connection with Lead Plaintiff's previously granted motion for preliminary approval.

Settlement is the second largest ever obtained in a 1933 Act case prosecuted in a California state court.

4. For all of the reasons set forth herein, including the results obtained in the face of significant litigation risks summarized at ¶¶48-59 below, it is respectfully submitted that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class. In addition, given the nature and amount of work performed and the quality of the result achieved, Plaintiff's Counsel respectfully submit that their request for a total aggregate award of attorneys' fees equal to 33⅓% of the Settlement Fund ($3,416,667), and for reimbursement of their litigation expenses in the amount of $415,306.60, is fair and reasonable and should also be approved.

5. By Order dated July 11, 2016, the Court (deciding a vigorously contested motion) has already certified the Class (although in so doing the Court substantially narrowed the originally proposed class so as to limit it to only investors who purchased FireEye shares directly "in" the March 6, 2014 Secondary Offering). In addition, by Order dated March 10, 2017 (the "Preliminary Approval Order"), the Court not only preliminarily approved the Settlement, but also approved the "long-form" Notice of Settlement (the "Notice"), the Summary Notice, and the Proof of Claim form. Pursuant to that Order, (a) over 30,720 Notices and Proof of Claim forms have been mailed to putative Class members, or sent to brokers/nominees to forward to their clients who are likely Class members; (b) the Summary Notice was duly published in *The Wall Street Journal* and over the PR Newswire, and (c) the Notice and Proof of Claim have also been posted on the dedicated settlement website (www.fireeyesecuritieslitigation.com). *See* accompanying Declaration of Justin R. Hughes [of the Court-appointed Claims Administration firm in this matter] Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; (C) Establishment of the Telephone Hotline; (D) Establishment of the Settlement Website; and (E) Report on Requests for Exclusion Received to Date, dated June 29, 2017, at ¶¶7-9, and 11.

6. The Notice advised Class members of the material terms of the Settlement. It also advised them of their rights to (a) exclude themselves from the Class, (b) object to any part of the Settlement, (b) object to the proposed Plan of Allocation, (c) object to counsel's requested

attorneys' fee award of 33⅓% of the Settlement Amount (plus reimbursement of expenses of up to $500,000) and (d) object to Lead Plaintiff DeKalb County's request for a service award of $7,500. To date, however, ***no*** objections to the Settlement, Plan of Allocation, proposed attorneys' fee and expense award, or the proposed service award have been received. Similarly, to date, no requests to "opt-out" of the Settlement have been received.

II. HISTORY OF THE LITIGATION AND SUMMARY OF WORK PERFORMED BY PLAINTIFF'S COUNSEL

A. Summary of the Action

7. On June 20, 2014, the International Brotherhood of Electrical Workers Local Union 363 filed the first complaint in this matter. That complaint alleged violations of §§11, 12(a)(2) and 15 of the Securities Act of 1933 ("1933 Act"), 15 U.S.C. §§77k, 77l(a)(2) & 77o, with respect to the dissemination of allegedly false, misleading, and materially incomplete statements in the Registration Statement and incorporated prospectus (the "Offering Materials") for the March 6, 2014 secondary offering of 14 million FireEye common shares (the "Offering"). The complaint asserted claims against FireEye, Inc. ("FireEye"), the FireEye officers and/or directors who signed the Offering Materials (the "Individual Defendants"), and the nine banks (the "Underwriter Defendants") who underwrote the Offering. On July 17, 2014, Steven Platt filed a complaint alleging similar violations of the 1933 Act.

8. On October 23, 2014, the two actions were consolidated, and on January 30, 2015, the Court granted Lead Plaintiff DeKalb County's motion to intervene.

9. On March 4, 2015, Lead Plaintiff filed the operative complaint in this action, the Consolidated First Amended Class Action Complaint for Violations of the Securities Act of 1933 (the "Complaint").

10. The Complaint brought claims under the 1933 Act on behalf of all persons or entities who purchased FireEye common stock pursuant or traceable to the Offering Materials. FireEye is a global network security company that provides automated threat forensics and dynamic malware protection against cyber threats. FireEye's main product line consists of malware protection for web security, email security, file security, and malware analysis. The Offering Materials were declared effective on March 6, 2014. The Company itself sold 5.58

million shares in the Offering, including shares sold pursuant to the Underwriters' overallotment, and the remaining 8.417 million shares were sold by FireEye insiders.

11. The Complaint alleges that the Offering Materials contained a number of materially inaccurate or misleading statements, and omitted certain other information required to be stated therein, regarding FireEye's business, performance, and products. For example, the Offering Materials represented that FireEye's product offering represented a "***comprehensive" and "complete" solution*** for "detecting, preventing and resolving advanced cybersecurity threats." Similarly, the Offering Materials represented that FireEye's software had the ability to "identify and block" both known and previously unknown cybersecurity threats. The Offering Materials also contained various representations concerning the purported benefits of FireEye's recent acquisition of Mandiant, as they described the Mandiant acquisition as providing a "significant opportunity [for FireEye] to leverage the inherent synergies between products and services" across the two companies. Plaintiff further alleges, however, that at the time of the Offering, these statements were materially inaccurate or misleading, and that the Offering Materials also failed to disclose a materially adverse decline in FireEye's revenue from product sales in violation of SEC Regulation S-K, 17 C.F.R. §229.303 ("Item 303").

12. The offered shares were sold to members of the public at a price of $82 per share. However, the Complaint alleges that the price of FireEye shares began to fall soon after the Offering in response to news that gradually disclosed the truth concerning the actual quality, capabilities, and weaknesses of FireEye's products and business. For example:

- On March 13, 2014, *Bloomberg* disclosed FireEye's involvement in a massive data breach at Target Corporation in November 2013. It also revealed that Target had installed FireEye's "complete solution" prior to the breach, but that it had turned off the "automatic kill" features of FireEye's technology because of concerns about its ability to reliably identify and attack only dangerous malware without also shutting down other computer systems that were not at risk. A *Reuters* report also cited two industry insiders as stating that, like Target, most FireEye customers turned off the product's automatic kill function "because it is known for incorrectly flagging data as malware, which can halt email and Web traffic for business users." Thereafter, the price of FireEye shares fell over $4.00. Compl., ¶¶11, 104-07.
- On April 2, 2014, NSS Labs, an independent computer security testing and consulting firm, reported that FireEye's products had scored "below average" in security effectiveness compared to those of five other security software companies, and had also received the worst score for overall breach detection. Following this negative review, FireEye shares fell again. *Id*., ¶¶12, 113-15.
- On May 6, 2014, FireEye announced its first quarter results, and that it had met its

prior projections for total revenue for the quarter. However, it also reported a decline in reported product (as opposed to services) revenue. FireEye's shares price thereafter fell by another $8.50. *Id.*, ¶¶13, 116-20.

