UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE MOL GLOBAL, INC. SECURITIES LITIGATION	No. 14-Civ-9357 (WHP) **ECF Case**

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

Daniel Hume
Ira M. Press
Meghan J. Summers
KIRBY McINERNEY LLP
825 Third Avenue, 16th Floor
New York, NY 10022
Telephone: (212) 371-6600
Facsimile: (212) 751-2540
dhume@kmllp.com
ipress@kmllp.com
msummers@kmllp.com

Lead Counsel for Class and Counsel for Lead Plaintiff TAP Retirement Fund

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I. INTRODUCTION

Court-appointed Lead Plaintiff and Lead Counsel in the above-captioned class action (the "Action") respectfully submit that the proposed $8.5 million cash settlement satisfies all of the relevant standards for final approval under Rule 23 of the Federal Rules of Civil Procedure.[1] The Settlement recovers approximately more than 19% of estimated potential class-wide recoverable damages, which compares favorably to the percentage of damages recovered in recent settlements of other securities class actions.[2] Pursuant to the Court's Preliminary Approval Order dated May 20, 2016 (the "Preliminary Approval Order"), the Court will hear Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation on September 16, 2016 at 11:00 a.m. (the "Settlement Hearing"). *See* Press Decl. Ex. A, Preliminary Approval Order ¶ 5, ECF No. 104.[3]

The Settlement is eminently fair considering the substantial recovery to the Settlement Class and the risks and costs attendant to further, protracted litigation. The Settlement resulted

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[1] References to "Lead Plaintiff" are to Lembaga Tabung Amanah Pekerja (the "TAP Retirement Fund"). Lead Plaintiff was appointed as class representative by the Court on May 8, 2015. *See* ECF No. 65. "Lead Counsel" refers to Kirby McInerney LLP, which was appointed as counsel for the Class by the Court on May 8, 2015. *Id.* All capitalized terms not otherwise defined shall carry the meaning set forth in the Stipulation of Settlement (the "Stipulation"), dated April 11, 2016, filed previously with the Court on April 12, 2016. *See* ECF No. 102-1.

[2] According to a 2016 report by NERA Economic Consulting entitled "Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review" ("NERA Report"), in securities class actions where estimated damages were between $20 million and $49 million, as they are here, the median recovery was only 8.6% of recognized losses. *See* concurrently filed Declaration of Ira M. Press in Support of Final Approval of the Proposed Class Action Settlement, Plan of Allocation, Award of Attorney's Fees and Expenses, and Class Representative's Request for Reimbursement of Expenses ("Press Decl.") Ex. D at 33, Figure 29. Further, according to a 2016 report by Cornerstone Research entitled "Securities Class Action Settlements: 2015 Review and Analysis" ("Cornerstone Report"), in securities class actions where estimated damages were less than $50 million, as they are here, the median recovery was only 6.7% of estimated damages. *See* Press Decl. Ex. E at 9, Figure 8.

[3] Lead Counsel is concurrently filing a motion for an award of attorneys' fees and reimbursement of litigation expenses, which the Court will also consider at the Settlement Hearing. *Id.*

from intensive arm's-length negotiations during a mediation process conducted by former U.S. District Court Judge Layn Phillips (Ret.) of Phillips ADR Enterprises, P.C. (the "Mediator"). The Settlement reflects a reasoned compromise based on Lead Plaintiff's and Lead Counsel's knowledge of the strengths and weaknesses of the case gained through an extensive pre-complaint investigation, thorough and detailed amended complaints, motion practice, consultation with experts, and an adversarial arm's-length mediation process. For the reasons set forth below, it is respectfully submitted that the Settlement and Plan of Allocation are fair, reasonable, and adequate, and the Court should approve the Settlement and Plan of Allocation.

II. PROCEDURAL BACKGROUND AND SUBSTANTIVE ALLEGATIONS

A. Procedural Background

The Press Declaration, which accompanies this motion, details the factual and procedural background of this case and the events that led to the Settlement. *See* Press Decl. ¶¶ 14-28.

