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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

CITY OF WARREN POLICE AND FIRE RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. REVANCE THERAPEUTICS, INC., et al., Defendants.	Case No. 1-15-CV-287794 CLASS ACTION MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION Judge: Hon. Brian C. Walsh Dept: 1 Date Action Filed: 05/01/15 Hearing Date: May 19, 2017 Hearing Time: 9:00 a.m.

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I. INTRODUCTION

Plaintiff City of Warren Police and Fire Retirement System, on behalf of the Class certified for settlement purposes, respectfully submits this memorandum of points and authorities in support of its motion for final approval of the settlement of this class action (the "Litigation") on the terms set forth in the Stipulation of Settlement dated October 31, 2016 (the "Stipulation" or "Settlement"), and for approval of the Plan of Allocation of settlement proceeds.[1]

The proposed Settlement of $6,400,000 in cash is the culmination of litigation among the parties over more than a year, and is the product of day-long, arm's-length negotiations facilitated by the Honorable Layn R. Phillips (Ret.), a former United States District Judge and one of the nation's most well-respected and effective mediators of securities class actions. Lead Counsel believes that the Settlement represents a highly favorable result for the Class and warrants this Court's approval.

As further discussed below, the Settlement should be presumed fair because it was reached through arm's-length bargaining and Lead Counsel's investigation and prosecution of this case assured that Plaintiff entered into the Settlement on a fully informed basis. Further, Lead Counsel is experienced in securities class action litigation and there have been no objections to the Settlement or Plan of Allocation to date.

Moreover, there is nothing to rebut the presumption of fairness. While Plaintiff and Lead Counsel believe that the Litigation has substantial merit and they would have prevailed at trial, they considered the numerous risks raised by the arguments Defendants made in settlement negotiations, as well as the risks in establishing liability and damages at trial. At trial, the jury could have sided with Defendants on some or all of the determinative issues, leaving the Class with little or no recovery.

Lead Counsel, who is well-respected and experienced in prosecuting shareholder class actions, has concluded that the Settlement is a highly favorable result and in the best interest of the Class. This conclusion is based on, among other things, the substantial recovery obtained when weighed against the significant risk, expense and delay presented in continuing this Litigation through trial and probable appeal; a complete analysis of the evidence obtained; past experience in litigating complex actions

[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation.

similar to the present action; and the serious disputes among the parties on both merits and damages issues.

For these and other reasons set forth below, as well as those set forth in the previously filed Declaration of James I. Jaconette in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Jaconette Decl."), dated November 11, 2016,[2] Plaintiff respectfully requests that the Court grant final approval to the Settlement and approve the Plan of Allocation as fair, reasonable, and adequate to Class Members.[3]

II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND WARRANTS FINAL APPROVAL

A. Standards Governing Final Approval of Class Action Settlements

"A class action shall not be dismissed, settled, or compromised without the approval of the court." Cal. Civ. Code §1781(f). When assessing a proposed class action settlement, the court's inquiry centers on whether the settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The 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.'" *Id.*[4] "Generally, 'questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion.'" *City of Warren Police and Fire Retirement System v. Revance Therapeutics, Inc., et al.*, 2015-1-CV-287794 (Santa Clara Cty. Sup. Ct.) (tentative ruling on preliminary approval at 1) (citing *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001)).

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[2] The Jaconette Declaration details Plaintiff's claims, the procedural history of the Litigation, the efforts of Lead Counsel in prosecuting this Litigation, the risks of continued litigation, and why the Settlement is in the best interests of the Class.

[3] This memorandum focuses primarily upon the legal standards for approving the Settlement, and evaluating the Plan of Allocation. A separate memorandum is being submitted herewith in support of the motion for an award of attorneys' fees and expenses. For a complete factual recitation, Lead Counsel respectfully refers the Court to the Jaconette Declaration.

[4] Unless otherwise noted, citations are omitted throughout.

Accordingly, the court need not inquire into the result that might have been obtained at trial. *See Wershba*, 91 Cal. App. 4th at 245. A review of the likely rewards of settlement and the risks and costs of continued litigation suffices. *See N. Cnty. Contractor's Ass'n v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1091 (1994) (court must determine if settlement is in the "ballpark"). "'In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.'" *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).[5] Further, longstanding public policy strongly favors settlements. *See, e.g.*, *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933) ("[I]t is the policy of the law to discourage litigation and to favor compromises."). This policy becomes an "overriding public interest" in class actions. *Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1608 (1991).

