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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE FIREEYE, INC. SECURITIES LITIGATION	Lead Case No.: 1-14-cv-266866 (Consolidated with Case No. 1-14-CV-268110)
This Document Relates To: ALL ACTIONS.	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS** 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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The Court-appointed class representative, DeKalb County Employees Retirement Plan ("Lead Plaintiff" or "DeKalb County") respectfully submits this brief in support of its motion for final approval of the proposed Settlement and proposed Plan of Allocation.[1]

I. INTRODUCTION

Subject to Court approval, the Parties have agreed to settle this Action, with Defendants (consisting of FireEye, Inc. ("FireEye"), certain of its current or former officers and directors, and four Underwriter Defendant") receiving a release of claims in exchange for payment of $10.25 million for the benefit of the Class. The Settlement is an excellent result in a complex and high-risk case. Indeed, not only is the Settlement roughly 40% larger than the median settlement in securities cases generally based on published data, but Plaintiff's Counsel believe that it is the second largest ever obtained in a Securities Act of 1933 case brought in a California state court.

As shown in the Fredericks Declaration (dated June 29, 2017), the Settlement is the result of years of litigation, including extensive discovery and motion practice, and was reached only after arm's-length mediation conducted in late 2016 by Layn Phillips (Ret.). Fredericks Decl., ¶¶37-41. Prior to mediating, Plaintiff's Counsel reviewed over a million pages of FireEye documents, had commenced depositions (including those of FireEye's CEO, defendant DeWalt, and co-founder, defendant Aziz). Moreover, discovery here was preceded or accompanied by multiple dispositive motions, including demurrers, a motion to require posting of an undertaking, and a motion for judgment on the pleadings (which, in turn, was the subject of interlocutory writ proceedings to the Court of Appeals, the California Supreme Court, and the U.S. Supreme Court). The case also involved hotly contested class certification proceedings with dueling expert submissions, and nearly 20 case management conferences (CMCs) or informal discovery conferences (IDCs). *Id.*, ¶¶15-33, 64. In sum, there can be no doubt that this case was settled only after all parties had developed a full appreciation of the strengths and weakness of their case.[2]

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[1] Unless otherwise defined, capitalized terms have the meanings given them in the Stipulation and Agreement of Settlement ("Stipulation" or "Settlement") dated February 6, 2017.

[2] Lead Plaintiff respectfully refers the Court to the Fredericks Declaration for a fuller summary of the procedural history of the Action; the 1993 Act claims asserted, the work performed, and the negotiation of the Settlement.

Although Plaintiff's Counsel believe that they could have proved their claims, they also recognized that this case also involved significant risks. Issues of liability, "negative" causation and damages were vigorously disputed throughout the case. For example, Defendants denied that Lead Plaintiff could prove that any of the challenged statements from FireEye's March 2014 Secondary Offering Materials were false, asserted that certain statements (to the effect that FireEye's products offered "complete" and "comprehensive" solutions) were mere puffery (and thus inactionable as a matter of law), and averred that FireEye's statement that its products generated only "negligible" false positives was not misleading. Defendants further contended, *inter alia*, that they could not have known that an independent evaluation firm, NSS, would give FireEye technology a negative rating shortly after the Offering, that they had no "duty to predict" in the Offering Materials what NSS might actually say, and that they lacked sufficient information as of the March 2014 Offering date to know for sure whether FireEye's product revenue was declining, as full first-quarter 2014 figures would not be in until after March 30 (when the quarter ended). Defendants also argued at class certification that even those who bought directly "in" the Secondary Offering had no claims, based on the novel position that the lead underwriter's "commingling" of the Offered Shares with pre-existing shares before they were distributed to purchasers in the Offering destroyed "traceability." *See* Fredericks Decl., ¶56.

The $10.25 million cash Settlement represents a superior recovery in the face of above-average risks and provides a certain, immediate, and substantial cash recovery for the Class. Indeed, given the history of interlocutory appeals in this case, even a victory at trial, following multiple "battles of experts" on highly technical issues, would not have assured a recovery, as post-trial motions and appeals would have surely followed. The Settlement should be approved.