B. Substantive Allegations

The factual allegations of the Complaint have been set forth at length in briefing on Defendants'[4] motion to dismiss. *See* ECF Nos. 85, 89, 93. In short, Lead Plaintiff alleged that the Offering Documents filed with the Securities Exchange Commission in connection with MOL's initial public offering ("IPO"): (i) materially misrepresented MOL's revenue during 2013 and the first half of 2014; (ii) materially misrepresented the revenue recognition policies underlying such revenues; (iii) omitted to disclose material weaknesses in MOL's internal

[4] Citigroup Global Markets Inc., Deutsche Bank Securities Inc., and UBS Securities LLC are collectively referred to as the "Underwriter Defendants." Defendants Ganesh Kumar Bangah, Allan Sai Wah Wong, Craig White, Yit Fei Chang, Tek Kuang Cheah, Mun Kee Chang, Eric He, Noah J. Doyle, and Tan Sri Dato' Seri Vincent Tan are collectively referred to as the "Individual Defendants," and together with MOL Global, Inc. ("MOL"), are referred to as the "MOL Defendants." The MOL Defendants and the Underwriter Defendants are collectively referred to as the "Defendants."

controls; and (iv) omitted to disclose MOL's disappointing financial results for the recently-completed third quarter of 2014.

After the close of trading on November 20, 2014, MOL announced that its Chief Financial Officer had resigned and that the disclosure of MOL's results would be delayed until early December. In response, MOL's American Depositary Shares ("ADS") lost more than half their value, falling from $8.86 per ADS on November 20, 2014 to $4.09 per ADS on November 21, 2014. Trading in MOL ADS was thereafter halted.

Then on December 1, 2014, MOL disclosed, among other things, that throughout 2013 and the first half of 2014, MOL's accounting practices had deviated from the revenue recognition policies stated in the Offering Documents and as a result, the revenue reported in the Offering Documents was overstated. These accounting errors had forced MOL to delay its Q3 results, which MOL disclosed on December 1, 2014. As trading resumed following these disclosures, MOL's ADS price fell an additional 58.68% from its frozen ADS price of $4.09 per ADS to $1.69 per ADS.

III. REASONS FOR THE SETTLEMENT

The principal reason for the Settlement is the significant benefit that it provides to the Settlement Class now. This benefit must be weighed against the risk that the Settlement Class would receive no recovery had Lead Plaintiff elected to continue litigating and been defeated at the motion to dismiss, class certification, or summary judgment phases, trial, or appeal.

Lead Plaintiff's decision to settle this matter was fully informed and the product of Lead Counsel's rigorous prosecution of this matter through the date of the parties' agreement. Specifically, in assessing whether the Settlement is in the best interest of the Settlement Class, Lead Plaintiff and Lead Counsel considered, among other things: (i) the substantial cash benefit

to the Settlement Class Members under the terms of the Stipulation; (ii) the merits of the parties' claims and defenses; (iii) the difficulties and risks involved in defending likely *Daubert* or summary judgment motions, and the likelihood of prevailing at trial; (iv) the likelihood of obtaining, and collecting on, a superior recovery in the event that Lead Plaintiff were to succeed at trial; and (v) the delays inherent in litigation, including appeals.

Although Lead Plaintiff believes that the Defendants made materially false and/or misleading statements in MOL's Offering Documents, Defendants have raised a host of factual and legal challenges, increasing the uncertainty of a favorable outcome absent settlement. For example, the arguments raised by Defendants in their motion to dismiss included that: (a) Defendants' admitted accounting error was not material; (b) Defendants' statements concerning internal controls in the Offering Documents were not false; (c) Defendants had no duty to pre-disclose the results for the third quarter of 2014; (d) the disclosure on November 20, 2014 was not corrective; and (e) the drop in MOL's ADS price on December 1, 2014 was caused largely by news that was not related to any actionable misrepresentations or omissions. *See* Press Decl. ¶ 5. Even if Lead Plaintiff were to defeat the dismissal motion in its entirety, it still faced the possibility that the Court would reject Lead Plaintiff's damages analysis under *Daubert*. Moreover, even if Lead Plaintiff were to overcome all challenges and prevail on all of its claims at trial, it would face the potential difficulty of enforcing a judgment in Malaysia. *Id.* ¶¶ 6, 32. By settling the action now, Lead Plaintiff and the Settlement Class can share in what would amount to a recovery of over 19% of the potential class-wide recovery had Lead Plaintiff prevailed at trial and had all Settlement Class Members submitted claims thereto. *See* Point V.C.7, *infra*.

