ISAACS FRIEDBERG & LABATON LLP
Mark Labaton (Bar No. 159555)
mlabaton@iflcounsel.com
555 South Flower Street, Suite 4250
Los Angeles, California 90071
Telephone: (213) 929-5550
Facsimile: (213) 955-5794

MOTLEY RICE LLC
Gregg S. Levin (*pro hac vice*)
glevin@motleyrice.com
28 Bridgeside Boulevard
Mt. Pleasant, South Carolina 29464
Telephone: (843) 216-9000
Facsimile: (843) 216-9450

LABATON SUCHAROW LLP
Jonathan Gardner (*pro hac vice*)
jgardner@labaton.com
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Attorneys for Lead Plaintiff Institutional Investor Group
and Co-Lead Counsel for the Settlement Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

IN RE HEWLETT-PACKARD COMPANY SECURITIES LITIGATION	Case No. SACV 11-1404 AG (RNBx) **JOINT DECLARATION OF JONATHAN GARDNER AND GREGG S. LEVIN IN SUPPORT OF (A) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND (B) PLAINTIFFS' COUNSEL'S MOTION FOR ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES** Judge: Hon. Andrew J. Guilford Dept.: Courtroom 10D Hearing Date: September 15, 2014 Hearing Time: 10:00 a.m.

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We, **JONATHAN GARDNER** and **GREGG S. LEVIN**, declare as follows pursuant to 28 U.S.C. § 1746:

1. Jonathan Gardner is a partner in the law firm Labaton Sucharow LLP ("Labaton Sucharow"). Gregg S. Levin is a member of the law firm Motley Rice LLC ("Motley Rice"). Labaton Sucharow and Motley Rice are the Court-appointed lead counsel ("Co-Lead Counsel")[1] for the Court-appointed Lead Plaintiffs Arkansas Teacher Retirement System, Union Asset Management Holding AG, Labourers' Pension Fund of Central and Eastern Canada, LIUNA National (Industrial) Pension Fund, and LIUNA Staff & Affiliates Pension Fund (collectively "Lead Plaintiffs" or "Institutional Investor Group"), in this securities class action (the "Action"). We submit this declaration in support of: (a) final approval of the Settlement reached between and among Lead Plaintiffs and defendants Hewlett-Packard Company ("HP" or the "Company"), Léo Apotheker ("Apotheker"), and R. Todd Bradley ("Bradley") (collectively with HP, "Defendants"); (b) approval of Lead Plaintiffs' proposed plan for the allocation of the Net Settlement Fund ("Plan of Allocation"); (c) approval of Plaintiffs' Counsel's application for an award of attorneys' fees and payment of litigation expenses (the "Fee and Expense Application"); and (d) Lead Plaintiffs' request for expenses, including lost wages, pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). Unless otherwise indicated, we have personal knowledge of the matters set forth herein based on our participation in the prosecution and settlement of the claims asserted on behalf of the Settlement Class, as defined below.

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Stipulation and Agreement of Settlement, dated March 31, 2014 and filed with the Court on March 31, 2014 (the "Settlement Agreement"). ECF No. 146-1.

2. The Settlement will resolve all claims asserted in the Action, as well as all Released Claims,[2] against all Defendants and Released Defendant Parties on behalf of the Settlement Class, which consists of any and each person or entity that purchased or otherwise acquired shares of HP's publicly traded common stock in the open market during the period from November 22, 2010 to and through August 18, 2011 (the "Class Period") and was damaged thereby (the "Settlement Class").[3]

3. The Court preliminarily approved the Settlement and preliminarily certified the Settlement Class by its Order entered May 2, 2014. ECF No. 153. The Preliminary Approval Order is attached hereto as Ex. 1.[4]

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[2] The definition of Released Claims has been carefully tailored to ensure that the Settlement Class is only releasing claims against the Released Defendant Parties related both to the alleged wrongdoing <u>and</u> a purchase of HP common stock, while giving the Released Defendant Parties closure and a full resolution. For instance, Settlement Class Members would be precluded from suing HP's auditor (a Released Defendant Party) for claims related to the alleged wrongdoing in the Action, but a Settlement Class Member who asserts a claim against their broker (not a Released Defendant Party) for an unauthorized trade (not the alleged wrongdoing) would not be barred.

[3] Excluded from the Settlement Class are: Defendants; members of the Immediate Families of the Individual Defendants; all of HP's subsidiaries and affiliates; any person who is or was an officer or director of HP or any of HP's subsidiaries or affiliates during the Class Period; any entity in which any Defendant has a controlling interest; and the legal representatives, heirs, successors, and assigns of any such excluded person or entity. Also excluded from the Settlement Class are those persons and entities who submit valid and timely requests for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice.

[4] Citations to "Ex. __" herein refer to exhibits to this Declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as "Ex. __-__." The first numerical reference refers to the designation of the entire exhibit attached hereto and the second reference refers to the exhibit designation within the exhibit itself.

I. PRELIMINARY STATEMENT: THE SIGNIFICANT RECOVERY ACHIEVED

4. After more than two years of vigorously contested litigation, Lead Plaintiffs have succeeded in obtaining a recovery for the Settlement Class in the amount of $57 million, in cash, which has been deposited in an interest-bearing escrow account for the benefit of the Settlement Class. As set forth in the Settlement Agreement, in exchange for this payment, the proposed Settlement resolves all claims asserted by Lead Plaintiffs and the Settlement Class in the Action and all Released Claims against the Released Defendant Parties.

5. The proposed Settlement was negotiated at arm's-length and reached only after extensive mediation conducted under the auspices of United States District Court Judge (ret.) Layn R. Phillips ("Judge Phillips"), as mediator. Judge Phillips is highly respected by jurists and lawyers and is recognized as one of the premier mediators of complex, multi-party, high-stake cases, both in the United States and abroad.

6. Before agreeing to the Settlement, Plaintiffs' Counsel conducted an extensive investigation into the events underlying the claims alleged in the Action and also conducted extensive discovery. In connection with its pre-filing investigations, Plaintiffs' Counsel analyzed the evidence adduced from, *inter alia*: (i) reviewing and analyzing publicly available information and data concerning HP; (ii) interviewing almost 60 former HP employees and other persons with relevant knowledge after locating almost 200 potential witnesses and contacting more than 150 of them; and (iii) consulting with experts in the technology, web-based data and communications industries, as well as forensic econometric experts in damages evaluation and related causation issues in shareholder securities actions.

7. As part of the mediation process, Plaintiffs' Counsel also conducted months of intense, focused and extensive discovery, which involved obtaining, reviewing and analyzing more than 314,000 pages of core documents produced by

Defendants. Plaintiffs' Counsel also fashioned, propounded and secured written discovery from Defendants via interrogatories. Plaintiffs' Counsel researched the applicable law with respect to the claims asserted by Lead Plaintiffs against Defendants and their anticipated defenses. At the time the Settlement was reached, Plaintiffs' Counsel had a thorough understanding of the strengths and weaknesses of the parties' positions.

8. The Settlement Amount of $57 million is well-above the $9.1 million median settlement amount of reported securities cases in 2013, and greater than the median reported settlement amounts since the passage of the PSLRA, which have ranged from $3.7 million in 1996 to $9.1 million in 2013 (with a peak of $12.3 million in 2012). *See* Dr. Renzo Comolli & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review* (NERA Jan. 21, 2014) (the "NERA Report") (attached hereto as Ex. 2).

9. According to analyses prepared by Lead Plaintiffs' consulting damages expert, the most likely aggregate damages the proposed class could have obtained at trial are estimated to be between $217 million (for a class period that starts on June 1, 2011) and $493 million (for a class period that starts on November 22, 2010), assuming that liability and loss causation for the alleged corrective disclosure were proven and based on various assumptions and modeling, including certain deductions for confounding information released on the corrective disclosure date. Defendants strenuously maintained, and continue to maintain, that no damages could be proven at trial. As such, the $57 million Settlement represents a gross recovery of approximately 12% to 26% of Lead Plaintiffs' consulting expert's most likely estimated damages. This percentage is well within the range of reasonableness approved by courts. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) ($13.75 million settlement yielding 6% of potential damages after deducting fees

and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (finding that a recovery representing 6.25% of damages was "at the higher end of the range of reasonableness of recovery in class actions securities litigations").

10. As discussed below, Lead Plaintiffs obtained this substantial recovery for the Settlement Class despite the significant risks they faced in prosecuting the Action. The Settlement Amount paid by Defendants, when viewed in the context of these risks and uncertainties, make the Settlement a very favorable result for the Settlement Class.

11. The Settlement has the full support of each of the Lead Plaintiffs.

II. FACTUAL SUMMARY OF LEAD PLAINTIFFS' CLAIMS

12. Lead Plaintiffs' claims in the Action are stated in the Second Amended Class Action Complaint for Violations of the Federal Securities Laws filed on October 19, 2012 (the "Complaint"). ECF No. 89. The Complaint alleges that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 78aa, by making alleged material misstatements and omissions relating to HP's development of a fully-fledged ecosystem of hundreds of millions of "seamlessly" connected webOS-enabled PCs and printers from a webOS ecosystem (consisting of TouchPad and two smartphones), all within the short time frame of less than two years. ECF No. 89.

13. The Complaint alleges that Defendants made materially false and misleading statements regarding the Company's mobile operating system, webOS, and HP's ability to develop and extend webOS across an "ecosystem" of tablets, smartphones, personal computers ("PCs"), and printers. The Complaint alleges

that these misrepresentations rendered Defendants' public statements and the Company's periodic reports filed with the Securities and Exchange Commission ("SEC") materially false and misleading.

14. As a result of Defendants' alleged misrepresentations, Lead Plaintiffs allege that purchasers paid artificially inflated prices for HP's publicly traded common stock and were damaged thereby. Disclosure by the Company, on August 18, 2011, that the Company had decided to discontinue the further development of webOS devices and the webOS ecosystem, allegedly led to HP's stock price falling from $30.46 immediately prior to the late trading day announcement to $23.60 per share on August 19, 2011.

15. Defendants have denied and continue to deny: (i) all the claims alleged by Lead Plaintiffs on behalf of the class, including all claims asserted in any pleading, including the Complaint; (ii) all allegations of wrongdoing, fault, liability, or damages to Lead Plaintiffs and the class; and (iii) that they have committed any act or omission giving rise to any liability or violation of law, including the federal securities laws. Defendants contend that at all times they acted properly, in good faith, and consistent with their legal duties and obligations. *See* ECF No. 146-1 at 4-5.

III. RELEVANT PROCEDURAL HISTORY

16. The Action was commenced on September 13, 2011 by the filing of an initial complaint in the United States District Court for the Central District of California, Southern Division – Santa Ana, against HP, Apotheker, and former defendant Catherine A. Lesjak ("Lesjak"), alleging violations of the federal securities laws. ECF No. 1.

A. Appointment Of Lead Plaintiffs

17. On December 19, 2011, pursuant to the provisions of the PSLRA, the Court appointed the Institutional Investor Group as Lead Plaintiffs and approved

its selection of Labaton Sucharow and Motley Rice to serve as Co-Lead Counsel representing the putative class. ECF No. 43. The Court directed Lead Plaintiffs to file their amended class action complaint by February 10, 2012.

B. Defense Counsel In The Action

18. Defendants assembled a formidable team of prominent and highly experienced defense firms to vigorously oppose the claims asserted by Lead Plaintiffs and the putative class. Their defense team was spearheaded by the nationally recognized law firms Morgan, Lewis & Bockius LLP and Gibson, Dunn & Crutcher LLP (counsel for defendant HP), and also included the leading law firms of: Munger, Tolles & Olson LLP (counsel for Individual Defendant Apotheker); Fenwick & West LLP (counsel for Individual Defendant Bradley); and Wilson Sonsini Goodrich & Rosati (counsel for Lesjak). These defense firms pursued an aggressive, well-executed, and relentless defense of their clients.

