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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES LITIGATION	No. 2:09-cv-01558-GMN-VCF
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS DATE: December 15, 2015 TIME: 9:00 a.m. CTRM: The Honorable Gloria M. Navarro

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure ("Rule 23(e)"), Court-appointed Lead Plaintiffs and proposed class representatives, Arkansas Teacher Retirement System, Philadelphia Board of Pensions and Retirement, Luzerne County Retirement System, and Stichting Pensioenfonds Metaal en Techniek (collectively, "Lead Plaintiffs"), by and through their counsel Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), Nix, Patterson & Roach, LLP ("NPR") and Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz") (collectively, "Lead Counsel"), respectfully submit this memorandum of points and authorities in support of their motion for an order: (i) approving the proposed Settlement of the above-captioned securities class action (the "Action"), which the Court preliminarily approved on September 11, 2015 (Dkt. No. 352) (the "Notice Order"); (ii) certifying the Class for settlement purposes;[1] and (iii) approving the proposed plan for allocating the settlement proceeds to the Class (the "Plan of Allocation" or the "Plan").[2]

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[1] By its Notice Order, the Court preliminarily certified, pursuant to FED. R. CIV. P. 23(a) and 23(b)(3) and solely for purposes of the Settlement, a class comprised of all Persons or entities who, between August 2, 2007 and March 5, 2009, inclusive, purchased or otherwise acquired the publicly-traded securities of MGM Mirage (now known as MGM Resorts International) ("MGM" or the "Company"), and were allegedly damaged thereby (the "Class"). Dkt. No. 352, ¶¶3-5. Since entry of the Notice Order, nothing has changed to alter the propriety of the Court's certification. Thus, for all the reasons stated in the Memorandum of Points and Authorities in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Certification of Settlement Class (Dkt. No. 350), incorporated herein by reference, Lead Plaintiffs respectfully request that the Court affirm its determinations in the Notice Order and finally certify the Class for purposes of carrying out the Settlement.

[2] Capitalized terms not defined herein shall have those meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 28, 2015 (Dkt. No. 351) (the "Stipulation") and the Joint Declaration of Brian O. O'Mara, Jeffrey J. Angelovich and Eli R. Greenstein in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation of Settlement Proceeds; and Award of Attorneys' Fees and Expenses and Lead Plaintiffs' Expenses (the "Joint Declaration") submitted herewith. Unless otherwise noted, all emphasis is added and internal citations are omitted.

I. INTRODUCTION

Pursuant to the terms of the Stipulation, Lead Plaintiffs have obtained $75,000,000 in cash for the Class in exchange for the dismissal of all claims brought in the Action and a full release of claims against Defendants and their Related Parties.[3] The proposed Settlement is an excellent result for the Class by any measure. Indeed, if approved, the Settlement will be the largest securities class action recovery in the history of this District–exceeding the aggregate amount of the next three largest securities class action recoveries ***combined***.[4] Notably, this outstanding recovery was obtained in the absence of a financial restatement by the Company or regulatory or governmental agency investigation related to the same conduct. Joint Decl., ¶7.

In addition to providing an immediate monetary recovery for the Class, the Settlement avoids the substantial risks and expense of continued litigation, including the risk of recovering less than the Settlement Amount—or no recovery at all—after years of protracted litigation. As described below and in the accompanying Joint Declaration, Lead Plaintiffs faced vigorous opposition from Defendants at every stage of the Action, including legal and factual challenges to virtually every element of Lead Plaintiffs' claims. Had the Settlement not been reached, Lead

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[3] Defendants are MGM, James J. Murren, Daniel J. D'Arrigo, Robert C. Baldwin, and Deborah H. Lanni, as Co-Executor of the Estate of J. Terrence Lanni. Defendants' Related Parties (as defined in ¶1.19 of the Stipulation) are each of MGM or an Individual Defendant's past or present directors, officers, employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling shareholders, attorneys, advisors, accountants, auditors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, estates, executors, administrators, heirs, related or affiliated entities, any entity in which MGM or an Individual Defendant has a controlling interest, any member of any Individual Defendant's immediate family, or any trust of which any Individual Defendant is the settlor or which is for the benefit of any member of an Individual Defendant's immediate family.

[4] The next three largest securities class action recoveries in this District are: (i) *Brown v. Kinross Gold U.S.A., Inc.*, CV-S-02-0605-PMP-(RJJ) (D. Nev. 2009) ($29,250,000), (ii) *In re PurchasePro.com, Inc. Sec. Litig.*, Master File No. CV-S-01-0483-JLQ (D. Nev. 2007) ($24,200,000), and (iii) *In re Alliance Gaming Corp. Sec. Litig.*, Master File No. CV-S-04-0821-BES-PAL (D. Nev. 2007) ($15,500,000), which collectively total $68,950,000—over $6 million ***less than*** the Settlement obtained here.

Plaintiffs would have faced considerable hurdles in proving their case, particularly in overcoming Defendants' aggressive defenses to scienter, falsity and loss causation and establishing the Class' full amount of damages at trial. Joint Decl., ¶¶81-90.

For example, given the magnitude and nature of the CityCenter project—a massive $9 billion construction project involving a myriad of moving parts, dozens of third parties and a complex and multi-faceted budget—Lead Plaintiffs would face substantial risk proving that Defendants had actual knowledge or were reckless in not knowing that the project was materially behind schedule for completion or that the cost estimate for CityCenter was understated. *Id*. ¶¶84-85. Lead Plaintiffs would also face rigorous challenges to loss causation and damages, particularly considering the fraud alleged in this case occurred during an unprecedented economic crisis and credit crunch, and also coincided with the near-insolvency of MGM's joint venture partner in the CityCenter project, Dubai World. *Id*. ¶¶86-87. Additionally, Lead Plaintiffs' motion for class certification was *sub judice* when the Settlement was reached, and although Lead Plaintiffs felt confident that their motion would be granted, the outcome was far from certain. *Id*. ¶¶78-80.