Similarly, although Defendants deny each and all of Lead Plaintiff's claims and contentions, they nevertheless have concluded that it is desirable to fully and finally resolve this litigation in the manner and on the terms set forth in the Stipulation. For Defendants, resolution of the Action limits further expense and inconvenience and eliminates the uncertainty and risks inherent in any litigation.

Accordingly, Lead Plaintiff and Lead Counsel respectfully submit that the Court should grant final approval of the proposed Settlement because it represents a significant all-cash compensation for the Settlement Class and will eliminate the significant risk that continued litigation may result in a smaller recovery or possibly no recovery at all. Defendants do not oppose this motion for final approval of the proposed class action Settlement.

IV. THE TERMS OF THE SETTLEMENT

The Settlement resolves all claims of Lead Plaintiff and the Settlement Class against all Released Parties. MOL has agreed to cause $8.5 million in cash to be paid into a Settlement Fund on behalf of Lead Plaintiff and the Settlement Class. The Settlement Fund was deposited into an escrow account within 15 days after the entry of the Preliminary Approval Order in accordance with the payment instructions provided by Lead Counsel and has and will continue to earn interest until distributed to the Settlement Class. *See* Press Decl. ¶ 4.

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND FINAL APPROVAL SHOULD BE GRANTED

A. The Applicable Standard

The settlement of claims brought by a certified class is subject to court approval after reasonable notice and a hearing. *See* Fed. R. Civ. P. 23(e)(1)-(2). A court will approve a settlement if it is "fair, adequate, and reasonable, and not a product of collusion." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotations omitted).

This determination falls within a court's sound discretion. *See Joel A. v. Giuliani*, 218 F.3d 132, 139 (2d Cir. 2000); *In re Ivan F. Boesky Sec. Litig.*, 948 F.2d 1358, 1368 (2d Cir. 1991); *In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp. 2d 503, 509 (E.D.N.Y. 2003). In exercising such discretion, a court should be mindful of the "strong judicial policy in favor of settlements." *Wal-Mart,* 396 F.3d at 116 (internal quotations omitted); *see also In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 280 (S.D.N.Y. 1999); *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 722 F.2d 988, 997 (2d Cir. 1983).

"Courts determine the fairness of a settlement by looking both at the terms of the settlement and the negotiation process leading up to it." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 575 (S.D.N.Y. 2008); *see Wal-Mart*, 396 F.3d at 116 (citations omitted). With respect to process, a class action settlement enjoys a strong "presumption of fairness" where it is the product of arm's-length negotiations conducted by experienced, capable counsel. *See Wal-Mart*, 396 F.3d at 116; *see also City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014); *Shapiro v. JPMorgan Chase & Co.*, Nos. 11 Civ. 8331, 11 Civ. 7961, 2014 WL 1224666, at *7 (S.D.N.Y. Mar. 24, 2014); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004); *Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 212 (S.D.N.Y. 1992). Indeed, "absent evidence of fraud or overreaching, [courts] consistently have refused to act as Monday morning quarterbacks in evaluating the judgment of counsel." *Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993). This is particularly true in complex class actions, where "the courts have long recognized that such litigation 'is notably difficult and notoriously uncertain,' and that compromise is particularly appropriate." *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989) (internal citations omitted).