C. The First Amended Class Action Complaint And Motion To Dismiss

19. Lead Plaintiffs filed the First Amended Class Action Complaint for Violations of the Federal Securities Laws ("FAC") on February 10, 2012. ECF No. 44. The FAC was the result of a significant effort by Plaintiffs' Counsel which included, among other things: (i) review and analysis of documents filed by HP with the SEC; (ii) review and analysis of press releases, news articles, and other public statements issued by or concerning HP; (iii) review and analysis of research reports issued by financial analysts concerning HP's securities and business; (iv) locating and contacting dozens of former HP employees and witnesses, the accounts of four of whom were included in the FAC as confidential witness ("CW") accounts; and (v) review and analysis of news articles, media reports, and other publications concerning the "web," the "cloud," and related web-based information, including such topics as notebooks, smartphones, and PCs. The FAC named HP, Apotheker, Bradley, and Lesjak as defendants.

20. Additionally, in their effort to prepare the FAC, Plaintiffs' Counsel consulted with several consulting experts in the technology and web-based communications and data industries.

21. Defendants filed motions to dismiss the FAC on April 11, 2012. ECF Nos. 57 & 58. In its memorandum of law asserting that the FAC alleged a theory of fraud that was implausible and unsupported, HP argued that Lead Plaintiffs were seeking to manufacture a claim out of the "unfortunate accident of timing" resulting from HP's introduction of its TouchPad product on July 1, 2011, only a few months after Apple unveiled the "dominant iPad 2". ECF No. 57. Defendants further argued, *inter alia*, that: (i) Lead Plaintiffs failed to specify any actionable misstatements or omissions with many of the challenged statements constituting mere "puffery," or vague and inactionable optimistic statements; (ii) Defendants' forward-looking statements about the Company's intentions, hopes, plans, and visions for new software technology were protected by the PSLRA's "Safe Harbor"; (iii) Lead Plaintiffs could not establish that the Company's executives had actual knowledge that their forward-looking statements were materially false or that they acted with the requisite *scienter* when they made any non-forward-looking public statements concerning the status of the Company's development of webOS-enabled products; (iv) none of the challenged statements amounted to securities fraud because they reflected, at most, differences of opinion among Company executives; and (v) that a more compelling theory than Lead Plaintiffs' "implausible" theory that HP spent billions of dollars to develop and promote webOS and webOS-enabled devices, while supposedly not being committed to the venture, was that HP intended to successfully develop and sell webOS-enabled products but was compelled to discontinue its anticipated plans in the face of strong competition. ECF No. 57.

22. HP further argued that Lead Plaintiffs could not plead falsity or *scienter* with hindsight, nor could they demonstrate *scienter* based on the temporal proximity of their statements to the August 18, 2011 announcement ending the alleged class period, the so-called "core operations" doctrine or general allegations of "access" or "monitoring" of information about HP's webOS development. ECF No. 57.

23. On April 11, 2012, the Individual Defendants also filed a memorandum of law in support of the motion to dismiss the FAC. ECF No. 58. The Individual Defendants "join[ed] Hewlett-Packard Company's motion to dismiss and each of the arguments raised therein." *Id.*

24. On June 11, 2012, Lead Plaintiffs filed a fifty page opposition to Defendants' motion to dismiss the FAC. Lead Plaintiffs' Omnibus Memorandum of Points and Authorities in Opposition to Defendants' Motions to Dismiss First Amended Class Action Complaint (the "Opposition"), ECF No. 72, laid out Lead Plaintiffs' theory of the case: seeking a share of the rapidly growing market in mobile, web-connected devices such as smartphones, but with no proprietary software of its own, HP acquired Palm, Inc. ("Palm") in 2010, mainly for webOS, Palm's mobile operating system. Using webOS as the "foundation," HP announced it would create a broad, unified "ecosystem" of devices that would encompass smartphones, tablets, and HP's PCs and printers, all "seamlessly" connected through the "cloud" by webOS. Defendants introduced three webOS devices developed by HP, emphasizing the "seamless connectivity" between HP's new tablet computer, the "TouchPad," and two webOS-enabled smartphones. The Touchpad, HP's flagship webOS product, was touted by Defendants for months before its launch. Defendants stated that the TouchPad would not be released until it was "perfect." Defendants repeatedly represented that HP would extend this existing group of webOS devices to printers and PCs to create a full

"ecosystem" of connected devices. In particular, Defendants stated that: "[d]evelopment teams across Hewlett-Packard are working to bring webOS and the webOS experience to the Windows PCs"; "we have the potential to deliver tens if not hundreds of millions of web OS enabled devices annually"; HP would "introduce . . . webOS to our millions of PC customers later [in 2011]"; and, "as [2011] progresses," the Company would "tak[e] webOS to other devices, including printers." Lead Plaintiffs further alleged that, other than a few nascent, exploratory projects that could not possibly have led to marketable products within a year, Defendants had no viable plans to extend webOS to printers and PCs, and that no official "Plan of Record" ("POR") existed for such products. In addition, Lead Plaintiffs alleged that, just a few weeks after publicly reaffirming HP's commitment to developing webOS-enabled PCs and printers as a central component of the webOS "ecosystem," the Company abruptly announced it would abandon the entire webOS product line, including its highly touted TouchPad, which was far from being "perfect" and was knowingly launched with multiple software "bugs." ECF No. 72.

25. In their Opposition, Lead Plaintiffs argued that the accounts of the confidential witnesses supporting the FAC were well-pleaded and reliable and that Defendants were improperly challenging factual assertions. Lead Plaintiffs argued that Defendants' statements regarding webOS were not "mere puffery." Lead Plaintiffs further argued that Defendants' statements were not protected or insulated by the PSLRA's "safe harbor" because: (i) they were not forward-looking; (ii) they were not identified as forward-looking; and (iii) any cautionary language required to invoke the safe-harbor protection was not "meaningful." ECF No. 72.

26. Lead Plaintiffs also argued that the FAC adequately pleaded a strong inference of *scienter*, positing that *scienter* was supported by reliable confidential

witnesses, the temporal proximity between late-class period statements and HP's complete abandonment of webOS, the magnitude of the Company's write-down of its webOS investment and project development, the inferences arising from the "core operations doctrine," and the termination of Apotheker, HP's Chief Executive Officer. ECF No. 72.

27. On July 11, 2012, HP and Individual Defendants Apotheker, Lesjak, and Bradley filed their forty-nine page Omnibus Reply in Support of Defendants' Motions to Dismiss First Amended Class Action Complaint, ECF No. 73. In that submission, Defendants argued that Lead Plaintiffs had failed to show that Defendants' statements were false when made and, further, that the accounts of the confidential witnesses were not reliable. Defendants also contended that the alleged false statements were inactionable because: (a) they were forward-looking and (b) the required *scienter* for such forward-looking statements (i.e., actual knowledge of falsity, rather than mere recklessness) was not adequately pleaded as to any of the Defendants. Defendants further emphasized, *inter alia*, that there can be no actionable securities fraud claim based on forward-looking statements that were identified as such and were accompanied by meaningful cautionary language. ECF No. 73.

28. On August 29, 2012, after a hearing and thorough argument, the Court issued its Order Granting Motions to Dismiss, with leave given to Lead Plaintiffs to file an amended complaint. ECF No. 82 (the "August 2012 Order").

29. The Court rejected Lead Plaintiffs' core argument that cautionary language accompanying a forward-looking statement is not meaningful where Defendants allegedly knew that those statements were false when made. Hence, the Court ruled that statements made during HP's February 22, 2011 earnings call, its March 14, 2011 Summit, its May 17, 2011 earning call, and in its June 8, 2011 Form 10-Q – all of which the Court concluded were forward-looking and

accompanied by meaningful cautionary language – were protected by the PSLRA's safe harbor and could not be relied upon to establish liability under § 10(b) of the Exchange Act or Rule 10b-5 promulgated thereunder. ECF No. 82.

30. The Court also considered Defendants' contention that any alleged misstatements that were not protected by the PSLRA safe-harbor nonetheless could not support a securities fraud claim because they constituted "immaterial, inactionable puffery." Upon reviewing Defendants' alleged misstatements concerning webOS-enabled PCs and printers, and HP's commitment to webOS, the Court concluded that statements by Bradley, reported in a July 6, 2011 article, and HP's statements in its July 11, 2011 Press Release constituted inactionable puffery, "as do *some* of Apotheker's June 2011 remarks and *some* of Bradley's July 2011 comments." With regard to the issue of actionable false statements, the Court ruled that, of the misstatements alleged in the FAC that were not protected by the PSLRA's safe harbor, only Bradley's February 9, 2011 statements and some of Apotheker and Bradley's June and July 2011 statements were potentially actionable. ECF No. 82 at 20.

31. With regard to the element of *scienter*, the Court determined that the FAC failed to raise "a strong inference of scienter – *i.e.*, a strong inference that the defendant acted with intent to deceive, manipulate or defraud." Reviewing the FAC's *scienter* allegations standing alone, the Court determined that allegations of "temporal proximity" of Defendants' late-class period misstatements to HP's discontinuation of webOS were not adequate to support *scienter*, stating that "Plaintiffs' allegations that Defendants knowingly lied about HP's commitment to webOS are undermined by their inconsistent allegations concerning HP's July and August 2011 efforts to improve flaws in certain webOS devices." ECF No. 82 at 29.

32. The Court also determined that the magnitude of HP's webOS-related write-downs could not, standing alone, sufficiently support *scienter*. Upon considering the application of the "core operations doctrine," the Court determined that webOS was not shown to be a "core" part of the Company's business given that webOS devices constituted only one component of HP's Personal Systems Group ("PSG") business unit, which also was responsible for the design, manufacturing and marketing of PCs.[5] The Court also rejected the notion that Apotheker's termination by the Company, in and of itself, demonstrated *scienter*. Then, viewing the allegations as a whole, the Court found that the totality of the allegations failed to raise a strong inference of *scienter*, while observing that a compelling inference could be drawn from the allegations that would negate Apotheker's *scienter*. As noted above, the Court granted Defendants' motion to dismiss with leave to amend. ECF No. 82 at 35.

D. The Second Amended Class Action Complaint And Defendants' Motions To Dismiss And Subsequent Motion For Reconsideration

33. Following the Court's order dismissing the FAC, Plaintiffs' Counsel renewed its investigation efforts, initiating contact or re-contacting numerous potential confidential witnesses and speaking with them. Overall, Plaintiffs' Counsel located almost 200 former HP employees and other persons with relevant knowledge, contacting more than 150 of them and interviewing almost 60 potential witnesses. Plaintiffs' Counsel also worked with experts in order to bolster and improve the allegations against Defendants. This intensive additional

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[5] Following its acquisition by HP, Palm was integrated into HP's PSG business unit as the Palm Global Business Unit ("Palm GBU"). In addition to the PSG, the Company was divided into several other business units including the Imaging and Printing Group ("IPG"), which was responsible for the design, manufacture and marketing of HP's printers.

investigation required a tremendous effort in a short period of time. Plaintiffs' Counsel worked long and hard to further develop and refine Lead Plaintiffs' theory of the case and draft an amended pleading that could satisfy the heightened pleading standards required by the PSLRA, without the benefit of formal discovery.

