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David H. Yamasaki
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By J. Cao-Nguyen, Deputy

ROBBINS GELLER RUDMAN
& DOWD LLP
JOHN K. GRANT (169813)
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)

Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

BRENT T. ROBINSON, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. AUDIENCE, INC., et al., Defendants.	Case No. 1:12-cv-232227 <u>CLASS ACTION</u> MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION DATE: May 6, 2016 TIME: 9:00 a.m. DEPT: 1 JUDGE: Hon. Peter H. Kirwan DATE ACTION FILED: 09/13/12

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I. INTRODUCTION

Class Representatives Brent T. Robinson and Dorothy Kasian submit this memorandum in support of their 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 19, 2015 ("Stipulation" or "Settlement") and approval of the Plan of Allocation.[1] The $6,050,000 Settlement was achieved after more than three years of extended litigation and arm's-length negotiations between the parties, including two mediation sessions. Class Counsel believes that the Settlement is an excellent result for the Class and warrants this Court's approval. *See* Declaration of John K. Grant in Support of Motion for Preliminary Approval of Class Action Settlement ("Grant Decl."), ¶7.[2]

This case has been carefully investigated and vigorously litigated since its commencement on September 13, 2012. From the outset, Defendants, represented by highly experienced and well-respected defense counsel, have adamantly denied any wrongdoing and have fought Class Representatives at nearly every stage of the Litigation, setting forth defenses that could have ultimately absolved them of any liability. Class Representatives and their counsel obtained the Settlement only after they had, among other things, (a) conducted an extensive factual investigation of the events underlying Audience, Inc.'s ("Audience" or the "Company") May 9, 2012 IPO and the subsequent September 6, 2012 disclosure that Audience's technology would not be included in Apple Inc.'s ("Apple") iPhone 5; (b) reviewed and analyzed the representations made by the Company in the Registration Statement and Prospectus (collectively, the "Registration Statement"), 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 Audience and Apple; (d) reviewed and analyzed witness accounts of Audience's operations provided by former Audience employees developed through counsel's investigation with the help of a private investigator; (e) researched and filed two complaints, including the operative

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

[2] The Grant Declaration, previously filed with the Court, details Class Representatives' claims, the procedural history of the Litigation, the efforts of counsel in prosecuting this Litigation, the risks of continued litigation, and why the Settlement is in the best interest of the Class.

complaint; (f) briefed, opposed and prevailed against a demurrer seeking to dismiss this Litigation for lack of subject matter jurisdiction; (g) briefed, opposed and prevailed against a second demurrer seeking to dismiss this Litigation for failure to state a claim; (h) responded to Defendants' discovery requests and appeared for Class Representatives' depositions; (i) moved for and obtained class certification; (j) retained and consulted with a damages consultant; (k) moved to compel, obtained and reviewed more than 55,000 pages of document discovery from Audience and non-party Apple; (l) prepared for and participated in an initial mediation session with Randall W. Wulff in which the parties were unable to resolve the Litigation; and (m) after seeking and obtaining additional discovery, prepared for and participated in a second mediation with Jed D. Melnick of JAMS which resulted in a substantially improved offer and settlement obtained on behalf of the Class.

While Class Representatives and their 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 their demurrers and 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. Plaintiffs' Counsel, who are well-respected and experienced in prosecuting shareholder class actions, have 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 similar to the present action; and the serious disputes between the parties concerning the merits and damages.[3]

To date, the Class' reaction to the Settlement and the Plan of Allocation supports approval. More than 9,900 copies of the Notice of Proposed Settlement of Class Action ("Notice") were sent to potential Class Members and their nominees explaining, *inter alia*, the terms of the Settlement, the Plan of Allocation, counsel's request for an award of attorneys' fees and expenses, as well as the options of

[3] Plaintiffs' Counsel includes Robbins Geller Rudman & Dowd LLP, Holzer & Holzer, LLC, Glancy Prongay & Murray LLP, Bottini & Bottini, Inc. and Robbins Arroyo LLP. These counsel participated in this Litigation for the four originally named plaintiffs and are all firms with extensive experience and expertise in prosecuting shareholder actions.

