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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15 Miguel Avila, on Behalf of Himself and All
16 Others Similarly Situated,
17
18 **Plaintiffs,**
19
20 v.
21
22 LifeLock Inc., Todd Davis, Chris G.
23 Power, and Hilary A. Schneider,
24
25 **Defendants.**

CASE NO. 2:15-cv-01398-SRB

CLASS ACTION

**LEAD PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF
CLASS ACTION
SETTLEMENT AND PLAN OF
ALLOCATION AND
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT**

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1 **MOTION**

2 PLEASE TAKE NOTICE THAT on July 21, 2020 at 10:00 am, Lead Plaintiffs
3 Oklahoma Police Pension and Retirement System and Oklahoma Firefighters Pension and
4 Retirement System (collectively, “Lead Plaintiffs”), on behalf of themselves and the
5 proposed Settlement Class, will move this Court, for an Order, pursuant to Rule 23 of the
6 Federal Rules of Civil Procedure: (i) granting final approval of the proposed class action
7 Settlement; and (ii) approving the proposed Plan of Allocation for the net proceeds of the
8 Settlement.

9 This motion is based on the accompanying Memorandum of Points and Authorities
10 and the Joint Declaration of Carol C. Villegas and Michael S. Bigin in Support of (I) Lead
11 Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation
12 and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of
13 Expenses, dated June 16, 2020, with annexed exhibits, filed herewith (the “Joint
14 Declaration” or “Joint Decl.”).

15 Proposed Orders will be submitted with Lead Plaintiffs’ reply submission, no later
16 than July 14, 2020, after the deadline for objecting and seeking exclusion has passed.¹

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **PRELIMINARY STATEMENT**

19 Lead Plaintiffs respectfully submit that the proposed Settlement is a very favorable
20 result for the Settlement Class, and should be approved by the Court. The Settlement
21 provides a recovery of \$20,000,000 in cash to resolve claims against Defendants LifeLock,
22 Inc. (“LifeLock,” or “the Company”), Todd Davis (“Davis”), Chris Power (“Power”), and
23

24 _____
25 ¹ All capitalized terms not otherwise defined herein have the same meaning as those
26 in the Stipulation and Agreement of Settlement, dated as of March 27, 2020 (the
27 “Stipulation”), previously filed with the Court. ECF No. 137-2. All exhibits referenced
28 below are attached to the Joint Declaration. The Joint Declaration contains a detailed
description of the allegations and claims, the procedural history of the Action, the risks
faced by the Settlement Class in pursuing litigation, and the efforts that led to a settlement,
among other matters.

1 Hilary Schneider (“Schneider”). The Settlement warrants approval given that it is the
2 result of vigorous arm’s-length negotiations by experienced counsel overseen by a well-
3 respected Mediator, represents a very favorable recovery that falls well within the range of
4 approval, and meets all of the approval factors required by Fed. R. Civ. P. 23(e)(2).

5 Accordingly, Lead Plaintiffs respectfully request that the Court grant final approval
6 of the Settlement. In addition, the Plan of Allocation, which was developed with the
7 assistance of Lead Plaintiffs’ consulting damages expert, is a fair and reasonable method
8 for distributing the Net Settlement Fund to eligible claimants and should also be approved
9 by the Court.

10 ARGUMENT

11 **I. STANDARDS FOR APPROVAL OF THE SETTLEMENT**

12 As a matter of public policy, settlement is strongly favored, “particularly where
13 complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095,
14 1101 (9th Cir. 2008); *see also Wood v. Ionatron, Inc.*, No. CV 06-354-TUC-CKJ, 2009
15 WL 10673479, at *2 (D. Ariz. Sept. 28, 2009) (“the extraordinary amount of judicial and
16 private resources consumed by massive class action litigation elevates the general policy of
17 encouraging settlements to an overriding public interest”).² Class action suits readily lend
18 themselves to compromise because of the difficulties of proof, the uncertainties of the
19 outcome, and the typical length of the litigation. Settlements of complex cases, such as
20 this one, greatly contribute to the efficient utilization of scarce judicial resources and
21 achieve the speedy resolution of claims. *See, e.g., Garner v. State Farm Mut. Auto Ins.*
22 *Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *10 (N.D. Cal. Apr. 22, 2010)
23 (“Settlement avoids the complexity, delay, risk and expense of continuing with the
24 litigation and will produce a prompt, certain and substantial recovery for the Plaintiff
25 class.”).