13. Defendants have denied, and continue to deny, all such allegations and continue to deny any liability, including any liability for the claims Plaintiff asserted in this Action under the 1933 Act.

B. Plaintiff's Pre-Filing Investigation and the Preparation of the Operative Complaint

14. In connection the preparation of the operative Complaint, Plaintiff's Counsel undertook a substantial investigation. That investigation included, among other things, collecting, reviewing and analyzing not only the Offering Materials, but also FireEye's press releases, FireEye's various filings with the U.S. Securities and Exchange Commission ("SEC"), analyst and media reports about FireEye, investigator reports of interviews with former employees of the Company, and other commentary, analysis, and information concerning FireEye and the cyber-security industry generally. In addition, from the early spring of 2015 until Lead Plaintiff entered into the Confidentiality Stipulation in this case that was so-ordered on October 28, 2015, Plaintiff's Counsel's efforts to develop the factual and legal bases supporting the Complaint included the sharing of work product with counsel for FireEye investors in a separate securities action which those counsel had brought in federal court against FireEye.

C. The Contested Demurrer Proceedings

15. On April 20, 2015, the FireEye and Underwriter Defendants both filed demurrers seeking to dismiss the Action in its entirety (primarily for failure to plead an actionable misrepresentation or omission). Lead Plaintiff filed its opposition papers on June 2, 2015, and Defendants filed their replies on June 29, 2015. Following briefing and oral argument, by Order dated August 11, 2015 this Court overruled the demurrers (except as to defendant Coughran's demurrer on the §12(a)(2) claim), and lifted the Court's prior stay of discovery.

16. On August 21 and September 4, 2015, the FireEye and Underwriter Defendants filed their respective Answers to the Complaint.

17. On September 24, 2015, Defendants filed a Motion to Require an Undertaking pursuant to §11(e) of the 1933 Act, which again attacked the sufficiency of the allegations of the

Complaint that the Court's August 11 Order had sustained just six weeks earlier. Lead Plaintiff filed its opposition papers on October 19, 2015, and Defendants filed their reply on October 23, 2015. After full briefing and oral argument, the Court denied the motion on October 30, 2015.

D. Summary of Merits Discovery Conducted By Plaintiff and Contested Discovery Proceedings

18. Plaintiff's Counsel conducted extensive formal discovery following the lifting of the Court's discovery stay in August 2015. These discovery efforts included preparing Plaintiff's comprehensive First Set of Requests for Production of Documents on the FireEye Defendants, together with an additional set of document requests served on the Underwriter Defendants.

19. Pursuant to its document requests, Plaintiff's Counsel obtained and reviewed (a) over 950,000 pages of documents produced by the FireEye Defendants, as well as (b) roughly an additional 110,000 pages of documents from the Underwriter Defendants.

20. In addition, Lead Plaintiff prepared and obtained responses to extensive interrogatories that it served on the FireEye Defendants.

21. In the fall of 2016, Lead Counsel began taking depositions of FireEye personnel, beginning with full-day depositions of FireEye's CEO (defendant DeWalt) and its founder and former Chief Technology Officer (defendant Aziz).

22. Litigation over the scope of discovery was also vigorously contested, with both sides requesting multiple Informal Discovery Conferences ("IDCs") – some of which resulted in the Court issuing subsequent discovery orders – over the course of the Action. For example, both sides prepared pre-IDC statements, and thereafter participated in at least six adversarial IDC proceedings before the Court on December 16, 2015; February 9, 2016; March 9, 2016; April 19, 2016; October 20, 2016; and November 7, 2016.

23. Among the more significant outcomes obtained by Plaintiff's Counsel through the IDC process were a ruling by the Court at the December 2015 IDC that denied Defendants' efforts to "phase" discovery (which sought to indefinitely restrict merits discovery to just one of the many issues raised in the Complaint), and a ruling at the March 2016 IDC allowing Lead Plaintiff to obtain discovery from the electronic custodial files of a significant number of additional FireEye personnel. The latter ruling was subsequently memorialized in an agreed Order, dated April 13,

2016 – the terms of which were only hammered out after weeks of further negotiations between Plaintiff's and FireEye's counsel over the details of the protocols to be followed for proposing and running electronic "search terms" and for ultimately selecting both the final search terms and the additional custodians whose files were to be searched.

24. In addition, separate and apart from the six IDCs and prior to entering into mediation in late 2016, the parties and the Court *also* participated in 12 Case Management Conferences ("CMCs") in this action. These 12 CMCs were held on January 30, 2015; March 13, 2015; May 29, 2015; July 10, 2015; July 31, 2015; September 25, 2015; October 30, 2015; February 5, 2016; May 13, 2016; July 8, 2016; August 5, 2016; and October 20, 2016. Prior to these CMCs, Plaintiff's Counsel also typically prepared, on behalf of all parties, the initial drafts of (and also handled the finalization and filing of the final versions of) the parties' often lengthy joint pre-CMC statements.

E. The Contested Class Certification Proceedings and Related Discovery

25. On November 16, 2015, Lead Plaintiff filed its Motion for Class Certification.

26. Thereafter, Plaintiff's Lead Counsel worked with Lead Plaintiff DeKalb County to prepare objections and responses to the Defendants' comprehensive class-related discovery requests, which required Lead Plaintiff to respond to more than a dozen separate document requests and an equally large number of detailed interrogatories. In addition, Lead Counsel prepared Lead Plaintiff's designee for his deposition, and thereafter defended what proved to be a full-day deposition of DeKalb County's representative on March 16, 2016. Lead Counsel also attended and participated in the examination of Lead Plaintiff's investment manager, Jennison Associates LLC, which Defendants had also noticed.