The Court should also approve the proposed Plan of Allocation of the Settlement, which will govern how Class members' claims will be calculated and how the Net Settlement Fund will be distributed among valid claimants. As is customary in such cases, the Plan was prepared with the assistance of Lead Plaintiff's damages expert based on its analysis of the amount of artificial inflation in the price of FireEye common stock during the Class Period, and the Plan provides for the *pro rata* distribution of proceeds based on each Class Member's recognized loss.

II. THE SETTLEMENT SHOULD BE GRANTED FINAL APPROVAL

When considering a motion for final approval of a class action settlement, the test is whether it is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). A settlement meets this test when "the interests of the class as a whole are better served if the litigation is resolved by settlement rather than pursued." See MANUAL FOR COMPLEX LITIGATION, §30.42, at 238 (3d ed. 1995); *see also Natural Gas Anti-Trust Cases I, II, III & IV*, No. 4221, 2006 WL 5377849, at *1 (San Diego Cty. Super. Ct. Dec. 11, 2006). In making this determination, a "presumption of fairness [applies] . . . where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1389 (2010) (same).

A. The Settlement Is Presumptively Fair

Here, the Settlement is presumptively fair. It is based on a "mediator's proposal" made by Judge Phillips, a highly experienced and well-regarded mediator, which he made only after the Parties' submission of lengthy mediation briefs and exhibits, and only after an all-day, face-to-face mediation before him at which the Parties hotly debated their respective positions. The Settlement was thus plainly the result of arm's-length negotiations. Fredericks Decl., ¶¶37-41.

Moreover, Plaintiff's Counsel's significant litigation efforts gave them an ample, let alone merely adequate, basis for making informed settlement decisions. For example, Plaintiff's Counsel's pre-mediation investigation, discovery, and litigation efforts here included, *inter alia*:

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

(b) briefing and successfully defeating Defendants' respective demurrers;

(c) successfully opposing FireEye's motion to require posting of an undertaking;

(d) obtaining and reviewing over a million pages of documents from the Defendants;

(e) successfully arguing several important discovery disputes before the Court;

(f) responding to Defendants' written discovery requests, which included (i) searching for, reviewing and producing over 2,000 pages of documents from Lead Plaintiff's files, and (ii) responding to Defendants' multiple sets of interrogatories;

(g) propounding interrogatories to, and obtaining responses from, the Defendants;

(h) preparing for and defending the Lead Plaintiff's PMK deposition;

(i) preparing for and participating in nearly 20 IDCs and/or CMCs before the Court;

(j) fully litigating a disputed class certification motion, and preparing and submitting expert declarations in connection therewith;

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

(l) briefing and defeating the Defendants' Motion for Judgment on the Pleadings; and

(m) preserving this Court's ruling on the Motion for Judgment in subsequent interlocutory appellate proceedings in three separate appellate courts.

Fredericks Decl., ¶¶14-36. In sum, the extensive information obtained in the course of the three years of this litigation, combined with Plaintiff's Counsel's extensive experience and expertise in securities class actions, gave them a more than adequate basis for intelligently assessing the strengths and weaknesses of the case, and the merits of the Settlement.

Finally, while the date for filing objections has yet to pass, no objections to the Settlement have been received. Fredericks Decl., ¶86. The presumption of fairness thus applies.

B. The Settlement Is Also Substantively Fair Under the *Dunk* Factors

The Settlement is also substantively fair under the standards for approval of class action settlements set forth in *Dunk*. There, the court listed several factors to be considered by courts when weighing final approval, including: (A) the results achieved (settlement amount); (B) the risks of continued litigation; (C) the stage of proceedings; (D) the complexity, expense, and likely duration of the litigation absent settlement; (E) the experience and views of class counsel; and (F) the reaction of class members. *Dunk*, 48 Cal. App. 4th at 1801 (citing *Officers for Justice v. Civil Service Com'n of City & County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *see also Cellphone Fee Termination*, 186 Cal. App. 4th at 1389. "The list of factors is not exhaustive," and "[t]he inquiry 'must 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.'" *Dunk*, 48 Cal. App. 4th at 1801.

