UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE COMMVAULT SYSTEMS, INC. SECURITIES LITIGATION	Civil Action No. 14-5628 (PGS)(LHG)

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

Dated: April 9, 2018

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PRELIMINARY STATEMENT

Lead Plaintiff Arkansas Teacher Retirement System ("ATRS"), on behalf of itself and the other members of the Settlement Class, respectfully submits this memorandum of law in support of its motion for final approval of the proposed settlement of this Action (the "Settlement") and for approval of the proposed plan of allocation of the proceeds of the Settlement (the "Plan of Allocation").[1]

If approved by the Court, the proposed Settlement will resolve this litigation in its entirety in exchange for a cash payment of $12,500,000. Lead Plaintiff and Lead Counsel respectfully submit that the Settlement is fair, reasonable and adequate – and, indeed, is a very favorable result for the Settlement Class – in light of the amount of the Settlement, the substantial challenges that Lead Plaintiff would have faced in proving liability and establishing loss causation and damages, and the costs and delays of continued litigation.

The Settlement is the product of extensive arm's-length negotiations between the Parties, which included two in-person mediation sessions and significant follow-up discussions under the auspices of an experienced mediator, Robert A Meyer, Esq. of JAMS (the "Mediator"). Indeed, the $12,500,000 Settlement is based on the Parties' acceptance of the Mediator's proposal that the Action be settled for that amount. The Settlement has been approved by the Lead Plaintiff, which is a sophisticated institutional investor with experience acting as lead plaintiff in other securities class actions, and counsel for Lead Plaintiff, the law firm of Bernstein Litowitz Berger &

[1] All capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 30, 2017 (ECF No. 117-1) (the "Stipulation") or in the Declaration of James A. Harrod in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Harrod Declaration" or "Harrod Decl."), filed herewith. All citations to "¶ __" in this memorandum refer to paragraphs in the Harrod Declaration.

Grossmann LLP ("Lead Counsel"), which is highly experienced in prosecuting securities class actions, and they have concluded that the Settlement is a very positive outcome for the Settlement Class given the significant risks and expense of continued litigation. The reaction of the Settlement Class to date has also been favorable. While the deadline to object to or request exclusion from the Settlement has not yet passed, to date, no Settlement Class Members have objected or requested exclusion.

At the time the agreement to settle was reached, Lead Plaintiff and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the Action. As more fully described in the Harrod Declaration,[2] before the Settlement was agreed to, Lead Counsel had, among other things: (i) conducted a wide-ranging investigation concerning the allegedly fraudulent misrepresentations made by Defendants, including interviews with former Commvault employees and a thorough review of publicly available information, such as Commvault's public filings with the Securities and Exchange Commission ("SEC"), research reports by securities and financial analysts, transcripts of Commvault's earnings conference calls and industry conferences, and other publicly available material such as press releases and media reports; (ii) prepared and filed the initial complaint in the Action and two detailed amended complaints; (iii) researched and drafted detailed briefing in opposition to Defendants' two rounds of motions to dismiss; (iv) participated in oral argument on both of Defendants' motions to dismiss; (v) consulted with experts in accounting, damages, loss causation, and market efficiency; (vi) prepared and filed Lead

[2] The Harrod Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action and a description of the services Plaintiffs' Counsel provided for the benefit of the Settlement Class (¶¶ 5, 13-68); the nature of the claims asserted (¶¶ 10-12, 20, 32); the negotiations leading to the Settlement (¶¶ 60-66); the risks and uncertainties of continued litigation (¶¶ 69-91); and the terms of the Plan of Allocation for the Settlement proceeds (¶¶ 98-106).

Plaintiff's motion for class certification; (vii) conducted extensive fact discovery, which included obtaining and reviewing over 1.8 million pages of documents, serving and responding to interrogatories, and exchanging numerous letters with Defendants; (vii) prepared a detailed mediation statement that addressed both liability and damages; and (ix) engaged in extensive arm's length settlement negotiations with Defendants, both directly and through the Mediator to resolve the Action. ¶¶ 13-68.

The Settlement is a favorable result in light of the substantial risks of continued litigation. As the Court is aware, the core allegations in this case were that Commvault had intentionally, and misleadingly, deferred recognition of revenues, in violation of generally accepted accounting principles (GAAP), to hide slowing revenue growth, and that Defendants had made materially false and misleading statements regarding the impact of the loss of Commvault's partnership with Dell on Commvault's business. While Lead Plaintiff believes that the claims asserted against Defendants are meritorious, Lead Plaintiff recognizes that the Action presented a number of risks to establishing both liability and damages. As detailed in the Harrod Declaration at ¶¶ 69-91 and discussed further below, in order to survive a motion for summary judgment and prevail at trial, Lead Plaintiff would have had to overcome a number of significant challenges to establishing that Defendants' alleged misstatements were actionable and false and that Defendants' had acted with scienter in making the alleged false statements. For example, Defendants had provided certain evidence supporting their contention that Commvault had not improperly deferred revenues in violation of GAAP, but had rather properly accounted for its revenues pursuant to accounting policies that did not allow for discretion on the part of Commvault employees. ¶ 72. For example, Defendants argued that Commvault had properly deferred recognition of an additional $6 million of software revenue at the end of FY2013 because the objective requirements for recognizing that

revenue under GAAP had not yet been satisfied. *Id*. Lead Plaintiff would have faced substantial challenges in proving that Commvault's accounting was incorrect and, at best, would have faced a battle of accounting experts at trial on this subject. *Id*.