27. In connection with the briefing of class certification issues, both sides also worked with their respective experts to submit expert reports in support of – and in opposition to – class certification. As part of their reply papers (filed on May 6, 2016), Plaintiff's Counsel, following extensive consultations with their experts, submitted two expert declarations, one from Dr. Scott Hakala, Ph.D. (an expert in damages and "tracing" methods in 1933 Act cases), and the other from

Prof. Thomas L. Hazen, the Cary C. Boshamer Distinguished Professor of Law at the University of North Carolina at Chapel Hill (an expert in the federal securities laws).

28. Following oral argument, the Court thereafter requested that the parties submit supplemental briefing and related materials on "tracing" issues. In response, Lead Plaintiff submitted further a supplemental brief on June 8, 2016, together with a further supplemental expert declaration from Dr. Hakala.

29. By Order dated July 11, 2016, the Court granted Lead Plaintiff's Motion for Class Certification in part and denied it in part. More particularly, the Court: (a) certified a Class, appointed Lead Plaintiff as the representative of the Class, appointed Scott+Scott and the law firm of Bottini & Bottini, Inc. (the "Bottini firm") as class counsel and liaison counsel, respectively; but (b) restricted membership in the Class to only those who purchased shares directly "in" FireEye's Secondary Offering (and were damaged thereby), and excluded all putative Class members who had purchased their FireEye shares in the secondary market.[2]

F. Defendants' Motion for Judgment on the Pleadings and the Subsequent Appellate Writ Proceedings in the California Court of Appeals, California Supreme Court, and United States Supreme Court

30. On January 6, 2016, FireEye filed a motion for judgment on the pleadings for lack of jurisdiction. Lead Plaintiff filed its opposition papers on March 18, 2016. The Court denied Defendants' motion on April 1, 2016.

31. Shortly after entry of this Court's Order denying its motion, FireEye filed for a Writ of Prohibition or Mandate in the California Court of Appeal on May 19, 2016 (the "Writ Petition"). Lead Plaintiff prepared and filed its brief in opposition to Defendants' Writ Petition on May 31, 2016.

32. After this initial petition was denied by the Court of Appeal on September 8, 2016, FireEye then filed a Petition for Review with the California Supreme Court on September 16,

[2] The Court's class certification ruling effectively disposed of the claims of the two other originally named plaintiffs, Steven Platt and IBEW 363, as they had not purchased directly "in" the Secondary Offering.

2016. Lead Plaintiff filed its opposition (Answer) to this Petition on October 6, 2016. The California Supreme Court denied FireEye's Petition for Review on November 9, 2016.

33. Thereafter, on December 5, 2016, the FireEye Defendants filed a Petition for Certiorari in the United States Supreme Court (the "Cert. Petition"), again seeking review of this Court's order denying their motion for judgment on the pleadings (and review of the California appellate courts' refusal to overturn this Court's order). The Cert. Petition presently remains pending in the U.S. Supreme Court, while the U.S. Supreme Court awaits word from this Court as to whether this Court will finally approve the Settlement (as this Court's approval will effectively moot that Petition).[3]

G. Additional Motions

34. On June 23, 2016, Defendants filed a motion for terminating sanctions and an order dismissing the action with prejudice, citing the deposition testimony of two former FireEye employees that purportedly conflicted with statements attributed to them in the Complaint. Lead Plaintiff opposed the motion. Following oral argument, the Court expressed concern that one of the two witnesses had denied making statements attributed to him, but denied the motion without prejudice on August 8, 2016.

H. Retention of and Consultations with Experts

35. Although the case did not reach the stage of expert discovery, Plaintiff's Counsel's work included taking the time to identify and interview a number of potential cybersecurity experts. Lead Counsel ultimately retained the firm of a particularly well-qualified industry expert to consult on, and if necessary provide testimony with respect to, the key liability issues in the case (notably those relating to the true nature, functionality and quality of FireEye's cybersecurity products, as compared to how Defendants described them in the Offering Materials). After retaining their liability expert in the early stages of merits discovery, Plaintiff's Counsel then

[3] The Settlement requires Defendants to withdraw or dismiss their Cert. Petition if this Court enters the proposed Final Judgment in this action. In January 2017, the U.S. Supreme Court extended Plaintiff's time to respond to the Cert. Petition until April 10, 2017 to allow this Court sufficient time to consider whether to preliminarily approve the Settlement. On March 30, 2017 the U.S. Supreme Court again extended the deadlines for further briefing on the Cert. Petition (this time until August 24, 2017) to allow this Court to hold the Final Fairness Hearing and rule on the pending final approval motion.

spent a considerable amount of time working with that expert (both in person and over the phone) to assist in planning Plaintiff's discovery program, in evaluating and interpreting key documents, and in explaining some of the many technical matters (and related technical jargon) at issue in this case – a case which, after all, involved the accuracy and completeness of Offering Material statements concerning a purportedly "cutting edge" technology in the ultra-high tech field of cybersecurity.

36. In addition, Plaintiff's Counsel retained Dr. Hakala (who submitted the previously mentioned expert declaration on "tracing" issues in support of Plaintiff's motion for class certification) to provide expert advice on damages issues, including in connection with Plaintiff's Counsel's preparations for the December 2016 Mediation that ultimately resulted in the proposed Settlement.

I. The Negotiation and Preliminary Approval of the Settlement

(1) The December 2016 Mediation

37. After roughly 18 months of active litigation and hard-fought discovery, the parties agreed in the fall of 2016 to explore the possibility of trying to negotiate a mediated resolution of the Action. Lead Plaintiff and the FireEye Defendants ultimately agreed to retain Judge Layn Judge Phillips (U.S.D.J., ret.), one of the country's most respected mediators of complex cases,[4] and to participate in a face-to-face mediation at Judge Phillips' offices on December 8, 2016.

38. In advance of the mediation, both Plaintiff's and FireEye's counsel prepared comprehensive mediation statements and accompanying binders of exhibits for Judge Phillips. In addition, Plaintiff's Counsel participated in various pre-mediation calls with Judge Phillips, and prepared responses to numerous written questions that he had submitted to them.

