IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

In re ADT INC. SHAREHOLDER LITIGATION This Document Relates To: ALL ACTIONS.	Case No. 502018CA003494XXXXMB-AG CLASS ACTION PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

Plaintiffs, on behalf of the Settlement Class and pursuant to Florida Rule of Civil Procedure 1.220, respectfully move this Court to enter orders and/or judgments in the above-captioned litigation: (1) granting final approval of the Settlement; (2) granting final certification of the Settlement Class; and (3) approving the Plan of Allocation. This motion is based on the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation, the declarations submitted in support thereof, the Stipulation of Settlement, all other pleadings and matters of record and such additional evidence or argument that may be presented at the hearing on this matter.

Proposed orders will be submitted with Plaintiffs' reply submission on or before January 5, 2021.

DATED: December 16, 2020

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s/ Jack Reise
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Lead Counsel and Chair of Executive Committee in the State Action

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2020, a true and correct copy of the foregoing was served via the e-portal on all counsel of record.

s/ Jack Reise
JACK REISE

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

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STATUTES, RULES AND REGULATIONS

Pursuant to Florida Rule of Civil Procedure 1.220, Court-appointed lead plaintiffs Goldstrand Investments Inc., Richard Krebsbach, Howard Katz, Daniel M. Sweet and Robert Lowinger (collectively, "State Court Plaintiffs" and together with federal court lead plaintiff Husam Asaff, "Plaintiffs"), by and through their undersigned counsel of record, respectfully submit this memorandum of law in support of their motion for final certification of the Settlement Class, and final approval of the proposed settlement (the "Settlement") and the proposed plan of allocation of the Settlement proceeds ("Plan of Allocation").[1]

I. INTRODUCTION

Plaintiffs, through their counsel, have reached an agreement to settle the above-captioned action (the "State Action") and the action entitled *Perdomo v. ADT Inc., et al.*, Case No. 18-80668-cv-Middlebrooks (S.D. Fla.) (the "Federal Action" and together with the State Action, the "Actions") in exchange for a $30,000,000 non-reversionary, cash payment (the "Settlement Amount") on behalf of the Settlement Class. This is an excellent result, and it is both procedurally and substantively fair. Accordingly, this Court should grant final approval of the proposed Settlement.

Procedurally, the Settlement follows an extensive mediation before a highly experienced mediator and was negotiated by counsel who were well aware of the strengths and weaknesses of the case. Indeed, prior to reaching the Settlement, Plaintiffs' Counsel conducted a comprehensive investigation into the allegedly wrongful acts, which included, among other things, review and

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation of Settlement dated September 15, 2020 (the "Stipulation") (Dkt. No. 152) and the Declaration of Jack Reise in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Reise Declaration"). Unless otherwise noted, all citations to "¶__" and "Ex." refer, respectively, to paragraphs in, and exhibits to, the Reise Declaration.

analysis of ADT's filings with the U.S. Securities and Exchange Commission ("SEC"), press releases, transcripts of ADT investor calls, and other public statements made by Defendants prior to, during, and after the Settlement Class Period, as well as research reports prepared by securities and financial analysts regarding ADT, and publicly available documents, reports, announcements, and news articles concerning Defendants. Moreover, Plaintiffs' Counsel worked with private investigators to interview former ADT employees and third parties who may have had information related to alleged wrongdoing, as well as damages experts. Plaintiffs' Counsel also drafted multiple complaints in the Actions, including the comprehensive and factually detailed 50-page State Court Consolidated Class Action Complaint for Violations of the Securities Act of 1933 based on the foregoing investigation, and researched and drafted responses to Defendants' three motions to dismiss. Following the State Court's partial denial of the motions to dismiss, Plaintiffs' Counsel provided the State Court with supplemental briefing on why the State Court has personal jurisdiction over certain Defendants, including the Apollo Defendants, Underwriter Defendants and certain Individual Defendants.