Defendants also contended and would continue to argue that their statements regarding Commvault's revenues or its relationship with Dell were not false when made. ¶ 71. Defendants attacked the premise of Lead Plaintiff's argument that the deferred revenue transactions were required to meet a 20% growth target by arguing that they had never told investors that Commvault's software revenue would grow by 20% in FY2014. Defendants also contended that they never made any false or misleading statements about the termination of Commvault's relationship with Dell, and in fact, had replaced the Dell business with business from other distribution partners, as they represented to investors. *Id*.

Even if Lead Plaintiff could establish that the statements in question were false when made, they would still have faced challenges in proving that the false statements were made with fraudulent intent or recklessness. ¶¶ 76-80. For example, Defendants would point to the fact that Commvault's revenue recognition decisions had been carefully documented and reviewed internally by accounting staff within the Company and confirmed as appropriate by Commvault's outside auditor multiple times. ¶ 77. Accordingly, they would contend that Lead Plaintiff would not be able to establish that the Individual Defendants believed that Commvault's accounting for the deferred revenues was improper or in violation of GAAP. *Id*. Defendants also argued and would continue to argue that the transparency of Commvault's accounting for deferred revenue made Lead Plaintiff's allegations regarding their use of a "cookie jar" of deferred revenues implausible because Defendants would not have engaged in this allegedly deceptive practice if it was not capable of fooling anyone. ¶ 78. Defendants further contended that Commvault had

actually replaced the business it lost from Dell with business from other distribution partners and thus, Defendants did not (and could not have) knowingly or recklessly misrepresent the impact of the loss of Dell to investors. ¶ 79. In addition, Defendants argued and would have continued to argue that Lead Plaintiff could not establish any motive for Defendants to engage in the alleged fraud. ¶ 80.

Finally, even if Lead Plaintiff successfully established liability, Lead Plaintiff would still have faced serious risks in proving loss causation and damages. ¶¶ 81-87. Defendants contended that Lead Plaintiff and the Settlement Class would not be able establish that the alleged misstatements caused any damages because the deferred revenue amounts were disclosed at all times to investors. ¶ 82. Defendants noted that Commvault's SEC filings specifically reported how much deferred software revenue it carried on its balance sheet, and that analysts repeatedly commented on deferred revenue. ¶ 83. Defendants pointed to these analysts' remarks as evidence that showed that – even if any deferral was technically improper – the market was not deceived and thus the stock price declines that occurred following the alleged corrective disclosures were not caused by the alleged misstatements. *Id*. Defendants further asserted with respect to Dell that Lead Plaintiff could not prove loss causation because Defendants were truthful in their statements to investors concerning both the loss of business from Dell and Commvault's efforts to replace that business with business from other distribution partners. ¶ 84. Thus, Defendants contended, the market was never deceived and, in fact, analysts understood that the Dell disengagement posed potential risks and could interrupt Commvault's growth story.

In addition, Defendants had very serious arguments that, even if liability and loss causation could even be established, significant portions of the declines in the price of Commvault common stock on the days at issue were not caused by disclosure of the alleged misstatements but by other,

non-fraud-related negative news about the Company's business, and that Lead Plaintiff would have difficulty in establishing what portion of the price drops related to the relevant disclosures and what portion related to confounding, non-fraud information. ¶ 86. Both of the alleged corrective disclosures in the case (on January 29, 2014 and April 25, 2014) were made as part of announcements of Commvault's quarterly financial results. The earnings announcements on these days included a substantial amount of information that was unrelated to the alleged fraud, including information concerning the slowing of growth of currently booked revenues, and Defendants, and their experts, would have argued that it was *this* news, rather than any news related to the alleged fraud, which impacted Commvault's stock price on those days. *Id*. Defendants would have further argued that Lead Plaintiff bore the burden of proof in "disaggregating" the impact of the confounding, non-fraud information from the impact of the information relating to the alleged fraud. ¶ 87. Defendants would have argued that such disaggregation could not be done, and, even if it could, that the overwhelming share of the price decline on those days should be attributed to the non-fraud-related information. *Id*. If the Court or a jury were to accept this argument, the recoverable damages for the Settlement Class would have been substantially reduced, if not eliminated entirely.

Moreover, in the absence of the Settlement, Lead Plaintiff faced the prospect of protracted litigation through class certification, the completion of fact discovery, costly expert discovery, a motion for summary judgment, a trial, post-trial motion practice, and likely ensuing appeals. The Settlement avoids these risks while providing a substantial and certain benefit to the Settlement Class in the form of a $12,500,000 cash payment. In light of these considerations, Lead Plaintiff and Lead Counsel believe that the Settlement is fair, reasonable and adequate and warrants final approval by the Court.

Additionally, Lead Plaintiff requests that the Court approve the Plan of Allocation, which is set forth in the Notice that has been sent to Settlement Class Members. The Plan of Allocation, which was developed by Lead Plaintiff's damages expert in consultation with Lead Counsel, provides a reasonable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on the losses they suffered as result of the conduct alleged in the Action. For these reasons, the Plan of Allocation is fair and reasonable, and should likewise be approved.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED

There is a "strong presumption in favor of voluntary settlement agreements." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010); *see also In re Gen. Motors Corp. Pick-Up Trucks Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*GMC Trucks*") ("[t]he law favors settlement"). The presumption in favor of settlement is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Ehrheart*, 609 F.3d at 595 (quoting *GMC Trucks*, 55 F.3d at 784).