In determining whether a settlement is fair, adequate, and reasonable, there is a "presumption of fairness . . . 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; *see also Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010) (same).[6]

The court in *Dunk* set forth additional factors to be considered along with this presumption, including (1) the settlement amount; (2) the risks of continued litigation; (3) the stage of proceedings; (4) the complexity, expense, and likely duration of the litigation absent settlement; (5) the experience and views of class counsel; and (6) the reaction of class members. *Dunk*, 48 Cal. App. 4th at 1801. As discussed below, the Settlement is entitled to a presumption of fairness, and readily satisfies the additional *Dunk* factors.

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[5] California courts also look to the standards developed by federal courts in reviewing and approving class action settlements. *See, e.g.*, *La Sala v. Am. Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971).

[6] In *Robinson v. Audience, Inc.*, a class action that, like this Litigation, asserted federal statutory claims alleging material misstatements in connection with an initial public offering, the Court approved the settlement in part because "the settlement was reached following extensive discovery and investigation by experienced counsel who negotiated at arms-length with the assistance of two experienced mediators." Order Approving Class Action Settlement and Plan of Allocation and an Award of Attorneys' Fees and Expenses, *Robinson v. Audience, Inc.*, No. 1:12-cv-232227, slip op. at 6 (Super. Ct. Santa Clara Cty. June 10, 2016) (Kirwan, J.).

B. The Settlement Should Be Accorded a Presumption of Fairness

The Settlement is presumptively fair. ***First***, the parties negotiated the Settlement at arm's length under the direct supervision of former Judge Layn R. Phillips (Ret.), a highly experienced and effective mediator in cases like this. *See In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) ("[T]he Court and the parties have had the added benefit of the insight and considerable talents of a former federal judge [Judge Phillips] who is one of the most prominent and highly skilled mediators of complex actions."). The negotiations included a day-long mediation session during which the parties' positions on merits and damages issues were discussed, and which were informed by detailed mediation briefs and supporting materials exchanged in advance. *See* Jaconette Decl., ¶¶26-29.

Second, the parties have engaged in sufficient pretrial investigation and other proceedings to evaluate the strengths and weaknesses of the claims and defenses and enter into the Settlement on a fully informed basis. Lead Counsel, among other things:

(a) Conducted an extensive factual investigation of the events underlying Revance's June 19, 2014 Offering;

(b) Reviewed and analyzed the representations made by the Company in the Prospectus, as well as subsequent U.S. Securities and Exchange Commission ("SEC") filings;

(c) Reviewed and analyzed industry and securities analyst reports and comprehensive news reports, press releases and other media files concerning Revance;

(d) Reviewed and analyzed witness accounts of Revance's operations given by former Revance employees and FDA representatives developed through counsel's investigation;

(e) Researched and filed the operative Complaint;

(f) Opposed Defendants' removal of this Litigation to federal court;

(g) Briefed, argued and prevailed on Plaintiff's motion to remand this Litigation back to state court;

(h) Negotiated, prepared and filed the joint stipulation transferring this Litigation from San Mateo Superior Court to Santa Clara Superior Court;

(i) Prepared and filed initial and updated joint case management conference statements setting discovery and briefing schedules;

(j) Met and conferred with Defendants over discovery requests;

(k) Retained and consulted with a damages consultant regarding the calculation of damages under the 1933 Act;

(l) Retained a consultant regarding pharmaceutical development and FDA regulatory strategy, processes and procedures;

(m) Sent discovery requests, obtained and reviewed over 62,700 pages of document discovery from Revance and non-party Medicis Pharmaceutical Corp.;

(n) Prepared for and participated in a day-long mediation session with the Hon. Layn R. Phillips (Ret.), in which the parties were unable to resolve the Litigation;

(o) Prior to the mediation with Judge Phillips, the parties prepared and submitted detailed mediation statements; and

(p) Post mediation, the parties continued settlement negotiations, which ultimately resulted in a substantially improved result obtained on behalf of the Class.