Class Members, including the right to exclude themselves from the Class or object to any aspect of the Settlement and the procedures for doing so.[4] While the deadline for Class Members to file a written objection or opt-out – March 30, 2016 – has not passed, to date, Class Counsel is not aware of a single objection to the Settlement, the Plan of Allocation, or to Plaintiffs' Counsel's request for an award of attorneys' fees and expenses, and no one has requested exclusion from the Class. Sylvester Decl., ¶15. For these and the other reasons set forth below, as well as those set forth in the Grant Declaration, Class Representatives respectfully request that the Court grant final approval of the Settlement. Moreover, the Plan of Allocation was developed with Class Counsel's in-house economic consultants and reflects an assessment of the damages that could have been recovered at trial under theories asserted in the Litigation by Class Representatives. As a result, the Plan of Allocation provides a fair and reasonable basis for allocating the available proceeds among Class Members.[5]

II. STANDARDS FOR FINAL APPROVAL OF SETTLEMENT

In California, there is a uniform policy favoring compromises of litigation. *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933). This policy is particularly compelling in complex matters, such as the one before the Court. *Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1607 (1991) (there is an overwhelming public interest in favor of settlement of class actions).

California Civil Code §1781(f) provides that "[a] class action shall not be dismissed, settled, or compromised without the approval of the court." The court's role in approving a class action settlement is to determine whether, as a whole, the settlement is fair, reasonable, and adequate. *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 (2009); *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 471 (1986); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The approval of settlements in representative lawsuits is a

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[4] *See* Declaration of Carole K. Sylvester 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 ("Sylvester Decl."), ¶¶4-11, which is being filed concurrently.

[5] 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, Plaintiffs' Counsel respectfully refer the Court to the Grant Declaration.

matter committed to the broad discretion of the trial court. *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1138 (1990).[6] The trial court's role, however, is limited to a consideration of the overall fairness, reasonableness, and adequacy of the settlement and does not require a determination of the result which might have been obtained after trial. *Rebney*, 220 Cal. App. 3d at 1138; *see also Wershba*, 91 Cal. App. 4th at 245. The court should also avoid substituting its judgment for that of the counsel who negotiated the settlement.

Due regard should be given to what is otherwise a private consensual agreement between the parties. 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.'" *Dunk*, 48 Cal. App. 4th at 1801 (citation omitted). A review of the likely rewards of settlement and the risks and costs of continued litigation will suffice. *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) (citation omitted).

III. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS

A presumption of fairness exists where, as here: "'(1) the settlement [was] 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.'" *Wershba*, 91 Cal. App. 4th at 245 (citation omitted); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008); *Cho*, 177 Cal. App. 4th at 743.

A. The Settlement Was Reached Through Arm's-Length Negotiations

The Settlement is the product of extensive arm's-length negotiations over the course of more than a year by counsel with significant experience and expertise in shareholder and other complex class

[6] California courts have adopted the standards developed by federal courts in reviewing and approving class action settlements. *La Sala v. Am. Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971). Therefore, several federal authorities have been relied upon throughout this memorandum.

action litigation. The settlement negotiations included mediation sessions with Mr. Wulff on May 8, 2014, and Mr. Melnick on July 23, 2015.[7] Prior to each mediation, the parties drafted, submitted and exchanged mediation statements summarizing their respective positions based in part on evidence obtained through discovery. The settlement negotiations were at all times hard fought and at arm's length. During these negotiations, Plaintiffs' Counsel advanced Class Representatives' positions and were fully prepared to continue to litigate (and in fact did) rather than accept a settlement that was not in the best interest of the Class. Indeed, the first mediation, which occurred in May 2014, did not result in a resolution of the Litigation. It was not until the parties continued to litigate and Class Representatives obtained additional discovery that an agreement-in-principle was reached at the second mediation in July 2015 that resulted in a substantially improved result for the benefit of the Class. During settlement negotiations, Class Representatives were represented by highly experienced counsel with expertise in the prosecution of complex securities class actions. Similarly, Defendants were represented by highly experienced counsel from Cooley LLP, a firm with a well-deserved reputation for vigorous advocacy in the defense of complex civil cases such as this.