As discussed below and in the accompanying Fredericks Declaration, each of the *Dunk* factors favors (if not strongly favors) final approval of the Settlement here.

1. The Results Achieved

The Settlement provides for a non-reversionary, all-cash payment of $10.25 million for the benefit of the Class, in exchange for customary releases of the Class's claims against Defendants.

It is respectfully submitted that the $10.25 million Settlement represents a significant recovery and an excellent result for the Class. 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),[3] 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 taking into account Defendants' loss causation defenses). By contrast, the NERA Report 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. *See* Fredericks Decl., ¶46. *See also In re Ravisent Techs., Inc. Sec. Litig.*, No. Civ.A.00-CV-1014, 2005 WL 906361, at *9 (E.D. Pa. Apr. 18, 2005) ("As another court in this District has noted, a study by Professor John C. Coffee, Jr., Adolf A. Berle Professor of Law at Columbia University Law School, determined that since 1995, class action settlements have typically recovered 'between 5.5% and 6.2% of the class members' estimated losses.'"); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (recovery of approximately 6.25% was "at the higher end of the range of reasonableness of recovery in class action[] securities litigations"); *Hicks v. Morgan Stanle*, No. 01 Civ. 10071, 2005

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

WL 2757792, at *7 (S.D.N.Y. Oct. 24, 2005) (settlement representing 3.8% of plaintiff's damages calculation was "within the range of reasonableness").

Moreover, 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 showed that they were willing to pursue virtually every conceivable avenue to defeat this case before the parties finally agreed to try mediation.

Accordingly, the "quality of the result factor" weighs strongly in favor of final approval.

2. The Substantial Risks of Continued Litigation

Lead Plaintiff's case against Defendants also involved real and substantial risks with respect to establishing both liability and damages, as well as with regard to maintaining class certification through trial.

Risks of Establishing Liability: Lead Plaintiff believes it could have prevailed on its claim that the Offering Materials issued in connection with the Secondary Offering contained material misstatements and omissions. For example, the Offering Materials represented that FireEye's product 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 Plaintiff, working in consultation with its liability consultant, believed that it 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 Plaintiff also believed that FireEye's statement that its technology generated only "negligible" false positives was materially misleading. However, proof of such matters would have involved complex and highly technical issues that would have likely turned on competing testimony by the Parties' respective experts in the ultra-high-tech

cybersecurity industry. The outcome of such a battle could not have been predicted with any certainty. Fredericks Decl., ¶49.

Defendants also consistently took the position that these challenged statements (to the effect that FireEye's products offered "complete" and "comprehensive" solutions and 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 stage, it is unclear what the Court would have found at summary judgment, or whether a jury would have believed such statements to be materially 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. Fredericks Decl., ¶50.

Plaintiff also believed that it could show that Defendants failed to disclose material information concerning certain evaluation work by an independent evaluation firm, NSS, 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. *Id.*, ¶51.

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"). *See* Fredericks Decl., ¶11. 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). *See* Fredericks Decl., ¶52.

In short, although liability issues were vigorously disputed, success in establishing liability was by no means assured in this highly technical and complex case.

Class Certification Risks: Prior to settlement, the Court had certified the Class over Defendants' objection that neither Lead Plaintiff nor anyone else had standing to bring ***any*** 1933

Act claims here. In particular, Defendants argued that even investors who bought directly "in" the Offering lacked standing because the lead underwriter's conduct in "commingling" the Offered shares with pre-existing FireEye shares in a common account (just prior to distributing them to investors who had bought "in" the Offering) allegedly destroyed "traceability" even for direct purchasers. (The Court separately narrowed the class to exclude non-direct, "aftermarket" purchasers). Counsel believe that Defendants' argument in this regard is flatly wrong, but the Court's July 11, 2016 class certification Order nonetheless stated that the Court might revisit the issue at summary judgment. Thus, a material risk remained that even the limited Class that the Court had certified would ultimately be decertified. *See* Fredericks Decl., ¶56.