39. The face-to-face mediation which followed on December 8, 2016 lasted almost 10 hours. During the mediation, Judge Phillips pressed the parties to realistically address the strengths and weaknesses of the Class's claims and Defendants' defenses.

[4] *See, e.g., In re LIBOR-Based Fin'l Instr. Antitrust Litig.*, 11 MDL 2262, 2016 WL 7625708, at *1 (S.D.N.Y. Dec. 21, 2016) (describing Judge Phillips as a "renowned" mediator).

40. At the end of this full day of mediation and related negotiations, Judge Phillips made a "mediator's proposal," whereby he proposed that all claims brought on behalf of the certified Class be settled (subject to judicial approval) for $10,250,000 in cash. Both sides ultimately accepted the mediator's proposal.

41. Shortly after the mediation, on December 19, 2016, the parties signed a written Memorandum of Understanding (the "MOU") reflecting the parties' acceptance of the mediator's proposal, and also informed the Court that they had reached a proposed Settlement.

(2) Documenting the Settlement

42. Between mid-December 2016 and early February 2017, the parties engaged in lengthy negotiations over the terms of the customary "long form" stipulation of settlement and related exhibits. Given the additional weeks that were required to negotiate and ultimately resolve various issues that arose in the context of drafting the final settlement papers and all related exhibits – which included the exchange of multiple rounds of drafts of each of the half-dozen separate documents that ultimately comprised the Stipulation and its various exhibits – the parties did not execute the resulting Stipulation (with exhibits) until February 6, 2017.

43. In addition, while the parties were continuing to negotiate the final terms of the Stipulation, Lead Counsel spent significant time working with their damages expert, Dr. Hakala, to develop an appropriate, fair, and reasonable Plan of Allocation for allocating the settlement proceeds among Class members. *See also* §III below (discussing Plan of Allocation).

(3) Preparing the Preliminary and Final Approval Papers

44. Finally, Plaintiff's Counsel have also undertaken all the work necessary to successfully steer the proposed Settlement through preliminary approval, to work with the Claims Administrator (KCC Class Action Services) to develop the Proof of Claim Form and facilitate the implementation of the Notice Plan, and to prepare and coordinate all the filings in support of the pending Final Approval Motion.

J. Summary

45. As set forth above, it is respectfully submitted that Plaintiff's Counsel aggressively and diligently prosecuted this action from its inception, battling through a host of potentially

dispositive motions and extensive discovery, until ultimately achieving an excellent Settlement with the assistance of Judge Phillips' mediation efforts.

III. QUALITY OF THE RESULT ACHIEVED

46. The $10.25 million settlement represents a significant and decidedly superior recovery. Not only is the $10.25 million recovery 40% higher than the median recovery ($7.3 million) for all securities class actions in 2015 (the figure was $6.8 million in 2014) according to NERA data,[5] but based on Plaintiff's Counsel's research, it is also the second largest recovery ever achieved in a case brought in California state court under the 1933 Act. Moreover, based on Plaintiff's Counsel's analysis and consultation with its damages expert, the $10.25 million Settlement represents a recovery of roughly 15% of the Class's estimated reasonably recoverable damages of roughly $68 million (after taking into account the significant narrowing of the Class at certification to include only investors who purchased directly "in" the Secondary Offering and Defendants' loss causation defenses). By contrast, NERA has found that the median settlement for cases involving $50 million to $200 million in estimated damages recovered only about 3.4% to 4.5% of investor losses. *Cf.* NERA Report at 33.

47. Finally, the result is especially notable when one considers the significant and very real risks of a much smaller recovery (or none at all) had the case proceeded through completion of additional fact discovery, expert discovery, trial, and likely appeals – particularly in an action where Defendants had already showed that they were willing to pursue virtually every conceivable motion, appellate writ, or other avenue to defeat this case prior to the parties' decision to mediate.

IV. SUMMARY OF LITIGATION RISKS FACED BY PLAINTIFF AND THE CLASS

48. Although securities class action litigation in general is considered to be both complex and high risk,[6] it is also respectfully submitted that the recovery here was obtained in the

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[5] *See* S. Starykh & S. Boettrich, *Recent Trends in Securities Class Action Litigation*, at 28 NERA (Jan. 25, 2016) ("NERA Report"), available at www.nera.com/content/dam/nera/publications/2016/2015 _Securities _Trends_Report_NERA.pdf.

[6] *See, e.g., Clark v. Lomas & Nettleton Fin. Corp.*, 79 F.R.D. 641, 654 (N.D. Tex. 1978), *vacated on other grounds*, 625 F.2d 49 (5th Cir. 1980) (a securities case "by its very nature is a complex animal").

face of above-average litigation risk and complexities, even compared to other securities cases. Thus, although Plaintiff's Counsel believed that they could have ultimately proved the Class's claims at trial, Lead Plaintiff and its counsel also recognized that success at trial was far from certain in light of Defendants' defenses.

(a) Risks of Proving Liability

49. For example, the Offering Materials represented that FireEye's products offered a "comprehensive and complete" solution for "detecting, preventing and resolving advanced cybersecurity threats", and that FireEye's technology had the ability to "identify and block" both known and previously unknown malware. Lead Counsel, working in consultation with its liability expert, believed that they could establish that such statements were materially false and misleading by showing, *inter alia,* that FireEye customers frequently chose not to implement the technology's "autoblock" features because of concerns that doing so would interfere with the normal operation of the customers' other computer systems (*i.e.*, because of concerns that FireEye's blocking technology would be triggered by benign "false positives" as well as genuine cyberthreats). Similarly, Lead Counsel also believed that it could show that FireEye's statements that its technology generated only "negligible" false positives was materially misleading based on Plaintiff's expert's opinions as to what constitutes a "false positive" and how false positives should be defined and properly counted. However, proof of such matters would have involved complex and highly technical issues that would have likely turned on competing testimony by the parties' competing experts in the ultra-high tech cybersecurity field. The outcome of such a battle could not have been predicted with any certainty.