During the settlement negotiations, the strengths and weaknesses of the parties' respective claims and defenses were explored among the parties and separately with the mediators. With an informed understanding of the nuances of the disputed issues in the Litigation, the parties reached an agreement-in-principle to settle the Litigation at the mediation with Mr. Melnick on July 23, 2015. Subsequently, Class Representatives and Defendants continued negotiating, resulting in the terms and conditions set forth in the Stipulation and related exhibits.

B. Class Representatives Have Engaged in Sufficient Pretrial Discovery and Proceedings to Evaluate the Propriety of the Settlement

As set forth above and in more detail in the Grant Declaration, this case has been vigorously litigated from start to finish. Class Representatives and their counsel, among other things, conducted an

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[7] Courts have recognized that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. Apr. 13, 2007); *see also Linney v. Cellular Alaska P'ship*, No. C-96-3008 DLJ, 1997 U.S. Dist. LEXIS 24300, at *16 (N.D. Cal. July 18, 1997) ("the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery ha[s] taken place create[s] a presumption that the agreement is fair"), *aff'd*, 151 F.3d 1234 (9th Cir. 1998).

extensive factual investigation of the events underlying Audience's May 9, 2012 IPO and the subsequent disclosure that Audience's technology would not be included in Apple's iPhone 5, drafted and filed two complaints, successfully opposed two demurrers, obtained class certification over Defendants' opposition, reviewed and analyzed more than 55,000 pages of documents produced by Audience and Apple, and participated in two mediation sessions.

Given these substantial efforts, there is no question that Class Representatives and their counsel were in an excellent position to evaluate the strengths and weaknesses of the claims asserted, the defenses raised, and the substantial risks of continued litigation, and as a result, the propriety of settlement. Having sufficient information to properly evaluate the case, Class Representatives and their counsel have managed to settle the Litigation on terms highly favorable to the Class without the substantial expense, risk, delay and uncertainty of continued litigation.

C. The Recommendation of Experienced Counsel Favors Approval of the Settlement

Although a court must independently review a proposed 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.'") (citation omitted); *Dunk*, 48 Cal. App. 4th at 1802. Class Counsel is known for its experience and success in litigating shareholder and other complex class action litigation. *See* www.rgrdlaw.com and Exhibit E to the Declaration of John K. Grant Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, submitted herewith. Class Counsel here fully supports the Settlement. It is Class Counsel's informed opinion that the substantial and certain recovery of $6,050,000 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. The fact that qualified and well-informed counsel endorse the Settlement as being fair, reasonable, and adequate heavily favors this Court's approval of the Settlement.

D. Reaction of the Class Supports Approval of the Settlement

The Class Members' reaction to the Settlement also supports approval of the Settlement. *Dunk*, 48 Cal. App. 4th at 1802. Here, copies of the Notice were mailed to more than 9,900 potential Class Members and nominees. Sylvester Decl., ¶11. In addition, the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on January 8, 2016. *Id.*, ¶14. The Notice contained a description of 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 advised Class Members of their right to object and the procedures and deadlines for objecting to the Settlement, the Plan of Allocation, or counsel's request for an award of attorneys' fees and expenses. While the deadline for filing objections has not yet passed, to date, to the knowledge of Plaintiffs' Counsel, there has not been a single objection to any aspect of the Settlement, Plan of Allocation, and/or counsel's request for an award of attorneys' fees and expenses. This fact supports a presumption of fairness and is strong evidence that Class Members support the Settlement. *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 fair" is that only "a small percentage of objectors" came forward). If any objections are received, they will be addressed in a reply brief which will be filed no later than April 22, 2016.