26
27
28 ² All internal quotations and citations are omitted unless otherwise noted.

1 Federal Rule of Civil Procedure 23(e) requires court approval of any class action
 2 settlement. The standard for determining whether to grant final approval to a class action
 3 settlement is whether the proposed settlement is “fair, reasonable, and adequate.” Fed. R.
 4 Civ. P. 23(e)(2). Under the Federal Rules, a court reviews a settlement using four main
 5 factors. *Id.*³ They are whether:

- 6 (A) the class representatives and class counsel have adequately
 7 represented the class;
 8 (B) the proposal was negotiated at arm’s length;
 9 (C) the relief provided for the class is adequate, taking into
 10 account:
 11 i. the costs, risks, and delay of trial and appeal;
 12 ii. the effectiveness of any proposed method of distributing
 13 relief to the class, including the method of processing
 14 class-member claims;
 15 iii. the terms of any proposed award of attorneys’ fees,
 16 including timing of payment; and
 17 iv. any agreement required to be identified under Rule
 18 23(e)(3); and
 19 (D) the proposal treats class members equitably relative to each
 20 other.

21 The determination of whether a settlement is fair, reasonable, and adequate is
 22 committed to the Court’s sound discretion. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
 23 454, 458 (9th Cir. 2000) (“Review of the district court’s decision to approve a class action
 24

25 ³ Fed. R. Civ. P. 23(e)(2) is intended to “direct[] the parties to present the settlement
 26 to the court in terms of a shorter list of core concerns, by focusing on the primary
 27 procedural considerations and substantive qualities that should always matter to the
 28 decision whether to approve the proposal.” Fed. R. Civ. P. 23 Committee Notes on Rules –
 2018 Amendment at Subdivision (e)(2).

These standards largely overlap with the pre-amendment factors considered within the
 Ninth Circuit: (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and
 likely duration of further litigation; (3) the risk of maintaining class action status
 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
 completed and the stage of the proceedings; (6) the experience and views of counsel; (7)
 the presence of a governmental participant; and (8) the reaction of the class members of
 the proposed settlement. *See Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575-76
 (9th Cir. 2004).

1 settlement is extremely limited.”). The Court need not reach conclusions about the merits
2 of the case, in part because the Court will be called upon to decide the merits if the action
3 proceeds. *See Officers for Justice v. Civil Serv. Comm’r*, 688 F.2d 615, 625 (9th Cir.
4 1982) (“[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for
5 trial on the merits. . . . [I]t is the very uncertainty of outcome in litigation and avoidance of
6 wasteful and expensive litigation that induce consensual settlements.”).

7 For the reasons discussed herein, in the Motion for Preliminary Approval of the
8 Settlement, and in the Joint Declaration, the proposed Settlement meets the criteria for
9 final approval.

10 **A. Lead Plaintiffs and Lead Counsel Have Adequately**
11 **Represented the Settlement Class**

12 Oklahoma Police Pension and Retirement System and the Oklahoma Firefighters
13 Pension and Retirement System were appointed Lead Plaintiffs after a finding that they
14 were the “most adequate plaintiffs” to represent the Settlement Class, *see* ECF No. 31, and
15 nothing has occurred since that would alter that finding. Lead Plaintiffs are sophisticated
16 institutional investors and each has substantial experience leading numerous securities
17 class actions. Both have been involved throughout the litigation and they support approval
18 of the Settlement. *See* Exs. 1 and 2. Throughout the Action, Lead Plaintiffs also benefited
19 from the advice of knowledgeable counsel well-versed in shareholder class action
20 litigation and securities fraud cases. Bernstein Liebhard LLP and Labaton Sucharow LLP
21 are among the most experienced and skilled firms in the securities litigation field, and each
22 has a long and successful track record in such cases. *See* Exs. 5-D and 6-C, firm resumes.
23 Both firms have served as lead counsel in a number of high profile and influential cases.
24 *Id.*