Under Federal Rule of Civil Procedure 23(e), a class action settlement must be approved by the court, upon a finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) ("*NFL Players*"); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998). The ultimate determination of whether a proposed class action settlement warrants approval is in the court's discretion. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424-25 (1968); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). While this Court has discretion in

determining whether to approve the Settlement, it should be hesitant to substitute its judgment for that of the parties who negotiated the Settlement. *See Sutton v. Med. Serv. Ass'n of Pennsylvania,* No. 92-4787, 1994 WL 246166, at *5 (E.D. Pa. June 8, 1994). "Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. . . . They do not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981); *see also Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 642-43 (D.N.J.), *aff'd*, 726 F.2d 956 (3d Cir. 1983).

In determining the adequacy of a proposed settlement, a court should ascertain whether the settlement is within a range that responsible and experienced attorneys could accept, considering all relevant risks. *See Serrano v. Sterling Testing Sys., Inc*., 711 F. Supp. 2d 402, 414 (E.D. Pa. 2010). That analysis recognizes the "uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion."' *Id*.

A proposed class action settlement is considered presumptively fair where, as here, the parties have engaged in arm's-length negotiations through experienced counsel after sufficient discovery. *See, e.g.*, *NFL Players*, 821 F.3d at 436; *Warfarin*, 391 F.3d at 535; *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016). Indeed, it is appropriate to give "substantial weight to the recommendations of experienced attorneys" who have engaged in arm's-length negotiations. *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003) (lead counsel's "assessment of the settlement as fair and reasonable is entitled to considerable weight."); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 255 (D.N.J. 2000) (affording

"significant weight" to counsel's recommendation), *aff'd in relevant part,* 264 F.3d 201 (3d Cir. 2001).

The Court should also assess the reasonableness of the settlement pursuant to the factors set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975):

> (1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. at 157 (citation omitted); *see also In re AT&T Corp. Sec. Litig*., 455 F.3d 160, 164-65 (3d Cir. 2006). The Third Circuit also advises courts to consider, where applicable, the additional factors set forth in *Prudential*, 148 F.3d 283 (3d Cir. 1998):

> [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

Id. at 323; *see also ViroPharma*, 2016 WL 312108, at *9.

As set forth herein and in the Harrod Declaration, the Settlement is a highly favorable result for the Settlement Class, is presumptively fair, and the *Girsh* factors and applicable *Prudential* considerations weigh strongly in favor of approval of the Settlement.

A. The Settlement was Reached After Extensive Arm's-Length Negotiations Conducted Under the Auspices of the Court and an Experienced Mediator

Here, the proposed Settlement is the product of extensive arm's-length negotiations between highly experienced and capable counsel after significant discovery and consultations with accounting and damages experts. The negotiations occurred under the auspices of the Court and Mr. Meyer, an experienced mediator of securities class actions and other complex litigation. ¶¶ 60-64. The Parties appeared at a settlement conference before Magistrate Judge Lois Goodman in May 2017. ¶¶ 60-61. Following that conference, the Parties agreed to engage in private mediation. Two in-person mediation sessions were held before the Mediator on August 18, 2017 and September 11, 2017. ¶¶ 63-64. At the conclusion of the second mediation session, Mr. Meyer made a mediator's proposal that the Parties settle the Action for $12,500,000 and the Parties accepted the mediator's proposal on September 15, 2017. ¶ 64.

The Settlement is entitled to a presumption of fairness because it was reached by experienced counsel following arm's-length negotiations and adequate discovery. *See, e.g.*, *NFL Players*, 821 F.3d at 436; *ViroPharma*, 2016 WL 312108, at *8. Moreover, the "'participation of an independent mediator in settlement negotiations virtually insures [*sic*] that the negotiations were conducted at arm's length and without collusion between the parties.'" *ViroPharma*, 2016 WL 312108, at *8 (citation omitted); *see also In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *14 (S.D.N.Y. Nov. 8, 2010).

The presumption that the Settlement is fair and reasonable is also strengthened because it has been approved by the Lead Plaintiff that oversaw the prosecution and settlement of the action. Lead Plaintiff is a sophisticated institutional investor that took an active role in supervising this litigation, as envisioned by the PSLRA. *See* Declaration of George Hopkins, the Executive Director of ATRS, attached as Exhibit 2 to the Harrod Declaration, at ¶¶ 4-7. A settlement reached

"under the supervision and with the endorsement of a sophisticated institutional investor . . . is 'entitled to an even greater presumption of reasonableness.'" *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007); *see also In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at *5 (S.D.N.Y. Dec. 19, 2014) ("the recommendation of Lead Plaintiffs, which are sophisticated institutional investors, also supports the fairness of the Settlement").

Further, as noted above, significant weight should be attributed "to the belief of experienced counsel that settlement is in the best interest of the class." *Lake v. First Nationwide Bank,* 900 F. Supp. 726, 732 (E.D. Pa. 1995) (citation omitted); *see also Alves v. Main*, No. 01-789 (DMC), 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd,* 559 F. App'x 151 (3d Cir. 2014) ("courts in this Circuit traditionally 'attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class'") (citations omitted). Lead Counsel, experienced in prosecuting securities class actions, believes that the Settlement is a very favorable result and in the best interest of the Settlement Class. In reaching this conclusion, Lead Counsel considered the strengths and weaknesses of the claims based on the information obtained through their investigation in the Action, the substantial discovery obtained, and the arguments presented in the course of the mediation efforts. As a result, Lead Counsel's opinion should be afforded considerable weight.

B. Analysis of the *Girsh* Factors Supports Approval of the Settlement as Substantively Fair, Reasonable and Adequate

To determine if a proposed settlement in a class action is fair, reasonable, and adequate, district courts in this Circuit consider the nine factors identified in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). These factors strongly support approval of the Settlement.