In preparation for the mediation, Plaintiffs' Counsel drafted a detailed mediation statement addressing both liability and damages issues and, following the exchange of mediation statements with Defendants, reviewed and analyzed Defendants' arguments and supporting documentation. Plaintiffs' Counsel subsequently engaged in an all-day mediation overseen by a highly respected mediator, David Geronemus, Esq., which culminated in an agreement in principle to settle the Actions. Thereafter, Plaintiffs' Counsel engaged in extensive negotiations regarding the terms of the proposed Settlement, and crafted a plan of allocation in conjunction with their damages expert that treats Plaintiffs and the proposed Settlement Class fairly. The Settlement is, therefore, the result of arm's-length negotiations, conducted by informed and experienced counsel, and does not

favor Plaintiffs over other members of the Settlement Class. In short, it is procedurally fair. *See Cole v. Echevarria, McCalla, Raymer, Barrett & Frappier*, 2008 WL 6161610 (Fla. 2d Cir. Ct. Mar. 26, 2008) ("A presumption of fairness, adequacy and reasonableness may attach where the Class Settlement is reached after arms-length negotiations between experienced capable counsel."); *In re AOL Time Warner ERISA Litig.*, 2006 WL 2789862, at *5 (S.D.N.Y. Sept 27, 2006) ("In light of the substantial evidence that settlement negotiations were conducted at arms-length without any hint of collusion, the Court credits the Settlement with a presumption of fairness.").

Substantively, if Plaintiffs overcame all of the obstacles to establishing liability, and completely prevailed on all of their alleged claims, the $30 million Settlement would equate to approximately 5.68% of the total $528 million ***maximum*** statutory damages ***potentially*** available in this Action.[2] However, Section 11 of the Securities Act of 1933 (the "Securities Act") provides Defendants with the affirmative defense of negative causation, which prohibits recovery for losses that Defendants prove are not attributable to alleged misrepresentations and/or omissions in the Registration Statement. Among other things, Defendants argued that certain post-IPO drops in ADT's stock price were based on factors unrelated to the alleged misstatements (*i.e.*, confounding information) and that certain allegedly omitted information was already in the public domain prior to the IPO.

In addition, Defendants may have been able to establish that the disclosure of certain information did not trigger a statistically significant price reaction in ADT stock. If these negative causation arguments were accepted by the trier of fact, in whole or in part, they would have

[2] The $528 million figure represents the difference between the $14 IPO price and the price of ADT stock on March 21, 2018 (*i.e.*, the date of the first-filed complaint in the state court action) ($8.97), multiplied by 105 million shares offered in the IPO.

severely limited recoverable damages. In fact, if Defendants had prevailed on these arguments, the total ***maximum*** damages available would be roughly $100 million, in which case, the Settlement represents a recovery of approximately 30% of the Settlement Class's maximum damages. A recovery within the range of 5.6%-30% of estimated damages is well above the average recovery in securities class action cases. *See* Ex. 1 (Excerpt from Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020) at p. 20, Fig. 13 ("NERA Report") (2019 median recovery in securities class actions was approximately 2.1% of estimated damages).

Defendants also argued that Amazon's February 27, 2018 announcement of its intent to acquire Ring was unforeseeable and, therefore, the decline in ADT's stock price in reaction to this announcement is not relevant to damages, contrary to Plaintiffs' allegations.[3] If this crucial argument had been accepted by the trier of fact, damages could have easily been reduced to $0. Consequently, given the significant risks of continued litigation, the $30 million Settlement is an outstanding result.