25 Lead Counsel have vigorously litigated the Action since its inception. Lead
26 Counsel, among other things: (i) conducted a thorough investigation that included the
27 review of publicly available information regarding the Company and interviews of former
28 employees and third parties; (ii) prepared two amended complaints; (iii) opposed two

1 motions to dismiss; (iv) successfully argued an appeal to the Ninth Circuit to restore the
2 claims; (v) conducted accelerated discovery; (vi) analyzed Defendants' mediation
3 statements and exhibits; (vii) analyzed documents produced by Defendants; and
4 (viii) consulted with experts concerning regulatory issues, damages and loss causation.

5 Prior to, and over the course of the litigation, Lead Counsel explored the strengths
6 and weaknesses of the claims and defenses and developed a deep understanding of the
7 merits of the claims. Lead Plaintiffs and Lead Counsel had a firm understanding of the
8 likelihood of success and the potential recovery at trial at the time the Settlement was
9 entered into. *See, e.g., Destefano v. Zynga Inc.*, No. 12-04007-JSC, 2016 WL 537946, at
10 *12 (N.D. Cal. Feb. 11, 2016) (noting that the extent of discovery completed and stage of
11 proceedings supports final approval of settlement where plaintiffs engaged in a pre-filing
12 investigation, opposed defendants' motions to dismiss and a motion for reconsideration,
13 worked with consultants, propounded and responded to some discovery, and prepared and
14 participated in mediation session); *Eisen v. Porsche Cars N. Am., Inc.*, No. 2:11-cv-09405-
15 CAS-FFMx, 2014 WL 439006, at *4 (C.D. Cal. Jan. 30, 2014) (approving settlement
16 where record established that "all counsel had ample information and opportunity to assess
17 the strengths and weaknesses of their claims and defenses"); *Redwen v. Sino Clean*
18 *Energy, Inc.*, No. 11-3936, 2013 U.S. Dist. LEXIS 100275, at *22 (C.D. Cal. July 9, 2013)
19 (settlement approved when, as here, "the parties have spent a significant amount of time
20 considering the issues and facts in this case and are in a position to determine whether
21 settlement is a viable alternative").

22 After this process, Lead Counsel and Lead Plaintiffs concluded that this is a fair and
23 reasonable settlement. As the Ninth Circuit observed in *Rodriguez v. West Publishing*
24 *Corporation*, Lead Counsel's informed opinion supports approval as "[t]his circuit has
25 long deferred to the private consensual decision of the parties" and their counsel in settling
26 an action. *Rodriguez*, 563 F.3d 948, 965 (9th Cir. 2009); *see also In re NVIDIA Corp.*
27 *Derivative Litig.*, No. 06-cv-06110-SBA (JCS), 2008 WL 5382544, at *4 (N.D. Cal. Dec.
28

1 22, 2008) (“[S]ignificant weight should be attributed to counsel’s belief that settlement is
2 in the best interest of those affected by the settlement.”); *Nat’l Rural Telecomm. Coop. v.*
3 *DirectTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); (“‘[g]reat weight’ is accorded to the
4 recommendation of counsel, who are most closely acquainted with the facts of the
5 underlying litigation.”). Accordingly, Lead Plaintiffs and Lead Counsel have adequately
6 represented the Settlement Class.

7 **B. The Settlement Was Negotiated at Arm’s-Length**

8 Courts have long recognized that there is an initial presumption that a proposed
9 settlement is fair and reasonable when it is the “product of arms-length negotiations.” *In*
10 *re Apollo Grp. Inc. Sec. Litig.*, No. 04-2147, 2012 WL 1378677, at *2 (D. Ariz. Apr. 20,
11 2012) (noting that “there is no evidence that there has been anything other than a genuine
12 arms-length negotiation in this case following mediation where the parties reached an
13 agreement on the settlement”). The use of an experienced mediator is an “important
14 factor” supporting a finding that this requirement is satisfied. *See In re Banc of California*
15 *Sec. Litig.*, No. SACV17-00118, 2019 WL 6605884, at *2 (C.D. Cal. Dec. 4, 2019).