The reasonableness of the Settlement is also supported by the extensive work performed in this case, all of which provided Lead Plaintiffs and Lead Counsel with a detailed record to assess the strengths, weaknesses and risks of continued litigation. The Settlement was reached only after nearly six years of vigorous litigation followed by well-informed, arm's-length settlement negotiations facilitated by the Honorable Layn R. Phillips (Ret.)—a former United States District Judge and a highly experienced and respected mediator. *Id*. ¶¶5-6. Before reaching the Settlement with Defendants, Lead Plaintiffs, through Lead Counsel, undertook extensive efforts to prosecute the Class' claims including, *inter alia*: (i) conducting an extensive

and detailed investigation into the claims asserted against Defendants, including interviews of numerous witnesses such as former MGM employees, the general contractor for the CityCenter project and other knowledgeable third parties; (ii) researching and drafting two comprehensive consolidated complaints; (iii) opposing two rounds of motions to dismiss; (iv) consulting with multiple experts and consultants; (v) engaging in extensive fact discovery, including the review of a significant portion of the more than 9 million pages of documents produced by Defendants and third parties to date; (vi) researching, developing and preparing extensive class certification briefing and engaging in rigorous class certification discovery, including numerous expert, client and third-party depositions; (vii) briefing multiple complex discovery motions; and (viii) preparing comprehensive briefs and evidentiary presentations in preparation for mediation. Joint Decl., ¶5. Following two formal full-day mediation sessions with Judge Phillips in May and June 2015, and several weeks of follow-up negotiations, the parties accepted a mediator's proposal to resolve the Action for $75 million on July 10, 2015. *Id*. ¶6. According to Judge Phillips, the "Settlement represents a well-reasoned and sound resolution of highly uncertain litigation and [] the result is fair, adequate, reasonable and in the best interests of the Class." Dkt. No. 356 (the "Phillips Decl."), at ¶14.

The Settlement is also fully supported by Lead Plaintiffs—four large, sophisticated institutional investors of the type favored by Congress when passing the Private Securities Litigation Reform Act of 1995 ("PSLRA"). All four Lead Plaintiffs have closely monitored and participated in this Action, including sitting for depositions, responding to substantial discovery, and supervising the negotiations leading to the resolution of the Action, and recommend that the Settlement be approved. Joint Decl., ¶17.[5] Further, Lead Counsel—comprised of three law

[5] *See* declarations of Lead Plaintiffs submitted herewith.

firms with extensive experience in prosecuting securities class actions—strongly believe that the Settlement is an outstanding result and in the best interests of the Class. Joint Decl., ¶19.

In accordance with the Court's September 11, 2015 Notice Order, the Court-appointed Claims Administrator, Gilardi & Co. LLC ("Gilardi"), has mailed a total of 41,984 copies of the Notice and Proof of Claim and Release form to potential Class Members and nominees as of October 22, 2015.[6] *Id*. ¶ 95. As ordered by the Court and set forth in the Notice, requests for exclusion from the Class and objections to the Settlement, the Plan of Allocation and/or Lead Counsel's request for attorneys' fees and expenses are due to be received no later than November 24, 2015. To date, there have been no objections to the Settlement or any aspect thereof. *Id*. ¶99. In addition, not a single request for exclusion from the Class has been received thus far. *Id*.; *see also* Gilardi Decl., ¶15.[7]

Lead Plaintiffs and Lead Counsel recognize the risk and expense of continued litigation and firmly believe that the Settlement represents an outstanding result for the Class. In addition, the Plan of Allocation—which was developed with the assistance of Lead Plaintiffs' damages expert—is a fair and reasonable method to allocate the Net Settlement Fund to the Class.

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[6] *See* Declaration of Carole K. Sylvester Regarding (A) Mailing of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Posting on Settlement Website, and (D) Requests for Exclusion Received to Date (Dkt. No. 355) (the "Gilardi Decl."), at ¶11. In addition, the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire*. *Id*. ¶14. Information regarding the Settlement, including downloadable copies of the Notice and Proof of Claim and Release, has also been posted on the settlement website, www.mgmmiragesecuritieslitigation.com, and Gilardi has established and currently maintains a toll-free telephone number to accommodate potential Class Member inquiries. *Id*. ¶¶12-13.

[7] Lead Plaintiffs will address any objections and/or exclusion requests received after the date of this submission in their reply brief to be filed on or before December 8, 2015—which is after the deadline for objections and requests for exclusion.

Accordingly, Lead Plaintiffs respectfully request that the Court grant approval of the Settlement and Plan of Allocation.

II. FACTUAL BACKGROUND AND HISTORY OF THE ACTION

This Action involves alleged material misrepresentations and omissions related to CityCenter—a multi-building development featuring a casino, hotel, residential units, retail, restaurants and entertainment venues–which, at the time of its inception in November 2004, was the largest privately developed construction project in the western hemisphere.[8] Lead Plaintiffs alleged, among other things, that, from August 2, 2007 through March 5, 2009, inclusive (the "Class Period"), Defendants misled MGM investors regarding the Company's financial condition, including the budget, cost and schedule for CityCenter; MGM's ability to survive and thrive during the U.S. financial crisis; and its ability to obtain adequate capital to finance CityCenter. *See generally* FAC, ¶¶1-8. Lead Plaintiffs further asserted that Defendants' alleged material misstatements and omissions artificially inflated the prices of MGM's publicly-traded securities during the Class Period and that, when the relevant truth regarding CityCenter became apparent, the prices of these securities declined, causing significant economic losses to investors. *Id*. ¶¶8, 173-76. In fact, by the end of the Class Period, the Company's common stock–which reached a high of $99.75 per share during the Class Period–was trading at $1.89 per share and its debt securities were trading at a fraction of their face value. *Id*. ¶¶175, 189.

The factual and procedural background of this case is well known to the Court. In the interest of brevity, Lead Plaintiffs will not recite the full factual and procedural background of this Action again herein, but instead respectfully refer the Court to the accompanying Joint

[8] *See* First Amended Complaint for Violations of Federal Securities Laws dated April 17, 2012 ("FAC") (Dkt. No. 152), at ¶1.