50. Defendants also consistently took the position that any statements to the effect that FireEye's products offered "complete" or "comprehensive" solutions, or generated only "negligible" false positives, were immaterial puffery or otherwise too inchoate to be inactionable as a matter of law. Although the Court rejected such arguments at the pleadings, it is unclear what the Court would have found at summary judgment, or whether a jury would have ultimately found such statements to be materially false or misleading. In this regard, a jury's assessment of the

credibility of FireEye's fact witnesses would also have been important, which presented another significant litigation risk.

51. Plaintiff's Counsel also believed that they could show that Defendants failed to disclose material information concerning certain evaluation work by an independent evaluation firm, NSS Labs, of FireEye technology that had been conducted prior to the Offering, but had not yet been published. However, Defendants vigorously contended, *inter alia*, that they could not have known with reasonable certainty that NSS would give FireEye technology a published negative rating soon after the Offering, and that they had no "duty to predict" in the Offering Materials what NSS might actually say. Such arguments involve unsettled legal questions, and also would have turned largely on a jury's assessment of the credibility of various witnesses.

52. Lead Plaintiff also alleged that the Offering Materials failed to disclose a materially adverse decline in FireEye's revenue from product sales in violation of SEC Regulation S-K, 17 C.F.R. §229.303 ("Item 303"). However, Defendants had credible arguments that they had insufficient information as of the March 6, 2014 offering date to know for sure whether FireEye's product revenue was declining, as the first quarter's full figures would not be in until after March 30 (when the quarter ended).

53. Moreover, although Lead Plaintiff's Counsel respectfully submit that, by the time of the mediation, ample discovery had been taken to allow the parties to reasonably assess the fairness of the proposed Settlement, they were also aware that much discovery would still remain to be completed absent the Settlement. For example, at the time the Settlement was reached, the parties were still negotiating the scope of additional documents to be produced by additional FireEye custodians, and Lead Plaintiff (although it had deposed two very senior FireEye officials) had other witnesses that it had yet to depose whose testimony and demeanor was not yet known. In addition, formal – and expensive – expert discovery on hotly contested issues of liability, causation, and damages issues had not yet begun, and all parties faced the further risks and expense of complex summary judgment motions and trial.

(b) Risks Relating to Causation and Proof of Damages

54. In addition, had this case gone to trial, issues of loss causation and damages would also have been complex and hotly disputed. Indeed, Defendants denied that any alleged misstatements or omissions caused more than a fraction of the damages that Lead Plaintiff claimed, and Defendants would have introduced expert testimony to show that the overwhelming quantum of any declines in the post-Secondary Offering price of FireEye common shares were attributable to factors that were unrelated to the alleged misstatements and omissions. For example, although FireEye stock fell on May 7, 2014 when it disclosed a decline in reported product revenue (which Lead Plaintiff alleged was a partial disclosure of problems with FireEye's products, *see* Compl., ¶¶13, 116-19), Defendants had arguments that most of the stock price decline that day was caused by ***other***, unrelated events – including the market's negative reaction to a corporate acquisition that FireEye had also announced earlier that day.

55. Thus, even if Plaintiff proved that FireEye's Offering Materials were materially false or misleading, damages and causation issues would have also likely come down to competing *Daubert* motions and an inherently risky "battle of experts." In other words, even if Plaintiff prevailed on liability, there was no assurance that Plaintiff could have recovered damages as large as – let alone larger than – the $10.25 million obtained under the proposed Settlement. And although Plaintiff's Counsel believed that the Class would have been able to offer persuasive expert testimony to support its claims on both liability and damages issues, Defendants plainly had the resources to put forward top-quality and highly persuasive experts of their own.

(c) Risks of Maintaining Class Certification Through Trial

56. Defendants also maintained that their arguments in opposition to class certification should bar recovery even for those persons who bought directly "in" the Secondary Offering, based on their novel argument as to the impact of the alleged "commingling" of the offered shares by the lead underwriter before the underwriters distributed the shares to purchasers in the Offering. While Lead Plaintiff continues to believe that Defendants' arguments in this regard are legally baseless, the Court's July 11, 2016 class certification Order stated that, notwithstanding Lead Plaintiff's positions, the Court might revisit the issue at summary judgment – thereby raising

the risk that even the more limited Class that the Court certified (which excluded "aftermarket" purchasers) would ultimately be decertified.

(d) Appellate Risks

57. Finally, even if Plaintiff and the Class (a) defeated Defendants' pending Cert. Petition in the U.S. Supreme Court on jurisdictional issues, and then (b) completely prevailed at trial on both liability and damages issues, if the parties' litigation experience in this hard-fought case is any guide, it seems reasonably certain Defendants would not have hesitated to file post-verdict motions, followed by further appeals on liability and damages issues. The prospect of such appeals not only further increased the overall litigation risk in this Action, but further highlights the extent to which (absent a Settlement) litigating this case to finality through expert discovery, summary judgment, trial, and appeals would have been complex and costly, and would have required Class members – even if Lead Plaintiff ultimately prevailed – to wait additional years before being able to collect any recovery. *See also* §IV.C, below.

(e) Summary

58. Having considered the various risks and potential benefits of continued litigation and all of the other factors discussed above, it is the considered and informed judgment of Plaintiff's Counsel, based upon all proceedings to date and their extensive experience in litigating shareholder class actions, that the proposed Settlement of this matter before this Court provides a very favorable result for the Class, and is fair, reasonable, adequate, and in the best interests of the Class.[7] Lead Plaintiff's counsel have also briefed the Board of the Lead Plaintiff, DeKalb County Employees Retirement Plan, on the Settlement, and DeKalb's Board has voted to approve it.

59. In sum, it is respectfully submitted that the risks of establishing both liability and damages in this complex action were very significant and very real, and provide further strong support for finding that the $10.25 million settlement is "fair, reasonable, and adequate."

[7] In this regard, Plaintiff's Counsel respectfully submit that they have extensive experience and expertise in complex civil litigation generally, and in securities class actions in particular. *See* copies of Scott+Scott's and the Bottini firm's résumés, true and correct copies of which are attached to the firms' respective Fee and Expense Declarations.

V. THE PLAN OF ALLOCATION

60. As set forth in the Notice, Class members who file valid Proofs of Claim will receive a distribution from the Net Settlement Fund. Plaintiff proposes that the distribution be made in accordance with the Plan of Allocation, as set forth and detailed in the Notice.