16 Here, Lead Plaintiffs and Lead Counsel agreed to settle after rigorous lengthy
17 litigation and through a mediation process overseen by a highly regarded and experienced
18 mediator, Judge Phillips. *See, e.g., In re Delphi Corp. Sec. Derivative & ERISA Litig.*, 248
19 F.R.D. 483, 498 (E.D. Mich. 2008) (speaking of Judge Phillips, “the Court and the parties
20 have had the added benefit of the insight and considerable talents of a former federal judge
21 who is one of the most prominent and highly skilled mediators of complex actions”); *see*
22 *also Hefler v. Wells Fargo & Co.*, No. 16-CV-05479, 2018 WL 6619983 (N.D. Cal. Dec.
23 18, 2018) (finding that settlement was the product of arms-length negotiation where, as
24 here, mediation was conducted by retired District Court Judge Layn Phillips). It is
25 respectfully submitted that this factor supports approval of the Settlement.

1 **C. The Relief Provided by the Settlement Is Adequate in Light of**
2 **Risks of Further Litigation**

3 The \$20 million Settlement Amount presents a very favorable recovery based on
4 several metrics. First, it is almost twice the median settlement value in securities class
5 action settlements in 2019, which was reported by Cornerstone Research to be \$11.5
6 million. *See* Laarni T. Bulan and Laura E. Simmons, Securities Class Action Settlements –
7 2019 Review and Analysis at 1 (Cornerstone Research 2020), Ex. 4. During the period
8 from 1996 to 2018, essentially since the passage of the Private Securities Litigation
9 Reform Act of 1995 (“PSLRA”), the median settlement value of securities class actions
10 has been \$8.8 million, less than two-times the Settlement Amount. *Id.*

11 Second, the Settlement provides a favorable recovery as a proportion of estimated
12 aggregate damages, were the case to continue. In that regard, the Settlement represents
13 approximately 5% of the \$416 million in maximum estimated damages, and up to 10% of
14 damages when factoring in the real risk that Lead Plaintiffs would need to “disaggregate,”
15 or parse out, non-fraud related stock price movement and account for an October 29, 2015
16 stock price recovery. Joint Decl. at ¶¶98-99. Courts have regularly approved settlements
17 that recovered a similar, or smaller, percentage of maximum damages. *See, e.g., McPhail*
18 *v. First Command Fin. Planning, Inc.*, No. 05-cv-179-IEG-JMA, 2009 WL 839841, at *5
19 (S.D. Cal. Mar. 30, 2009) (finding a \$12 million settlement recovering 7% of estimated
20 damages was fair and adequate); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042
21 (N.D. Cal. 2008) (\$13.75 million settlement yielding 6% of potential damages after
22 deducting fees and costs was “higher than the median percentage of investor losses
23 recovered in recent shareholder class action settlements”). Cornerstone Research has also
24 tracked the median proportion of Section 10(b) class action recoveries since 2010.
25 Cornerstone uses what it calls a “simplified tiered damages” approach for comparison
26 purposes, *see* Ex. 4 Endnote 6, and the recovery here exceeds Cornerstone’s estimated
27 median recovery of 4.6%. *See* Ex. 4 at 7, Figure 6.

1 Moreover, although Lead Plaintiffs believe that the case against Defendants is
2 strong, that confidence must be tempered by the fact that the Settlement is certain and that
3 every case involves significant risk of no recovery, particularly in a complex case such as
4 this one, which was twice dismissed by the Court. To prevail, Lead Plaintiffs would have
5 confronted a number of legal and factual challenges, while trying to prove difficult
6 securities claims.