With respect to the substantive terms of a settlement, courts in this Circuit analyze the factors set forth in *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974), which include:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Wal-Mart, 396 F.3d at 117 (quoting *Grinnell*, 495 F.2d at 463) (citations omitted)).

In applying the *Grinnell* factors, a court should not substitute its judgment for those of the parties who negotiated the settlement, or conduct a "mini-trial" on the action's merit. *See Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982).

Here, the proposed Settlement is fair, reasonable, and adequate when the *Grinnell* factors are considered. Counsel for the parties have thoroughly weighed the strengths and weaknesses of the claims and defenses thereto and, after a formal mediation session and extensive negotiations facilitated by the independent and experienced Mediator, have reached an informed compromise.

B. The Settlement Is Procedurally Fair as it Was Negotiated at Arm's Length and Is Supported by Lead Plaintiff and Experienced Counsel

The Settlement was negotiated at arm's-length by counsel who are experienced in complex securities litigation and who were acting in an informed manner. During the mediation process, the parties submitted confidential mediation statements and participated in mediated settlement negotiations before the Mediator. At the conclusion of the mediation, after continued

discussions with the Mediator in the weeks that followed, the parties accepted the Mediator's proposal to settle and release all claims for $8.5 million in cash. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("[M]ediator's involvement . . . ensure[d] that the proceedings were free of collusion and undue pressure."); *see also In re Advanced Battery Techs., Sec. Litig.*, 298 F.R.D. 171, 179 (S.D.N.Y. 2014) ("[A] strong initial presumption of fairness attaches to the proposed settlement if, as here, the settlement is reached by experienced counsel after arm's-length negotiations."); *In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) ("[T]hat the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable.").

Lead Counsel, who has extensive experience prosecuting complex securities and shareholder class actions and is intimately familiar with the facts of this case, believes that the Settlement is not just fair, reasonable, and adequate, but an excellent result for Lead Plaintiff and the Settlement Class. *See* Press Decl. ¶¶ 5-7, 30-36. This opinion is entitled to "great weight." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), aff'd, 117 F.3d 721 (2d Cir. 1997) (citation omitted); *see also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115809, at *12 (S.D.N.Y. Nov. 7, 2007).

All of these considerations confirm the reasonableness of the Settlement and that the Settlement is entitled to the presumption of procedural fairness.

C. The Settlement Terms Are Fair, Reasonable, and Adequate and Satisfy the Second Circuit's *Grinnell* Factors

In determining whether the substantive terms of a settlement are fair, reasonable, and adequate, courts in this Circuit look to the nine *Grinnell* factors. However, all nine factors need not be satisfied. Instead, the court should look at the totality of these factors in light of the

specific circumstances involved. *See Global Crossing*, 225 F.R.D. at 456. As demonstrated below, the Settlement satisfies the *Grinnell* factors. Accordingly, Lead Counsel respectfully submits that the Settlement clearly warrants this Court's final approval.

1. Continued Litigation Would Be Complex, Expensive, and Protracted

Courts have consistently recognized that the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement, especially in a securities class action. *See, e.g., In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, No. 02 Civ. 5575, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *Hicks v. Stanley*, No. 01 Civ. 10071, 2005 WL 2757792, at *5-6 (S.D.N.Y. Oct. 24, 2005).

The parties resolved this Action after Lead Plaintiff, *inter alia*: (i) conducted an extensive pre-complaint investigation; (ii) researched, drafted, and filed thorough and detailed amended complaints; (iii) consulted with damages and legal experts; (iv) analyzed the law applicable to the parties' claims and defenses; (v) opposed Defendants' motion to dismiss briefing; and (vi) engaged in intensive settlement negotiations, including mediation sessions facilitated by the Mediator. *See* Press Decl. ¶¶ 5, 22-26, 45-46. During the mediation process, the parties submitted mediation statements and participated in face-to-face mediation sessions, which, with the assistance of the Mediator, resulted in an agreement to settle and release all claims asserted against Defendants for $8.5 million in cash. Reaching a settlement at this juncture avoided the uncertainties of protracted litigation.