Declaration, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated as if set forth fully herein. Joint Decl. at ¶¶20-76.[9]

III. THE SETTLEMENT WARRANTS FINAL APPROVAL UNDER RULE 23

A. Legal Standards for Judicial Approval of Class Action Settlements

A class action settlement should be approved if it is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). The authority to grant such approval lies within the sound discretion of the reviewing court. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). In exercising its discretion, however, the reviewing court must be mindful of the "strong judicial policy that favors settlements." *Id.* In particular, it is well-established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Browning v. MCI*, 3:00-cv-00633-ECR-VPC, 2010 U.S. Dist. LEXIS 75736, at *20-21 (D. Nev. June 30, 2010); *see also Lee v. Enter. Leasing Company-West*, 3:10-CV-00326-LRH-WGC, 2015 U.S. Dist. LEXIS 64027, at *10-11 (D. Nev. May 15, 2015) (noting that "[t]he Ninth Circuit has recognized a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'"); *Officers for Justice v. Civil Serv. Comm'n of City and Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

The court's role in reviewing a proposed settlement is essentially twofold—it must determine whether the settlement is: (i) fair, reasonable, and adequate; and (ii) untainted by fraud or collusion. *See Officers for Justice*, 688 F.2d at 625; *Ramirez v. Ghilotti Bros. Inc.*, No. C 12-04590 CRB, 2014 U.S. Dist. LEXIS 56038, at *2 (N.D. Cal. Apr. 21, 2014). Recognizing that a

[9] The Joint Declaration also details, among other things, the efforts undertaken by Lead Plaintiffs and Lead Counsel on behalf of the Class; the value of the Settlement to the Class in light of the risk and uncertainties of continued litigation; and the terms of the Plan of Allocation. In addition, Lead Plaintiffs are also simultaneously submitting to the Court, on behalf of Lead Counsel, the Memorandum of Points and Authorities in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses.

proposed settlement represents a consensual agreement by the negotiating parties, the reviewing court need not "reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Officers for Justice*, 688 F.2d at 625; *see also In re Ecotality, Inc. Sec. Litig.*, Master File No. 13-cv-03791-SC, 2015 U.S. Dist. LEXIS 114804, at *7 (N.D. Cal. Aug. 28, 2015) ("The Court, in evaluating the agreement of the parties, is not to reach the merits of the case or to form conclusions about the underlying questions of law or fact."). The ultimate question is whether, after reviewing the proposed settlement "as a whole," it is "fundamentally fair within the meaning of Rule 23(e)"—not "whether the settlement is perfect in the estimation of the reviewing court." *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

Moreover, courts have found that a strong initial presumption of fairness attaches to a proposed settlement if the settlement is reached by experienced counsel after arm's-length negotiations. *See Fulford v. Logitech, Inc.*, Case No. 08-cv-02041 MMC, 2010 U.S. Dist. LEXIS 29042, at *7 (N.D. Cal. Mar. 5, 2010) ("Counsel for both parties ha[d] extensive experience in complex litigation, and they reached the Settlement [] after vigorous litigation and extensive arm's-length negotiation about the specific terms of the Settlement."). Here, the $75 million Settlement was reached by counsel well-versed in the prosecution of securities class actions following nearly six years of contentious litigation—including extensive investigation and formal discovery—and arm's-length settlement negotiations conducted under the auspices of an experienced neutral. Joint Decl., ¶¶5, 24-76. There is no doubt that Lead Counsel were fully informed of the merits of the Action, as well as both the strengths and weaknesses of Lead

Plaintiffs' case, when the Settlement was reached. Accordingly, the Settlement is entitled to a presumption of fairness.

B. The Settlement Satisfies the Ninth Circuit's Criteria for Final Approval

A proposed settlement is fair, reasonable and adequate when "the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *Create-A-Card, Inc. v. INTUIT Inc.*, Case No. CV-07-6452 WHA, 2009 U.S. Dist. LEXIS 93989, at *7 (N.D. Cal. Sept. 22, 2009). To that end, the Ninth Circuit has identified eight factors for assessing whether a proposed settlement is proper: (1) the amount offered in settlement; (2) the strength of the plaintiff's case; (3) the risk, expense, complexity, and likely duration of further litigation; (4) the risk of maintaining a class action status throughout the trial; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the absence of fraud or collusion; and (8) the reaction of the class members to the proposed settlement. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458-59 (9th Cir. 2000). This list of factors is neither exhaustive nor in any specific order of significance. *See Officers for Justice*, 688 F.2d at 625; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375-76 (9th Cir. 1993). In fact, the "relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Enter. Leasing Company-West*, 2015 U.S. Dist. LEXIS 64027, at *12. As demonstrated herein and in the Joint Declaration, the Settlement readily satisfies each of these factors and warrants this Court's final approval.

1. The Settlement Provides a Favorable Recovery to the Class

The determination of a "reasonable" settlement is not susceptible to a mathematical equation yielding a particularized sum. *Mego*, 213 F.3d at 458. As "[s]ettlement is the offspring

of compromise[,] the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation[.]" *Officers for Justice*, 688 F.2d at 624.

Here, the result achieved is substantial. The Class will receive $75 million, less Court-awarded fees and expenses and the costs of notice and administering the Settlement. This recovery provides an immediate, tangible and significant benefit to the Class and eliminates the significant risk that the Class could recover less than the Settlement Amount, or nothing at all, if the Action continued. Joint Decl., ¶¶77, 90. As noted above, this recovery is, by far, the largest securities class action recovery in this District and 4-5 times higher than the median securities class action settlement as a percentage of estimated damages. Specifically, the Settlement here represents approximately 10% of the Class' likely recoverable damages in this Action as estimated by Lead Plaintiffs' damages expert, which greatly exceeds the median of 2.2% in 2014.[10]

[10] The median settlement as a percentage of "estimated damages" in securities cases where estimated damages are between $500-$999 million was 2.2% in 2014 and 1.8% in 2005-2013. *See* Laarni T. Bulan, et al., *Securities Class Action Settlements: 2014 Review and Analysis* (Cornerstone Research 2015), at 9. *See also, e.g., IBEW Local 697 Pension Fund v. Int'l Game Tech., Inc.*, Case No. 3:09-cv-00419-MMD-WGC, 2012 U.S. Dist. LEXIS 151498, at *9 (D. Nev. Oct. 19, 2012) (approving settlement representing "about 3.5% of the maximum damages that Plaintiffs believe could be recovered at trial"); *Weeks v. Kellogg Co.*, Case No. CV 09-08102 (MMM) (RZx), 2011 U.S. Dist. LEXIS 155472, at *53-55 & n.85 (C.D. Cal. Nov. 23, 2011) (approving "settlement amount [of] approximately 10 percent of th[e] total damages figure" because "[e]stimates of what constitutes a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)"); *In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) (approving a settlement representing 6% of potential damages); *Mego*, 213 F.3d