7 **1. Risks in Proving Loss Causation and Damages**

8 Although Lead Plaintiffs' damages expert estimated that the maximum aggregate
9 damages for this Action could be approximately \$416 million, this case involved
10 allegations that arguably required material reductions to damages if Lead Plaintiffs had to
11 "disaggregate" the price impact of multiple revelations. *See* Joint Decl. at ¶¶73-83. The
12 Complaint originally alleged that three revelations from the FTC contempt proceedings
13 caused the stock price to drop: 1) that alerts were not near real-time; 2) there was a lack of
14 PCI compliance; and 3) LifeLock understated the severity of the FTC investigation. *Id.* at
15 ¶73. However, consistent with the Ninth Circuit's decision affirming in part and reversing
16 in part the Court's Order granting Defendants' second motion to dismiss for failure to
17 adequately plead scienter as to statements related to the Company's alert services and PCI-
18 DSS compliance, and for failure to adequately plead falsity as to statements related to the
19 Federal Trade Commission investigation of the Company, liability could only attach to the
20 allegedly false statements concerning alerts. *Id.*

21 Accordingly, Defendants would likely argue that the class could only recover for
22 the decrease in stock price related to the alerts statements. *Id.* How a jury would
23 determine the value of the alerts statements versus the value of other non-fraudulent
24 revelations is unknown and presented significant challenges. But even assuming a
25 disaggregation model where 50% of the abnormal return on July 21, 2015, the end of the
26 Class Period, was disaggregated to account for the value of the alerts statements,
27
28

1 recoverable damages would decrease to \$249 million from \$416 million (which increases
2 the value of the Settlement to an 8% recovery for the Settlement Class). *Id.* at ¶79.

3 In addition to needing disaggregation to account for other causes of loss,
4 Defendants would likely argue that most of the price drop was speculation by the market
5 and did not reflect the value of the alerts statements. *Id.* at ¶80. They would likely argue
6 that the overreaction is proved by a bounce-back in LifeLock's stock price after its October
7 29, 2015 announcement that its settlement with the FTC was within a range originally
8 communicated to investors prior to July 21, 2015. *Id.* While Lead Plaintiffs do not
9 concede that an offset of damages is required, such an offset could further reduce
10 recoverable damages, by over half the maximum damages, to \$199 million, making the
11 \$20 million Settlement a 10% recovery for the Settlement Class. *Id.*

12 Defendants would also likely argue that Lead Plaintiffs cannot establish that any
13 recoverable losses were caused by the two alleged corrective disclosures. *Id.* at ¶¶74-75.
14 Defendants would argue that the first corrective disclosure on February 10, 2015 merely
15 announced that LifeLock was taking a reserve for a previously disclosed FTC investigation
16 and this announcement contained no information—much less new information—regarding
17 LifeLock's alerts. *Id.* at ¶74. Defendants would also argue that the second alleged
18 corrective disclosure on July 21, 2015, the FTC's announcement that it was initiating
19 contempt proceedings against LifeLock, revealed only *potential* wrongdoing—there was
20 no subsequent adjudication or admission that confirmed *any* wrongdoing occurred. *Id.* at
21 ¶75. Additionally, if Lead Plaintiffs were unable to develop a scientifically reasonable
22 method for disaggregating losses related to the alerts statements, then Lead Plaintiffs
23 would be unable to prove an element of their claims and none of the class members could
24 recover for their losses.

25 2. Risks in Proving Falsity and Scienter

26 Regarding falsity, Defendants would have likely argued that LifeLock never stated
27 that *all* of its alerts were near real-time. To the contrary, Defendants would argue that
28

1 LifeLock repeatedly and plainly told investors that its alerts were subject to limitations. *Id.*
2 at ¶66. With respect to scienter, Defendants would argue that Lead Plaintiffs could not
3 prove that any Defendant knowingly made statements with the required intent to defraud
4 or with severe recklessness, especially because they believed they adequately told the
5 market that the various alerts they provided came with obvious and disclosed limitations.
6 *Id.* at ¶71.