Risks Relating to Loss Causation and Damages: Lead Plaintiff and its counsel are mindful that even if they were able to establish liability at trial, there would be no guarantee of prevailing on issues of negative loss causation and damages. The Complaint alleged that the price of FireEye shares began to fall soon after the Offering due to a series of partial disclosures that disclosed the truth about the actual quality, capabilities, and weaknesses of FireEye's technology and business. Fredericks Decl., ¶12. Throughout the action, however, Defendants argued that the drop in the price of FireEye shares was unrelated to the disclosures that revealed any truths that had been allegedly misstated or omitted from the Offering Materials. 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), Defendants had arguments that most of the 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 that day). Fredericks Decl., ¶54.

In short, at summary judgment and trial, Defendants' experts would have argued that all or most of the Class's losses were due to factors unrelated to any alleged flaws in the Offering Materials. Ultimately, causation issues and the related issue of damages would have inevitably come down to a highly technical – and inherently unpredictable – "battle of experts." *See, e.g.*, *In re Cendant Corp Litig.*, 264 F.3d 201, 239 (3d Cir. 2001) (damages issues at trial would devolve to a "battle of experts . . . with no guarantee whom the jury would believe"); *In re Bear Stearns*

Cos., Inc. Sec., Deriv. & ERISA Litig., 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured."). *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) (approving settlement where "it is virtually impossible to predict with any certainty which testimony would be credited), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

Post-Trial and Appellate Risks: There is, of course, ample precedent for securities cases being lost at summary judgment or at trial despite the best efforts of skilled and able counsel. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment for defendants after eight years of litigation); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict by jury).

However, even if Lead Plaintiff were to prevail at trial, there are also numerous cases where a jury verdict for plaintiffs has been overturned on post-trial motions or appeal. For example, in *In re Apple Computer Sec. Litig.*, No. C-84-20148, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991), the jury rendered a $100 million verdict for plaintiffs after a lengthy trial. The trial court, however, entered judgment notwithstanding the verdict for the individual defendants, and ordered a new trial as to the corporate defendant. *See also, e.g., Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding $2.46 billion jury verdict after 13 years of litigation on loss causation grounds and error in jury instructions); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07-61542-CIV, 2011 WL 1585605, at *20-*22 (S.D. Fla. Apr. 25, 2011) (after jury verdict for plaintiffs, court granted defendants' motion for judgment n.o.v.), *aff'd on other grounds*, 688 F.3d 713 (11th Cir. 2012) (finding trial court erred, but that defendants were still entitled to judgment as a matter of law based on lack of loss causation); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1235 (10th Cir. 1996) (overturning securities-fraud class-action jury verdict for plaintiffs in case filed in 1973 and tried in 1988, all on the basis of a 1994 Supreme Court opinion).

In sum, the "risks of continued litigation" factor also strongly favors approval. *See, e.g., In re Mfrs. Life Ins.*, MDL No. 1109, 1998 WL 1993385, at *5 (S.D. Cal. Dec. 21, 1998) ("even if it

is assumed that a successful outcome . . . would yield a greater recover than the Settlement – which is not at all apparent – there is easily enough uncertainty in the mix to support settling the dispute rather than risking no recovery in future proceedings").