Absent the Settlement, Lead Plaintiff would still likely need to successfully achieve class certification, defend summary judgment, *Daubert* motions, and other motion practice, and participate in a complex and costly trial, and likely appeals. Throughout this process Lead Plaintiff would face numerous hurdles such as challenges to loss causation, and arguments that

there were no actionable misrepresentations during the Class Period, no recoverable damages, that any misrepresentations or omissions were not material, and that any omitted information was not subject to a duty of disclosure.

Moreover, even if Lead Plaintiff were to prevail at all stages of the litigation, any potential recovery (in the absence of a settlement) likely would only occur years in the future, substantially delaying payment to the Settlement Class, and only after costly appeals and additional protracted post-judgment and post-appeal proceedings in Malaysia to enforce such judgment against Malaysian defendants. By contrast, the Settlement offers the opportunity to provide definite recompense to the Settlement Class now. *See Hicks*, 2005 WL 2757792, at *6 ("Further litigation would necessarily involve further costs; justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[E]ven if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery.").

2. Reaction of the Settlement Class to the Settlement

The reaction of the Settlement Class to the Settlement is a significant factor in assessing its fairness and adequacy. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02 Civ. 3400, 2010 WL 4537550, at *16 (S.D.N.Y. Nov. 8, 2010); *Veeco*, 2007 WL 4115809, at *7. The absence of valid objections to the Settlement provides evidence of Settlement Class Members' approval of the terms of the Settlement and desire to share in the proceeds thereof. *See RMED Int'l, Inc. v. Sloan's Supermarkets, Inc.*, No. 94 Civ. 5587, 2003 WL 21136726, at *1 (S.D.N.Y. May 15, 2003). Pursuant to Paragraph 16 of the Preliminary Approval Order, Settlement Class

Members were notified that they have until August 26, 2016 to request exclusion from the Settlement Class or to object to the Settlement. To date, not a single objection has been received regarding the Settlement, the Plan of Allocation, or the amount of Lead Counsel's fee request or expenses. *See* Press Decl. ¶¶ 37, 57. Additionally, as of August 9, 2016, no requests for exclusion have been received. *Id.*; GCG Aff.[5] ¶ 11. The overwhelmingly positive reaction of the Settlement Class evidences its approval. *See City of Providence*, 2014 WL 1883494, at *6 ("That almost no Class Member objected to the Settlement or chose to exclude himself from it is indeed the strongest indication that the Settlement is fair and reasonable.").[6]

3. Lead Plaintiff Had Sufficient Information to Make an Informed Decision as to Settlement

In considering the third *Grinnell* factor, "the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement." *In re Bear Stearns Cos., Inc. Sec., Derivative, and ERISA Litig.*, 909 F.Supp.2d 259, 267 (S.D.N.Y. 2012) (citing *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 190 (S.D.N.Y. 2012) (internal citations, quotation marks and alterations omitted)).

Here, Lead Counsel conducted its own independent investigation without the benefit of any government investigation to formulate its theory of the case. As detailed in the Press Declaration, the investigation included, *inter alia*, reviewing and analyzing publicly available

[5] "GCG Aff." refers to the Affidavit of Jose C. Fraga Regarding Mailing of the Notice and Proof of Claim and Release; Publication of the Summary Notice; Telephone Helpline; Website; and Requests for Exclusion, filed herewith as Exhibit B to the Press Decl.

[6] To the extent any objections or timely requests for exclusion are received subsequent to the filing of this brief, Lead Plaintiff will address those requests in its reply papers, which are due on September 9, 2016.

information and data concerning MOL, and consulting with experts about accounting and causation issues. *See* Press Decl. ¶¶ 6, 30-32, 45. Lead Counsel also researched and drafted amended complaints, engaged in motion practice on Defendants' motion to dismiss, and participated in settlement and mediation discussions. *See id.* ¶¶ 22-26, 45.