7 These risks aside, additional discovery would have been protracted. Defendants
8 would likely have sought summary judgment and there was no guarantee that the proposed
9 class would prevail in Defendants' continuous challenges and, even if they did, how the
10 Court's rulings would affect damages or how the case would be presented to a jury. A trial
11 of Lead Plaintiffs' claims would inevitably be long and complex, and even a favorable
12 verdict would undoubtedly spur a lengthy post-trial and appellate process. *See, e.g.,*
13 *Torrissi*, 8 F.3d at 1376 ("the cost, complexity and time of fully litigating the case all
14 suggest that this settlement was fair"). "Generally, unless the settlement is clearly
15 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation
16 with uncertain results." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal.
17 2015). The Settlement provides the Settlement Class, whose claims have been pending
18 since 2015, with a prompt and substantial tangible recovery, without the considerable risk,
19 expense, and delay of litigating to completion.

20 3. The Effective Process for Distributing Relief

21 The Settlement will be distributed with the assistance of an experienced claims
22 administrator. The Claims Administrator will employ a well-established protocol for the
23 processing of claims in a securities class action. Potential class members will submit,
24 either by mail or online using the Settlement website, the Court-approved Claim Form.
25 Based on the trade information provided by claimants, the Claims Administrator will
26 determine each claimant's eligibility to participate and calculate their respective
27 "Recognized Claim" based on the Court-approved Plan of Allocation. *See* Stipulation at
28

¶24. Lead Plaintiffs' claims will be reviewed in the same manner. Claimants will be notified of any defects or conditions of ineligibility and be given the chance to contest rejection. Any claim disputes that cannot be resolved will be presented to the Court for a determination.

After the Settlement reaches its Effective Date (Stipulation at ¶39) and the passing of all applicable deadlines, Authorized Claimants will be issued checks. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator will, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute the balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after redistribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, will be contributed to a non-sectarian, not-for-profit charitable organization serving the public interest designated by Lead Plaintiffs and approved by the Court. *See* Stipulation at ¶27.

4. The Anticipated Attorney's Fees and Expenses Are Reasonable

As set forth in the accompanying motion, Lead Counsel is requesting attorneys' fees of 30% of the Settlement Fund, litigation expenses of \$265,124.33, and awards totaling \$4,320 to Lead Plaintiffs pursuant to the PSLRA. A fee request of 30%, while slightly above the 25% "benchmark" within the Ninth Circuit, is consistent with other settlements approved in the Ninth Circuit, and is warranted given the work done in the case. *See, e.g., Wood v. Ionatron, Inc.*, No. CV 06-354-TUC-CKJ, 2009 WL 10673479, at *5 (D. Ariz. Sept. 28, 2009) (fee of 30% of settlement fund "well within the range

1 routinely approved in such cases”). The Settlement is not contingent upon any particular
2 award to Lead Counsel, which is within the discretion of the Court.

3 **5. The Relief Provided in the Settlement Is Adequate Taking Into**
4 **Account all Agreements Related to the Settlement**

5 The relief provided to the Settlement Class is also adequate under Rule
6 23(e)(2)(C)(iv) given that the agreements required to be identified under Rule 23(e)(3)
7 treat the Settlement Class fairly. *See In re Extreme Networks, Inc. Sec. Litig.*, No. 15-CV-
8 04883-BLF, 2019 WL 3290770, at *8 (N.D. Cal. July 22, 2019) (finding that the absence
9 of clear sailing fee provisions and no reversion of funds to the defendants support
10 approving the settlement).

11 Here, on March 4, 2020, the Parties entered into a memorandum of understanding
12 concerning their agreement in principle, which was formally memorialized in the
13 Stipulation, dated as of March 27, 2020. Also as of March 27, 2020, they entered into a
14 confidential Supplemental Agreement Regarding Requests for Exclusion (the
15 “Supplemental Agreement”). The Supplemental Agreement sets forth the conditions under
16 which LifeLock has the discretion to terminate the Settlement if requests for exclusion
17 from the Settlement Class exceed a certain agreed-upon threshold. As is standard in
18 securities settlements, the Supplemental Agreement has been kept confidential in order to
19 avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging
20 a larger individual settlement. Pursuant to its terms, the Supplemental Agreement may be
21 submitted to the Court *in camera* or under seal.