1. Complexity, Expense and Likely Duration of This Litigation Support Approval of the Settlement

The first *Girsh* factor looks to "the complexity, expense and likely duration of the litigation." *Id.* at 157. "This factor is intended to capture 'the probable costs, in both time and money, of continued litigation.'" *ViroPharma*, 2016 WL 312108, at *9 (citation omitted). Securities litigation is acknowledged by courts to be complex and expensive, and this case was no exception. *See, e.g., In re Par Pharm. Sec. Litig.*, No. 06-3226 (ES), 2013 WL 3930091, at *4 (D.N.J. July 29, 2013) (recognizing that securities fraud class actions are "notably complex, lengthy, and expensive cases to litigate"); *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525(GEB), 2007 WL 4225828, at *3 (D.N.J. Nov. 28, 2007) ("This securities fraud class action involves accounting and damages issues, the resolution of which would likely require extensive and conceptually difficult expert economic analysis. . . . Trial on these issues would [be] lengthy and costly to the parties.").

While this case had already proceeded through substantial discovery, achieving a litigated verdict in this Action for Lead Plaintiff and the class would nonetheless have required substantial additional time and expense. Lead Plaintiff would have had to complete and prevail on the contested motion for class certification, and any subsequent interlocutory appeals if a favorable decision was issued by this Court. Lead Plaintiff would have to complete fact discovery, including taking depositions of key Commvault personnel and other relevant witnesses. The Parties would then have had to engage in substantial expert discovery, including preparing opening and rebuttal reports and taking depositions of the experts. Lead Plaintiff had consulted with and intended to obtain expert reports from experts on accounting, loss causation, and damages. Defendants were expected to put forth expert testimony on similar topics which Lead Plaintiff would have sought to rebut.

After the close of discovery, Defendants likely would move for summary judgment, which would have to be briefed and argued, a pre-trial order would have to be prepared, proposed jury instructions would have to be submitted, and *Daubert* motions and motions *in limine* would have to be filed and argued. Substantial time and expense would need to be expended in preparing the case for trial, which itself would be highly costly and uncertain. Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of post-trial motions and an appeal. Taking into account the likelihood of appeals, absent the Settlement, this case likely would have continued for years.

2. The Reaction of the Settlement Class

"'The second *Girsh* factor 'attempts to gauge whether members of the class support the settlement.'" *NFL Players,* 821 F.3d at 438. A lack of significant objections by class members weighs in favor of judicial approval. *See In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 578 (E.D. Pa. 2003) ("unanimous approval of the proposed settlement by the class members is entitled to nearly dispositive weight in this court's evaluation of the proposed settlement").

Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice dated January 22, 2018 (ECF No. 120) (the "Preliminary Approval Order"), the Court-appointed Claims Administrator, Garden City Group, LLC ("GCG"), began mailing copies of the Notice Packet (consisting of the Notice and Claim Form) to potential Class Members and their nominees on February 16, 2018. *See* Declaration of Jose C. Fraga Regarding (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date (Ex. 1 to the Harrod Decl.) ("Fraga Decl."), at ¶¶ 3-4. As of April 6, 2018, GCG had mailed a total of 35,978 copies of the Notice Packet to potential Settlement Class Members and nominees. *See id*. ¶ 7. In addition, the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on February 26, 2018. *See id*. ¶ 8. The Notice set

out the essential terms of the Settlement and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, as well as the procedure for submitting Claim Forms. While the deadline set by the Court for Settlement Class Members to exclude themselves or object to the Settlement has not yet passed, to date, no objections to the Settlement or the Plan of Allocation and no requests for exclusion have been received. Accordingly, the reaction of the Settlement Class to date supports approval of the Settlement.[3]

3. The Stage of the Proceedings and Amount of Discovery Completed Support Approval of the Settlement

The third *Girsh* factor requires a court to consider "the degree of case development that class counsel have accomplished prior to settlement" in order to "determine whether counsel had an adequate appreciation of the merits of the case before negotiating" the settlement. *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (citation omitted); *see also Warfarin*, 391 F.3d at 537; *Devlin v. Ferrandino & Son, Inc.*, No. 15-4976, 2016 WL 7178338, at *5 (E.D. Pa. Dec. 9, 2016).

Here, Lead Plaintiff and Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims at the time they agreed to the Settlement. Prior to filing the Complaint, on behalf of Lead Plaintiff, Lead Counsel extensively investigated the merits of the case, including interviewing former employees of Commvault, analyzing Commvault's SEC filings, and reviewing news articles and other public information concerning Commvault. ¶¶ 17-19. After the resolution of Defendants' motions to dismiss, Lead Plaintiff obtained substantial additional

[3] The deadline for submitting objections and requesting exclusion from the Settlement Class is April 23, 2018. As provided in the Preliminary Approval Order, Lead Plaintiff will file reply papers no later than seven days before the Settlement Hearing (by May 7, 2018) that will address any requests for exclusion or objections that may be received.

information through fact discovery, which included reviewing 1.8 million pages of documents produced by Defendants and non-parties. ¶¶ 40-54. Lead Counsel also consulted extensively with experts in accounting, loss causation and damages. ¶¶ 58-59. In addition, Lead Plaintiff and Lead Counsel obtained information about the strengths of the claims and the defenses asserted by Defendants through briefing of the motions to dismiss, through Defendants' mediation statement, and the in-person mediation sessions. ¶¶ 21-37, 63-64.