For these reasons, and those set forth below and in the Reise Declaration, Plaintiffs respectfully request that the Court grant final approval of the Settlement and Plan of Allocation, and finally certify the Settlement Class for settlement purposes only.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Reise Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*,

[3] Plaintiffs alleged that Amazon's announcement to buy Ring had the potential to disrupt ADT's business. For example, as noted by analysts at Morgan Stanley, ADT could face greater risk from Ring if Amazon added professional monitoring to Ring's home automation offering, and that "if Amazon wanted to aggressively compete with ADT" it could pull integration capabilities between ADT Pulse and Amazon's Alexa, "harming ADT in the process."

the factual and procedural history of the Actions; the nature of the claims asserted; the efforts involved in the drafting and defending of the Complaints; the risks of continued litigation; the negotiations leading to the Settlement; and the Plan of Allocation.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

Florida Rule of Civil Procedure 1.220(e) requires a court to approve any voluntary withdrawal, dismissal, or compromise of a class action lawsuit after notice and hearing. Final approval of a class action settlement is within the court's sound discretion. *See Andrews v. Ocean Reef Club, Inc*., 1993 WL 563622 (Fla. 16th Cir. Ct. Jan. 22, 1993).[4] When exercising its discretion, a court should always review the proposed settlement in light of the strong judicial policy that favors settlements. *Id.* at *3. This policy has special importance in class actions with their notable uncertainty, difficulties of proof, and length. *Id.* "To approve a class action settlement, the court must find that the agreement is fair, reasonable, and adequate, and not the product of collusion between the parties." *Dreidame v. Village Center Cmty. Development Dist.*, 2008 WL 7079074 (Fla. 5th Cir. Ct. Mar. 29, 2008); *Andrews*, 1993 WL 563622, at *3; *Bennett v. Behrings Corp*., 737 F.2d 982, 986 (11th Cir. 1984).

Rule 1.220 is based on Rule 23 of the Federal Rules of Civil Procedure, and Florida courts may look to federal cases as persuasive authority in the interpretation of Rule 1.220. *Broin v. Philip Morris Cos., Inc.*, 641 So. 2d 888, 889 n.1 (Fla. 3d DCA 1994) (collecting cases). In *Bennett*, the Eleventh Circuit approved the trial court's consideration of six factors in determining whether a proposed settlement is fair, adequate, and reasonable: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point over or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense and duration

[4] All emphasis is added and all internal citations and quotations are omitted.

of the litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved. 737 F.2d at 986; *see also Andrews*, 1993 WL 563622, at *3 (citing *Bennett* factors).

In evaluating these considerations, the court should not try the case on the merits. The court can rely upon the judgment of experienced counsel and, absent fraud, should "be hesitant to substitute its judgment for that of counsel." *Id*. (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

A. Plaintiffs' Likelihood Of Success At Trial; The Complexity, Expense And Duration Of The Litigation

The ability to avoid the risk, uncertainty, expense, complexity, and likely duration of further litigation should be considered by the Court in reviewing this motion. *In re: Checking Account Overdraft Litig*., 2013 WL 11319392, at *8 (S.D. Fla. Aug. 5, 2013) ("The Court should 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."). While Plaintiffs were prepared to go to trial against Defendants, and remain confident in their ability to ultimately prove their claims, a trial is always a risky proposition. Here, there is no question that continued litigation would have been costly, risky, and protracted. Courts have repeatedly noted that "[s]tockholder litigation is notably difficult and notoriously uncertain." *Carpenters Health & Welfare Fund v. The Coca-Cola Co.*, 2008 WL 11336122, at *9 (N.D. Ga. Oct. 20, 2008). Indeed, even though State Court Plaintiffs partially prevailed at the motion to dismiss stage, that was only a partial victory, and this Court could still could have determined that it lacked personal jurisdiction over certain of the Defendants. Moreover, Plaintiffs would still have to obtain class certification and prove their claims. Overcoming these hurdles would be no small task, and Plaintiffs and Plaintiffs' Counsel recognized the significant risk, time, and expense

involved in prosecuting Plaintiffs' claims through class certification, completion of fact and expert discovery, summary judgment, trial, and subsequent appeals.

Defendants could raise plausible arguments to oppose class certification. Had Plaintiffs failed to obtain class certification, the benefit to the Settlement Class would have been substantially reduced or eliminated. Moreover, assuming class certification was achieved, the Court could revisit certification – presenting a continuous risk that this case, or certain claims, might not receive class treatment through trial. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class"). Thus, the risks of obtaining and maintaining class certification support approval of the Settlement in this case. *See In re Marsh & McLennan Cos., Inc. Sec. Litig*., 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("the uncertainty surrounding class certification supports approval of the Settlement").