22 The Supplemental Agreement, Stipulation, and memorandum of understanding are
23 the only agreements concerning the Settlement entered into by the Parties. The Settlement
24 does not contain a reversion to Defendants, and the Settlement is not contingent on any
25 particular fee award to Lead Counsel. All the agreements treat the Settlement Class fairly
26 and support a finding that the relief provided by the Settlement is adequate.

1 **D. Settlement Class Members Are Treated Equitably Relative to One**
2 **Another and the Proposed Plan of Allocation Should Be Approved**

3 The Plan of Allocation, drafted with the assistance of Lead Plaintiffs' damages
4 expert, is a fair, reasonable, and adequate method for allocating the proceeds of the
5 Settlement among eligible claimants and treats all Settlement Class Members equitably, as
6 required by Rule 23(e)(2)(D). Each Authorized Claimant, including Lead Plaintiffs, will
7 receive a distribution pursuant to the Plan, and Lead Plaintiffs will be subject to the same
8 formula for distribution of the Settlement as other class members. *See Ciuffitelli v.*
9 *Deloitte & Touche LLP*, No. 16CV00580, 2019 WL 1441634, at *18 (D. Or. Mar. 19,
10 2019) (“[t]he Proposed Settlement does not provide preferential treatment to Plaintiffs or
11 segments of the class” where “the proposed Plan of Allocation compensates all Class
12 Members and Class Representatives equally in that they will receive a pro rata distribution
13 based [sic] of the Settlement Fund based on their net losses”).

14 The standard for approval of a plan of allocation in a class action under Rule 23 of
15 the Federal Rules of Civil Procedure is the same as the standard applicable to the
16 settlement as a whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs v.*
17 *City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *Omnivision*, 559 F. Supp. 2d at 1045.
18 An allocation formula need only have a reasonable basis, particularly if recommended by
19 experienced class counsel. *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL
20 1594403, at *11 (C.D. Cal. June 10, 2005). “[A] plan of allocation . . . fairly treats class
21 members by awarding a pro rata share to every Authorized Claimant, even as it sensibly
22 makes interclass distinctions based upon, inter alia, the relative strengths and weaknesses
23 of class members’ individual claims and the timing of purchases of the securities at issue.”
24 *Redwen*, 2013 U.S. Dist. LEXIS 100275, at *29.

25 Here, Lead Plaintiffs’ consulting damages expert prepared the Plan of Allocation
26 after careful consideration of Lead Plaintiffs’ theories of liability and damages under the
27 Exchange Act. The Plan provides for distribution of the Net Settlement Fund among
28 Authorized Claimants on a *pro rata* basis based on “Recognized Claim” formulas tied to

1 liability and damages. These formulas consider the amount of alleged artificial inflation
2 (or deflation for put options) in the prices of LifeLock publicly traded common stock and
3 call options, as quantified by the consulting damages expert. Losses arising from
4 purchases/acquisitions on the first day of the Class Period, July 31, 2014, are discounted
5 by 95% given the unique considerations on that date. Namely, the class period in the
6 Complaint originally began on July 30, 2014. However, the Ninth Circuit held that the
7 alleged misstatement on July 30, 2014, which occurred during after-hours trading and
8 allegedly impacted trading prices on July 31, 2014, was not actionable as pled (*see*
9 *Oklahoma Police Pension and Retirement System v. LifeLock, Inc.*, 780 F. App'x 480, 483
10 n.2 (9th Cir. 2019)). Settlement Class members are eligible to receive 5% of the
11 Recognized Loss Amount for their purchases made on July 31, 2014 to account for the risk
12 of Lead Plaintiffs being unable to re-plead and sustain the dismissed July 30, 2014
13 statement and the limited effect of the July 31, 2014 alleged misstatement on trading.

14 Individual claimants' recoveries will depend upon when during the Class Period
15 they bought LifeLock securities, what type of securities they purchased, and whether and
16 when they sold their securities. Authorized Claimants will recover their proportional "pro
17 rata" amount of the Net Settlement Fund based on their Recognized Loss, calculated under
18 the Plan of Allocation using the transactional information provided by claimants in their
19 claim forms. As a result, the Plan of Allocation will result in a fair distribution of the
20 available proceeds among Settlement Class Members who submit valid claims. The Plan
21 of Allocation was fully described in the Notice and, to date, there has been no objection to
22 the proposed plan. *See* Ex. 3-A at 12-18.