"Accordingly, Lead Plaintiff and Lead Counsel have developed a comprehensive understanding of the key legal and factual issues in the litigation and, at the time the Settlement was reached, had 'a clear view of the strengths and weaknesses of their case' and of the range of possible outcomes at trial." *City of Providence*, 2014 WL 1883494, at *7; *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.,* No. 01 Civ. 11814, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (quotation omitted).

4. Lead Plaintiff Faced Significant Risks in Establishing Liability and Damages

In analyzing the risk to plaintiffs in establishing liability, the Court does not "need to decide the merits of the case or resolve unsettled legal questions." *Cinelli v. MCS Claim Servs., Inc*., 236 F.R.D. 118, 121 (E.D.N.Y. 2006) (internal quotations and alterations omitted). Rather, the Court is only required to weigh the likelihood of success on the merits against the relief provided by the Settlement. *See id.* at 122. Courts routinely approve settlements where plaintiffs would have faced significant legal and factual obstacles to establishing liability. *See Global Crossing*, 225 F.R.D. at 459.

In assessing the Settlement, the Court should balance the benefits afforded the Settlement Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463; *Veeco*, 2007 WL 4115809, at *8-9. Securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet. *See AOL Time Warner*, 2006 WL 903236, at *11 (noting that "[t]he difficulty of establishing liability is a

common risk of securities litigation"); *In re Alloy, Inc. Sec. Litig.*, No. 03 Civ. 1597, 2004 WL 2750089, at *2 (S.D.N.Y. Dec. 2, 2004) (finding that issues present in a securities action presented significant hurdles to proving liability).

While Lead Counsel believes that it would prove Lead Plaintiff's claims, it also recognizes that it would face substantial hurdles. Lead Plaintiff would bear the burden of showing that the evidence it elicited during discovery was sufficient to establish its claims despite any credible defenses. Although Lead Plaintiff believes that documentary and testimonial evidence would support its claims, there is no way to determine without substantial additional litigation whether such evidence would withstand a summary judgment motion, and convince a jury to accept Lead Plaintiff's theory over Defendants' competing narrative. Among other factual defenses, Defendants have argued that: (i) misstatements regarding MOL's revenue and revenue recognition policies were immaterial; and (ii) the Offering Documents were not false and/or misleading because they identified certain material weakness in internal controls and complied with MOL's disclosure obligations.

Lead Plaintiff would also face the risk that it would be unable to prevail on questions concerning loss causation and damages. *See In re Milken & Assocs. Sec. Litig.*, 150 F.R.D. 46, 54 (S.D.N.Y. 1993) (approving settlement of a small percentage of the total damages sought because the magnitude of damages often becomes a "battle of experts . . . with no guarantee of the outcome"); *see also In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. at 129. To prevail on those issues, Lead Plaintiff would be required, with the assistance of an expert, to defeat Defendants' expert-assisted contentions that the price of MOL ADS declined for reasons unrelated to correction of any misleading statements in the Offering Documents.

Further, at the summary judgment stage, Defendants would likely continue to challenge Lead Plaintiff's calculation of damages or argue that any decline in the price of MOL ADS resulted from factors other than disclosures relating to MOL's restated financial information or its disappointing Q3 results. Even if the Action were permitted to go to trial, it is not possible to determine which party's expert the jury would find more credible.

Accordingly, absent this Settlement, there is a very real risk of no recovery, possibly after years of additional proceedings. Conversely, the Settlement will provide tangible, certain and substantial relief to the Settlement Class now, "without subjecting them to the risks, complexity, duration, and expense of continuing litigation." *Global Crossing*, 225 F.R.D. at 456-57. Under these circumstances, the Settlement balances the risks, costs, and delay inherent in complex cases.

5. The Risk of Maintaining Class Action Status Through Trial

Lead Counsel is confident that the Court would have granted a class certification motion and disregarded any challenges thereto. However, Lead Counsel recognizes that Defendants can continuously raise challenges to class certification, and may move to de-certify the Class before trial or on appeal at the conclusion of trial, as class certification may always be reviewed. *See* Fed. R. Civ. P. 23(c); *Chatelain*, 805 F. Supp. at 214 ("Even if certified, the class would face the risk of decertification. This factor indicates that settlement is advantageous to the class at this time."). "Given such risk, this factor weighs in favor of approval of the Settlement." *In re Advanced Battery Techs*., 298 F.R.D. at 178.