61. As the Notice explains, the Plan of Allocation, which was developed in consultation with Lead Plaintiff's damages expert, apportions the recovery among Class members who acquired their FireEye common shares directly "in" the Secondary Offering, and who suffered losses after the truth was allegedly revealed regarding FireEye's technology, based on the analysis of the Class's damages expert. The Plan of Allocation is based on allocation methodologies frequently applied in securities cases of this type, and is based on the decline in value of FireEye common shares that occurred following partial disclosure events as the truth concerning the limitations and problems with FireEye's technology was gradually disclosed.

62. After deducting any attorneys' fees and expenses approved by the Court, notice and administration costs, and any taxes that may be payable by the Settlement Fund, the Stipulation provides that the Net Settlement Fund will be distributed to Authorized Claimants (*i.e.*, Class members who submit timely and valid Proofs of Claim) in accordance with the Plan of Allocation. Plaintiff's Counsel respectfully submits that the Plan of Allocation is fair and reasonable, and that the Court should approve it.

VI. PLAINTIFF'S COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES

63. Plaintiff's Counsel respectfully request an award of attorneys' fees equal to 33⅓% of the $10.25 million Settlement Fund. As discussed below, the requested 33⅓% fee, which equates to $3,416,667, represents a "*negative* multiplier" of only .47 on Plaintiff's Counsel's combined lodestar of roughly $7,220,988.50. The legal authorities supporting a one-third percentage fee are set forth in the accompanying memorandum of law, which is being filed contemporaneously herewith. The primary factual bases for the requested fee are summarized below.

A. The Work Performed and the Results Achieved

64. As previously summarized at ¶¶14-45 above, Plaintiff's Counsel's work on this case included, *inter alia*:

(a) researching and preparing the initial and amended consolidated complaints;

(b) opposing two sets of demurrers and Defendants' subsequent motion to require an undertaking;

(c) identifying, retaining, and consulting with their liability expert to help successfully navigate a case involving an exceptionally complex cybersecurity product;

(d) requesting, obtaining, and reviewing *over a million* pages of documents from the various Defendants, and successfully arguing various related discovery disputes before the Court;

(e) responding to Defendants' discovery requests and successfully preparing for and defending the Lead Plaintiff's deposition;

(f) preparing for and participating in nearly 20 IDCs and CMCs before the Court;

(g) preparing multiple rounds of briefing and working with additional experts to support Lead Plaintiff's motion for class certification;

(h) deposing FireEye's CEO (defendant DeWalt) and its co-founder and former Chief Technology Officer (defendant Aziz);

(i) defeating Defendants' motion for judgment on the pleadings in this Court (and preserving this victory for Lead Plaintiff and the Class through subsequent appellate proceedings in the California Court of Appeal, the California Supreme Court, and the United States Supreme Court);

(j) preparing for and participating in the Mediation;

(k) negotiating the terms of the comprehensive "long-form" settlement papers; and

(l) preparing the papers in support of both preliminary and final approval.

65. It is respectfully submitted that the work that culminated in the Settlement that is now before the Court was performed by or under the direction and supervision of my firm, Scott+Scott, which acted as lead counsel throughout for Lead Plaintiff DeKalb County.

66. Exhibit A to the accompanying declaration of Daryl F. Scott Filed on Behalf of Scott+Scott, Attorneys at Law, LLP in Support of Motion for Award of Attorneys' Fees and Expenses sets forth a schedule that summarizes the lodestar that my firm incurred in this case, as well as the expenses it reasonably incurred listed by category (the "Scott+Scott Fee and Expense Schedule"). The Scott+Scott Fee and Expense Schedule shows the amount of time spent by each attorney and paraprofessional employed by Plaintiff's Counsel, and the relevant lodestar calculations based on their current billing rates. This information was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, and which are

available at the request of the Court. The hourly rates for attorneys and paraprofessionals included in these schedules are commensurate with the hourly rates charged by lawyers and paraprofessionals performing similarly complex representation in securities class action litigation in New York and other major cities. For persons no longer employed by my firm, the lodestar calculations are based upon the billing rates for such persons in their final year of employment. In total, as summarized in Exhibit A to the Declaration of Daryl Scott, to date my firm has expended 10,258.80 hours in bringing and prosecuting this case, with a resulting lodestar of $6,327,821.00.

67. Also being filed contemporaneously herewith is the Declaration of Albert Y. Chang, Esq., of the Bottini Firm, which served as liaison counsel for Lead Plaintiff and the Class in this case. As set forth in that declaration, the Bottini Firm expended an additional 1,697.70 hours in connection with the prosecution of this case, resulting in an additional lodestar of $893,167.50.

68. Thus, the two Plaintiff's Counsel firms expended a combined total of 11,951.5 hours prosecuting this Action, for a combined total lodestar of $7,220,988.50.

69. Based on the work performed and the quality of the result achieved, it is respectfully submitted that the requested 33⅓% fee is fully merited.

B. Lodestar Analysis

70. Plaintiff's Counsel also recognize that courts also consider whether a requested fee is merited based on whether it reflects a reasonable and appropriate "lodestar multiple."

71. The requested 33⅓% fee here ($3,416,667) represents a "negative" .47 lodestar multiple compared to Plaintiff's Counsel's regular billing rates. In other words, the requested fee amounts to only a fraction – or approximately 47% – of Lead and Liaison Counsel's base lodestar ($7,220,988.50) through June 26, 2017. As set forth in the authorities cited in Plaintiff's Counsel's accompanying brief, a "positive" multiplier of 3.0 to 4.0 would be well within the range of multipliers that courts routinely award in comparable complex securities class actions. *A fortiori*, where, as here, the requested fee amounts to *less than half* of the Plaintiff's Lead and Liaison Counsel's combined lodestar time, it is plainly justified under any "lodestar"-based methodology.

72. Scott+Scott and Bottini & Bottini are highly experienced in prosecuting securities class actions. *See* firm résumés (together with summary biographies of the principal attorneys who worked on this case), attached as exhibits to their respective Fee and Expense Declarations. As detailed herein, the Settlement was the result of Plaintiff's Counsel's hard work, persistence, and skill. Plaintiff's Counsel respectfully submit that at all times, their efforts were focused on advancing the litigation to achieve the most successful resolution reasonably possible for Plaintiff and the Class, whether through settlement or trial, and that their diligent work and the results achieved fully merit the fee requested.