23 **E. Reaction of the Settlement Class to Date**

24 Pursuant to this Court's Preliminary Approval Order, the Notice and Claim Form
25 were mailed to potential Settlement Class Members who could be identified with
26 reasonable effort. *See* Declaration of Luiggy Segura Regarding (A) Mailing of the Notice
27 and Proof of Claim; (B) Publication of the Summary Notice; and (C) Report on Requests
28

1 for Exclusion Received, Ex. 3 at ¶¶3-13. The Summary Notice was published in *Investor's*
2 *Business Daily* and transmitted over the internet using *PRNewswire* on May 4, 2020. *Id.* at
3 ¶14. Additionally, the Stipulation, Notice, Claim Form, and Preliminary Approval Order
4 were posted to the website dedicated to the Settlement (*id.* at ¶16), as well as Lead
5 Counsel's websites.

6 The Notice advised the Settlement Class of, among other things, the terms of the
7 Settlement, the Plan of Allocation, and the maximum amount of Lead Counsel's request
8 for an award of attorneys' fees and expenses, as well as the procedures and deadlines for
9 filing objections and requesting exclusion from the Settlement Class. *See generally* Ex. 3-
10 A. The Notice also stated that the motions in support of approval of the Settlement and the
11 request for attorneys' fees and expenses would be filed with the Court no later than June
12 16, 2020, and be available to the public through the Settlement website, Lead Counsel's
13 websites, request to the Claims Administrator, the Clerk's Office, or PACER. *See* Ex. 3-A
14 at ¶¶49-51.

15 The Ninth Circuit has held that notice must be "reasonably calculated, under all the
16 circumstances, to apprise interested parties of the pendency of the action and afford them
17 an opportunity to present their objections." *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d
18 1338, 1351 (9th Cir. 1980). The Ninth Circuit has also ruled that the objection deadline
19 should fall after motions in support of approval and attorneys' fees and expenses have been
20 filed. *See, e.g., In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010)
21 (requiring that fee motion be made available to the class before the deadline for objecting
22 to the fee). Lead Plaintiffs respectfully submit that the notice program utilized here readily
23 meets these standards.

24 To date, 44,954 Notice Packets have been mailed to potential Settlement Class
25 Members and nominees. Ex. 3 at ¶13. While the objection/exclusion deadline – June 30,
26 2020 – has not yet passed, to date, no objections and no exclusion requests have been
27 received. *See* Joint Decl. at ¶62; Ex. 3 at ¶17. The reaction to date supports approval of
28

1 the Settlement and the proposed Plan of Allocation. Lead Plaintiffs will address objections
2 and requests for exclusion, if any, in their reply submission.

3 **II. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS**

4 The Court previously granted preliminary certification to the Settlement Class under
5 Rules 23(a) and (b)(3). *See* ECF No. 138 at 2-3. Because nothing has occurred since then
6 to cast doubt on the propriety of class certification for settlement purposes, and no
7 objections to certification have been received to date, the Court should grant final class
8 certification.

9 **CONCLUSION**

10 For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court: (i)
11 grant final approval of the Settlement; (ii) finally certify the Settlement Class, for
12 settlement purposes only; and (iii) approve the proposed Plan of Allocation as fair,
13 reasonable, and adequate. Proposed orders will be submitted with Lead Plaintiffs' reply
14 submissions, after the deadlines for objecting and seeking exclusion have passed.

15 Dated: June 16, 2020

Respectfully submitted,

17 **LABATON SUCHAROW LLP**

18 */s/ Carol C. Villegas*

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CERTIFICATE OF SERVICE

I, Carol C. Villegas, hereby certify that a true copy of the foregoing document filed through the ECF system on June 16, 2020, will be electronically sent to the registered participants as identified on the Notice of Electronic Filing, and paper copies will also be sent to those indicated as non-registered participants.

/s/ Carol C. Villegas
CAROL C. VILLEGAS