34. On October 19, 2012, Lead Plaintiffs filed the Second Amended Class Action Complaint for Violations of the Federal Securities Laws asserting claims against HP and Individual Defendants Apotheker and Bradley. The Complaint was supported by numerous additional CWs and asserted a more focused and refined theory of liability on behalf of a modified class extending from February 9, 2011 through August 18, 2011, inclusive, as more fully discussed below. ECF No. 89. To the extent that subsequent discovery substantiated the original class period, which began on November 22, 2010, Lead Plaintiffs would have sought to amend the Complaint to reassert the class period originally asserted in the FAC.

35. On December 3, 2012, Defendants moved to dismiss the Complaint. ECF No. 96. The Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss Second Amended Complaint, ECF No. 96-1, addressed the new and amended allegations of the Complaint, while also advancing many of the same legal arguments that were successful in securing the dismissal of the FAC. Characterizing the Complaint as focusing "primarily on predictions and aspirational statements about how HP would develop and commercialize webOS in the future," Defendants argued that the Complaint's "13 new 'Confidential Witnesses' ("CWs") still fail[ed] to allege the key facts necessary for any viable fraud claim," namely that webOS was not being developed in other parts of the Company, that it would have been impossible to put webOS on PCs or printers within the aspirational time frame, and that each

speaking defendant knew that the challenged statements – all forward-looking – were false when made. ECF No. 96-1 at 1. Arguing that nothing in the Complaint would alter the Court's prior ruling that certain statements challenged by Lead Plaintiffs were protected by the PSLRA's safe harbor, and that no remaining statements had been adequately shown to have been false or made with the requisite *scienter* required by the PSLRA, Defendants asserted that Lead Plaintiffs' theory of fraud remained entirely "irrational" because, among other things, "the theory that HP would spend more than $1 billion to acquire Palm, Inc. ("Palm") and webOS, devote substantial time and resources to webOS hardware and software development, including developing and marketing the TouchPad, and repeatedly highlight its hopes for webOS – all while concealing that HP was not committed to the webOS ecosystem – makes no sense." ECF No. 96 at 4. Defendants further noted that "the purported fraud was, by definition, short term and irrational since – under Lead Plaintiffs' theory – the 'truth' would be disclosed when no webOS-enabled PCs and printers were released on the timeline projected. Nor do Lead Plaintiffs point to any motive to commit fraud." *Id.* Indeed, Defendants noted that none of the Individual Defendants sold any stock during the class period, when the price was supposedly inflated, adding that "to the contrary, in March 2011, Bradley exercised options and *held* those options throughout the putative class period." *Id.*

36. Lead Plaintiffs fiercely opposed Defendants' second effort to secure dismissal. Lead Plaintiffs' fifty-page Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss Second Amended Class Action Complaint, filed January 17, 2013, noted preliminarily that the Complaint, bolstered by the accounts of seventeen confidential witnesses, provided a "new focus" respecting Lead Plaintiffs' claims and that contrary to Defendants' characterization of the case, the Complaint was not premised on

misrepresentations regarding their subjective and forward-looking "commitment" to webOS as an overall strategy. ECF No. 98 at 1. Lead Plaintiffs further noted that the Complaint focused on Defendants' repeated statements that HP had invested in, and then-currently possessed, the technological and operational capability to expand its nascent webOS "mini-ecosystem" (consisting of the TouchPad and two smartphones) to a full-fledged ecosystem of hundreds of millions of "seamlessly" connected webOS-enabled personal computers and printers, all within the short time frame of two years. Lead Plaintiffs focused the Court on two essential themes conveyed by Defendants' statements: (1) that by the end of 2011 HP would have placed webOS on PCs and printers (Bradley stating that people would see webOS on printers "as the year progresses" and on PCs "later this year"), and (2) that by 2012 the Company would begin producing over 100 million webOS-enabled PCs and printers annually. ECF No. 98 at 2.

37. Lead Plaintiffs further argued that the Complaint alleged that there was never any POR for webOS-enabled PCs and printers and thus, no budget or resources allocated to develop such devices, making it impossible for such products to be introduced during the time period that Defendants represented. Furthermore, the Complaint alleged that the webOS division was unable to devote any resources to developing the webOS code for such devices because they were focusing exclusively on the troubled TouchPad, and no other division had the expertise to "cut" the webOS code for different devices. The Complaint also alleged that a hiring freeze at HP prevented the Company from allocating resources to developing webOS-enabled PCs and printers. Moreover, the Complaint alleged that in April 2011, the PC and printer groups were instructed to "cease all plans to integrate webOS into their products without executive level approval," and that internal financial projections as far as the end of 2012 revealed that HP did not expect any revenue from webOS-enabled PCs or printers during

that timeframe. ECF No. 98 at 3. Lead Plaintiffs argued that Defendants' statements were false, made with the requisite *scienter*, and were not protected by the PSLRA's safe harbor provisions. Lead Plaintiffs specifically noted that many of Defendants' statements were not forward-looking and that others were a mixture of present facts and future predictions and thus not protected by the safe harbor. ECF No. 98.

38. On February 11, 2013, Defendants filed a thirty-six page Reply Brief in Support of Defendants' Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint. ECF No. 100. In that submission, Defendants asserted the challenged statements were all forward-looking and, therefore, protected by the PSLRA's safe harbor and that, to the extent any forward-looking statements were not so insulated, the Complaint failed to demonstrate a strong inference that those forward-looking statements were made with the requisite *scienter* or actual knowledge. Defendants reiterated their argument that the Complaint did not sufficiently allege that their challenged statements were false when made and that the Complaint failed to remedy the deficiencies previously cited by the Court with respect to falsity or *scienter*. ECF No. 100.

39. On February 28, 2013 the Court requested supplemental briefing to address a U.S. Supreme Court decision in *Amgen, Inc. v. Connecticut Retirement Plans & Trust Funds*, 133 S. Ct. 1184 (2013), and reset the hearing on the motion to dismiss. ECF No. 105. Thereafter, on March 18, 2013, the Court held an extensive oral argument on Defendants' motion to dismiss the Complaint. On May 8, 2013, the Court issued its Order Granting in Part and Denying in Part Motion to Dismiss. ECF No. 110 ("May 8, 2013 Order").

40. The Court observed that the Complaint focused more squarely on Lead Plaintiffs' argument that Defendants misrepresented ***when*** webOS would be put on PCs and printers. As the Court explained:

This argument is based primarily on [the] following four alleged misstatements:

(1) Bradley's statements at the February 9, 2011 "WebOS Announcement" that "I'm excited to announce our plans to bring WebOS to the HP device that has the biggest reach of all: the personal computer. So across HP, we have phenomenal people working hard to enhance our customers' already familiar experience with the PC to add a rich set of applications and services that only WebOS offers, and as we introduce that WebOS to our millions of PC customers ***later this year*** . . . ." (*Id.* ¶ 140 (emphasis added).)

(2) Bradley's statement at HP's March 14, 2011 Summit that "[o]ur goal with web OS and our unique opportunity is really to extend web OS to the broadest range of products available . . . . With this in mind, we'll be extending the ecosystem beyond phones and tablets. Development teams across HP are working to bring web OS and the web OS experience to the Windows PCs. ***Next year***, we'll migrate tens of millions of web connected printers into the ecosystem. . . . In the figure [sic], across smart phones, TouchPads, PCs, printers, we have the potential to deliver tens if not hundreds of millions of web OS enabled devices annually into a huge installed base.["] (*Id.* ¶ 158 (emphasis added).)

(3) Apotheker's statement at the March 14, 2011 Summit that "[t]here will be a beta version for web OS running on a browser on PCs available at the ***end of the year*** and you will see us putting web OS on the (inaudible) technology on PCs, on Windows PCs I should add, starting from that point onwards.

> And we hope to reach 100 million devices a year." (*Id.* ¶ 162 (emphasis added).)
>
> (4) Apotheker's statement during an interview at the June 2, 2011 Conference. (*Id.* ¶ 179.) During the interview, Apotheker and the analyst discussed "when webOS would be on the Company's PCs." (*Id.*)
>
> [Analyst:] "Do you have a date for that? webOS on the PC?"
>
> [Apotheker:] "***2012***. I know there are 12 months in 2012, even in Germany. And then we have – and we are going to put webOS also on printers. So we can create the kind of a platform of about 100 million, 110 million devices a year." (*Id.* (emphasis added).[)]

May 8, 2013 Order at 11-12 (second, fifth, sixth, and seventh alterations in original).

41. With respect to the PSLRA's safe harbor, the Court found no reason to change its August 2012 Order ruling that the following statements were forward-looking and accompanied by meaningful cautionary language and thus were protected by the PSLRA's safe harbor: (1) statements made during the February 22, 2011 Earnings Call; (2) statements during the March 14, 2011 Summit; (3) statements made during the May 17, 2011 Earnings Call; and (4) statements in the June 8, 2011 Form 10-Q. In addition, the Court ruled that the PSLRA's safe harbor also protected the challenged statements in HP press releases on March 14, 2011 and July 11, 2011. May 8, 2013 Order at 13-14.

42. While the Court accepted Defendants' argument that it should not change its August 2012 Order that certain "Puffing Statements" were not actionable, it also reaffirmed that "Defendants' statements about timing for

developing webOS-enabled PCs and printers cannot be dismissed as puffery." May 8, 2013 Order at 15. The Court found that:

> the following aspirational statements made by Apotheker at the June 2011 Conference are too vague for a reasonable investor to rely on them: statements (1) that Apotheker hopes HP "can disrupt the market" with WebOS; (2) that "we are all about WebOS"; (3) that "[i]t's about the webOS much more than about device A or device B"; and (4) that "we are doing really well on the PSG side of the house [with] webOS."

Id. at 15-16; *see also* Complaint ¶¶ 181-82.

43. In order to determine whether the Complaint adequately pleaded "falsity," the Court reviewed whether Lead Plaintiffs had described the accounts of confidential witnesses adequately. The Court concluded that CWs 1-3 were described with sufficient particularity, as it had previously ruled in the August 2012 Order. The Court also found that prior deficiencies respecting CW 4 had been cured. Turning its attention to the thirteen new CWs, the Court concluded that they were pleaded sufficiently, thus enabling it to consider all CW accounts as pleaded in the Complaint. May 8, 2013 Order.

44. Relying on the well-pleaded accounts of CWs, and after a thorough review and discussion, the Court concluded that Bradley's February 9, 2011 statement was adequately alleged to have been false when made. The Court reached the same conclusion with respect to statements made by "Apotheker at the June 2011 Conference, by Apotheker during the June 2011 Interview, and by Bradley in the July 2011 Article, to the extent that these statements [were] not inactionable puffery." *Id.* at 25.

45. The Court also held that the issue of scienter presented a "close question" when the allegations of the Complaint were viewed in their entirety. In that regard, the Court stated that only the Complaint's allegations concerning the

June and July 2011 statements raised a "strong inference" of *scienter* sufficient to satisfy the pleading requirements of the PSLRA. *Id.* at 32. Thus, Defendants' motion to dismiss the Complaint was granted in part and denied in part.

46. On May 22, 2013, Defendants moved for reconsideration of the Court's May 8, 2013 Order. ECF No. 113. Lead Plaintiffs opposed the Motion for Reconsideration on June 4, 2013, ECF No. 117, to which Defendants responded on June 10, 2013, ECF No. 119. On June 17, 2013, the Court denied the Motion for Reconsideration and also denied Defendants' request to certify its ruling for appeal. ECF No. 120.

47. On July 17, 2013, Defendants filed their Answer denying the material allegations of the Complaint and demanding a jury trial. ECF No. 124.

E. Joint Rule 26(f) Report, Scheduling Order, And Case Management

48. Amid Defendants' efforts to secure the dismissal of the Action, on October 25, 2012, the parties filed a Joint Case Management Report pursuant to Federal Rule of Civil Procedure 26(f). ECF No. 91. That report followed a meet-and-confer process.