As a result of all these efforts, Lead Plaintiff and Lead Counsel clearly had a "sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02 Civ. 5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006); *see also Saunders v. Berks Credit & Collections, Inc.*, No. 00-3477, 2002 WL 1497374, at *10 (E.D. Pa. July 11, 2002) (finding that the "parties conducted adequate investigation and discovery to gain an appreciation and understanding of the relative strengths and weaknesses of the claims and defenses asserted," based on document discovery conducted, the briefing of the motion to dismiss and motion for class certification, and settlement negotiations).

4. The Risks of Establishing Liability Weigh in Favor of Final Approval

The fourth *Girsh* factor looks to "the risks of establishing liability." *Girsh*, 521 F.2d at 157. Under this factor, "[b]y evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them." *GMC Trucks*, 55 F.3d at 814. While Lead Plaintiff believes that its claims have merit, the risks of establishing liability in this Action were particularly significant and weigh heavily in favor of approval of the Settlement.

In this Action, Lead Plaintiff alleged that Defendants had made materially false and misleading statements during the Settlement Class Period regarding the impact of the loss of

Commvault's partnership with Dell on Commvault's business and that Commvault had intentionally deferred recognition of revenues in order to hide slowing revenue growth and the impact of the loss of the partnership with Dell, in violation of GAAP. ¶¶ 12, 20. Defendants would have contended that these statements were not false when made or were otherwise not actionable and that, even if the statements were false, that Defendants had not acted with scienter when making these statements. ¶¶ 70-80.

With respect to the alleged misstatements, and as discussed above and in the Harrod Declaration, Defendants argued that they had not made any false statements about Commvault's deferred revenue practices, or its relationship with Dell. Defendants would be expected to press these same arguments on summary judgment and at trial. ¶¶ 70-75. For example, if Lead Plaintiff could not establish that Commvault's deferral of revenues violated any objective GAAP requirements based on the specific transactions at issue, then Lead Plaintiff would have had difficulty establishing the falsity of Defendants' statements – even if Lead Plaintiff presented established evidence that the Company's *motivation* for seeking to defer revenues in FY 2013 was to "smooth out" the expected decline in its growth rate due to the loss of business from Dell, consistent with Lead Plaintiff's "cookie jar" theory and the statements of several confidential witnesses. ¶¶ 71-73.

Even if Lead Plaintiff could have established that Defendants made materially false or misleading statements, Lead Plaintiff would still have faced additional, substantial challenges in proving that the alleged misstatements were made with scienter – that is, with fraudulent intent or recklessness. ¶¶ 76-80. Scienter is commonly regarded to be the most difficult element to prove in a securities fraud claim. *See, e.g., ViroPharma*, 2016 WL 312108, at *12 (noting that "proving scienter is an 'uncertain and difficult necessity for plaintiffs'"); *Datatec*, 2007 WL 4225828, at *4

(proving scienter in a securities class action is a "formidable task" and that risk supported settlement approval).

For example, Defendants would point to the fact that Commvault's revenue recognition decisions had been carefully documented and reviewed internally by accounting staff within the Company and confirmed as appropriate by Commvault's outside auditor multiple times. ¶ 77. Accordingly, Defendants would contend that Lead Plaintiff would not be able to establish that the Individual Defendants believed that Commvault's accounting for the deferred revenues was improper or in violation of GAAP. *Id*. Defendants also argued and would continue to argue that the transparency of Commvault's accounting for deferred revenue made Lead Plaintiff's allegations regarding their use of a "cookie jar" of deferred revenues implausible because Defendants would not have engaged in this allegedly deceptive practice if it was not capable of fooling anyone. ¶ 78.

Defendants would have also contended that Commvault's replacement of the lost Dell revenue through sales to other partners negated any finding that they knowingly or recklessly misrepresented the impact of the loss of Dell to investors. ¶ 79. Finally, Defendants would have continued to assert there was no motive for Defendants to engage in fraud. ¶ 80.

Defendants could also point to the fact that the neither the SEC nor any other regulatory body took any action against Defendants based on the misstatements alleged in this Action. As Courts have recognized, the absence of a regulatory action or a government investigation enhances the risks of the litigation. *See, e.g., In re Fasteners Antitrust Litig.,* No. 08-1912, 2014 WL 296954, at *6 (E.D. Pa. Jan. 27, 2014) ("the risk of not establishing liability . . . [is] greater when plaintiffs are without the benefit of the results of a corresponding U.S. governmental investigation"); *In re Am. Integrity Sec. Litig.*, No. 86-7133, 1989 WL 89316, at *11 (E.D. Pa. Aug. 8, 1989) ("The risk

of lack of success was increased because there was never a criminal prosecution or other significant government investigation.").

Furthermore, in order to succeed in establishing the Defendants' liability for the allegedly false and misleading statements, Lead Plaintiff would have had to prevail at several stages in the litigation – including at class certification, on a motion for summary judgment and at trial. ¶¶ 88-90. At each of these stages, there were significant risks and there was no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

5. The Risks of Establishing Loss Causation and Damages Weigh in Favor of Final Approval

Even if Lead Plaintiff overcame all of the risks discussed above and was successful in establishing liability, it still faced substantial risks in proving loss causation and damages. Indeed, while the issues of loss causation and damages were not before the Court at the motion to dismiss stage, these issues were an important factor in establishing the settlement value of this case. Lead Plaintiff bore the burden of proving loss causation and damages for their claims under Section 10(b) – that is, it must show that the alleged false statements or omissions caused investors' losses. *See ViroPharma,* 2016 WL 312108, at *12. The Supreme Court's decision in *Dura Pharms., Inv. v. Broudo,* 544 U.S. 336 (2005), and the subsequent cases interpreting *Dura*, have made proving loss causation even more difficult and uncertain than it was in the past. *See, e.g.*, *In re Ocean Power Techs., Inc.*, No. 3:14-CV-3799, 2016 WL 6778218, at *19 (D.N.J. Nov. 15, 2016) ("proving loss causation would be a major risk faced by Plaintiff").