73. In accord with California Rule of Court 3.769(b) and California Rule of Professional Conduct Rule 2-200 regarding disclosure of fee-splitting arrangements, Plaintiff's Counsel state that Scott+Scott and the Bottini firm have agreed to allocate approximately 10.5% and 7%, respectively, of the total fee awarded to the law firms of Labaton Sucharow LLP and Glancy Binkow & Goldberg LLP ("Federal Counsel"). Lead Counsel and Federal Counsel had agreed in early 2015 to assist each other in prosecuting their respective clients' claims against FireEye under the federal securities laws, namely Lead Plaintiff's 1933 Act claims (which were being litigated in this Court), and claims of the Federal Counsel's clients under the Securities Exchange Act of 1934 (which were being litigated in the U.S. District Court for the Northern District of California). This cooperation included sharing information to develop and refine relevant facts and legal theories of material misrepresentations or omissions by FireEye, which would be in the mutual interest of plaintiffs and the proposed classes in both actions. Although these cooperation efforts ended in October 2015 (when a Confidentiality Order was entered in this Action), Plaintiff's Counsel have agreed to compensate Federal Counsel for their common interest work as set forth above. Scott+Scott and the Bottini firm have agreed to split 75-25 the remaining portion of any attorneys' fees awarded. Because the allocation of a share of fees to the Federal Counsel firms has no effect on the size of Plaintiff's Counsel's fee request, and because Plaintiff's Counsel in this action (Scott+Scott and the Bottini firm) submit that their attorney's fee request is already amply justified without reference to any additional work performed by other counsel (and would in any event only reduce the already negative multiplier if included), Plaintiff's Counsel

have not included any time from the Labaton or Glancy firms in their lodestar calculations. Lead Counsel have reviewed the foregoing fee allocations (as well as the overall 33⅓% fee request) with the Lead Plaintiff and Class Representative, DeKalb County, and DeKalb has no objections.

C. The Fully Contingent Nature of the Representation

74. Plaintiff's Counsel undertook the prosecution of this case on a fully contingent-fee basis, and as discussed above, they assumed very real and significant risks in bringing it.

75. From the outset, Plaintiff's Counsel understood that they were embarking on a complex and expensive litigation with no guarantee of ever being compensated for the enormous investment of time and money that the case would require. In undertaking this responsibility, they had to ensure that they dedicated sufficient resources to prosecuting the case, and that funds were available to pay staff and cover the out-of-pocket costs that a case of this size can require. With an average lag time of several years for securities cases to conclude – this case being no exception – the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiff's Counsel have received ***no*** compensation during the lengthy course of this litigation, and have incurred substantial out-of-pocket expenses in prosecuting it for the benefit of the Class.[8]

76. For these and the additional reasons set forth in Plaintiff's Counsel's accompanying fee brief, Plaintiff's Counsel respectfully submit their requested fee should be awarded in full.

VII. PLAINTIFF'S COUNSEL'S REQUEST FOR REIMBURSEMENT OF

[8] Case law, as well as counsel's experience, confirms that the risk of no recovery in complex securities actions is all too real, and there are numerous class actions where plaintiffs' attorneys have expended thousands of hours and yet received no compensation whatever despite their hard work and expertise. *See, e.g. Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Eisenstadt v. Centel Corp.*, 113 F.3d 738 (7th Cir. 1997) (affirming lower court's granting of summary judgment in favor of defendants); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *In re Apple Computer Sec. Litig.*, No. C-84-20148, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (after class won jury verdict against two individual defendants, court vacated judgment on motion for judgment notwithstanding the verdict); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (where class won a substantial jury verdict and motion for judgment n.o.v. was denied, judgment was reversed on appeal and case was dismissed – after 11 years of litigation); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (multimillion dollar judgment reversed after lengthy trial); *Trans World Airlines, Inc. v. Hughes*, 312 F. Supp. 478 (S.D.N.Y. 1970) (large judgment overturned after years of litigation and appeals), *modified*, 449 F.2d 51 (2d Cir. 1971), *rev'd*, 409 U.S. 373 (1973).

REASONABLE LITIGATION EXPENSES

77. Plaintiff's Counsel also respectfully request reimbursement in the total amount of $415,306.60 for litigation expenses reasonably and actually incurred by them in connection with the prosecution of this Action.

78. From the outset, Plaintiff's Counsel knew that they might not recover any of their expenses. They also understood that, even assuming the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced by them to prosecute this Action. Thus, Plaintiff's Counsel were motivated to, and did, take steps to minimize expenses whenever practicable where it would not jeopardize the vigorous and efficient prosecution of the case.

79. As set forth in Exhibit B to the Declaration of Daryl F. Scott and in Exhibit B to the Declaration of Albert Chang, Plaintiff's Counsel have incurred a total of $415,306.60 in unreimbursed expenses in connection with prosecuting the Action. These expenses are reflected on the respective books and records maintained by Plaintiff's Counsel, which are prepared from expense vouchers, check records and other source materials, and which accurately record the expenses incurred. Plaintiff's Counsel's fee and expense schedules also break down their respective expenses incurred by category – *e.g.*, experts' fees, travel, copying, and postage expenses – for which Plaintiff's Counsel seek reimbursement. Such expense items are billed separately by Plaintiff's Counsel, and are not duplicated in the firms' billing rates. In sum, Plaintiff's Counsel's combined (and as yet unreimbursed) litigation expenses are $415,306.60 ($394,421.12 for Scott+Scott, and $20,885.48 for the Bottini firm.

80. The foregoing expenses were reasonably necessary to the prosecution of the Litigation and are of the type that Plaintiff's Counsel typically incur – and are reimbursed for – in securities cases that (as here) result in the creation of a common fund.[9]

[9] Plaintiff's Counsel also incurred additional out-of-pocket expenses for fees it paid to the San Jose law firm of McManis Faulkner LLP in connection with discovery and other work it performed in connection with certain charges made by the FireEye Defendants in connection with their motion for terminating sanctions. Although arguably reimbursable as an additional cost of litigation, Plaintiff's Counsel have decided ***not*** to seek reimbursement for ***any*** of McManis Faulkner's fees or expenses, and will instead absorb the full amount of those costs themselves rather than seek to pass any portion of them on to the Class.