3. The Stage of Proceedings and Available Evidence Provided an Ample Foundation for the Parties to Negotiate a Fair and Reasonable Settlement

When assessing whether the parties had sufficient information to negotiate an informed settlement, the issue is "not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it." *In re OCA, Inc. Sec. & Deriv. Litig.*, No. 05-cv-2165, 2009 WL 512081, at *12 (E.D. La. Mar. 2, 2009). Here, and unlike cases where settlements have been approved even without any formal discovery (*e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)), there is no dispute that ***extensive*** discovery was taken. Indeed, Plaintiff's Counsel's assessment of the legal and factual strengths and weaknesses of the Class's claims was informed not only by their review of over a million pages of FireEye documents and the depositions of FireEye's CEO (defendant DeWalt) and its founder and former Chief Technology Officer (defendant Aziz) which were all obtained through discovery, but was also informed by the Parties' extensive motion practice on merits issues and Plaintiff's Counsel's consultation with their liability and damages experts. Fredericks Decl., ¶¶15-29. In such circumstances, it is particularly appropriate for the trial court to "legitimately presume that counsel's judgment [that it has sufficient information to evaluate a settlement] is reliable." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981).

a. The Complexity, Expense, and Likely Duration of Further Litigation

There is also little doubt that the "complexity, expense, and likely duration of further litigation" factor also strongly favors approval of the settlement. *See generally In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013) ("the more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes").

Courts have repeatedly recognized the "notorious complexity" of securities class action litigation. *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, No. 03-CV-4372, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (securities cases are inherently "complex"). This case was no exception. Prosecution required not only a thorough knowledge of securities and class action law, but also a good understanding of the cybersecurity industry.

Courts also agree that "[s]ecurities class actions are . . . expensive to prosecute." *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007). Had the case continued, further extensive expert preparation and testimony – and commensurate expenditures – would have been required for summary judgment and trial.

In contrast to the risks of further litigation, approval of the Settlement will result in a significant and prompt recovery for the Class. Absent settlement, the case would have continued through completion of fact witness deposition discovery, expert discovery, summary judgment, and trial. A trial would have occupied a number of attorneys for weeks, in addition to requiring substantial and costly expert testimony on both sides. Furthermore, a judgment favorable to the Class, in light of the contested nature of virtually every aspect of this case, would have almost certainly resulted in post-trial motions and further appeals by the losing side, which could likely prolong the case for additional years. *See, e.g.*, *Warner Commc'ns*, 618 F. Supp. at 745 (delay from appeals is a factor to be considered).

Indeed, this case has ***already*** been the subject of interlocutory petitions for writ review, resulting in the filing of proceedings before the California Court of Appeals, the California Supreme Court, and even the U.S. Supreme Court (where Defendants have filed a petition for certiorari review (the "Cert. Petition")). By contrast, final approval of the Settlement ensures an immediate recovery, will avoid further appeals (as final approval here will require Defendants to withdraw their pending Cert. Petition), and will also eliminate the risk of no recovery at all. *See In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 373-74 (S.D. Ohio 2006) (noting both the "difficulty" and "substantial litigation expenses" of continued litigation, as well as the "possible delay in recovery due to the appellate process," as justifying final approval).

b. The Recommendations of Experienced Counsel Heavily Favor Approval of the Settlement

In determining if a settlement is fair and reasonable, the opinion of experienced counsel is also entitled to considerable weight. *See, e.g., Dunk*, 48 Cal. App. 4th at 1801 (factors to be considered include "the experience and views of counsel"); *O'Brien v. Brain Research Labs, LLC*, No. 12-cv-204, 2012 WL 3242365, at *12 (D.N.J. Aug. 9, 2012) ("the opinion of experienced counsel, based upon their familiarity with the facts and law and understanding of the strengths and weaknesses of their positions, is entitled to considerable weight").

Here, Lead and Liaison Counsel are both experienced class action securities attorneys, and they believe that the Settlement represents an excellent result for the Class. Fredericks Decl., ¶¶56, 83. In addition, as discussed above, this Settlement was achieved only after arm's-length negotiations before a nationally recognized mediator, and reflects both side's acceptance of a "double-blind" proposal by Judge Phillips. *Id*., ¶¶37-41. This factor therefore also strongly favors a finding that the Settlement is fair, reasonable, and adequate.

c. The Reaction of the Class Supports Approval of the Settlement

A court may also consider the reaction of the class in determining whether to approve a settlement. *Dunk*, 48 Cal. App. 4th at 1801 (*see also In re Nationwide Fin. Servs. Litig*., No. 2:08-CV-00249, 2009 WL 8747486, at *7 (S.D. Ohio Aug. 19, 2009) ("The lack of significant objections is powerful evidence of the fairness of a proposed settlement.").