There was a substantial risk that Plaintiffs would be unable to prove all of their claims. Defendants deny that the Registration Statement issued in connection with ADT's IPO contained any material misstatements or omissions and deny any and all allegations of fault, liability, wrongdoing, or damages, whatsoever. Although the Court denied many of Defendants' arguments at the pleading stage, Plaintiffs still had to ***prove*** their case, which they would have had to do through documents and deposition testimony taken from Defendants and other third parties. Defendants would have continued to argue at summary judgment and/or trial that the evidence demonstrates that no material misstatements or omissions were made, that Plaintiffs could not prove materiality, and that Plaintiffs and the Settlement Class suffered no damages. Plaintiffs would have to prevail on all of these issues; had Defendants prevailed on any of them, the case

would be lost. Any judgment favorable to the Settlement Class would then likely be the subject of post-trial motions and appeal, which could prolong the case for years, with the ultimate outcome uncertain. *See, e.g., Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs).[5]

Finally, given, among other the things, the extensive discovery necessary to prove the case, and the significant expert testimony that would have been needed to establish damages, there is no doubt that continued prosecution of the Actions would have been both time intensive and costly. *See In re OCA, Inc. Sec. & Deriv. Litig.*, 2009 WL 512081, at *11 (E.D. La. Mar. 2, 2009) (noting continued litigation, including through discovery, class certification, trial and appeals, "would consume substantial judicial and attorney time and resources, and avoiding such costs weighs in favor of settlement").

In sum, even if Plaintiffs prevailed after trial and appeals, there is no guarantee they would have obtained a judgment greater than the $30 million Settlement. There was, as in any securities action, a very significant risk that continued litigation might yield a smaller recovery – or no recovery at all – several years in the future. *See Trief v. Dun & Bradstreet Corp*., 840 F. Supp. 277, 282 (S.D.N.Y. 1993) ("It is beyond cavil that continued litigation in this multi-district securities class action would be complex, lengthy, and expensive, with no guarantee of recovery by the class members."). By contrast, the Settlement provides an extremely favorable, immediately realizable recovery and eliminates the risk, delay, and expense of continued litigation. *See Nalepa v. City of North Bay Village*, 2012 WL 12894526, at *3 (Fla. 11th Cir. Ct. Dec. 10,

[5] *See also In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following plaintiffs' verdict); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 414, 433 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion in securities action ***after 13 years of litigation*** on loss causation grounds and error in jury instructions).

2012) ("By approving the Stipulation, the Settling Parties and the Court will be spared a massive amount of work yet to be done to resolve the litigation between Lead Plaintiff and ATS – including voluminous discovery, extensive research into complex legal issues, and determining the merits of the dispute.").

B. The Range Of Possible Recovery; The Point In The Range Of Recovery At Which The Settlement Is Fair, Reasonable And Adequate

"Particularly in class action suits, there is an overriding public interest in favor of settlement [because it] is common knowledge that class action suits have a well-deserved reputation as being most complex." *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 698 (M.D. Fla. 2005) (quoting *Cotton*, 559 F.2d at 1331). Part of that complexity lies in the calculation of damages and determining the range of possible recovery, an issue which generally requires expert testimony and invariably leads to a "battle of the experts." *See In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001) ("[E]stablishing damages at trial would lead to a battle of experts with each side presenting its figures to the jury and with no guarantee whom the jury would believe.").

The $30,000,000 non-reversionary Settlement Amount is well within the range of reasonableness to warrant final approval.[6] As set forth above, had Plaintiffs ***fully prevailed*** at both summary judgment and after a jury trial, if the Court certified the same class period as the Settlement Class Period, and if the Court and jury accepted Plaintiffs' damages theory—*i.e.*, Plaintiffs' ***best case scenario*** – the total ***maximum*** damages would be approximately $528 million.