Jaconette Decl., ¶¶5, 32. Given these substantial efforts, Lead Counsel plainly was in a position to endorse the propriety of settlement based on an evaluation of the strengths and weaknesses of the claims asserted, the defenses raised, and the risks of continued litigation.

Third, although the court must independently review the settlement, the judgment of experienced counsel regarding the settlement is entitled to great weight and supports a presumption of fairness. *See Nat'l Rural*, 221 F.R.D. at 528 ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."); *Dunk*, 48 Cal. App. 4th at 1802.

Lead Counsel here has extensive experience and expertise in the prosecution of securities class actions in federal and state courts throughout the country. *See* Jaconette Decl., Ex. B. Further, Lead

Counsel here fully supports the Settlement. It is Lead Counsel's informed opinion that the substantial and certain recovery of $6,400,000 is a highly favorable result for the Class when weighed against the uncertainty and substantial risk and expense of continuing this Litigation through trial and appeals. *Id.*, ¶37. The fact that qualified and well-informed counsel endorses the Settlement as being fair, adequate, and reasonable favors this Court's approval of the Settlement.

Fourth, the reaction of the Class to the Settlement supports a presumption of fairness. The Notice describes the nature of the Litigation, the terms of the Settlement, and the manner in which the Net Settlement Fund will be allocated among Class Members and an estimate of the per share recovery. The Notice also advises Class Members of their right to object and the procedures and deadline for objecting to the Settlement, the Plan of Allocation, or counsel's request for an award of attorneys' fees and expenses. *See* Exhibit A to accompanying Declaration of Fred Rodriguez Regarding (A) Mailing of the Notice of Proposed Settlement of Class Action and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Internet Posting, and (D) Requests for Exclusion Received to Date ("Rodriguez Decl.").

Beginning on February 3, 2017, more than 10,000 Notices and Proofs of Claim were sent to potential Class Members and their nominees explaining the terms of the proposed Settlement. Rodriguez Decl., ¶¶4-12. In addition, the Summary Notice was transmitted over the *PR Newswire* and published in *The Wall Street Journal* on February 10, 2017. *Id.*, ¶15. The Notice, Proof of Claim, and other relevant information, including all deadlines, have been made publicly available on a case-dedicated website for the Settlement, www.revancesecuritiessettlement.com. *Id.*, ¶14.

Although Class Members have until April 19, 2017 to object or exclude themselves from the Class, Lead Counsel is not aware of any objections to the Settlement or the Plan of Allocation as of the date hereof, and no one has requested exclusion from the Class. *See id.*, ¶16. The silence of the Class to date supports a presumption of fairness.[7] *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1153 (2000) (one factor that "lead[s] to a presumption the settlement was

[7] If any objections are received, Plaintiff will address them in a reply memorandum to be filed by May 12, 2017, in accordance with this Court's January 6, 2017 Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order").

fair" is that only "a small percentage of objectors" came forward); *Nat'l Rural*, 221 F.R.D. at 529 (small number of objections raises strong presumption that settlement is fair).

C. The Settlement Readily Satisfies the Additional *Dunk* Factors

1. The Amount of the Settlement Balanced Against the Strength of Plaintiff's Case Favors Approval

Each of the additional *Dunk* factors supports final approval. Under the Settlement, the Company and certain of its insurers have paid $6,400,000 in cash for the benefit of the Class, with no right of reversion. This $6,400,000 Settlement, if approved, would be in the range of court-approved settlements in recent years in class actions asserting federal statutory claims in California Superior Court for alleged material misstatements in the offering documents for a public stock offering. By comparison, the court-approved class action settlements in the *Audience*[8] and *A10*[9] actions in this Court, the *CafePress*,[10] *Castlight*,[11] *Envivio*,[12] *Model N*[13] and *Pacific Biosciences*[14] actions in San Mateo County, and the *CardioNet*[15] action in San Diego County range from $6.05 million to $9.837 million.[16]

There are approximately three million allegedly damaged shares in this case, among which the recovery will be allocated to Class Members pursuant to the Plan of Allocation, which is detailed in the

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[8] *Robinson v. Audience, Inc.*, No. 1:12-cv-232227, slip op. (Santa Clara Super. Ct. June 10, 2016) (Kirwan, J.).