Had this Action proceeded, there was a real possibility that the Class would recover a smaller amount—or nothing at all after protracted litigation. For instance, Defendants would have argued that the Class' losses were primarily caused by factors other than the alleged misleading statements and omissions—namely the Great Recession and collapse of the gaming industry in 2007-2009—thereby undercutting the recoverable damages estimated by Lead Plaintiffs' damages expert. Joint Decl., ¶86. These issues of loss causation and damages would have inevitably come down to a "'battle of experts' . . . with no guarantee whom the jury would believe." *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001); *Id.* ¶87. In fact, during the class certification phase, Defendants used expert testimony to argue that complex issues involving "disaggregation" and confounding information would prevent Lead Plaintiffs from reliably establishing damages at all.[11] *Id.* Accordingly, this factor weighs heavily in favor of the Settlement.

2. The Strengths and Weaknesses of Lead Plaintiffs' Case Support the Settlement

Courts evaluating proposed class action settlements consider the strength of the plaintiffs' case and the risks of further litigation. *See, e.g.*, *Torrisi*, 8 F.3d at 1376; *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015). Indeed, by their very nature, securities class actions involve complex legal and factual issues. This Action, prosecuted under the heightened requirements of the PSLRA, was inherently risky and difficult from the outset.[12]

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at 459 (deeming a settlement amount of roughly one-sixth of the potential recovery "fair and adequate").

[11] *See* Defendants' Joint Opposition to Plaintiffs' Motion for Class Certification (Dkt. No. 303), at ¶¶19-20.

[12] Indeed, "the heightened pleading requirement of the PSLRA and the application of *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005), which poses significant risks to plaintiffs' ability to survive…summary judgment and prevailing at trial,

As Justice O'Connor aptly observed sitting by designation for the Fifth Circuit: "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

While Lead Plaintiffs and Lead Counsel are confident that the Court would have granted Lead Plaintiffs' pending motion for class certification and that they could have ultimately prevailed against Defendants, they recognize that numerous risks and uncertainties accompany further litigation of the Class' claims. Joint Decl., ¶¶81-89. Lead Plaintiffs and Lead Counsel also recognize that plaintiffs have prosecuted many securities class actions believing their cases to be meritorious, only to lose on summary judgment, at trial or on appeal. *See Nobles v. MBNA Corp.*, No. C 06-3723 CRB, 2009 U.S. Dist. LEXIS 59435, at *5 (N.D. Cal. June 29, 2009) (noting that, although "Plaintiff's claim has survived a motion to dismiss, [] success is not guaranteed if this matter were to proceed to jury trial.").[13]

i. ***The Risks of Establishing Liability***

Lead Plaintiffs faced considerable risks to establishing Defendants' liability if the Action continued. First, given the large scale and sheer magnitude of the $9 billion CityCenter project—which involved numerous contractors, engineers, architects, and other third parties and a complex, multi-faceted budget—Lead Plaintiffs faced the risk that they would be unable to prove that Defendants possessed the requisite level of scienter regarding the construction cost

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suggest that settlement here is prudent." *In re Portal Software, Inc. Sec. Litig.*, No C-03-5138 VRW, 2007 U.S. Dist. LEXIS 88886, at *8 (N.D. Cal. Nov. 26, 2007).

[13] *See, e.g.*, *In re Pfizer Sec. Litig.*, 4-CV-9866-LTS-HBP, 2014 U.S. Dist. LEXIS 92951 (S.D.N.Y. July 8, 2014) (dismissing ten-year-old litigation based on a *Daubert* ruling just before trial); *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (overturning jury verdict and award in favor of plaintiff on loss causation grounds); *In re Apollo Grp., Inc. Sec. Litig.*, No. 08-16971, 2010 U.S. App. LEXIS 14478 (9th Cir. June 23, 2010) (granting judgment to defendants and nullifying a unanimous jury verdict for plaintiffs following a two-month trial).

estimate for CityCenter and the schedule for completion. Joint Decl., ¶84. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007) (noting that scienter is a "complex and difficult [element] to establish at trial").

Second, Lead Plaintiffs also faced the risk that the Court or a jury would ultimately find that Defendants' alleged false statements were non-actionable forward-looking projections, immaterial expressions of corporate optimism, or both. *Id.* ¶85.[14] In connection with their motions to dismiss, Defendants argued that the alleged misleading statements reflected an honest, optimistic expectation that MGM would weather the financial crisis, and were not evidence of fraud. Moreover, with respect to Lead Plaintiffs' claims that CityCenter was behind schedule for completion or that its cost estimate was understated, Defendants would continue to assert that, in the end, the majority of CityCenter opened on time and the budget (despite fluctuations as expected with any complex and expansive construction project) ended up at or around the projections made by MGM during most of the Class Period. Although Lead Plaintiffs would vigorously argue that, based on documentary evidence, deposition testimony and expert analysis, Defendants' misstatements concerned present and/or historical facts that would have been important information for a reasonable investor to consider in making an investment decision about MGM, there is a possibility that the Court or a jury could disagree. Joint Decl., ¶85. In addition, given the millions of pages of documents that remained to be produced and/or reviewed at the time of settlement, there was a risk that these later-produced and/or reviewed documents would significantly undermine the FAC's allegations of falsity and scienter. *Id.* ¶81.