6. Ability to Withstand Greater Judgment

The court may also consider a defendant's ability to withstand a judgment greater than that secured by settlement. *See Grinnell*, 495 F.2d at 463. Here, MOL's solvency is

questionable. MOL's October 9, 2014 IPO was priced at $12.50 per ADS but MOL ADS has been delisted effective as of June 1, 2016. The Underwriter Defendants may be solvent but there is no guarantee that Lead Plaintiff would be to overcome their due diligence defense (a defense that is not available to MOL). Furthermore, even if all Defendants were capable of withstanding a greater judgment – which is not a certainty here – that factor alone is insufficient to defeat approval of the Settlement, especially where, as here, the other *Grinnell* factors weigh in support of approving the Settlement. *See D'Amato*, 236 F.3d at 86 (the ability to withstand higher judgment, "standing alone, does not suggest that the settlement is unfair"); *Veeco*, 2007 WL 4115809, at *11. (defendant's substantial net worth "alone does not prevent the Court from approving the Settlement where the other *Grinnell* factors are satisfied"); *see also In re Sony SXRD Rear Projection Television Class Action Litig., No. 06 Civ. 5173*, 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008). ("[A] defendant is not required to 'empty its coffers' before a settlement can be found adequate.").

7. The Settlement Amount Is in the Range of Reasonableness in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

The size of the Settlement provides support for its reasonableness when viewed in light of the best possible recovery and all of the risks of continued litigation discussed above. *See Wal-Mart*, 396 F.3d at 119 ("[T]here is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion . . . .") (internal citation omitted).

When compared to other recent securities class action settlements, the Settlement is clearly within the range of reasonableness. Press Decl. ¶¶ 33-36. According to the NERA Report, in 2015, the "median of settlement value as a percentage of investor losses" was 8.6%

for cases, such as this, with investor losses in the range of $20 to $49 million. *See* Press Decl. Ex. D at 33, Figure 29. Additionally, the Cornerstone Report reveals that in 2015, in securities class actions where estimated damages were less than $50 million, as they are here, the median recovery was only 6.7% of estimated damages. *See* Press Decl. Ex. E at 9, Figure 8. Accordingly, the $8.5 million Settlement here, which represents over 19% of the estimated class-wide damages of $43.7 million, represents a truly remarkable result.[7] Thus, the Settlement represents a recovery well in excess of the median settlement for securities class actions with comparable estimated class-wide damages in recent years.

The Settlement is even more impressive when one considers the very real risks and challenges that Lead Plaintiff and the Settlement Class would have experienced collecting on any judgment in the event that they were to succeed at trial on liability and damage issues. MOL and the Individual Defendants are residents of Malaysia. There is considerable uncertainty as to whether a Malaysian court would enforce a U.S. class action judgment against Malaysian defendants. Needless to say, this risk does not exist in most PSLRA actions, as they generally involve defendants that are based, or have some presence, in the United States.

Accordingly, Lead Counsel respectfully submits that this Court should find that the *Grinnell* factors, taken together, weigh in favor of Settlement and that the Settlement should be approved.

[7] In the event that fewer than 100% of the Settlement Class Members choose to submit claims to share in the Settlement recovery (securities class action claims rates are generally below 100%), those Settlement Class Members who file timely and valid claims will likely receive significantly more than their estimated recoverable damages.