VIII. THE CLASS REPRESENTATIVE'S REQUEST FOR A SERVICE AWARD

81. As set forth in the accompanying legal memorandum in support of the Motion, California caselaw provides for granting an incentive or service award to duly appointed class representatives in connection with their role in helping to procure a benefit on behalf of a class. Here, the Plaintiff and Class Representative, DeKalb County, has been a faithful class representative, having maintained regular communication with its counsel with respect to the initiation, litigation, and settlement of this action over the lengthy course of this litigation. In addition, DeKalb County personnel took time away from their other duties to (a) search for and produce documents in response to Defendants' document requests; (b) work with Lead Counsel in preparing substantive responses to Defendants' interrogatories; and (c) prepare for – and sit for – its PMK deposition.

82. Based on my personal knowledge and my review of work done by my colleagues, I conservatively estimate that DeKalb County personnel have spent a combined total of well over 30 hours in fulfilling their fiduciary duties to monitor and participate in required discovery activities in this litigation. This has included time spent by DeKalb County's Board members hearing oral presentations by (and reviewing written updates from) members of my firm, time spent by the Plan's staff to search for and produce responsive documents (including through use of search terms applied across DeKalb County's email system and other electronic databases), and the roughly 15 hours of time spent by DeKalb's PMK deposition designee (plan administrator Jelani Hooks) in conference calls and in person with me preparing for, and then travelling to and sitting for, his deposition (which excludes the substantial amount of time that Mr. Hooks spent reviewing pleadings and other materials that I sent to him to review in preparation for his deposition, and which I am confident he did review based on my personnel experience in preparing him for his deposition). Unfortunately, the DeKalb official most personally involved in supervising DeKalb's document gathering, in reviewing (and signing) DeKalb's interrogatory responses, and in preparing for and sitting for DeKalb's PMK deposition – Mr. Hooks – is no longer with DeKalb. In such circumstances, rather than submit a separate affidavit from another DeKalb official, it is respectfully submitted that a declaration from the undersigned counsel provides an equally

competent, if not superior, first-hand testament to the work and contributions of DeKalb personnel to this case compared to what other personnel who are still working for DeKalb could provide.

83. Moreover, but for DeKalb County's willingness to step forward and serve as a plaintiff, there would almost certainly have been ***no*** recovery at all for any members of the Class, as DeKalb County was the only purchaser of FireEye common shares who acted to bring suit who had also purchased its shares directly in the Secondary Offering. In addition, as noted below, to date, no Class Member has objected to the requested $7,500 service award.

IX. REACTION OF THE CLASS

84. The Notice informed Class members of the Settlement's material terms, the Plan of Allocation, and of Plaintiff's Counsel's intent to apply for an award of attorneys' fees of 33⅓% of the Settlement Amount, and reimbursement of their litigation expenses of up to $500,000.

85. As set forth in the separate declaration of Justin R. Hughes of KCC Class Action Services, LLC (the Court-appointed Claims Administrator in this case), copies of the Notice and Proof of Claim form have been mailed to 30,720 likely Class members. In addition, copies of the Notice were posted on the settlement website, and the Summary Notice (which included the web address of the settlement website) was duly published in *Investor's Business Daily* and also disseminated through the internet via the *PR Newswire*. *See* Hughes Decl., ¶¶7, 9 and 11.

86. The Court-ordered deadline for filing written objections to the Settlement, the Plan of Allocation, Plaintiff's Counsel's fee and expense application, and/or Plaintiff's request for an incentive award is July 14, 2017. Although this deadline has not yet passed (and Class members may also appear at the Fairness Hearing to object orally), to date, Plaintiff's Counsel have received ***no*** objections from any of the 30,720 potential Class members who have received the Notice. If any written objections are received prior to the Fairness Hearing, Plaintiff's Counsel will address them in supplemental reply papers, as provided for in the Preliminary Approval Order.[10]

[10] Although the deadline for receipt of objections from the Class has not yet passed, it should be noted that the Board of the institutional lead plaintiff here, DeKalb County, has already voted to approve the Settlement. *See* ¶58 above.

87. Pursuant to the Court's Preliminary Approval Order, potential Class members who wish to "opt-out" from the Class must submit valid and timely written requests to exclude themselves from the Class. Opt-out requests must be mailed to the Court-appointed Claims Administrator and postmarked by or before July 14, 2017. Although the July 14 deadline for submitting requests for exclusion has not yet passed, to date neither the Claims Administrator nor Plaintiff's Lead Counsel have received any "opt-out" requests.

X. CONCLUSION

88. Plaintiff's Counsel respectfully submit that the proposed Settlement represents an excellent result for the Class in a complex, high risk and hard-fought case, and that it therefore easily meets the "fair, reasonable and adequate" standard for final approval.

89. Based on the work performed, the results achieved in the face of substantial risk, the fully contingent nature of their representations, awards in similar cases and the fact that the requested 33⅓% fee award will effectively compensate Plaintiff's Counsel for less than half of the value of their "lodestar" time, it also respectfully submit that their work merits the requested award of fees and expenses. Accordingly, Plaintiff's Counsel respectfully request that the Court:

(a) Approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate;

(b) Approve Plaintiff's Counsel's application for a percentage fee award equal to 33⅓% of the Settlement Amount (or $3,416,667), and reimbursement of expenses in the amount of $415,306.60;

(c) Approve Class Representative DeKalb County's request for a service award in the amount of $7,500 for its service to the Class; and

(d) Enter the proposed Final Judgment in the form attached to the Notice of Motion as Exhibit 1.[11]

[11] If the Court otherwise approves of the form of the [Proposed] Order Granting Plaintiff's Counsel Motion for Award of Attorneys' Fees and Expenses, and of Lead Plaintiff's Request for a Service Award, the Court should also fill in the blanks at ¶¶1-2 thereof to reflect the amount of any attorneys' fee and expense award, and of any Lead Plaintiff's service award, that the Court may award.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: June 30, 2017

William C. Fredericks