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[14] *See generally Woodward v. Raymond James Fin., Inc.*, 732 F. Supp. 2d 425, 436 (S.D.N.Y. 2010) ("There is no basis for inferring from this allegation that Defendants had scienter; it is much more likely that Defendants (like many other financial institutions) underestimated the magnitude of the coming economic crisis and believed that they were taking adequate risk management and cautionary measures to account for any future downturn.").

ii. ***The Risks of Establishing Loss Causation and Damages***

Lead Plaintiffs also faced formidable challenges to establishing loss causation and damages. With respect to loss causation, Defendants would continue to assert the absence of a causal link between the various price declines in MGM stock and bonds and the corrective disclosures alleged by Lead Plaintiffs, arguing that the declines were caused by industry or macroeconomic factors other than the alleged fraud (*i.e.*, the global economic crisis, the severe slump in the gaming industry, and the collapse in the Las Vegas real estate market that coincided with the fall in MGM's stock price). Joint Decl., ¶86. *See Int'l Game Tech., Inc.*, 2012 U.S. Dist. LEXIS 151498, at *8 (noting that "establishing loss causation damages may be challenging because of the historic economic downturn that occurred during the Class Period"). To bolster this argument, Defendants would point to the substantial decrease in stock and bond value experienced by various other gaming companies during this same time period.[15] Defendants would also argue that nearly 80% of the price decline in MGM's publicly-traded securities during the Class Period occurred *prior* to any of the corrective disclosures alleged in the case, thereby supporting their contention that investor losses were caused by factors unrelated to the alleged misconduct. Joint Decl., ¶86.

Further, even if Lead Plaintiffs could establish at summary judgment and trial that Defendants' alleged misstatements and omissions were a factor in causing the alleged stock price declines, Lead Plaintiffs still faced a significant risk that the Court and/or a jury would find that only a small fraction of the total damages were attributable to those statements and omissions, thus significantly reducing any recovery for the Class. Likewise, Lead Plaintiffs faced risks

[15] *See generally First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 772 (2d Cir. 1994) ("[W]hen the plaintiff's loss coincides with a marketwide phenomenon causing comparable losses to other investors, the prospect that the plaintiff's loss was caused by the fraud decreases.").

associated with issues of "disaggregation" (*i.e.*, the jury would not be able to untangle losses attributable to the alleged misrepresentations and omissions from those tied to other non-fraud factors, if any). Moreover, the parties' differing arguments on loss causation and damages hinged upon extensive expert discovery and testimony. Joint Decl., ¶87. Although Lead Plaintiffs believe they would have been able to present expert testimony to meet their burden on loss causation and damages, "establishing damages at trial would lead to a 'battle of experts' … with no guarantee whom the jury would believe." *Cendant Corp.*, 264 F.3d at 239.

Simply put, had this Action proceeded, there existed substantial risk and uncertainty concerning liability, causation and damages. Instead, if the Settlement is approved, the Class will receive a significant recovery without undertaking these risks, which weighs strongly in favor of the Settlement.

3. The Risk, Expense, Complexity and Likely Duration of the Litigation

Courts consistently recognize that the risk, expense, complexity, and possible duration of the litigation are key factors in evaluating the reasonableness of a settlement. *See Torrisi*, 8 F.3d at 1375-76 (finding that "the inherent risks of litigation . . . and the cost, complexity and time of fully litigating the case" rendered the settlement fair). Thus, a court "shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004); *see also Patel v. Axesstel, Inc. et al.*, Case No. 3:14-CV-1037-CAB-BGS, 2015 U.S. Dist. LEXIS 146949, at *13 (S.D. Cal. Oct. 23, 2015) ("In most situation, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

It is well known that class action litigation is inherently complex. *See Nobles*, 2009 U.S. Dist. LEXIS 59435, at *5 (finding a proposed settlement proper "given the inherent difficulty of prevailing in class action litigation"). Certainly, this securities class action, prosecuted under the more restrictive provisions of the PSLRA and involving a massive, unprecedented construction project involving numerous moving parts, various third parties and a complex, multi-faceted budget, is no exception. Joint Decl., ¶¶11, 84. Moreover, as set forth above and in the Joint Declaration, Lead Plaintiffs would face substantial risks if the Action continued, including successfully establishing falsity, scienter, loss causation and damages. *Id*. ¶¶81-89. Lead Plaintiffs also faced the risks inherent in taking a case to trial, where it is impossible to predict how a trier of fact will construe conflicting evidence and testimony. *Id*. ¶87. *See Fernandez v. Victoria Secret Stores, LLC*, Case No. CV 06-04149 MMM (SHx), 2008 U.S. Dist. LEXIS 123546, at *18-19 (C.D. Cal. July 21, 2008) ("Because both parties faced extended, expensive future litigation, and because both faced the very real possibility that they would not prevail, this factor supports approval of the settlement.").[16]

Judging from the vigorous motion practice, the volume of documents produced in the Action to date and the numerous disputes among the parties regarding the scope of discovery, resolving this case through continued litigation would have undoubtedly been a long and expensive endeavor. Joint Decl., ¶¶26-69, 77. Notably, despite litigating this case reasonably and efficiently, Lead Counsel have incurred expenses of over $1.9 million to date. *Id*. ¶125; *see also* declarations submitted by Lead Counsel firms. Thus, the cost of completing merits

[16] *See also In re Charles Schwab Corp. Sec. Litig*., No. C 08-01510 WHA, 2011 U.S. Dist. LEXIS 44547, at *19 (N.D. Cal. Apr. 19, 2011) ("[P]rosecuting these claims through trial and subsequent appeals would have involved significant risk, expense, and delay to any potential recovery . . . risks included proving loss causation and the falsity of the representations at issue.").

discovery, expert discovery, summary judgment briefing, *Daubert* motion practice, preparation for trial, completing trial and the inevitable post-trial appeals, would be exorbitant. *Int'l Game Tech., Inc*., 2012 U.S. Dist. LEXIS 151498, at *7 ("The action was filed in 2009 and, but for the settlement, would require additional discovery, court intervention to resolve discovery disputes, extensive briefings, and possibly a protracted, expensive and lengthy trial in order to reach resolution.").

Moreover, this Action, if taken to trial, would have expended substantial party and judicial resources. As a result, and given the post-trial appeals that would likely follow, years could pass before the Class would receive a recovery, even if successful at trial.[17] Under these circumstances, it is "proper to take the bird in hand instead of a prospective flock in the bush." *DIRECTV*, 221 F.R.D. at 526.