[9] *In re A10 Networks, Inc. S'holder Litig.*, No. 1-15-CV-276207, slip op. (Santa Clara Super. Ct. Mar. 2, 2017) (Walsh, J.).

[10] *In re CafePress Inc. S'holder Litig.*, No. CIV522744, slip op. (San Mateo Super. Ct. Aug. 11, 2015).

[11] *In re Castlight Health, Inc. S'holder Litig.*, No. CIV533203, slip op. (San Mateo Super. Ct. Oct. 29, 2016).

[12] *Wiley v. Envivio, Inc.*, No. CIV517185, slip op. (San Mateo Super. Ct. June 22, 2015).

[13] *Plymouth Cty. Ret. Sys. v. Model N, Inc.*, No. CIV530291, slip op. (San Mateo Super. Ct. Apr. 4, 2016).

[14] *In re Pacific Biosciences of Cal., Inc. Sec. Litig.*, No. CIV509210, slip op. (San Mateo Super. Ct. Oct. 31, 2013).

[15] *West Palm Beach Police Pension Fund v. CardioNet, Inc.*, No. 37-2010-00086836-CU-SL-CTL, slip op. (San Diego Super. Ct. June 28, 2012).

[16] All unreported authorities are attached to the Declaration of Ellen Gusikoff Stewart in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, submitted herewith.

Notice. Based on that and the assumption that Plaintiff would meet its burden of proof and persuade the jury at trial as to each element of its *prima facie* claims, and that Plaintiff would successfully rebut every affirmative defense Defendants intended to establish, damages are approximately $28 million. Accordingly, the percentage of recovery is approximately 22%. The percentage of recovery falls well within the range of approval, and courts have routinely approved settlements in securities class actions that recover comparable or smaller percentages. *See, e.g.*, *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) ($13.75 million settlement yielding 6% of maximum damages was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re LDK Solar Sec. Litig.*, No. C 07-5182 WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) ($16 million settlement yielding approximately 5% of maximum damages).[17]

Regardless of the specific percentage of recovery yielded by the Settlement, however, the Settlement is unquestionably better than another possibility—little or no recovery at all in view of the risks of continued litigation, discussed below. *See Wershba*, 91 Cal. App. 4th at 250 ("Compromise is inherent and necessary in the settlement process . . . even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'"). This factor supports final approval of the Settlement.

2. The Substantial Risks of Continued Litigation

a. Risks Related to Establishing Liability

While Plaintiff believes its claims are strong on the merits, success is hardly assured. Defendants have and would continue to maintain that Plaintiff cannot demonstrate the materiality or falsity of any the challenged statements in the Registration Statement and Prospectus. Defendants would likely argue at the summary judgment stage and at trial, for example, that the offering documents

[17] *See* Laarni T. Bulan, Ellen M. Ryan and Laura E. Simmons, *Securities Class Action Settlements, 2016 Review and Analysis* at 8, Figure 7 (Cornerstone Research 2017) (median settlements as a percentage of estimated damages were 2.4% between 2006-2015, and 2.5% in 2016; median settlements as a percentage of damages less than $50 million were 10.8% between 2006-2015, and 7.3% in 2016).

adequately disclosed the status of the drug's clinical development program and the significant risks faced by the Company.

While Plaintiff has substantial responses to these arguments, the uncertainty of continued litigation weighs strongly in favor of approval of the Settlement. As one court has observed:

> It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced. Merely by way of example, two instances in this Court may be cited where offers of settlement were rejected by some plaintiffs and were disapproved by this Court. The trial in each case then resulted unfavorably for plaintiffs; in one case they recovered nothing and in the other they recovered less than the amount which had been offered in settlement.