49. On November 5, 2012, the Court held a Rule 16 Scheduling Conference and entered a Scheduling Order setting a discovery cut-off of July 7, 2014, a final pre-trial conference for September 22, 2014 and a jury trial for October 7, 2014. ECF No. 93. All discovery remained stayed at that time, however, given the automatic stay provision of the PSLRA.

50. Once the PSLRA's automatic stay of discovery was lifted by virtue of the Court's May 8, 2013 Order, and following additional extensive conferences and negotiation, the parties entered into a Joint Stipulation Re: Confidential and Protected Information, which the Honorable Magistrate Judge Robert N. Block granted by order entered October 3, 2013. ECF Nos. 142, 143.

IV. EXTENSIVE FACT DISCOVERY, INVESTIGATION, AND ANALYSIS

51. Subsequent to the May 8, 2013 Order, the parties met and conferred concerning the scope of discovery, the exchange of initial disclosures, and discovery protocols, including an Electronically Stored Information ("ESI") Protocol and a Privilege Log Protocol. On August 16, 2013, the parties exchanged initial disclosures. Thereafter, Lead Plaintiffs and Defendants began evidentiary discovery.

52. Prior to reaching the Settlement, Defendants produced and Plaintiffs' Counsel reviewed more than 314,000 pages of core documents. This discovery is discussed below.

A. Discovery Propounded On Defendants

53. On June 28, 2013, Lead Plaintiffs served their first set of document requests on Defendants. These expansive, thorough requests covered forty-six separate categories. HP served its written responses and objections to those requests on July 29, 2013.

54. As discovery progressed, Defendants and Lead Plaintiffs discussed the utility of engaging a neutral mediator for the purpose of exploring a resolution of the Action. To that end, the Settling Parties agreed to engage Judge Phillips, who has extensive experience in mediating complex securities class actions. In connection with the mediation, Defendants produced over 314,000 pages of critically relevant and important documents between October 2013 and December 2013. These documents included, *inter alia*: (i) Company emails; (ii) internal memoranda from HP; (iii) corporate minutes of the Company's board of directors; (iv) spreadsheets from HP regarding webOS-related projects; (v) Company submissions to the SEC; (vi) the source materials utilized by HP in connection with the Company's webOS development; (vii) slide show presentations concerning HP's financial, operations, and project planning; and (viii) draft public statements concerning webOS projects. In connection with the mediation,

Defendants also provided written responses to certain interrogatories that had been propounded previously by Lead Plaintiffs.

55. Plaintiffs' Counsel made great efforts and employed significant resources, including technical resources, to review and cull Defendants' production. To properly analyze and process this technical and proprietary information in a cost-effective and efficient manner, Plaintiffs' Counsel developed a document review process that encompassed a number of resources.

56. First, in order to facilitate the cost and time-efficient nature of this process, documents were placed in an electronic database that was created and maintained by Motley Rice. The database allowed Plaintiffs' Counsel to search for documents through Boolean-type searches, as well as by multiple categories, including author and/or recipients, type of document (e.g., emails, memoranda, and SEC filings), date, and Bates number. The database also provided a streamlined ability to cull and organize witness specific documents in folders for review and any necessary mediation preparation.

57. Second, to perform an initial review of Defendants' document production, a team of attorneys was assembled by Plaintiffs' Counsel. The majority of the attorneys working on the review possessed extensive experience reviewing documents in complex cases, including cases of a technical nature.

58. These attorneys focused on reviewing Defendants' document production for the purpose of preparing for the mediation and gathering evidence to prove Lead Plaintiffs' allegations. These attorneys also were instrumental in identifying potential gaps in Defendants' production.

59. Much of the initial review ("first level review") was conducted by attorneys experienced in electronic document discovery in securities and complex cases, many of whom had performed similar functions in other matters. These attorneys utilized review guidelines and protocols that were put in place and

monitored regularly to ensure efficient and accurate review of the documents. This initial review was structured to avoid duplicative work and to minimize, to the extent possible, the amount of hours necessary for document review. An experienced team of attorneys oversaw the review to ensure that it was as thorough and efficient as possible and to thereafter closely examine the more probative or "hot" documents.

60. All aspects of the document review were carefully supervised to eliminate inefficiencies and to ensure a high quality work-product. This supervision included multiple in-person training sessions, the creation of a set of relevant materials and protocols, including a coding sheet, presentations regarding the key legal and factual issues in the case, and in-person instruction from more senior attorneys. The attorneys performing document review were instrumental in uncovering documents that could be used to advance Lead Plaintiffs' case during mediation and thereby helped to achieve the successful result: securing a settlement of $57 million on behalf of the Settlement Class.

61. As more fully discussed in Part V below, Plaintiffs' Counsel also relied on experts to assist with more complicated analysis as necessary. The key allegations in the Action concerned multi-platform hardware, software, and operating system product development, as well as related planning and budgeting issues beyond the knowledge and understanding of a lay person. These issues required objective expert input from consultants with experience in software, hardware and operating system product development who could opine on the feasibility of the development timeline of webOS for PCs and printers. Special expertise also was required to analyze internal Company documents in order to assess what, if any, progress HP had made with respect to meeting its publicly stated timelines or its internal development milestones.

62. Throughout the discovery process, Plaintiffs' Counsel analyzed not only what was produced, but also tracked discovery that potentially was still outstanding. Plaintiffs' Counsel held numerous meet-and-confer sessions with Defendants' Counsel concerning Defendants' production to ensure the production of all agreed-upon materials. On several occasions, Lead Plaintiffs and Defendants exchanged correspondence concerning additional areas of production.

B. Discovery Propounded On Lead Plaintiffs

63. Lead Plaintiffs also actively responded to discovery requests. On August 16, 2013, Defendants served their First Set of Document Requests on Lead Plaintiffs. Lead Plaintiffs served their written responses and objections on September 16, 2013.

64. On August 16, 2013, HP served a set of twelve interrogatories on Lead Plaintiffs. Lead Plaintiffs served written responses and objections to these interrogatories on September 16, 2013.

65. Lead Plaintiffs took steps to gather responsive documents, including ESI material, for production to Defendants.

V. LEAD PLAINTIFFS' EXPERTS

66. Lead Plaintiffs consulted with several experts during the pendency of the Action, including several industry experts. Those experts assisted with the analysis of complex information and evidence and provided insight into the documents needed to be secured through discovery. Proceeding in an efficient manner, Plaintiffs' Counsel utilized one of the technical experts to more fully review documents produced by HP. Lead Plaintiffs' main industry expert was able to assess complex information produced by HP to determine whether the statements Defendants made about webOS development, planning, and timing were reasonable when made.

67. Lead Plaintiffs also consulted with an econometric and damages expert who analyzed the alleged class period disclosures and information available in the market to determine the market price effect of Defendants' purported false and misleading statements and alleged damages as a result thereof. This was critical given Defendants' challenges on the elements of "loss causation," "materiality" and "reliance" and the complicated issue of disaggregating or otherwise parsing fraud-related versus non-fraud related aspects of the disclosures issued by HP on August 18, 2011, which ended the class period.

68. Lead Plaintiffs' econometric and damages expert drafted a detailed expert report and exhibits prior to Lead Plaintiffs and Defendants entering into mediated discussions and the Settlement. This analysis was valuable in helping Plaintiffs' Counsel achieve the Settlement.

VI. RISKS FACED BY LEAD PLAINTIFFS IN THE ACTION

69. Based on publicly available information, documents obtained through Lead Plaintiffs' informal investigation, discussions with expert consultants, and the extensive review of documentary evidence secured in the Action, Lead Plaintiffs believe that they would be able to adduce evidence to establish Lead Plaintiffs' claims. However, Lead Plaintiffs also realize that they faced considerable risks and defenses in continuing the Action against Defendants. Lead Plaintiffs and their counsel carefully considered these risks during the months leading up to the Settlement and throughout the settlement discussions with Defendants and Judge Phillips.

70. In particular, throughout the course of the litigation, Defendants raised a number of arguments and defenses (which they likely would raise at summary judgment and trial) including that: (i) there were no actionable misstatements and omissions; (ii) Class Members assumed the risk of investing in HP stock; (iii) Lead Plaintiffs would not be able to establish that Defendants acted

with the requisite fraudulent intent and particularly the *scienter* requirement of "actual knowledge" respecting Defendants' forward-looking statements; (iv) the market did not rely on Defendants' optimistic statements, nor were they material to the market, as evidenced by the fact that Defendants' June and July 2011 statements did not inflate HP's stock price and, indeed, occasioned an immediate decline in price; (v) the market was fully aware of competitive forces that could limit continuing development of any webOS-enabled ecosystem and devices, including successful new product offerings by Apple amid HP's problems with its Touchpad product launch and sales; (vi) Lead Plaintiffs could not establish the required element of "loss causation" because the stock price decline in question was not caused by any fraud-related disclosure; and (vii) the market reacted to not one but four pieces of news simultaneously announced on August 18, 2011, three of which did not reveal any allegedly fraudulent statements or omissions, thus making it impossible to reliably disaggregate the stock price decline to determine what portion was substantially fraud-related. Some of the most serious risks that adversely prejudiced or threatened the Class's recovery are more fully discussed below.

A. Risk Concerning Falsity

71. In order for the Lead Plaintiffs to prevail, they would first have to establish that Defendants made an actionable false or misleading statement or material omission. Defendants would undoubtedly argue that Lead Plaintiffs could not demonstrate that any of their statements were fraudulent, maintaining as they have throughout the litigation that nothing they said was false, deceptive, or misleading when these statements were made.

72. It is anticipated the Defendants would attempt to contradict Lead Plaintiffs' allegations about the lack of resources and commitment to webOS-enabled PCs by marshaling evidence demonstrating that the Company wholly

supported webOS PC development; that HP paid the extraordinary sum of $1.2 billion in order to acquire Palm, thus evincing its sincere and significant commitment to webOS; that numerous HP employees in its Fort Collins, Colorado location and elsewhere were working on webOS-enabled PCs; that HP employees had access to the webOS code; that webOS development had an approved POR; and that webOS-enabled PCs were on track to go to the market in 2012.

73. Defendants could be expected to argue that HP had several different webOS projects that it was developing. Among these, Defendants likely would highlight the "Rio" project, which was established in order to develop a version of webOS that would run as a Microsoft Windows application, rather than as a standalone operating system, as described by Apotheker in June 2011 ("webOS will be available on PCs on top of Windows") and by Bradley in July 2011 (HP intends "to enable all of our PC users to access their webOS environment, their applications on their PCs"). Lead Plaintiffs further anticipated that Defendants would proffer as witnesses employees within Palm and HP in support of their contention that Rio development was moving forward, that the development was passing important design objective check points for the program, that the Company had received approval to proceed, and that it was preparing for the POR check-point.

74. With regard to Lead Plaintiffs' contentions that HP was not devoting resources to webOS development, that no one outside the Palm GBU had access to the webOS code, and that only a "small exploratory team with no access to the webOS code worked on webOS-enabled PCs," Defendants likely would contend that there were numerous individuals with access to the webOS code who were working on creating webOS-enabled PCs and that those individuals were not simply "only the webOS team," but rather a broader cross-section of employees.

75. Defendants also were expected to contend that even after the Palm GBU became focused on developing webOS-enabled phones and the webOS-enabled tablet the "TouchPad," the Rio team still received assistance from Palm with a continuing focus to develop Rio, the project to run webOS on PCs, as well as related development of webOS for printers by the Palm GBU throughout the Spring and Summer of 2011. It also was likely Defendants would contend that substantial work on Rio proceeded after the POR was approved in January 2011, and that Rio was progressing as planned, with forecasts that Rio would be released in time for the end-of-year holidays in 2011 or during calendar year 2012.