[6] The second and third *Bennett* factors ask courts to consider the range of possible recovery and the point on or below the range of possible recovery at which settlement is fair, reasonable, and adequate. *Bennett*, 737 F.2d at 986. These factors are "easily combined." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 693 (S.D. Fla. 2014).

Thus, the $30,000,000 Settlement Amount equates to approximately 5.68% of the total ***maximum*** damages ***potentially*** available. *See, supra*, n.2.

Conversely, if Defendants' claims that certain drops in ADT's stock price were based on factors unrelated to the alleged misstatements in, or omissions from, the Registration Statement, that certain allegedly omitted information was already in the public domain prior to the IPO, and that the disclosure of certain information did not trigger a statistically significant price reaction in ADT stock were accepted by the trier of fact, Plaintiffs' total ***maximum*** damages available would be roughly $100 million. Under such a scenario, the Settlement represents a recovery of approximately 30% of the Settlement Class's maximum damages. A recovery within the range of 5.6%-30% is well above the average recovery in securities class actions. *See* Ex. 1 (NERA Report at p. 20, Fig. 13 (median recovery in securities class actions in 2019 was approximately 2.1% of estimated damages). Moreover, assuming *arguendo*, Defendants demonstrated that Amazon's February 27, 2018 announcement of its intent to acquire Ring was not foreseeable, the decline in ADT's stock price in reaction to this announcement would not constitute compensable damages, and damages could have easily been reduced to $0. Consequently, given the significant risks of continued litigation, the $30 million Settlement is an outstanding result.

In light of these risks, there can be no doubt that the Settlement Amount is well within the range of reasonableness, and this factor weighs in favor of final approval.

C. The Stage of Proceedings At Which Settlement Was Achieved

Courts also consider "the stage of proceedings at which settlement was achieved." *Bennett*, 737 F.2d at 986. In weighing this *Bennett* factor, a Court should focus on whether "Class Counsel had sufficient information to adequately evaluate the merits of the case and weigh the benefits against further litigation," and not the extent to which formal discovery was conducted. *Francisco v. Numismatic Guar. Corp.*, 2008 WL 649124, at *11 (S.D. Fla. Jan. 31, 2008). Indeed, "[t]he

question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it." *In re OCA*, 2009 WL 512081, at *12.

This case settled following this Court's partial denial of Defendants' motions to dismiss, and full briefing of the Defendants' three motions to dismiss in the Federal Action. By then, Plaintiffs and their counsel had obtained a comprehensive understanding of the strengths and weaknesses of the case based upon, among other things, Plaintiffs' Counsel's extensive legal and factual investigation, Defendants' motion to dismiss briefing, consultation with Plaintiffs' damages expert, mediation briefing containing detailed analyses of the strengths, risks, and potential issues in the litigation and the full-day mediation session overseen by a well-respected neutral. Consequently, Plaintiffs' "Counsel had sufficient information to adequately evaluate the merits of the case and weigh the benefits against further litigation." *Francisco*, 2008 WL 649124, at *11.

Further, although no formal discovery exchanged, "formal discovery [is not] a necessary ticket to the bargaining table" (*In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981)), and courts have rejected the notion that such discovery must take place. *See, e.g.*, *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 (5th Cir. 2012) (affirming approval of securities class action settlement where there had been no "formal discovery" but "class counsel had conducted informal discovery by hiring private investigators and experts").

D. The Substance and Amount of Opposition to the Settlement Favors Final Approval of the Settlement

Notice of this Settlement has been provided to potential Settlement Class Members in accordance with this Court's Order granting preliminary approval of the Settlement. *See*

Declaration of Ross Murray, submitted herewith. More than 33,700 Notice Packages have been mailed to potential Settlement Class Members, a summary of the Settlement was published in Investors' Business Daily and over a widely circulated internet-based wire service. *Id*. at ¶¶4-12. To date, no objections to the Settlement have been filed with the court or received by Plaintiffs' Counsel. ¶43. The overwhelmingly favorable reaction of the Settlement Class supports final approval.[7] *See Access Now, Inc. v. Claire's Stores, Inc.*, 2002 WL 1162422, at *7 (S.D. Fla. May 7, 2002) ("[t]he fact that no objections have been filed strongly favors approval of the settlement").