IV. OTHER FACTORS CONSIDERED BY COURTS CONFIRM THAT THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. The Amount of the Settlement Balanced Against the Strength of Class Representatives' Case Favors Approval

In assessing the fairness, reasonableness, and adequacy of a settlement, the court may balance the risks of continued litigation against the benefits afforded the class. *Wershba*, 91 Cal. App. 4th at 244-45. Here, the benefits of the Settlement must be balanced against the expense, delay, and risk of continued litigation and the risk of receiving no benefit at all. A "proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Id.* at 246.

Under the Settlement, Defendants have made a cash payment of $6,050,000 for the benefit of the Class, with no right of reversion. This Settlement is unquestionably better than another distinct

possibility – little or no recovery for the Class. Indeed, even if Class Representatives were able to successfully prosecute this Litigation through trial and all appeals, there was no guarantee that a jury's verdict would have been more than the settlement amount, and it would have taken years before all appeals were settled and the Class received any payment. *See id.* 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.'") (citation omitted). While Class Representatives calculated an upper range of damages of $58 million, there were substantial risks in continued litigation, including the risk that Class Representatives would fail to meet their burden to show the challenged statements were materially false, that certain statements would be found to be protected by the bespeaks caution doctrine, that the truth-on-the-market defense applied, and that the alleged losses of Class Members were due to other causes. The $6,050,000 recovery for the Class represents more than 10% of Class Representatives' upper range of damages which is at the "higher end of the range of reasonableness of recovery in class actions securities litigation." *See, e.g.*, *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02-MDL-1484 (JFK), 2007 U.S. Dist. LEXIS 9450, at *33 (S.D.N.Y. Feb. 1, 2007) (court approved $40.3 million settlement representing approximately 6.25% of estimated damages). Based on all factors involved, an all-cash settlement of $6,050,000 is a highly favorable result for the Class. Accordingly, this factor militates in favor of the Court granting final approval.

B. The Substantial Risks of Continued Litigation

Class Representatives' case against Defendants presented substantial risks in terms of establishing liability and damages.

1. Risks in Establishing Liability

Section 11 of the Securities Act of 1933 creates a private remedy for any purchaser of a security if "any part of the registration statement . . . contain[s] an untrue statement of a material fact or omit[s] to state a material fact required to be stated therein or necessary to make the statement therein not misleading." 15 U.S.C. §77k(a). Class Representatives believe that they stood a good chance of

establishing that the Registration Statement issued in connection with the IPO violated the federal securities laws by: (1) misrepresenting Audience's relationship with Apple, its primary customer, and (2) failing to disclose problems and risks relating to the anticipated inclusion of Audience's technology in the upcoming iPhone 5. Grant Decl., ¶4. Defendants, however, consistently took the position that Class Representatives could not prove Defendants made any materially false or misleading statements in the Registration Statement, that certain statements were protected by the bespeaks caution doctrine or were otherwise sufficiently disclosed, and that the truth-on-the-market defense applied. While Class Representatives would vigorously dispute Defendants' contentions, the uncertainty of continued litigation must be considered. 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). Thus, careful consideration of the numerous uncertainties and risks of proving liability supports approval of the Settlement.