Defendants contended that Lead Plaintiff could not establish that the alleged misstatements caused any damages to members of the class. For example, Defendants contended that the price of Commvault stock did not increase when the alleged misstatements were made and that the share price declines that occurred on January 29, 2014 and April 25, 2014 following the alleged

corrective disclosures were not attributable to any correction of prior alleged false or misleading statements concerning Commvault's revenue recognition practices or about Dell, but instead resulted from other negative news about the Company's business. ¶ 82. Defendants also contended that Lead Plaintiff and the Settlement Class would not be able establish that the alleged misstatements caused any damages for the same reason discussed above – because the amounts of revenue deferred were disclosed at all times to investors. ¶ 83. Defendants noted that Commvault's SEC filings specifically reported how much deferred software revenue it carried on its balance sheet, and that analysts repeatedly commented on deferred revenue, specifically noting in Q2 and Q3 of FY2014 precisely how much deferred revenue contributed to the software revenue Commvault had recognized. *Id*. Defendants pointed to these analysts' remarks and argued that this showed that – even if any deferral was technically improper – the market was not deceived and thus the stock price declines that occurred following the alleged corrective disclosures were not caused by the alleged misstatements. *Id*.

Defendants further asserted with respect to Dell that Lead Plaintiff could not prove loss causation because Defendants were truthful in their statements to investors concerning both the loss of business from Dell and Commvault's efforts to replace that business with business from other distribution partners. ¶ 84. Thus, Defendants contended, the market was never deceived and in fact analysts understood that the Dell disengagement posed potential risks and could interrupt Commvault's growth story. *Id*.

Lead Plaintiff's damages expert estimated that if Lead Plaintiff were successful with respect to all liability arguments, that the maximum potential damages that could reasonably be established at trial would be approximately $450 million to $570 million based on both alleged partial corrective disclosures, and assuming that the entire decline on both corrective disclosure

dates was completely attributable to the corrective nature of those disclosures. ¶ 85. However, Defendants had very serious arguments that provable damages are much lower, if liability could even be established. ¶ 86. Both of the alleged corrective disclosures in the case (on January 29, 2014 and April 25, 2014) were made as part of announcements of Commvault's quarterly financial results. The earnings announcements on these days included a substantial amount of information that was unrelated to the alleged fraud, including information concerning the slowing of growth of currently booked revenues, and Defendants would have contended that it was this news which impacted Commvault's stock price on those days. *Id*.

Defendants would have further argued that Lead Plaintiff bears the burden of proof in "disaggregating" the impact of the "confounding," non-fraud information from the impact of the information relating to the alleged fraud on the price movement of Commvault stock. ¶ 87. Defendants would have also argued that such disaggregation could not be done, and, even if it could, that the overwhelming share of the price decline on those days should be attributed to the non-fraud-related information. If the Court or a jury were to accept this argument, the potentially recoverable damages for the Settlement Class could have been substantially reduced, if not eliminated entirely. *Id*. Given Defendants' arguments, even assuming that Lead Plaintiff were to prevail on liability, it is not inconceivable that the class's maximum aggregate damages could be reduced by as much 50% to 75%.

Moreover, to determine damages and loss causation, the parties would have had to rely on expert testimony. While Lead Plaintiff would have been able to present a cogent expert's view establishing loss causation and damages, there is little doubt that Defendants would have also been able to present a well-qualified expert who would opine against a finding of loss causation with respect to most or all of the price declines. Lead Plaintiff could not be certain which expert's view

would be credited by the jury and, accordingly, this "battle of the experts" created an additional level of litigation risk. *See ViroPharma*, 2016 WL 312108, at *13 ("The conflicting damage theories of defendants and plaintiffs would likely have resulted in an expensive battle of the experts and it is impossible to predict how a jury would have responded."); *Lazy Oil Co. v. Witco Corp.,* 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997) ("[C]ourts have recognized the need for compromise where divergent testimony would render the litigation an expensive and complicated 'battle of experts.'"), *aff'd,* 166 F.3d 581 (3d Cir. 1999). In short, Lead Plaintiff and Lead Counsel recognized the possibility that a jury could be swayed by experts for the Defendants, and find that there were no damages or only a fraction of the amount of damages Lead Plaintiff might have sought at trial.

6. Risks Related to Class Certification Weigh in Favor of Approval

On May 12, 2017, Lead Plaintiff filed and served its motion for class certification (ECF No. 102). ¶ 55. The motion was supported by a memorandum of law (ECF No. 102-1) and an expert report (ECF No. 102-5) from Lead Plaintiff's expert, Michael Hartzmark, Ph.D., on market efficiency and common damages methodologies, who opined that the market for Commvault common stock was efficient and that damages for investors in Commvault common stock during the Class Period could be calculated through a common methodology. ¶ 55. As a result of the stay of proceedings in the Action ordered by the Court in June 2017, pending the Parties' mediation efforts, Defendants had not filed their opposition to Lead Plaintff's motion for class certification at the time the Parties reached their agreement to settle the Action. ¶ 57. However, Defendants would have vigorously opposed class certification based on the same arguments, discussed above, concerning Lead Plaintiff's inability to establish reliance and loss causation. ¶ 89. Specifically, Defendants would have argued that Lead Plaintiff could not establish that the alleged false statements had any impact on Commvault's stock price either when they were first made, or at the

end of the Class Period, when the alleged disclosures occurred. If Lead Plaintiff could not establish that the alleged misstatements had "price impact" on Commvault's stock, the class would not be entitled to a fraud-on-the-market presumption of reliance, and would have been required to prove actual reliance for each purchaser of Commvault stock, a task that might prove impossible and would raise individualized issues that would likely preclude class certification. *Id*.