76. With regard to Apotheker's June 2, 2011 statement that "we are going to put webOS also on printers," Defendants likely would contend that Apotheker was simply responding to a specific question from an analyst about the timing for putting webOS on PCs and replied "2012," which he then followed with the stated general remark about HP's ability to include printers in the mix of devices in the webOS system, without promising a date by which webOS printers would be on sale, or providing detail about what types of printers would run on webOS. Lead Plaintiffs further anticipated that Defendants would contend that there had been significant development on webOS printers and that HP's IPG business unit had substantial resources devoted to, and had made substantial progress with, webOS printer development, with several teams in multiple locations within the printer group exploring the use of webOS in various types of printers. Additionally, Defendants likely would contend that there were communications as late as July 2011 demonstrating Palm and HP's continued efforts to advance the webOS printer initiative, thus contradicting Lead Plaintiffs' claims that HP was merely "concepting" webOS printers.

77. Lead Plaintiffs also anticipated that Defendants would challenge statements referring to HP's commitment to developing a webOS "ecosystem."

The Court characterized these statements as ones in which "Apotheker and Bradley specifically reaffirmed HP's commitment" to "integrate [webOS-enabled PCs and printers] into a cohesive webOS platform and produce a large volume of such devices – 100-110 million annually." Defendants were expected to contend that the Company was wholly committed to developing the webOS ecosystem and that it would make no sense to spend more than $1 billion to acquire Palm if it was not so committed.

78. Defendants also were expected to contend that HP remained committed to creating a large webOS ecosystem involving many different types of devices and maintained that commitment at least through July 20, 2011, the date of the last statement challenged by Lead Plaintiffs.

B. Risks Concerning *Scienter*

79. As a threshold matter, Defendants were expected to contend that the Individual Defendants, Apotheker and Bradley, did not benefit financially from the alleged fraud. In that regard, Lead Plaintiffs did not allege any illegal or suspicious insider stock sales or self-dealing by those defendants.

80. Defendants almost certainly would continue to argue that all of the statements challenged by Lead Plaintiffs were "forward-looking statements" (i.e., statements regarding plans and objectives of future operations by management). With regard to such forward-looking statements, Defendants would continue to vigorously maintain that: (i) they are insulated from any liability by reason of the "safe harbor" for forward-looking statements as provided by the PSLRA; and (ii) with respect to unidentified forward-looking statements or those lacking sufficient cautionary language, Lead Plaintiffs nonetheless could not prove Defendants' "actual knowledge" of their falsity at the time they were made.

81. It was further anticipated that Defendants would assert *vis-à-vis scienter*, the same arguments respecting HP's devotion of significant resources to

develop webOS-enabled PCs and printers and its commitment to developing the webOS ecosystem as discussed above, contending that none of the challenged statements made by Defendants were false and, regardless, were not knowingly false when made. Defendants also were expected to argue that any motive or explanation for committing the alleged fraud (i.e., any reason why an executive would build excitement about a product that was supposedly doomed to fail), was lacking. In other words, Defendants would posit that Lead Plaintiffs were asking the fact finder to believe that Defendants would act "irrationally," as opposed to what Defendants likely would contend was a more obvious inference and explanation that, despite HP's enthusiasm and commitment to webOS devices, its strategy had to be reconsidered given the Touchpad's unexpected and disappointing sales results in July and August 2011 amid the success of a competing product introduced by Apple.

82. Specifically with regard to Bradley, he likely would contend that he did not know nor was he ever informed at any point prior to August 14, 2011, at the earliest, that webOS devices would be discontinued. Defendants had consistently maintained in their filings that this fact was reported in an August 19, 2011 *All Things Digital* article.

83. Additionally, Defendants likely would have argued that any possible motive for fraud was belied by the fact the Individual Defendants lost significant amounts of their personal wealth when HP's stock price dropped dramatically, but did not attempt to escape such losses and exploit their alleged knowledge of material adverse information by engaging in insider selling at any time prior to the revelation of the truth on August 18, 2011. Defendants would have been expected to contend that, to the contrary, Bradley exercised vested stock options, thus acquiring more shares of HP, at the very time Lead Plaintiffs contend Bradley

actually knew of material adverse information regarding the Company's plans for webOS.

C. Risks Concerning Loss Causation, Materiality, And Damages

84. Defendants also would have vigorously challenged Lead Plaintiffs' ability to establish the necessary *prima facie* element of loss causation and the calculation of damages.

85. Defendants contended, and likely would continue to maintain, that any potential investment losses suffered by Lead Plaintiffs and the Class were actually caused by external and independent factors rather than by any revelation of Defendants' alleged fraudulent conduct. In that regard, Defendants were expected to argue that HP announced multiple pieces of news on August 18, 2011, including announcements of reduced earnings guidance; HP's decision to acquire Autonomy Corporation plc, an acquisition at what many market professionals felt was a vastly excessive price; and HP's announcement of a potential spin-off of its PSG business unit. Hence, Defendants were expected to argue that, when a company announces multiple pieces of negative news on a single day, proving loss causation requires a plaintiff to offer reliable evidence allowing the fact finder to conclude that a fraud-related corrective disclosure was a substantial factor in the price decline. Defendants contended that the fact finder could not reasonably conclude that the webOS-related disclosure on August 18, 2011, was a substantial cause of the ensuing stock drop.

86. Indeed, Defendants were expected to point to numerous analyst reports published in the week following HP's August 18, 2011 announcement reflecting the fact that analysts did not attach significance to the announced discontinuation of webOS. For example, Defendants contended that several reports did not contain ***any*** reference to HP's decision to discontinue webOS devices, while a number of others contained references that were neutral.

Defendants contended that of the analyst reports that did offer a reaction to the announcement that HP would discontinue webOS-enabled devices, only two contained arguably mild negative reactions, while a number of reports were favorable, noting that the webOS shut down "makes sense," or that it was the "right move." Lead Plaintiffs also anticipated Defendants would proffer testimony and documentary evidence supporting the decision to shut down webOS in an effort to prove that the stock price drop in question was not caused by the webOS-related news.

87. Significantly, in *In re Oracle Corp. Securities Litigation*, 627 F.3d 376 (9th Cir. 2010), the Ninth Circuit canvassed the many analyst reports that had been issued to investors and effectively weighed the number of reports that supported defendants' contentions versus those that supported plaintiffs' contentions. *Id.* at 383. Finding that "a legion of analysts" offered opinions inconsistent with plaintiffs' theory of the fraud, the Ninth Circuit affirmed the dismissal of the action. Here, given the prevailing Ninth Circuit jurisprudence, Defendants undoubtedly would have submitted a large bulk of analyst reports supporting their position that the webOS discontinuance was viewed as either positive or neutral by various analysts and thus had no negative impact on HP's stock price.

88. Defendants also were expected to argue that Lead Plaintiffs could not prove that the challenged statements were even material to investors. Defendants would continue to maintain that given the failings of the TouchPad launch and strong competition from Apple, by June 2011 at the latest, investors did not care about webOS-enabled PCs or printers, or about an "ecosystem" that included these devices. This would have required a battle of experts which presented risk as to an essential element of Lead Plaintiffs' *prima facie* case: materiality.

89. Beyond the issues of loss causation and materiality, it also was incumbent on Lead Plaintiffs to prove one additional essential element of its *prima facie* case: damages. Given that the Company made a series of announcements on August 18, 2011, including the announcement that HP was discontinuing its webOS devices, Defendants undoubtedly would contend that it was incumbent upon Lead Plaintiffs to precisely apportion that part of the stock price drop attributable to the alleged fraud as opposed to the loss attributable to non-fraud related news. In that regard, Defendants maintained, and would continue to maintain, with the benefit of expert testimony, that precise apportioning of the ensuing stock price drop attributable to the webOS announcement would be impossible.

90. Lead Plaintiffs retained a reliable and experienced forensic econometric expert with whom they consulted extensively, including in connection with the mediation. That expert was capable of providing a detailed analysis with respect to loss causation and damages that could apportion the amount of the price drop attributable to fraud-related versus non-fraud-related disclosures. Lead Plaintiffs also disagreed with Defendants' interpretation of the law as somehow requiring absolute precision with respect to such apportionment. Nevertheless, these issues presented additional and considerable risk that a fact finder (or possibly even the Court) could have determined that loss causation and/or damages were not sufficiently proven.

91. Each of the foregoing arguments that Defendants likely would have raised, if credited by the Court at summary judgment or by a jury at trial, could have resulted in no recovery for the Class or, at a minimum, significantly and adversely impacted potential damages.

VII. NEGOTIATION OF THE SETTLEMENT

92. Based on the Settling Parties' informal pre-mediation discussions, it was jointly agreed that it would serve all parties' interests to engage in a formal mediation before a highly experienced, reputable mediation specialist possessing a solid track record of mediating complex class action litigation, and a deep understanding of the law and issues involved in actions brought under the PSLRA. The parties identified several well respected mediators, including retired federal court jurists, ultimately reaching an agreement on Judge Phillips.

93. Prior to the mediation there were numerous issues about which the Settling Parties disagreed, including: (i) whether the statements made or facts allegedly omitted were material, false, misleading, or actionable; (ii) whether Lead Plaintiffs could prove that Defendants acted with scienter; and (iii) whether Lead Plaintiffs could prove loss causation or recoverable damages given the numerous and disparate pieces of news that entered the market on the corrective disclosure date of August 18, 2011.

94. Judge Phillips set December 3, 2013 as an initial mediation date and instructed the parties to submit and exchange mediation statements detailing their respective positions and supporting evidence. Plaintiffs' Counsel worked diligently and extensively to prepare Lead Plaintiffs' Mediation Statement, while marshaling the facts and documentary evidence obtained through their extensive informal investigation, pre-mediation discovery efforts, consultation with and input from forensic and industry experts and their review and analysis of the facts and legal issues. The Settling Parties' respective mediation statements thoroughly set forth Lead Plaintiffs' and Defendants' respective positions and included substantial supporting documentation.

95. On December 3, 2013, the Settling Parties, by their representatives, along with representatives of insurers of HP and the Individual Defendants, participated in a lengthy arm's-length mediation in Newport Beach, California,

facilitated by Judge Phillips. During the December 3, 2013 mediation session, Plaintiffs' Counsel also provided the Defendants' representatives and insurance carriers with a damages study and analysis prepared by Lead Plaintiffs' econometric expert. While no settlement was reached at the mediation session, substantial progress was achieved. In that regard, Lead Plaintiffs and Defendants developed a better understanding of each other's positions regarding the merits of and defenses to the claims asserted in the Action.

96. Between December 4, 2013 and January 15, 2014, the Settling Parties continued to participate in mediated arm's-length settlement communications with the assistance of Judge Phillips. On January 15, 2014, the Settling Parties' arm's-length mediation communications, facilitated by Judge Phillips, resulted in an agreement-in-principle to settle the Action.

97. Lead Plaintiffs and Defendants thereafter memorialized the final terms of settlement in the Settlement Agreement. On March 31, 2014, Lead Plaintiffs' motion and supporting memorandum of points and authorities seeking preliminary approval of the Settlement was filed, together with the Settlement Agreement, the proposed Plan of Allocation, and a request that the Court preliminarily certify the Settlement Class. ECF Nos. 144 and 145. Lead Plaintiffs' motion was heard by the Court on April 28, 2014. The Court granted preliminary approval of the Settlement by Order entered May 2, 2014. ECF No. 153. The Court also preliminarily approved the proposed Plan of Allocation, preliminarily certified the Settlement Class, and directed the Settling Parties to give notice to the Settlement Class. *Id*.