W. Va. v. Chas. Pfizer & Co., 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971); *see also Bellows v. NCO Fin. Sys., Inc.*, No. 3:07-cv-01413-W-AJB, 2008 WL 5458986, at *7 (S.D. Cal. Dec. 10, 2008) ("[W]hile Class Counsel believe strongly in the merit of the class claims, they also recognize that any case encompasses risks and that settlement of contested cases is preferred in this circuit. Indeed, even if Plaintiff were to prevail at trial, risks to the class remain."); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *7 (C.D. Cal. June 10, 2005) ("Also favoring approval of the Settlement is the knowledge that, while Plaintiffs are confident of the strength of their case, it is imprudent to presume ultimate success at trial and thereafter.") (both citing *Chas. Pfizer*, 314 F. Supp. at 743-44). The numerous uncertainties and risks of proving liability at and after trial support approval of the Settlement.

b. Risks Relating to Establishing Causation and Damages

Although Plaintiff was confident that it could establish damages assuming a finding of liability, Plaintiff faced a risk that the Court or jury would substantially reduce or even eliminate damages. Under Section 11(e) of the Securities Act of 1933, 15 U.S.C. §77k(e), a defendant can reduce or eliminate damages through a showing that the false or misleading statements or omissions alleged were not the cause, in whole or in part, of the loss sustained by the class. Defendants would attempt to establish such "negative causation" at both summary judgment and trial. Defendants would doubtless contend, for example, that the losses sustained by the Class were attributable not to any misrepresentation or omission in the Registration Statement, but rather to negative events concerning the efficacy of RT001. Jaconette Decl., ¶35.

The parties' respective experts would offer sharply divergent testimony concerning damages at both summary judgment and trial, reducing the determination of this element to a "battle of the experts." *See In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) (fact that "trial would likely involve a confusing 'battle of the experts' over damages" supported approval of settlement). Plaintiff faced a substantial risk that the factfinder would credit Defendants' contentions that damages were not linked to the misstatements in the offering documents or that damages were a fraction of the amount Plaintiff proffered. *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, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

Even if Plaintiff obtained 100% of the Class' damages, the risks would not end there. *See In re Mfrs. Life Ins. Co. Premium Litig.*, No. 96-CV-230 BTM (AJB), 1998 WL 1993385, at *5 (S.D. Cal. Dec. 21, 1998) ("[E]ven if it is assumed that a successful outcome for plaintiffs at summary judgment or at trial would yield a greater recovery 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."). There are numerous cases in which a successful verdict has been overturned either by motion after trial or an appeal. In *In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 WL 238298, at *1 (N.D. Cal. Sept. 6, 1991), for example, the jury rendered a verdict for plaintiffs after an extended trial. Based upon the jury's findings, recoverable damages would have exceeded $100 million. The court, however, overturned the verdict, entered judgment for the individual defendants, and ordered a new trial with respect to the corporate defendant. *See also*, *e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)); *In re BankAtlantic Bancorp, Inc.*, No. 07-61542-CIV, 2011 WL 1585605, at *20 (S.D. Fla. Apr. 25, 2011) (after plaintiffs' jury verdict, court granted defendants' motion for judgment as a matter of law and entered judgment for defendants), *aff'd*, 688 F.3d 713 (11th Cir. 2012) (finding trial court erred, but defendants nevertheless

entitled to judgment as a matter of law based on lack of loss causation). Litigation risks on liability and damages support approval of the Settlement.

3. Plaintiff Had Sufficient Information to Negotiate and Obtain a Fair Settlement

This factor focuses on whether the parties had sufficient information to conduct an informed negotiation for a settlement that adequately reflects the merits of the case. "'[I]n the context of class action settlements, "formal discovery is not a necessary ticket to the bargaining table" where the parties have sufficient information to make an informed decision about settlement.'" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000); *see also In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *39-*40 (E.D. La. Mar. 2, 2009) ("The question 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.").

As detailed above, when the parties reached the Settlement, Lead Counsel had sufficiently investigated and researched the merits of the Class' claims and Defendants' potential defenses to determine that the terms of the Settlement are fair, reasonable, and adequate and in the best interests of the Class. Lead Counsel's reasoned judgment was obtained after more than a year of litigation, during which time it drafted detailed complaints; collected witness accounts of Revance's operations given by former Revance employees and FDA representatives; reviewed hundreds of pages of SEC filings; investigated and researched the facts and issues required to craft the complaints; retained a consultant with expertise regarding pharmaceutical development and FDA regulatory strategy, processes and procedures; reviewed voluminous confidential data and more than 62,700 pages of confidential documents produced by Revance and non-party Medicis Pharmaceutical Corp.; consulted with an expert on damages issues; and participated in mediated settlement negotiations during which the strengths and weaknesses of the parties' positions were fully explored and debated. *See generally*, Jaconette Decl. The knowledge and insight gained through these activities provided Lead Counsel with sufficient information to evaluate the strengths and weaknesses of the Class' claims and Defendants'

defenses, as well as the likelihood of obtaining a larger recovery from Defendants had the Litigation continued.