D. The Plan of Allocation Should Be Approved as it Is Fair, Reasonable, and Adequate

When evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel. "When formulated by competent and experienced class counsel," a plan of allocation of net settlement proceeds "need have only a reasonable, rational basis." *Telik*, 576 F. Supp. 2d at 580 (quoting *Global Crossing*, 225 F.R.D. at 462 (quotation marks omitted)). "A reasonable plan may consider the relative strength and values of different categories of claims." *Id*.; *see also In re Gulf Oil/Cities Serv. Tender Offer Litig*., 142 F.R.D. 588, 595-96 (S.D.N.Y. 1992) (plan of allocation that distributes greater part of settlement proceeds to those most injured is reasonable).

Here, the proposed Plan of Allocation is rational and consistent with Lead Plaintiff's theory of the case; the plan reimburses claimants based largely on when they bought or sold MOL ADS, taking into account the amount of artificial inflation present in the ADS price at those times (and the amount by which the level of inflation was reduced by the alleged corrective disclosures). *See* Press Decl. ¶ 41. More specifically, the Plan of Allocation allocates Recognized Loss based on the MOL ADS price declines following the November 20, 2014 and December 1, 2014 disclosures. The Recognized Loss is applied to ADS that were purchased during the Class Period and held through the time of Defendants' alleged corrective disclosures on November 20, 2014 and December 1, 2014. *Id*. at ¶¶ 17-18, 40-41; GCG Aff. Ex. A, Notice at 5-7.

Lead Plaintiff and Lead Counsel submit that the Plan of Allocation represents a fair and equitable method for allocating the Net Settlement Amount among the members of the Settlement Class, and should be given final approval by the Court. It should be noted that, to date, not one objection to the Plan of Allocation has been filed, which also supports its approval

by the Court. *See Veeco*, 2007 WL 4115809, at *14; *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).

E. Notice to the Settlement Class Satisfies Due Process Requirements

The Notice program provides the "best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (citing Fed. R. Civ. P. 23(c)(2)). In accordance with Paragraph 9 of the Preliminary Approval Order, the Claims Administrator, Garden City Group, LLC ("GCG"), caused the Court-approved Notice and Proof of Claim forms to be mailed via U.S. mail, postage prepaid to 6,226 potential Settlement Class Members. *See* GCG Aff. ¶ 7. Pursuant to paragraph 9(iii) of the Preliminary Approval Order, on June 20, 2016, the Court-approved Summary Notice was published once in *Investor's Business Daily* and once over the *PR Newswire*. *Id.* ¶ 8 & Exs. B and C. The Notice and Proof of Claim Form, along with other documents related to the Settlement, were also posted on a website established by the Claims Administrator (http://molglobalsecuritieslitigation.com) (the "Website") for easy downloading by interested investors. *Id.* ¶ 10. Additionally, the Website lists important deadlines related to the Settlement as well as detailed instructions to submit their claims electronically. *Id.* GCG also established a telephone hotline with a recorded message and live operators to assist potential Settlement Class Members with questions about the Settlement. *Id.* ¶ 9. As of August 9, 2016, GCG has received 35 calls. *Id.* ¶ 9. All calls to the telephone hotline have been responded to in a timely manner. *Id.*

Moreover, as is required in class actions, the Settlement Class has been given notice of the proposed Settlement and Plan of Allocation, as well as the rights of Settlement Class Members and the method and dates by which they can object to, or opt-out of, the Settlement. *Id.*

¶¶ 3-8 & Exs. A (Notice), B (newspaper publication), and C (press release). Further, the Settlement Class has been advised of the date of the Settlement Hearing at which time they will have an opportunity to be heard with respect to any objection raised. *Id*.

VI. CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court approve the proposed Settlement as fair, reasonable, and adequate; approve the Plan of Allocation as fair, reasonable, and adequate; and enter the accompanying proposed Final Approval Order and Judgment.

Dated: August 12, 2016

Respectfully submitted,

KIRBY McINERNEY LLP

By: /s/ *Ira M. Press*

Ira M. Press
Daniel Hume
Meghan J. Summers
825 Third Avenue, 16th Floor
New York, NY 10022
Telephone: (212) 371-6600
Facsimile: (212) 751-2540

Lead Counsel for Class and Counsel for Lead Plaintiff TAP Retirement Fund