7. The Ability of Defendants to Withstand A Greater Judgment

This *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *Cendant*, 264 F.3d at 240. The "fact that [defendants] could afford to pay more does not mean that [they are] obligated to pay any more than what the [] class members are entitled to under the theories of liability that existed at the time the settlement was reached." *Warfarin*, 391 F.3d at 538. Here, while Defendants arguably could afford to pay more, Lead Plaintiff respectfully submits that this factor should not be viewed as determinative by this Court in light of the other factors supporting approval of the Settlement.

8. The Size of the Settlement Fund in Light of the Range of Possible Recoveries and the Attendant Risks of Litigation Strongly Support Approval of the Settlement

The final two *Girsh* factors, typically considered in tandem, ask "whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial." *Prudential*, 148 F.3d at 322. "In making this assessment, the Court compares the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, with the amount of the proposed settlement." *Par Pharm.*, 2013 WL 3930091, at *7 (citing *GMC Trucks*, 55 F.3d at 806).

Here, the $12,500,000 settlement is reasonable in light of all the risks of litigation (as discussed above) and the best possible recovery. If Lead Plaintiff had "run the table" and (a) established Defendants' liability for *all* the alleged false and misleading statements and

omissions, (b) had been able to establish loss causation with respect to *both* of the alleged curative disclosures, and (c) had been able to establish that the alleged misstatements caused *all* of Commvault's abnormal price drop on the disclosure dates, then the damages that Lead Plaintiff would have asserted at trial would have been substantially more than the Settlement Amount. ¶ 85. However, as discussed above, there were numerous, substantial risks to proving falsity and scienter in this case and to establishing loss causation and damages. Indeed, even if liability had been established, if Defendants' loss causation and damages arguments been accepted, damages might have been significantly limited or eliminated entirely.

Moreover, even if there were a favorable verdict at trial, Defendants would most likely appeal. Recovery was thus highly uncertain and would likely take years, while the Settlement confers an immediate and substantial benefit. *See In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 837 (W.D. Pa. 1995) ("It is safe to say, in a case of this complexity, the end of the road might be miles and years away."); *Prudential*, 148 F.3d at 318 (settlement was favored where "the trial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court"). For these reasons, the Settlement should be approved as fair, reasonable, and adequate.

9. The Opinion of Experienced Counsel Supports Approval of the Settlement

The *Girsh* factors do not provide an exhaustive list of factors to be considered when reviewing a proposed settlement. *See AT&T Corp.*, 455 F.3d at 165; *Prudential*, 148 F.3d at 323.[4]

[4] In *Prudential,* the Third Circuit said that, where appropriate and relevant, a district court should also consider the following non-exhaustive factors: "the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results

In determining whether a given settlement is reasonable, the opinion of experienced counsel is also entitled to considerable weight. *See Good v. Nationwide Credit, Inc.*, 2016 WL 929368, at *13 (E.D. Pa. Mar. 14, 2016) ("the opinion of experienced class counsel that settlement is in the class's best interest is entitled to 'significant weight'"); *O'Brien v. Brain Research Labs, LLC*, 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 and favors finding that the settlement is fair").

Here, Lead Counsel, highly experienced in securities class action litigation, believes that the Settlement represents a very favorable result for the Settlement Class and is in the best interests of the Settlement Class as a whole, in light of all of the litigation risks discussed above. ¶¶ 6, 91. In addition, as discussed above, this Settlement was only achieved after lengthy arm's-length settlement negotiations and mediations before the Court and Robert A. Meyer, who has significant experience in mediating complicated securities and other class actions. ¶¶ 60-66. The fact that the Settlement was achieved after extensive arm's-length negotiations between experienced counsel and that these negotiations were conducted with the assistance of the experienced and

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achieved by the settlement for individual class or subclass members and the results achieved – or likely to be achieved – for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable." *Prudential*, 148 F.3d at 323. The first of these factors – the maturity of the underlying substantive issues, as measured by the extent of discovery on the merits, among other things – supports approval of the Settlement. The second factor, regarding a comparison of the results achieved by the Settlement as compared to the results achieved for other claimants is not applicable here because there has been no other recovery for other claimants based on the claims asserted in this Action. The remaining additional factors all support approval of the Settlement because (a) Settlement Class Members are accorded the right to opt out if they wish to do so; (b) the attorneys' fees requested are reasonable (as discussed in the accompanying Fee Memorandum); and (c) the Plan of Allocation discussed in Part II below and the general procedure for processing individuals claims, which is the same typically used in securities class actions of this nature, are fair and reasonable.

respected Mediator, strongly supports the fairness and reasonableness of the agreed Settlement.

In sum, all of the *Girsh* factors, and additional considerations, support approval of the proposed Settlement.

II. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED

The "[a]pproval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *In re Merck & Co. Vytorin ERISA Litig.*, No. 08-CV-285 (DMC), 2010 WL 547613, at *6 (D.N.J. Feb. 9, 2010) (*citing In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)). "In evaluating a plan of allocation, the opinion of qualified counsel is entitled to significant respect. The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis." *Boyd v. Coventry Health Care Inc.*, No. DKC09-2661, 2014 WL 359567 (D. Md. Jan. 31, 2014); *see also Datatec*, 2007 WL 4225828, at *5 (approving plan as "rational and consistent with Lead Plaintiffs' theory of the case"); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of General Instrument stock").

Here, the proposed Plan of Allocation, which was developed by Lead Plaintiff's damages expert in consultation with Lead Counsel, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. In developing the Plan of Allocation, Lead Plaintiff's damages expert calculated the estimated amount of artificial inflation in the per share closing prices of Commvault common stock which allegedly was proximately caused by Defendants' alleged false and misleading statements and

omissions. Notice ¶ 55. In calculating the estimated artificial inflation, Lead Plaintiff's damages expert considered price changes in Commvault common stock in reaction to certain public announcements regarding the Company in which such alleged misrepresentations and omissions were alleged to have been revealed to the market, adjusting for price changes that were attributable to market or industry forces. *Id*.

Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of Commvault common stock during the Class Period that is listed in the Claim Form and for which adequate documentation is provided. Notice ¶ 58. In general, the Recognized Loss Amount calculated under the Plan of Allocation is the lesser of (a) the difference between the estimated artificial inflation on the date of purchase and the estimated artificial inflation on the date of sale or (b) difference between the purchase price and the sale price. *Id.* Under the Plan of Allocation, those shareholders who bought and then sold shares "before the relevant truth begins to leak out" have no recognized losses because "the misrepresentation will not have led to any loss." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 342 (2005). Thus, claimants who purchased and sold all their Commvault shares before the first alleged corrective disclosure on January 29, 2014, or who purchased and sold all their Commvault shares between January 29, 2014 and April 25, 2014 (the date of the second alleged corrective disclosure), will have no Recognized Loss Amount as to those transactions. Notice ¶¶ 58(a)(i), 58(b)(i).

Under the Plan, the sum of a claimant's Recognized Loss Amounts for all of his, her or its transactions is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Notice ¶¶ 61, 62.

Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as result of the conduct alleged in the Action. Moreover, as noted above, as of April 6, 2018, nearly 36,000 copies of the Notice, which contains the Plan of Allocation, and advises Settlement Class Members of their right to object to the proposed Plan of Allocation, have been sent to potential Settlement Class Members and their nominees. *See* Fraga Decl. ¶ 7. To date, no objections to the proposed Plan of Allocation have been received. ¶ 106.

III. CERTIFICATION OF THE SETTLEMENT CLASS REMAINS WARRANTED

The Court's Preliminary Approval Order certified the Settlement Class, for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). ECF No. 120. Nothing has changed to alter the propriety of certification for settlement purposes and, for all the reasons stated in Lead Plaintiffs' Preliminary Approval Brief (ECF No. 117-3, at 12-19), which is incorporated herein by reference, and in the Court's Preliminary Approval Order, Lead Plaintiff respectfully requests that the Court affirm its determination to certify the Settlement Class pursuant to Rules 23(a) and (b)(3).

IV. NOTICE TO THE SETTLEMENT CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The notice provided to the Settlement Class satisfied the requirements of (i) Rule 23(c)(2)(B), which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); and (ii) Rule 23(e)(1), which requires that notice of a settlement be "reasonable" – *i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them," *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1318 (3d Cir. 1993); *see also In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013) ("[N]otice should contain sufficient

information to enable class members to make informed decisions on whether they should take steps to protect their rights").

Both the substance of the Notice and the method of its dissemination to potential members of the Settlement Class satisfied these standards. The Court-approved Notice included all the information required by Federal Rule of Civil Procedure 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7), including: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Settlement Class; (iii) the amount of the Settlement; (iv) a description of the Plan of Allocation; (v) an explanation of the reasons why the Parties are proposing the Settlement; (vi) a statement indicating the attorneys' fees and costs that will be sought; (vii) a description of Settlement Class Members' right to opt-out of the Settlement Class or to object to the Settlement, the Plan of Allocation or the requested attorneys' fees or expenses; and (viii) notice of the binding effect of a judgment.

As noted above, in accordance with the Preliminary Approval Order, from February 16, 2018 through April 6, 2018, the Claims Administrator, GCG, has disseminated 35,978 copies of the Notice Packet to potential Settlement Class Members and nominees. Fraga Decl. ¶¶ 3-7. In addition, GCG caused the Settlement Notice to be published in *Investor's Business Daily* and to be transmitted over PRNewswire newswire on February 26, 2018. *Id.* ¶ 8. GCG also established a toll-free informational telephone line and caused information regarding the Settlement to be posted on the website for the Action, www.CommvaultSecuritiesLitigation.com, which provides access to the Notice, Claim Form and other documents. *Id.* ¶¶ 9-10.

The combination of individual first-class mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by publication notice and use of internet websites, is the best notice practicable under the circumstances. *See, e.g.*, *In re Marsh &*

McLennan Cos. Sec. Litig., 2009 WL 5178546, at *12-*13 (S.D.N.Y. Dec. 23, 2009); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 448-49 (S.D.N.Y. 2004).

V. CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully submits that: (i) the Court should grant final certification to the Settlement Class; (ii) the proposed Settlement is fair, reasonable and adequate and the Court should grant final approval to the Settlement; and (iii) the Plan of Allocation is fair and reasonable, and the Court should approve the Plan of Allocation.

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