2. Risks Relating to Loss Causation and Damages

Class Representatives are mindful that if they were able to establish liability at trial, there was no guarantee they would prevail on the issues of loss causation and damages. Defendants would likely assert the statutory defense of causation. Under §11(e), a defendant can reduce or eliminate damage through a showing that the false or misleading statement or omission alleged was not the cause of class representatives' loss. In this Litigation, Defendants would likely argue that Class Representatives' and the Class' losses were attributable not to any misrepresentation but to the announcement of reduced revenue going forward. Grant Decl., ¶34. Indeed, after years of discovery, issues of loss causation can prove at times to be an insurmountable hurdle at summary judgment or at trial. *See, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07-61542-CIV-UNGARO, 2011 U.S. Dist. LEXIS 48057 (S.D. Fla. Apr. 25, 2011) (court granted defendants' judgment as a matter of law on the basis of loss

causation, overturning jury verdict and award in plaintiff's favor).[8] The risk of no recovery at all was a real possibility. Although Class Representatives were confident they could prove damages, there was a risk that Class Representatives might not be able to overcome Defendants' arguments that the damages alleged by Class Representatives were not caused by the alleged material misrepresentations and omissions in the Registration Statement.

At summary judgment and trial, Defendants' experts would no doubt argue that all or a substantial portion of the losses experienced by the Class were due to factors completely unrelated to any conduct of Defendants, thereby eliminating any potential recovery. There was a substantial risk that the finder of fact would agree with Defendants' contention that no damages could be linked to the Defendants' conduct, or that damages were substantially less than the amount Class Representatives asserted. *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); *In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) ("even if the jury agreed to impose liability, the trial would likely involve a confusing 'battle of the experts' over damages"). Thus, the amount of damages that Class Members would actually recover at trial even if they prevailed on liability issues was uncertain.

Even if Class Representatives prevailed and obtained a substantial judgment after trial, there is little doubt that Defendants would have filed post-trial motions and/or appeals which raised two significant risks for the Class. First, they would receive nothing during the post-trial motions and appeals process which would have likely spanned several years. Second, they could ultimately receive no recovery despite prevailing at trial given that post-trial motions or appeals of any verdict carries the risk of reversal. Finally, even with a judgment in hand, there is no guarantee that a significant judgment

[8] *Phillips v. Scientific-Atlanta, Inc.*, 489 Fed. App'x 339 (11th Cir. 2012) (upholding summary judgment in favor of defendants on loss causation grounds in a case litigated since 2001); *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997) (finding no loss causation and overturning $81 million jury verdict).

entered years down the road would be collectable. Therefore, the amount of damages the Class would actually recover if successful at trial is uncertain.

It is the informed belief of Class Representatives and their counsel that the Settlement is in the best interests of the Class. Although Plaintiffs' Counsel believe that the case is meritorious, their experience has taught them that such risks can render the outcome of a trial extremely uncertain. *See In re Mfrs. Life Ins. Co. Premium Litig.*, MDL No. 1109, 1998 U.S. Dist. LEXIS 23217, at *17 (S.D. Cal. Dec. 21, 1998) ("even 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").

C. Balancing the Certainty of an Immediate Recovery Against the Complexity, Expense and Likely Duration of Protracted 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, e.g.*, *Wershba*, 91 Cal. App. 4th at 244-45; *Dunk*, 48 Cal. App. 4th at 1801; *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982). Thus, the benefit of the present settlement must be balanced against the expense of achieving a more favorable result at a trial in the future. *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971).

Approval of the Settlement will mean a significant and prompt recovery for Class Members. If not for this Settlement, the case would have continued through the completion of document and deposition discovery, expert discovery, summary judgment, trial, and likely appeal. A trial would have occupied a number of attorneys for many weeks and would have required substantial and costly expert testimony on both sides. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) (settlement 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"). Furthermore, 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 further appeals, which could prolong the case for several more years. *See, e.g.*, *Warner Commc'ns*, 618 F. Supp. at 745

(delay from appeals is a factor to be considered). Therefore, 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 a recovery in the near future and eliminates the risk of no recovery at all.

As the Ninth Circuit has made clear, the very essence of a settlement agreement is compromise, "'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (citation omitted). "'Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.'" *Id*. (Citation omitted.)

Each of the above factors fully supports a finding that the Settlement is fair, reasonable, and adequate. Accordingly, Class Representatives request that the Court approve the Settlement.

V. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED BY THE COURT

Class Representatives also seek approval of the Plan of Allocation. The Plan of Allocation is set forth in full in the Notice mailed to potential Class Members.

Assessment of a plan of allocation of settlement proceeds in a class action under Rule 23 of the Federal Rules of Civil Procedure 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. *White v. NFL*, 822 F. Supp. 1389, 1420 (D. Minn. 1993); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992).

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. Here, the Plan of Allocation was developed by Class Counsel with the assistance of its in-house economic consultants and reflects an assessment of the damages that could have been recovered at trial under the theories asserted in the case by Class Representatives. As a result, the Plan of Allocation will result in a fair distribution of the available proceeds among Class Members who submit valid claims and therefore should be approved.

1 **VI. CONCLUSION**

2 For reasons set forth above and in the entire record, Class Representatives respectfully request
3 that the Court grant final approval of the Settlement and the Plan of Allocation.

4 DATED: March 16, 2016

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
JOHN K. GRANT

s/ John K. Grant
JOHN K. GRANT

Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
JEFFREY D. LIGHT
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

HOLZER & HOLZER, LLC
COREY D. HOLZER
MARSHALL P. DEES
1200 Ashwood Parkway, Suite 410
Atlanta, GA 30338
Telephone: 770/392-0090
770/392-0029 (fax)

Attorneys for Plaintiffs

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
STEPHEN J. ODDO
ARSHAN AMIRI
EDWARD B. GERARD
JUSTIN D. RIEGER
600 B Street, Suite 1900
San Diego, CA 92101
Telephone: 619/525-3990
619/525-3991 (fax)

5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

GLANCY PRONGAY & MURRAY LLP
LIONEL Z. GLANCY
ROBERT V. PRONGAY
EX KANO S. SAMS II
CASEY E. SADLER
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: 310/201-9150
310/201-9160 (fax)

BOTTINI & BOTTINI, INC.
FRANCIS A. BOTTINI, JR.
YURY A. KOLESNIKOV
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
Telephone: 858/914-2001
858/914-2002 (fax)

Additional Counsel for Plaintiffs

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ELECTRONIC FILING - WWW.SCEFILING.ORG
c/o Glotrans
2915 McClure Street
Oakland, CA94609
TEL: (510) 208-4775
FAX: (510) 465-7348
EMAIL: Info@Glotrans.com

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Superior Court of CA, County of Santa Clara
Case #1-12-CV-232227 Filing #G-81921
By J. Cao-Nguyen, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

BRENT T. ROBINSON, BOYD DEEL, DOROTHY KASIAN, DAREN NOWAK, individually and on behalf of all others similarly situated,
Plaintiff,

Plaintiff,
vs.

AUDIENCE, INC., PETER B. SANTOS, MOHAN S. GYANI, KEVIN S. PALATNIK, FOREST BASKETT, MARVIN D. BURKETT, BARRY L. COX, RICH GERUSON, GEORGE A. PAVLOV, J.P. MORGAN SECURITIES LLC, CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK SECURITIES INC., PACIFIC CREST SECURITIES LLC, and DOES 1 through 25, inclusive, Defendants.

Defendant.

AND RELATED ACTIONS

Robinson, et al. v. Audience, Inc., et al.

Lead Case No.1-12-CV-232227

Hon. Peter Kirwan

PROOF OF SERVICE
Electronic Proof of Service

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Wed. March 16, 2016 at 4:46 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, http://www.scefiling.org, on Wed. March 16, 2016 at 4:46 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 16, 2016 at Oakland, California.

Dated: March 16, 2016 For WWW.SCEFILING.ORG

Andy Jamieson

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THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
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Electronic Proof of Service
Page 2

Document(s) submitted by John K. Grant of Robbins Geller Rudman & Dowd LLP on Wed. March 16, 2016 at 4:46 PM PDT

1. Memo:Ps & As/Suppt of Mtn: Settlement Memorandum

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