4. The Risk of Maintaining Class Action Status Through Trial

A pending class certification motion may support approval of a final settlement where, as here, the motion "may be outcome-determinative in itself[.]" *OmniVision*, 559 F. Supp. 2d at 1041. When the Settlement was reached, Lead Plaintiffs' class certification motion—which Defendants vigorously opposed—was pending before the Court. Joint Decl., ¶¶78-79. Although Lead Plaintiffs are confident the Court would have granted class certification, the Settlement removes any uncertainty with respect to certification and, thus, supports approval of the Settlement. *See OmniVision*, 559 F. Supp. 2d at 1041-42 ("If the Court were to refuse certification, the unrepresented potential plaintiffs would likely lose their chance at recovery

[17] Even if Lead Plaintiffs reached and prevailed at trial, it is far from certain whether they could promptly collect on a post-trial monetary judgment. *See, e.g., Jaffe v. Household Int'l, Inc.*, No. 1:02-CV-05893 (N.D. Ill.) (after prosecuting securities fraud case for seven years and obtaining a favorable jury verdict for plaintiffs, the verdict was reversed six years later on May 21, 2015, without a single class member receiving a penny from defendants to date).

entirely . . . As Defendants agree to the class certification for the purposes of the Settlement, there is much less risk of anyone who may have actually been injured going away empty-handed.").[18]

5. The Extent of Discovery Completed and the Stage of the Proceedings

Another factor that courts consider in determining the adequacy of a settlement is the stage of proceedings and the amount of information available to the parties to assess the strengths and weaknesses of their case. *See, e.g.*, *Mego*, 213 F.3d at 459; *In re Rambus Inc. Derivative Litig*., Case No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845, at *8 (N.D. Cal. Jan. 20, 2009). Specifically, a settlement following sufficient discovery and investigation, and genuine arm's-length negotiations is presumed fair. *See DIRECTV*, 221 F.R.D. at 527 ("The extent of discovery may be relevant in determining the adequacy of the parties' knowledge of the case."). Given the significant discovery conducted and the stage of the Action here, Lead Counsel and Lead Plaintiffs were both sufficiently familiar with the strengths and weaknesses of the case to make informed decisions regarding settlement.

As detailed in the Joint Declaration, the parties have been actively litigating this Action since August 2009. During the course of this Action, Lead Counsel have, among other things: conducted a thorough investigation of Lead Plaintiffs' claims and exhaustive research into the applicable law; conducted or oversaw detailed investigative interviews of numerous witnesses, including former MGM employees and third parties; drafted two comprehensive amended complaints; opposed two rounds of motions to dismiss; aggressively pursued discovery from

[18] This factor would support Settlement even if the Court granted Lead Plaintiffs' motion for class certification, as the Court may exercise its discretion to re-evaluate the appropriateness of class certification at any time. FED. R. CIV. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."); *see also OmniVision*, 559 F. Supp. 2d at 1041 ("[T]here is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class.").

Defendants and dozens of relevant third parties, resulting in the production of over 9 million pages of documents; reviewed and analyzed a significant portion of the voluminous document productions; participated in dozens of in-person and telephonic meet and confers regarding discovery disputes; briefed multiple complex discovery motions; conducted, defended, or prepared for the depositions of numerous experts, representatives from MGM, all four Lead Plaintiffs and various third-party investment managers; consulted extensively with multiple experts and consultants; and briefed and argued a motion for class certification, which required the preparation of formal expert reports. Joint Decl., ¶¶5, 24-69. In addition, prior to reaching a resolution of this Action, the parties had engaged in several months of settlement negotiations, including two formal mediation sessions with Judge Phillips. *Id*. ¶¶70-76.

In sum, the knowledge and insight gained by Lead Plaintiffs and Lead Counsel following nearly six years of hard-fought litigation, followed by highly contested settlement negotiations confirm the reasonableness of the Settlement. Indeed, Lead Plaintiffs and Lead Counsel were well apprised of the strengths and weaknesses of the Class' claims, Defendants' defenses, and the likelihood of obtaining a larger recovery from Defendants had the Action continued towards trial. *See Mego*, 213 F.3d at 459 (approving settlement where counsel "conducted significant investigation, discovery and research, [] presented the court with documentation supporting those services [and] . . . worked with damages and accounting experts throughout the litigation"); *see also Immune Response*, 497 F. Supp. 2d at 1174 (finding even informal discovery and investigation sufficient for the parties to have a "clear view" of their case).

6. Experienced Counsel Supports the Settlement

"Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."' *DIRECTV*, 221 F.R.D. at 528; *see also Nobles*, 2009 U.S. Dist. LEXIS 59435, at *6 (same). As is the case here, "[w]hen class counsel

is experienced and supports the settlement, and the agreement was reached after arm's length negotiations, courts should give a presumption of fairness to the settlement." *Ramirez*, 2014 U.S. Dist. LEXIS 56038, at *3. This is because "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *Cal. v. eBay, Inc.*, Case No. 5:12-cv-05874-EJD, 2015 U.S. Dist. LEXIS 118060, at *15 (N.D. Cal. Sept. 3, 2015).

Lead Counsel here have extensive experience prosecuting complex securities class actions, including many of the largest securities fraud recoveries in U.S. history, including *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.); *In re Bank of America Corp. Sec., Derivative, and ERISA Litig.*, Master File No. 09MD-2058-PKC (S.D.N.Y.); and *In re Lehman Bros. Sec. and ERISA Litig.*, Master File No. 09-MD-2017–LAK (S.D.N.Y.). *See also* firm resumes for Robbins Geller, NPR and Kessler Topaz attached to the declarations of Brian O. O'Mara, Jeffrey J. Angelovich and Gregory M. Castaldo submitted herewith.[19] Having prosecuted this case for several years, Lead Counsel are intimately familiar with the facts and legal issues surrounding this Action and believe that the Settlement is fair, reasonable, and in the best interests of the Class. Likewise, Defendants were represented by highly experienced and skilled counsel who vigorously defended their clients at every turn. Furthermore, "[b]oth Parties are represented by experienced counsel and their mutual desire to adopt the terms of the

[19] As set forth in their resumes, Lead Counsel have litigated and recovered hundreds of millions of dollars on behalf of investors in this Circuit alone. *See, e.g.*, *In re Verifone Holdings, Inc. Sec. Litig.*, Master File No. 3:07-cv-06140-EMC (N.D. Cal. 2014) ($95 million); *Luther v. Countrywide Fin. Co.*, No. 12-cv-05125 (C.D. Cal. 2013) ($500 million); *In re Wells Fargo Mortg. Backed Certificates Litig.,* 5:09-cv-01376-LHK (N.D. Cal. 2011) ($125 million); *In re Brocade Sec. Litig.,* 3:05-cv-02042-CRB (N.D. Cal. 2009) ($160 million); *In re Marvell Tech.Grp., Ltd. Sec. Litig.*, C-06-03894 RMW (N.D. Cal. 2009) ($72 million); *In re Tenet Healthcare Corp. Sec. Litig.,* No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2008) ($281.5 million); *In re Cisco Sys., Inc. Sec. Litig.*, Master File No. C-01-20418-JW (PVT) (N.D. Cal. 2006) ($99.250 million).

proposed settlement, while not conclusive, is entitled to [a] great deal of weight." *Immune Response*, 497 F. Supp. 2d at 1174.