VIII. LEAD PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER

98. Pursuant to the Preliminary Approval Order, the Court appointed Garden City Group, Inc. ("GCG")[6] as Claims Administrator in the Action and instructed GCG to disseminate copies of the Notice of Pendency and Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses and Proof of Claim (collectively "Notice Packet") by mail and to publish the Summary Notice of Pendency and Class Action Settlement and Motion for Attorneys' Fees and Expenses.

99. The Notice, attached as Ex. A to the Affidavit Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of Summary Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusions Received to Date (the "Mailing Affidavit"), which is attached hereto as Ex. 3, provides potential Settlement Class Members with information about the terms of the Settlement and, among other things: (i) their right to exclude themselves from the Settlement Class; (ii) their right to object to any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and (iii) the manner for submitting a Proof of Claim in order to be eligible for a payment from the net proceeds of the Settlement. The Notice also informs Settlement Class Members of Plaintiffs' Counsel's intention to apply for an award of attorneys' fees of no more than 25% of the Settlement Fund, for payment of their litigation expenses in

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[6] GCG was selected through a competitive bidding process with other experienced claims administrators and after a careful review of its proposed fees and expenses, its track-record in administering other settlements involving Co-Lead Counsel, and its unsurpassed experience in administering securities class action settlements, such as *WorldCom*, *Tyco*, and *Global Crossing*.

an amount not to exceed $525,000, and for payment of Lead Plaintiffs' expenses in an amount not to exceed $75,000.

100. As detailed in the Mailing Affidavit, on May 19, 2014, GCG began mailing Notice Packets to potential Settlement Class Members as well as banks, brokerage firms, and other third party nominees. Ex. 3 ¶¶ 2-5. In total, to date, GCG has mailed 800,314 Notice Packets to potential nominees and Settlement Class Members by first-class mail, postage prepaid. *Id.* ¶ 6. To disseminate the Notice, GCG obtained the names and addresses of potential Settlement Class Members from listings provided by HP and its transfer agent and from banks, brokers, and other nominees. *Id.* ¶¶ 3-5.

101. On May 28, 2014, GCG caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire*. *Id.* ¶ 7 and Exhibits B and C thereto.

102. GCG also maintains and posts information regarding the Settlement on a dedicated website established for the Action, http://www.HewlettPackardSecuritiesLitigation.com, to provide Settlement Class Members with information concerning the Settlement, as well as downloadable copies of the Notice Packet and the Settlement Agreement. Ex. 3 ¶ 8. In addition, Co-Lead Counsel have made available relevant documents concerning the Settlement on their firms' websites.

103. Through July 31, 2014, the Claims Administrator has incurred fees and expenses in connection with notifying the Settlement Class and administering the Settlement in the amount of approximately $750,000. *Id.* ¶ 13. As a result of the competitive bidding process, GCG's fees are principally a function of a very reasonable claim processing charge of $3.95 per claim. Because the claims deadline has not passed and the administration is not complete, it is not possible to know at this time what GCG's total fees and expenses will be. However, based on

its experience, the number of notices mailed to date, and an estimate of receiving no more than 150,000 claims, GCG has estimated that its fees and expenses may total between approximately $2 million and $2.5 million, which we respectfully submit are reasonable amounts given the potential size of the Settlement Class and the administration. *Id*. ¶ 14.

104. Pursuant to the terms of the Preliminary Approval Order, the deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, or to request exclusion from the Settlement Class is August 25, 2014. To date, Co-Lead Counsel have received only one objection (to both the Settlement and Plan of Allocation) and have received 25 requests for exclusion from potential Settlement Class Members (which represent approximately 2,110 shares of HP stock). Some of these requests were not filed by class members and several are invalid. No institutional investor or public pension fund has objected to any aspect of the Settlement or sought exclusion.

105. By letter received June 27, 2014, individual investor Ziping Li, who reports that he lost less than $1,000, wrote to the Claims Administrator to object to the Settlement and, ostensibly, the Plan of Allocation. *See* Ex. 4, hereto. (Since then, he has also submitted an invalid request for exclusion.) Primarily, he argues that the Settlement Fund is not "significant enough" and that he "would like to get a recovery of 20% - 50%" to make the claim process worthwhile. As an initial matter, Mr. Li did not provide any of the documentation required to establish that he actually is a member of the Settlement Class. Moreover, as discussed above, Lead Plaintiffs respectfully submit that the consideration achieved is substantial under the circumstances of this case and well within the range of reasonableness. With respect to the proposed Plan of Allocation, Mr. Li also comments that Table 1 to the plan, which reports the 90-day look back prices, does not show significant

price fluctuations and falls outside the class period, "so there is not significant evidence that the defendant might have any wrong doing based on your data." Mr. Li misunderstands the purpose of Table 1 and the import of the 90-day look back provisions of the PSLRA. Lastly, Mr. Li writes that institutional investors caused the stock price fluctuations, therefore they, and "inside traders," should not be able to recover from the Settlement. Here, however, Lead Plaintiffs' consulting damages expert has carefully analyzed HP's stock price changes to isolate the artificial inflation caused by the alleged fraud, rather than other market factors. Eligible investors will only be able to recover based on the alleged wrongdoing. Also, "insiders" related to the Defendants are not eligible to recover in the Settlement. Co-Lead Counsel have written to Mr. Li to clarify these matters.

106. Should any additional objections or requests for exclusion be received, Lead Plaintiffs will address them in their reply papers, which are due September 8, 2014.

IX. PLAN OF ALLOCATION

107. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who wish to participate in the distribution of the Settlement proceeds must submit a valid Proof of Claim, including all required information, postmarked no later than September 16, 2014. As provided in the Notice, after deduction of Court-awarded attorneys' fees and expenses, notice and administration costs, and all applicable taxes, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the plan of allocation approved by the Court (the "Plan of Allocation").

108. The proposed Plan of Allocation, which was set forth in full in the Notice (Ex. 3 - A at 9-11), is designed to achieve an equitable and rational distribution of the Net Settlement Fund, but it is not a formal damages analysis

that would be submitted at trial. Plaintiffs' Counsel developed the Plan of Allocation in close consultation with Lead Plaintiffs' consulting damages expert and believe that the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

109. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. These formulas are tied to the amount of alleged artificial inflation in the share prices, as quantified by Lead Plaintiffs' expert. Lead Plaintiffs' expert analyzed the movement of HP common stock and took into account the portion of the stock drops attributable to the alleged fraud. The Plan of Allocation ensures that the Net Settlement Fund will be fairly and equitably distributed based on the amount of inflation in the price of HP common stock during the Class Period that was attributable to the alleged wrongdoing.

110. The Court-approved Claims Administrator, under Co-Lead Counsel's direction, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Loss compared to the aggregate Recognized Losses of all Authorized Claimants. Calculation of Recognized Loss will depend upon several factors, including when the claimants purchased HP stock during the Class Period, and whether the stock was sold during the Class Period, and if so, when.

111. Additionally, a Settlement Class Member's Recognized Loss will be reduced by an additional factor to reflect the increased litigation risk for purchases of HP publicly traded common stock made prior to June 1, 2011. For purchases/acquisitions of HP publicly traded common stock made between November 22, 2010 and February 8, 2011, inclusive, the Recognized Loss Amount will be reduced by 50%. For purchases/acquisitions of HP publicly

traded common stock made between February 9, 2011 and May 31, 2011, inclusive, the Recognized Loss Amount will be reduced by 25%. These percentage reductions reflect Co-Lead Counsel's good faith assessment of the relative strength and weaknesses of Settlement Class Members' claims against Defendants and upon consideration of the Court's rulings on Defendants' motions to dismiss. *See* ECF Nos. 82 & 110. These discounts are consistent with plans of allocation that have been developed and approved in other cases. *See, e.g.*, *In re Portal Software, Inc. Sec. Litig.*, No. C-03-5138 VRW, 2007 WL 4171201, at *6 (N.D. Cal. Nov. 26, 2007) ("Courts endorse distributing settlement proceeds according to the relative strengths and weaknesses of the various claims.") (collecting cases).

112. In sum, the proposed Plan of Allocation, developed in consultation with Lead Plaintiffs' consulting damages expert, was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants. Accordingly, Co-Lead Counsel respectfully submit that the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved.

X. CO-LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES

113. Plaintiffs' Counsel are requesting an attorneys' fee award of 25% of the Settlement Fund. This request is fully supported by Lead Plaintiffs. Plaintiffs' Counsel also request payment of litigation expenses incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $335,119.93, plus any accrued interest. Plaintiffs' Counsel further request reimbursement of lost wages and expenses for Lead Plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4) directly related to their representation of the Settlement Class in the total amount of $13,546.85. *See* Decls. of George Hopkins (Arkansas Teachers), Dr. Joachim Von Cornberg and Dr. Fabian Hannich (Union Asset Management), and David D'Agostini (Labourers' Pension Fund), attached hereto

as Exs. 5, 6, and 7, and Ex. 8 (summary table of requests).[7] The total payment requested for Plaintiffs' Counsel's expenses and the expenses of Lead Plaintiffs is well below the $600,000 maximum expense amount that the Settlement Class was advised could be requested.

A. Lead Plaintiffs Support The Fee And Expense Application

114. Lead Plaintiff Arkansas Teacher Retirement System ("ATRS") is an institutional investor that provides retirement, disability, and survivor benefits to the thousands of current and former employees of the Arkansas education community, and manages approximately $14 billion in assets held in trust. *See* Ex. 5 ¶ 1.

115. Lead Plaintiff Union Asset Management Holding AG ("UAMH") is an institutional investor and experienced fiduciary that manages pension funds for the benefit of current and retired employees in the Federal Republic of Germany. UAMH manages assets of approximately $253.1 billion. *See* Ex. 6 ¶ 1.

116. Lead Plaintiff Labourers' Pension Fund of Central and Eastern Canada ("LPF") is a multi-employer pension plan that provides retirement benefits to thousands of current and former employees in the construction industry. LPF manages approximately $4.1 billion (Canadian) in assets and more than 41,000 members. *See* Ex. 7 ¶ 1.

117. Lead Plaintiff LIUNA National (Industrial) Pension Fund ("LIUNA National") was established by the Laborers' International Union of North America ("LIUNA") and is a joint labor-management trust fund that provides retirement income for LIUNA-represented employees working in various industries other

[7] Due to scheduling and travel issues, the LIUNA Funds are regrettably unable to submit their declaration concerning their request for reimbursement with this filing. We will file the declaration with the Court promptly upon its finalization.

than the building and construction industry. Complaint ¶ 23. Lead Plaintiff LIUNA Staff & Affiliates Pension Fund ("LIUNA Staff" and collectively with LIUNA National, the "LIUNA Funds") is a pooled trust fund established and maintained for the exclusive purpose of providing a defined benefit retirement income for officers and staff employees of LIUNA and of local unions, district councils and other labor organizations affiliated with LIUNA. *Id.* The LIUNA Funds have more than 17,000 pensioners and manage more than $1.5 billion in assets. *Id.*

118. Collectively, Lead Plaintiffs manage over $272.7 billion in retirement fund assets for their collective fund beneficiaries.

119. Lead Plaintiffs have evaluated and fully support the Fee and Expense Application. In coming to this conclusion, Lead Plaintiffs, having been involved in the prosecution of the Action and negotiation of the Settlement, considered the size of the recovery obtained as well as Plaintiffs' Counsel's substantial effort in obtaining the recovery and agreed to allow Plaintiffs' Counsel to apply for 25% of the Settlement Fund, particularly in light of the considerable risks of litigation. *See, e.g.*, Exs. 5-7. All of the Lead Plaintiffs take very seriously their role as Court-appointed Lead Plaintiffs to ensure that Co-Lead Counsel's fee request is fair in light of the work performed and the result achieved for the Settlement Class.