4. Balancing the Certainty of an Immediate Recovery Against the Complexity, Expense, and Likely Duration of Continued Litigation and Trial Favors Settlement

The immediacy and certainty of a recovery balanced against the complexity, expense and duration of continued litigation is another factor for the Court to balance in determining whether the Settlement is fair, adequate, and reasonable. *See Wershba*, 91 Cal. App. 4th at 244-45; *Dunk*, 48 Cal. App. 4th at 1801. The benefit of the present settlement must be balanced against the expense of achieving a more favorable result at a trial in the future.

Approval of the Settlement assures a prompt and significant recovery for Class Members. If not for the Settlement, this Litigation would continue to proceed through the completion of document and deposition discovery, expert discovery, summary judgment, trial, and likely appeal. A trial would occupy teams of attorneys for weeks and would require substantial and costly expert testimony on both sides. Further, a judgment favorable to the Class, in light of the contested nature of virtually every aspect of this case, would unquestionably be the subject of post-trial motions and appeals, which would prolong the case for several more years. *See Warner Commc'ns*, 618 F. Supp. at 745 (delay from appeals is factor to be considered). Delay, not just at the trial stage, but through post-trial motions and the appellate process as well, could force Class Members to wait many more years for any recovery, further reducing its value. Settlement of this Litigation ensures an immediate recovery, and eliminates the risk of no recovery at all.

The essence of a settlement is compromise, "'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982). "'[T]he agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.'" *Id*. The certainty of recovery balanced against the complexity, expense, and duration of continued litigation weighs in favor of approval of the Settlement. Jaconette Decl., ¶36.

5. The Recommendations of Experienced Counsel Favor Approval of the Settlement

The views of the attorneys actively conducting the litigation, while not conclusive, are entitled to weight in the fairness analysis. *Dunk*, 48 Cal. App. 4th at 1802; *see also Omnivision*, 559 F. Supp. 2d at 1043 ("'The recommendations of plaintiffs' counsel should be given a presumption of reasonableness.'"). Lead Counsel, who has extensive experience in the prosecution of securities class actions, commend the Settlement to the Court as in the best interests of the Class. *See* Jaconette Decl., Ex. B.[18]

In sum, because each of the *Dunk* factors supports a finding that the Settlement is fair, reasonable, and adequate, the Court should approve the Settlement.

III. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

Plaintiff also seeks approval of the Plan of Allocation. The Plan of Allocation is set forth in full in the Notice mailed to potential Class Members. *See* Rodriguez Decl., Ex. A at 3-4. Assessment of a plan of allocation in a class action is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair and reasonable. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). An allocation formula "'need only have a reasonable, rational basis, particularly if recommended by experienced and competent'" class counsel. *E.g.*, *In re Zynga Inc. Sec. Litig.*, No. 12-cv-04007-JSC, 2015 WL 6471171, at *12 (N.D. Cal. Oct. 27, 2015). No objections to the Plan of Allocation have been filed to date.

The Plan of Allocation provides an equitable basis to allocate the Net Settlement Fund among all Class Members who submit an acceptable Proof of Claim. The Plan of Allocation was developed by Lead Counsel with the assistance of its damages consultant and reflects an assessment of the damages that could have been recovered at trial. Accordingly, Plaintiff respectfully submits that the Plan of Allocation is a fair and reasonable method for allocating the Net Settlement Fund among the Members of the Class.

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[18] The reaction of the Class is also relevant to the fairness of the Settlement. *See Dunk*, 48 Cal. App. 4th at 1801. As noted above, there have been no objections and no opt-outs to date. If any timely objections are submitted, Plaintiff will address them in a reply memorandum.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval to the Settlement, approve the Plan of Allocation, and enter the proposed Order and Final Judgment.

DATED: April 5, 2017

Respectfully submitted,

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on April 5, 2017, declarant served **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 5, 2017, at San Diego, California.

Jaclyn Stark

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