E. Other Factors Supporting Approval

1. Recommendation of Experienced Counsel Favors Final Approval of The Settlement

In determining whether the proposed Settlement is fair, reasonable, and adequate, the Court, "absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Cotton*, 559 F.2d at 1330; *accord Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1380 (S.D. Fla. 2007). Here, Lead Counsel for the two Actions are highly capable attorneys with substantial experience in securities litigation, and there is no evidence of any kind that the Parties or their counsel colluded or otherwise acted in bad faith in arriving at the proposed settlement. *See* Exs. 10 and 17 (firm resumes of Lead Counsel in the State and Federal Actions). Accordingly, this factor favors final approval. *See Warren v. City of Tampa*, 693 F. Supp. 1051, 1059 (M.D. Fla. 1988) (giving "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation.").

[7] If any objections are received after the date of this submission, Lead Counsel will address them in the reply brief, which will be filed with the Court no later than January 5, 2021.

2. The Settlement Is Not a Product of Collusion

Finally, "[w]here the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion." *Saccoccio*, 297 F.R.D. at 692. "[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1247 (S.D. Fla. 2016). As noted above, the proposed Settlement was achieved only after an all-day mediation session – followed by additional arm's-length negotiations – overseen by a well-respected third-party mediator, Mr. Geronemus. As part of those discussions, the Parties prepared submissions concerning, among other things, their respective views of the Actions' merits and damages on a class-wide basis. The negotiations focused on heavily disputed issues, which were explored in-depth. Thus, "[t]here is no evidence that fraud or collusion affected the settlement in any respect" (*Id.* at 1248), and this factor weighs in favor of final approval. *See Feller v. Transamerica Life Ins. Co.*, 2019 WL 6605886, at *4 (C.D. Cal. Feb. 6, 2019) (finding "there is no evidence of collusion. The Settlement is the product of extensive negotiations between the Parties with the assistance, and direct supervision, of an experienced and highly-regarded nationally-renowned mediator, David Geronemus, associated with JAMS in New York City, who teaches negotiation at Yale and Columbia Law Schools and who conducted many telephone sessions with all parties and a full day in-person mediation with all parties.").

For all of the foregoing reasons, Plaintiffs respectfully submit that the proposed Settlement is fair, reasonable, and adequate.

IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Court's October 15, 2020 Preliminary Approval Order certified the Settlement Class for settlement purposes only under Rule 1.220 of the Florida Rules of Civil Procedure. *See* Dkt. No. 155, ¶¶1-2. There have been no changes to alter the propriety of class certification for

settlement purposes. Thus, for the reasons stated in the Preliminary Approval Brief (*see* Dkt No. 153, at pp. 16-23), Plaintiffs' respectfully request that the Court affirm its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 1.220(a) and (b)(3).[8]

V. THE NOTICE PROCEDURES MET THE REQUIREMENTS OF RULE 1.220 AND DUE PROCESS

Rule 1.220(d)(2) requires that "notice shall be given to each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be most practicable under the circumstances." "In class action litigation, due process requires that the absent class members be afforded notice of the suit, an opportunity to be heard and participate in the litigation, and, in actions for damages, a chance to opt out of the litigation." *Nelson v. Wakulla Cty*, 985 So. 2d 564, 576 (Fla. 1st DCA 2008).