B. The Risks And Unique Complexities Of The Litigation

120. This Action presented substantial challenges from the outset of the case. The specific risks Lead Plaintiffs faced in proving Defendants' liability and damages are detailed in paragraphs 69 to 91, above. These case-specific risks are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Action was undertaken on a contingent basis.

121. From the outset, Plaintiffs' Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Plaintiffs' Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the course of the Action but have incurred over 13,000 hours of time for a total lodestar of $7,525,051.75 and have incurred $335,119.93 in expenses in prosecuting the Action for the benefit of the Settlement Class.

122. Plaintiffs' Counsel also bore the risk that no recovery would be achieved (or that a judgment could not be collected, in whole or in part). Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured.

123. Plaintiffs' Counsel know from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to convince sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

124. Plaintiffs' Counsel are aware of many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a competent judge or jury following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.

125. For example, since the enactment of the PSLRA, there has been a trend towards dismissal of actions with prejudice at the pleading or summary judgment stage. Indeed, over one-half of securities class actions are dismissed before ever reaching the merits. NERA reports that between 2000 and 2013, motions to dismiss were granted in 48% of securities class actions in which they were filed and the Plaintiffs voluntarily dismissed in an additional 8% of cases, leaving only 44% of cases to proceed to discovery. *See* NERA Report at 18, attached hereto as Ex. 2.

126. Federal appellate reports are filled with opinions affirming dismissals with prejudice in securities cases. The many appellate decisions affirming summary judgments and directed verdicts for defendants show that surviving a motion to dismiss is not a guarantee of recovery. *See, e.g., Oracle Corp., Securities Litigation*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Scientific-Atlanta, Inc.*, 489 Fed. App'x. 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig*, 669 F.3d 68 (1st Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l Inc. Sec. Litig.*, 14 Fed. App'x. 714 (8th Cir. 2001); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001); *Greebel v. FTP Software, Inc.*, 194 F.3d 185 (1st Cir. 1999); *Longman v. Food Lion, Inc.*, 197 F.3d 675 (4th Cir. 1999); *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609 (4th Cir. 1999); *In re Comshare Inc. Sec. Litig.*, 183 F.3d 542 (6th Cir. 1999); *Levitin v. PaineWebber, Inc.*, 159 F.3d 698 (2d Cir. 1998); *Silver v. H&R Block Inc.*, 105 F.3d 394 (8th Cir. 1997).

127. Getting past a motion to dismiss and successfully opposing a motion for summary judgment is not a guarantee that plaintiffs will prevail at trial. Indeed, while only a few securities class actions have been tried before a jury, several have been lost in their entirety, such as *In re JDS Uniphase Securities Litigation*, Case No. C-02-1486 CW (EDL), slip op. (N.D. Cal. Nov. 27, 2007), or

substantially lost as to the main case, such as *In re Clarent Corp. Securities Litigation*, Case No. C-01-3361 CRB, slip op. (N.D. Cal. Feb. 16, 2005). Moreover, even plaintiffs who succeed at trial may find their verdict overturned on appeal. *See, e.g.*, *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (en banc) (reversing plaintiffs' verdict for securities fraud and ordering entry of judgment for defendants); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (same). Even when plaintiffs win a jury verdict, they still face substantial challenges in securing a recovery. *See, e.g.*, *In re Apollo Grp., Inc. Sec. Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3073731 (D. Ariz. Aug. 4, 2008), *rev'd*, 2010 5927988 (9th Cir. 2010) (trial court tossing unanimous verdict for plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals and judgment re-entered after denial by the Supreme Court of the United States of defendants' Petition for Writ of Certiorari).

128. Changes in the law through legislation or judicial decree, such as *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 272 (2010) (limiting the ability of investors on non-US stock exchanges to recover), can also be catastrophic, frequently affecting contingent counsel's entire inventory of pending cases. These are very real threats.

129. Losses such as those described above are exceedingly expensive. The fees that are awarded in successful cases are used to cover enormous overhead expenses incurred during the course of litigations and are taxed by federal, state, and local authorities.

130. Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations

pertaining to the duties of officers and directors of public companies. Vigorous private enforcement of the federal securities laws and state corporation laws can only occur if the private plaintiffs can obtain some semblance of parity in representation with that available to large corporate interests. If this important policy is to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the enormous risks undertaken with a clear view of the economics of a securities class action.

131. When our firms undertook to act for Lead Plaintiffs and the Class in this matter, we were aware that the only way we would be compensated was to achieve a successful result. The benefits conferred on the members of the Settlement Class by the Settlement are particularly noteworthy in that a common fund worth $57 million (plus interest) was obtained for the Settlement Class despite the existence of substantial risks, a period when the case was dismissed and Defendants' zealous and vigorous defense by outstanding lawyers and law firms.

132. Here, Plaintiffs' Counsel's persistent effort in the face of substantial risks and uncertainties have resulted in a significant and immediate recovery for the benefit of the Settlement Class. In circumstances such as these, and in consideration of Plaintiffs' Counsel's hard work and the very favorable result achieved, the requested fee of 25% of the Settlement Fund and payment of $335,119.93 in expenses is reasonable and should be approved.

C. A Lodestar Cross-Check Supports The Requested Award Of Attorneys' Fees

133. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting this case and arriving at the present Settlement in the face of serious hurdles has been time-consuming and challenging. As more fully set forth above, the Action was prosecuted for more than two years and settled only after Plaintiffs' Counsel overcame multiple challenges. Among other efforts,

Plaintiffs' Counsel conducted a comprehensive investigation into the Class's claims; researched and prepared two detailed complaints; briefed two extensive oppositions to Defendants' two motions to dismiss and successfully opposed Defendants' motion for reconsideration; obtained and reviewed over 314,000 pages of documents; consulted with experts and consultants; and engaged in a hard-fought settlement process with experienced defense counsel.

134. At all times throughout the pendency of the Action, Plaintiffs' Counsel's efforts were driven and focused on advancing the litigation to bring about the most successful outcome for the Class, whether through settlement or trial, by the most efficient means necessary.

135. Attached hereto are declarations from Plaintiffs' Counsel, which are submitted in support of the request for an award of attorneys' fees and payment of litigation expenses. *See* Decl. of Jonathan Gardner on Behalf of Labaton Sucharow LLP in Support of Pls.' Counsel's Mot. for Award of Attys' Fees & Payment of Expenses (attached hereto as Ex. 9); Decl. of Gregg S. Levin on Behalf of Motley Rice LLC in Support of Pls.' Counsel's Mot. for Award of Attys' Fees & Payment of Expenses (attached hereto as Ex. 10); Decl. of Stephen R. Basser on Behalf of Barrack, Rodos & Bacine in Support of Pls.' Counsel's Mot. for Award of Attys' Fees & Payment of Expenses (attached hereto as Ex. 11).

136. Included with these declarations are schedules that summarize the lodestar of each firm, as well as the expenses incurred by category (the "Fee and Expense Schedules").[8] The attached declarations and the Fee and Expense Schedules report the amount of time spent by each attorney and professional

[8] Attached hereto as Ex. 12 is a summary table of the lodestars and expenses of Plaintiffs' Counsel.

support staff employed by Plaintiffs' Counsel and the lodestar calculations based on their billing rates. As set forth in each declaration, the declarations were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court.

137. The hourly billing rates of Plaintiffs' Counsel here range from $975 to $525 for partners, $850 to $550 for of counsel/senior counsel, and $690 to $350 for other attorneys. *See* Exs. 9 - B, 10 - B, 11 - B. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary. Ex. 13, attached hereto, is a table of billing rates for major defense firms compiled by Labaton Sucharow from fee applications submitted by such firms in bankruptcy proceedings nationwide in 2013. Similarly, the *National Law Journal*'s annual survey of law firm billing rates in 2013 shows that average partner billing rates among the nation's largest firms ranged from $930 to $1,055 per hour and average associate billing rates ranged from $590 to $670 per hour. *See* Ex. 14 attached hereto. With respect to defense counsel in this Action, the *National Law Journal* reported that Morgan Lewis Bockius' 2013 partner billing rates ranged from $765 to $430 per hour, with an average partner rate of $620, and its associate rates ranged from $585 to $270, with an average rate of $390 per hour. Gibson Dunn & Crutcher partner billing rates ranged from $1,800 to $765 per hour, with an average partner rate of $980, and its associate rates ranged from $930 to $175 with an average rate of $590 per hour. Munger, Tolles and Fenwick did not participate in the survey. *Available at* http://www.nationallawjournal.com.

138. A lodestar cross-check supports the requested attorneys' fees. A lodestar cross-check can be performed by multiplying the number of hours expended in the litigation by the hourly rates of the attorneys. While a lodestar

cross-check is often a useful tool in determining the reasonability of a fee request, whether or not to perform one is within the Court's discretion.

139. Here, Plaintiffs' Counsel have collectively expended more than 13,000 hours in the prosecution and investigation of the Action. Co-Lead Counsel allocated work among Plaintiffs' Counsel and the three firms worked closely to avoid duplication of effort and to ensure efficient prosecution of the Action. The resulting collective lodestar is $7,525,051.75. Pursuant to a lodestar "cross-check," the requested fee of 25% of the Settlement Fund ($14,250,000) results in a reasonable "multiplier" of 1.89 on the lodestar, which does not include any time that will necessarily be spent from this date forward administering the Settlement and moving for a distribution order. As detailed in Plaintiffs' Counsel's brief in support of its fee request, this level of multiplier is well within range of multipliers approved in this Circuit.

D. Standing And Expertise Of Co-Lead Counsel

140. The law firms prosecuting this case, Co-Lead Counsel Labaton Sucharow and Motley Rice, and additional counsel, Barrack, Rodos & Bacine, are among the most experienced and skilled securities litigation law firms in the field. The expertise and experience of Plaintiffs' Counsel and their attorneys involved in this litigation are described in Exs. 9 - B; 10 - B; and 11 - B, annexed hereto. Since passage of the PSLRA, each of these firms has been approved by courts to serve as lead counsel in numerous securities class actions throughout the United States. Each of these firms has acted as lead counsel in several of the most significant federal securities class actions in history. Here, attorneys with each of these firms have devoted considerable time and effort to this case, thereby greatly benefiting the outcome by bringing to bear well over 100 years of collective experience and litigation skills and achieving an outstanding result for the Settlement Class.

141. Labaton Sucharow has served as lead counsel in a number of high profile matters, for example: *In re American International Group, Inc. Securities Litigation*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re HealthSouth Corp. Securities Litigation*, No. 03-1501 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than $600 million); and *In re Countrywide Securities Litigation*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than $600 million). *See* Ex. 9 - B.

142. Motley Rice has served as lead counsel in several high profile matters which, during the last several years alone, have recovered hundreds of millions of dollars for investors. Motley Rice's recent class action work includes *Alaska Electrical Pension Fund v. Pharmacia Corp.*, Consol. No. 03-1519 (AET) (D.N.J.) (representing PACE Industry Union-Management Pension Fund and reaching $164 million settlement); *Minneapolis Firefighters' Relief Ass'n v. Medtronic, Inc.*, No. 08-6324 (PAM/AJB) (D. Minn.) (representing Union Asset Management Holding AG and reaching $85 million settlement); *City of Sterling Heights General Employees' Retirement System v. Hospira, Inc.*, No. 11 C 8332 (N.D. Ill.) (representing KBC Asset Management NV and Sheet Metal Workers National Pension Fund and reaching $60 million settlement, pending final court approval); *South Ferry LP #2 v. Killinger*, No. C04-1599C (W.D. Wash.) (regarding Washington Mutual, Inc.) (representing Metzler Investment GmbH and reaching $41.5 million settlement); and *In re Dell Inc., Securities Litigation*, No. A-06-CA-726-SS (W.D. Tex.) (representing Union Asset Management Holding AG and reaching $40 million settlement). *See* Ex. 10 - B.