7. The Absence of Fraud or Collusion Supports the Settlement

The record clearly shows that the Settlement is not a product of fraud or collusion. Indeed, "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, Case No. C03-2659 SI; C 03-2878 SI, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. Apr. 13, 2007); *Vincent v. Reser*, No. C 11-03572 CRB, 2013 U.S. Dist. LEXIS 22341, at *12 (N.D. Cal. Feb. 19, 2013) (two days of mediation and subsequent negotiations with an experienced mediator "strongly suggest that the settlement agreement was reached through arm's length negotiations").[20] Here, the parties' settlement negotiations were vigorously contested and were conducted under the auspices of an experienced neutral and with the involvement of Lead Plaintiffs. *See* Joint Decl., ¶¶70-76; *see also* Phillips Decl., ¶12 ("After presiding over the mediation process in this case, I am able to report that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiation conducted in good faith. There was no collusion between the parties.").

In particular, the parties engaged in two full-day, in-person mediation sessions with Judge Phillips in May and June 2015. Joint Decl., ¶¶8-10; Phillips Decl., ¶¶72-74.[21] *See, e.g.*, *Int'l*

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[20] *See also Officers for Justice*, 688 F.2d at 627 (finding no collusion where the case had been aggressively litigated for several years, "the settlement proposal . . . was not hastily arrived at and . . . [t]he consent decree resulted only after long and careful negotiations"); *Hanlon*, 150 F.3d at 1027 (Proposed settlement was not collusive where there was "no evidence to suggest that the settlement was negotiated in haste or in the absence of information illuminating the value of plaintiffs' claims."); *eBay*, 2015 U.S. Dist. LEXIS 118060, at *26 (same).

[21] *In re High-Tech Emp. Antitrust Litig.*, Case No. 11-CV-02509-LHK, 2015 U.S. Dist. LEXIS 26635, at *7 (N.D. Cal. Mar. 3, 2015) (finding Judge Phillips to be "an experienced mediator"); *In re Bear Stearns Cos., Inc. Sec., Derivative, and Erisa Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (approving settlement where parties "engaged in extensive arm's length

Game Tech., 2012 U.S. Dist. LEXIS 151498, at *8 (settlement was fair where it "was reached following arm's length negotiations between experienced counsel that involved the assistance of an experienced and reputable private mediator, ***retired Judge Phillips***"). Prior to the first mediation, the parties submitted and exchanged detailed mediation briefs setting forth their respective views on the merits of the case. Joint Decl., ¶71; Phillips Decl., ¶7. Present at both mediations were counsel for all parties and representatives from MGM and their insurance carriers. Phillips Decl., ¶¶8-10. Also present at the first mediation session was General Counsel for Lead Plaintiff Arkansas Teacher Retirement System. *Id*. ¶8. As the parties were still too far apart in their respective positions to reach a resolution at the conclusion of the second mediation, Judge Phillips continued to work with the parties in an attempt to bridge their differences before presenting a mediator's proposal, which both sides ultimately accepted. Joint Decl., ¶74; Phillips Decl., ¶11. *See Morales v. Stevco, Inc*., Case No. 1:09-cv-00704 AWI JLT, 2011 U.S. Dist. LEXIS 130604, at *32 (E.D. Cal. Nov. 10, 2011) ("The parties utilized an impartial mediator, and the matter was '*resolved by means of a mediator's proposal*.' Thus, the agreement is the product of non-collusive conduct."). This well-documented record of a robust dispute resolution process confirms both the reasonableness of the Settlement and an absence of collusion.

At all times during the parties' settlement negotiations, Lead Counsel zealously advocated for the best interests of the Class while counsel for the Defendants fervently advanced their position. But for the Settlement, Lead Counsel were prepared to continue prosecuting the Action to trial. In sum, as "[t]he arms-length, contentious negotiations that culminated in the settlement agreement indicate that the settlement was reached in a procedurally sound manner," there is "nothing in the record indicating any collusion or bad faith by the parties." *Portal*

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negotiations, which included multiple sessions mediated by ***retired federal judge Layn R. Phillips***, an experienced and well-regarded mediator of complex securities cases").

Software, 2007 U.S. Dist. LEXIS 88886, at *12.[22] Thus, the circumstances surrounding the resolution of the Action lend further support to the fairness of the Settlement.

8. Reaction of the Class to the Proposed Settlement to Date

As of October 22, 2015, nearly 42,000 copies of the Notice and Proof of Claim and Release form had been mailed to potential Class Members and nominees. Joint Decl., ¶95; Gilardi Decl., ¶11. Pursuant to the Notice Order and as set forth in the Notice, the deadline for Class Members to object to any aspect of the Settlement, or to request exclusion from the Class, is November 24, 2015. Joint Decl., ¶¶91, 99; Gilardi Decl., ¶15. To date, there have been no objections and no requests for exclusion from the Class. Joint Decl., ¶99. As set forth above, Lead Plaintiffs will address any objections, as well as any requests for exclusion, received after the date of this submission in their reply brief to be filed with the Court on or before December 8, 2015.