Here, pursuant to this Court's earlier Preliminary Approval Order, the Class was notified of the Settlement by First-Class Mail, publication, and the Internet. The Court-appointed Claims Administrator, KCC Class Action Services ("KCC"), mailed the Notice to over 30,720 potential Class members and nominees, and caused the Summary Notice to be transmitted over the PR Newswire and published in *Investors' Business Daily* on April 7, 2017. Hughes Decl., ¶¶7-9. KCC also created a dedicated website, www.fireeyesecuritieslitigation.com, where copies of the Notice, copies of relevant Court filings and other information about the case (including information regarding claims and objection filing deadlines) are all publicly accessible. *Id*., ¶11.

Although the time for objections has not yet expired, to date no Class members have objected to the Settlement. *See* Fredericks Decl., ¶86. In addition, no Class members have requested exclusion from the Class. *Id.* ¶87; Hughes Decl., ¶12. Thus, the reaction of the Class weighs heavily in favor of approving the Settlement. *See Dunk*, 48 Cal. App. 4th at 1802 (that "percentage of objectors is small" favors approval); *Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (absence of large number of objections raises a strong presumption settlement is fair to the class). Moreover, the Lead Plaintiff, DeKalb County, supports the Settlement, and as an institutional investor, its views should also be given weight. Accordingly, this factor also supports approval.[4]

d. Summary

As the Ninth Circuit has noted, the essence of a settlement is compromise, "a yielding of absolutes and an abandoning of highest hopes." *Officers for Justice*, 688 F.2d at 624; *see also Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 19 (N.D. Cal. 1980) ("[a]s a quid pro quo for not having to undergo the uncertainties and expenses of litigation, the plaintiffs must be willing to moderate the measure of their demands"), *aff'd,* 661 F.2d 939 (9th Cir. 1981). *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) ("[c]ompromise is inherent and necessary in the settlement process").

Here, however, the Settlement achieved is not merely adequate, but represents a decidedly superior recovery in the face of above-average risk in a fiercely litigated action. All of the other *Dunk* factors also strongly support a finding that the Settlement is fair, reasonable, and adequate. The Settlement should therefore be approved.

4. The Plan of Allocation Should Be Approved

Approval of a plan of allocation must also be fair, reasonable and adequate. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). However, a plan's allocation formula need only have a reasonable, rational basis, particularly where it is recommended by "experienced and competent" plaintiff's counsel. *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D.

[4] Should any objections be received prior to the Final Approval Hearing, Lead Plaintiff will address them on reply.

Minn. 1993); *In re Am Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001). Moreover, plans (as here) that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatec Sys., Inc. Sec. Litig.,* No. 04-CV-525, 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007). Under the Plan of Allocation, in accord with the Court's class certification decision, only those who purchased "in" FireEye's March 6, 2014 Secondary Offering, at the Offering Price, are eligible for inclusion in the Class, but the amount of a Class member's recovery will depend on when they sold their shares (or if they still hold), as the amount of a Class member's damages here increased depending on whether they held through one or more of the partial disclosures alleged.

In short, the Plan of Allocation was developed with the assistance of Plaintiff's Counsel's damages expert, and reflects their assessment of the damages that could have been reasonably recovered under the legal theories asserted in this case based on the timing of Class member's stock sales. *See* Fredericks Decl., ¶¶60-62. The Plan will therefore result in an equitable distribution of the proceeds among Class members who submit valid claims. In addition, to date, no Class members have objected to it. Accordingly, it should also be approved.

III. CONCLUSION

For the reasons set forth above and in the accompanying Hughes and Fredericks Declarations, Lead Plaintiff respectfully requests that the Court grant final approval of the Settlement and Plan of Allocation.

Dated: June 30, 2017

Respectfully submitted,
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Dated: June 30, 2017

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