143. Additional counsel, Barrack Rodos & Bacine, has extensive experience litigating securities class actions and has successfully prosecuted numerous securities fraud class actions on behalf of injured investors. *See* Ex. 11 - B. Barrack, Rodos & Bacine has been appointed as lead counsel in dozens of securities class actions, including more than fifty filed since passage of the PSLRA. Barrack, Rodos & Bacine served as co-lead counsel in *In re Cendant Corp. Securities Litigation*, 109 F. Supp. 2d 235 (D.N.J. 2000), before the Honorable William H. Walls. In *Cendant*, Barrack, Rodos & Bacine obtained settlements with defendants totaling more than $3.1 billion. Barrack, Rodos & Bacine also served as co-lead counsel for the New York State Common Retirement Fund, the sole lead plaintiff in *In re WorldCom, Inc. Securities Litigation*, Master File No. 02-Civ-3288 (DLC) (S.D.N.Y.), in which the court approved a settlement in excess of $6.1 billion. Barrack, Rodos & Bacine also was co-lead counsel in *In re McKesson HBOC, Inc. Securities Litigation*, Master File No. CV-99-20743 RMW, which was litigated before this Court, ultimately settling for a total of $1.0425 billion from all defendants. The firm obtained a unanimous jury verdict in favor of the plaintiff class in *In re Apollo Group, Inc. Securities Litigation*, CV 04-2147-PHX-JAT (D. Ariz.), ultimately securing a $145 million recovery for class members. After trial, the court commented upon and noted counsel's "professionalism . . . civility . . . and the integrity that you have all demonstrated and exuded throughout the handling of this case." *Id*.

E. Standing And Caliber Of Defense Counsel

144. Defendants were represented throughout this action by Morgan, Lewis & Bockius and Gibson, Dunn & Crutcher (counsel for HP), Munger Tolles & Olson (counsel for Apotheker), Fenwick & West (counsel for Bradley), and Wilson Sonsini Goodrich & Rosati (counsel for Lesjak). These firms are among the finest and largest law firms in the country possessing substantial resources and

expertise in the defense of complex securities litigation. These prominent law firms and attorneys zealously provided their clients with a very vigorous and aggressive defense of this Action. In the face of this formidable opposition, Plaintiffs' Counsel developed the case and persuaded the defendants and their insurance carriers to resolve this Action on behalf of the Settlement Class and on a basis that is adequate, fair and reasonable.

F. Request For Litigation Expenses

145. Co-Lead Counsel also seek payment from the Settlement Fund of $335,119.93 in litigation expenses reasonably and necessarily incurred by Plaintiffs' Counsel in connection with commencing and prosecuting the claims against Defendants.

146. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Thus, Plaintiffs' Counsel were motivated to, and did, take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

147. As set forth in the Fee and Expense Schedules, Plaintiffs' Counsel have incurred a total of $335,119.93 in unpaid litigation expenses in connection with the prosecution of the Action. *See* Exs. 9 ¶¶ 8-10; 10 ¶¶ 8-9; 11 ¶¶ 9-10. As attested to, these expenses are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are set forth in detail in each firm's declaration, each of which identifies the specific category of expense (e.g., online/computer research, experts' fees, travel costs, photocopying, telephone, fax and postage expenses).

These expense items are billed separately and such charges are not duplicated in the respective firms' billing rates.

148. Co-Lead Counsel maintained strict control over the litigation expenses. Indeed, many of the litigation expenses were paid out of a litigation fund created and maintained by Labaton Sucharow. *See* Ex. 9 ¶ 10.

149. Of the total amount of expenses, more than $130,000, or approximately 40% of total litigation expenses, was expended on experts.

150. Additionally, Plaintiffs' Counsel paid more than $33,175.00 in mediation fees assessed by the mediator in this matter, Judge Phillips.

151. The other expenses for which Co-Lead Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, travel costs, legal and factual research, duplicating costs, long distance telephone and facsimile charges, and postage and delivery expenses.

152. All of the litigation expenses incurred, which total $335,119.93, were necessary to the successful prosecution and resolution of the claims against Defendants.

G. The Costs And Expenses Requested By Lead Plaintiffs Are Fair And Reasonable

153. Additionally, Lead Plaintiffs seek the reasonable lost wages and expenses, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), that they directly incurred in connection with their representation of the class in the total amount of $13,546.85. *See* Ex. 12. The amount of time and effort devoted to this Action by Lead Plaintiffs is detailed in their separate declarations. *See* Ex. 5 ¶¶ 4; 8-13; Ex. 6 ¶¶ 4, 8-9; Ex. 7 ¶¶ 4, 8-11.

154. ATRS hereby requests $5.654.61 as reimbursement for its lost wages and expenses to represent the class. *See* Ex. 5.

155. UAMH hereby requests $4,970.00 as reimbursement for its lost wages and expenses to represent the class. *See* Ex. 6.

156. LPF hereby requests $2,922.24 as reimbursement for its lost wages and expenses to represent the class. *See* Ex. 7.

157. Plaintiffs' Counsel respectfully submit that these modest awards, which will be paid directly to the Lead Plaintiffs, are fully consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role in bringing and supervising actions of this type.

158. The Notice apprised the Settlement Class that Co-Lead Counsel might seek payment of Lead Plaintiffs' expenses and lost wages in an amount not to exceed $75,000. *See* Ex. 3 - A at 2. The amount requested herein is well below this cap. To date, no objection to the requests by Lead Plaintiffs has been raised.

159. In view of the complex nature of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the class. Accordingly, we respectfully submit that the expenses incurred by Plaintiffs' Counsel and Lead Plaintiffs should be paid in full from the Settlement Fund.

H. The Reaction Of The Settlement Class To The Fee And Expense Application

160. As mentioned above, consistent with the Preliminary Approval Order, more than 800,000 Notices have been mailed to potential Settlement Class Members advising them that Plaintiffs' Counsel would seek an award of attorneys' fees not to exceed 25% of the Settlement Fund, and payment of expenses in an amount not greater than $600,000 (including the reasonable expenses and lost wages of Lead Plaintiffs). *See* Ex. 3 - A at 2, 7. Additionally, the Summary Notice was published in *The Wall Street Journal* and disseminated over the *PR Newswire*. Ex. 3 ¶ 7. The Notice and the Settlement Agreement have also been available on the settlement website maintained by GCG. *Id.* ¶ 8.

161. While the deadline set by the Court for Settlement Class Members to object to the requested fees and expenses has not yet passed, to date Co-Lead Counsel have received no objections. Co-Lead Counsel will respond to any objections received by the August 25, 2014 deadline in its reply papers, which are due September 8, 2014.

XI. MISCELLANEOUS EXHIBITS

162. Attached hereto as Ex. 15 is a compendium of unreported cases, in alphabetical order, cited in the accompanying Memorandum of Law in Support of Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses.

163. Attached hereto as Ex. 16 is a true and correct copy of Charles Silver, *Class Actions in the Gulf South Symposium: Due Process and the Lodestar Method: You Can't Get There from Here*, 74 Tul. L. Rev. 1809 (2000).

XII. CONCLUSION

164. In view of the significant recovery to the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Lead Plaintiffs and Co-Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, and the standing and experience of Plaintiffs' Counsel, as described above and in the accompanying memorandum of law, Plaintiffs' Counsel respectfully submit that a fee in the amount of 25% of the Settlement Fund be awarded, that litigation expenses in the amount of $335,119.93 be paid in full, and that Lead Plaintiffs' lost wages and expenses be similarly reimbursed in full.

I declare, under penalty of perjury, under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of August, 2014 at New York, New York.

Jonathan Gardner

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of August, 2014 at Mount Pleasant, South Carolina.

Gregg S. Levin

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the attached Electronic Mail Notice List. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 11, 2014.

By: *_/s/ Jonathan Gardner*
Jonathan Gardner *(pro hac vice)*
jgardner@labaton.com
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Mailing Information for a Case 8:11-cv-01404-AG-RNB In re Hewlett-Packard Company Securities Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Marie Bafus**
  mbafus@fenwick.com,vsheehan@fenwick.com,pnichols@fenwick.com
- **Jennifer R Bagosy**
  jbagosy@morganlewis.com,krosello@morganlewis.com
- **Stephen R Basser**
  sbasser@barrack.com,lnapoleon@barrack.com
- **Joel H Bernstein**
  jbernstein@labaton.com,rviczian@labaton.com,ElectronicCaseFiling@labaton.com,lmehringer@labaton.com,sauer@labaton.com
- **Jennifer C Bretan**
  jbretan@fenwick.com,kayoung@fenwick.com
- **Monique E Cho**
  mcho@morganlewis.com
- **Brian Danitz**
  bdanitz@wsgr.com,pbaird@wsgr.com
- **Vanessa De Simone**
  vDeSimone@labaton.com
- **Boris Feldman**
  boris.feldman@wsgr.com
- **Daniel S Floyd**
  dfloyd@gibsondunn.com,jarneson@gibsondunn.com
- **Jonathan Gardner**
  jgardner@labaton.com
- **Tahir I Golden**
  tgolden@fenwick.com,vsheehan@fenwick.com
- **David J Goldsmith**
  dgoldsmith@labaton.com,lmehringer@labaton.com,sauer@labaton.com
- **Robert Elliot Gooding , Jr**
  rgooding@morganlewis.com,krosello@morganlewis.com
- **David Samuel Han**
  dhan@gibsondunn.com
- **Katherine L Henderson**
  khenderson@wsgr.com
- **Dean J Kitchens**
  dkitchens@gibsondunn.com,MOstrye@gibsondunn.com
- **Catherine J Kowalewski**
  katek@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Mark I Labaton**
  MLabaton@iflcounsel.com,PGioitta-Zimmer@iflcounsel.com,pgioitta-zimmer@iflcounsel.com
- **Gregg Steven Levin**
  glevin@motleyrice.com

- **Christopher F Moriarty**
  cmoriarty@motleyrice.com
- **Kevin P Muck**
  kmuck@fenwick.com,vsheehan@fenwick.com,kayoung@fenwick.com
- **Angelina Nguyen**
  anguyen@labaton.com
- **William S Norton**
  bnorton@motleyrice.com
- **Brian Oliver O'Mara**
  bomara@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Lance V Oliver**
  loliver@motleyrice.com
- **Vincent Ian Parrett**
  vparrett@be-law.com,lvargem@be-law.com
- **Karen Pieslak Pohlmann**
  kpohlmann@morganlewis.com
- **Darren J Robbins**
  e_file_sd@rgrdlaw.com
- **Paul J Scarlato**
  pscarlato@labaton.com
- **Steven M Schatz**
  sschatz@wsgr.com
- **Laura Danielle Smolowe**
  laura.smolowe@mto.com,avis.fields@mto.com,gregory.weingart@mto.com,dan.munson@mto.com
- **Marc J Sonnenfeld**
  msonnenfeld@morganlewis.com
- **Michael W Stocker**
  mstocker@labaton.com,drogers@labaton.com,ravan@labaton.com,lmehringer@labaton.com,ckeller@labaton.com
- **Irina Vasilchenko**
  ivasilchenko@labaton.com
- **David C Walton**
  davew@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Samuel M Ward**
  sward@barrack.com,lnapoleon@barrack.com
- **Nicole M Zeiss**
  NZeiss@labaton.com,Settlementquestions@labaton.com,EWierzbowski@labaton.com

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