IV. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

Following the Effective Date of the Settlement and once the Claims Administrator has completed processing the claims received in connection with the Settlement, the Net Settlement Fund will be distributed to those members of the Class who submit timely and valid Proof of Claim and Release forms and whose claim for recovery has been allowed pursuant to the terms of the Stipulation (the "Authorized Claimants"). The proposed Plan of Allocation contained in

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[22] Moreover, none of the three "signs of collusion" identified in *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) are present here. First, Lead Counsel are not receiving a "disproportionate distribution of the settlement" nor will "the class receive[] no monetary distribution." *Id*. Rather, the Class is receiving a Settlement that equals approximately 10% of the Class' likely recoverable damages in this Action as estimated by Lead Plaintiffs' damages expert, and Lead Counsel's requested attorneys' fees are in-line with the Ninth Circuit's 25% benchmark. Joint Decl., ¶¶86, 110. Second, the Stipulation does not contain a "clear sailing" provision, wherein a defendant agrees not to oppose a petition for a fee award. *Bluetooth*, 654 F.3d at 947. Third, unclaimed fees will not "revert to defendants rather than be added to the class fund." *Id*.

the Notice details the manner in which the Net Settlement Fund shall be allocated to Authorized Claimants. *See* Gilardi Decl., Ex. A. To date, there have been no objections to the Plan. Joint Decl., ¶105.

The Court has broad discretion in approving a plan of allocation. *See In re Heritage Bond Litig.*, MDL Case No. 02-ML-1475 DT, 2005 U.S. Dist. LEXIS 13555, at *37 (C.D. Cal. June 10, 2005). Such approval is governed by the same standard applicable to settlement approvals—the proposed plan must be fair, reasonable, and adequate. *See In re High-Tech Emp. Antitrust Litig.*, Case No. 11-CV-02509-LHK, 2015 U.S. Dist. LEXIS 118051, at *29-30 (N.D. Cal. Sept. 2, 2015) (same). A plan of allocation that, for instance, "reimburses class members based on the extent of their injuries is generally reasonable." *Id.* Significantly, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." *Heritage Bond*, 2005 U.S. Dist. LEXIS 13555, at *38. The Plan sufficiently meets these criteria.

Pursuant to the Plan—developed by Lead Counsel in consultation with Lead Plaintiffs' damages expert, Chad Coffman, CFA—each Authorized Claimant shall be allocated a percentage of the Net Settlement Fund based upon the relationship that each authorized claim bears to the total of all authorized claims. Joint Decl., ¶102; *see also* Gilardi Decl., Ex. A.[23] The Plan was designed in an effort to achieve an equitable and rational distribution of the Net Settlement Fund among those who suffered economic losses as a result of the alleged violations asserted in the Action as opposed to losses caused by market or industry factors or Company-specific factors unrelated to the alleged violations of law. Joint Decl., ¶102.

[23] *See High-Tech*, 2015 U.S. Dist. LEXIS 118051, at *29-30 (finding plan of allocation "fundamentally fair" and reasonable where the allocation was *pro rata* across the class); *Patel*, 2015 U.S. Dist. LEXIS 146949, at *19 (same).

To have a loss under the Plan, a claimant must have purchased or otherwise acquired eligible MGM publicly-traded securities[24] during the Class Period and held such securities through the alleged partial corrective disclosure on February 3, 2009. *Id.* ¶104.[25] Losses under the Plan will depend primarily on the following factors: (i) the type of eligible MGM securities purchased/acquired; (ii) the amount of eligible MGM securities purchased/acquired; and (iii) the timing of such purchases/acquisitions and sales, if any (and the applicable artificial inflation amount(s) set forth in Table 1 of the Plan). *Id.* ¶103. In addition, a claimant's "Recognized Loss Amount" takes into account the PSLRA's statutory limitation on recoverable damages, whereby losses on eligible MGM securities cannot exceed the difference between the purchase price and the average price of the security during the 90-day period subsequent to the Class Period (if the security was held through the end of the 90-day period) and, the difference between the purchase price and the average price of the security during the portion of the 90-day period elapsed as of

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[24] The eligible MGM publicly-traded securities include MGM common stock and the following MGM debt securities ("MGM Bonds"): (i) 5.875% MGM Bonds, due 2/27/14; (ii) 6.0% MGM Bonds, due 10/1/09; (iii) 6.625% MGM Bonds, due 7/15/15; (iv) 6.75% MGM Bonds, due 9/1/12; (v) 6.75% MGM Bonds, due 4/1/13; (vi) 6.875% MGM Bonds, due 4/1/16; (vii) 7.5% MGM Bonds, due 6/1/16; (viii) 7.625% MGM Bonds, due 1/15/17; (ix) 8.375% MGM Bonds, due 2/1/11; (x) 8.5% MGM Bonds, due 9/15/10; and (xi) 13% MGM Bonds, due 11/15/13.

[25] On February 3, 2009, Moody's downgraded MGM's credit rating to B1 from Ba3, indicating that MGM's ratings remained on review for further downgrades. FAC, ¶¶145, 179. Moody's disclosed, among other things, that MGM's debt/EBITDA level was "inconsistent with its prior rating" and observed that "MGM's liquidity remains weak." *Id.* Also on February 3, 2009, Oppenheimer issued an analyst research report concerning MGM, in which it identified as a primary issue "funding for CityCenter's completion" and noted that "we remain focused on liquidity, CityCenter funding and looming maturities." *Id.* ¶¶147, 180. In addition, on that same date, Citigroup published a report that openly questioned MGM's management's representations, stating that the "biggest question for MGM [is] financing for CityCenter while managing its own balance sheet." *Id.* ¶181. In response to this news, Lead Plaintiffs have alleged that the price of MGM's stock declined 14.51% to $6.95 per share on extremely heavy volume of more than 7.7 million shares traded. *Id.* ¶¶148, 181.

the date of sale (if the security was sold during the 90-day period). Joint Decl., ¶104; *see also* Gilardi Decl., Ex. A.

Lead Plaintiffs and Lead Counsel believe that the Plan provides a fair and reasonable method to allocate the settlement proceeds among Authorized Claimants. *Id*. ¶105. Accordingly, Lead Plaintiffs respectfully submit that the Plan warrants the Court's approval.

V. CONCLUSION

For the reasons set forth above, Lead Plaintiffs respectfully request that the Court approve the proposed Settlement as fair, reasonable and adequate; approve the Plan of Allocation as fair and reasonable; and affirm its determinations in the Notice Order and finally certify the Class for purposes of carrying out the Settlement.

DATED: November 3, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2015, 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 e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual 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 November 3, 2015.

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