Here, the notice documents and procedure for providing notice were previously approved by the Court (*see* Preliminary Approval Order, ¶¶8-9, 11), and notice was provided via mail to all Settlement Class Members who could be identified through reasonable efforts, publication, and establishment of case specific settlement website (www.adtsecuritieslitigation.com). *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, attached to the Reise Decl. as Ex. 4. Settlement Class Members have, therefore, been afforded notice of the suit, an opportunity to be heard and participate in the litigation, and a chance to opt out of the litigation. Nothing more is required; indeed, "[t]he notice procedures implemented in this case more than adequately satisfy Rule 1.220 and due process

[8] Defendants do not object to certification of the Settlement Class for settlement purposes only.

standards." *Nalepa v. City of North Bay Village*, 2012 WL 12894526, at *3 (Fla. 11th Cir. Ct. Dec. 10, 2012); *see also Nelson*, 985 So. 2d at 576.

VI. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

Assessment of a plan of allocation of settlement proceeds in a class action is governed by the same standards of review applicable to approval of the settlement as a whole – the plan must be "fair, adequate and reasonable." *In re Catalina Marketing Corp. Sec. Litig*., 2007 WL 9723529, at *1 (M.D. Fla. July 9, 2007); *see also Nalepa*, 2012 WL 12894526, at *4 (approving plan of allocation that was "fair, reasonable, and adequate to the members of the Settlement Class."). "When formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *see also In re Marsh & McLennan*, 2009 WL 5178546, at *13 ("In determining whether a plan of allocation is fair, courts look largely to the opinion of counsel."). "A plan of allocation that calls for the *pro rata* distribution of settlement proceeds on the basis of investment loss is presumptively reasonable." *In re Merrill Lynch Tyco Research Sec. Litig*., 249 F.R.D. 124, 135 (S.D.N.Y. 2008).

Here, the proposed Plan of Allocation, which was developed by Lead Counsel in consultation with a damages expert, provides for calculation of damages based on the formula set forth in Section 11(e) of the Securities Act, 15 U.S.C. §77k(e). The calculation of each Settlement Class Member's Recognized Loss under the Plan of Allocation is explained in detail in the Notice and will be based on several factors, including when the ADT stock was purchased and sold and the value of the stock at the time of purchase or sale. The Net Settlement Fund will be allocated to Authorized Claimants – including Plaintiffs – on a *pro rata* basis based on the relative size of

their Recognized Loss(es).[9] Similar plans have repeatedly been approved by courts in class action cases brought pursuant to the Securities Act. *See In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 158 (S.D.N.Y. 2013) (approving plan of allocation "based on the formula set forth in Section 11(e) of the Securities Act"); *In re Facebook, Inc., IPO Sec.and Deriv. Litig*., 343 F. Supp. 3d 394, 414-15 (S.D.N.Y. 2018) (approving plan of allocation "arrived at using the statutory formula in Section 11(e)").

Moreover, the proposed Plan of Allocation "was prepared by experienced counsel along with a damages expert—both an "indicia of reasonableness" (*Facebook*, 343 F. Supp. 3d at 414), and, to date, there have been no objections to the Plan. *See Pritchard v. APYX Medical Corp*., 2020 WL 6940765, at *1 (M.D. Fla., Nov. 6, 2020) (approving plan of allocation where "no objections to the proposed plan were filed with the Court."). Accordingly, Plaintiffs respectfully request that the Court approve the proposed Plan of Allocation as fair, reasonable and adequate. *See Lazarus v. City of Hallandale Beach*, 2013 WL 6331156, at *4 (Fla. 17th Cir. Ct. Apr. 22, 2013) ("The Plan of Allocation described in the Stipulation and Long Form Notice is APPROVED as fair, reasonable, and adequate to the members of the Settlement Class, and the Claims Administrator is DIRECTED to administer the Settlement accordingly.") (capitalization in the original)).

VII. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate; and finally certify the Settlement Class for the purposes of settlement.

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[9] The Plan of Allocation is detailed in the Notice. *See* Ex. A-1 (Notice at pp. 4-7). In addition to being mailed to potential Settlement Class Members, the Notice was posted online at www.adtsecuritieslitigation.com.

DATED: December 16, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2020, a true and correct copy of the foregoing was served upon all counsel of record via the Florida e-filing portal.

s/ Jack Reise
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