UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Honorable Jorge L. Alonso

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

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Class Representatives Glickenhaus & Co. ("Glickenhaus"), PACE Industry Union-Management Pension Fund ("PACE") and International Union of Operating Engineers Local No. 132 Pension Plan ("IUOE") (collectively, "Plaintiffs") respectfully submit this memorandum of points and authorities in support of their motion for final approval of the settlement of this Litigation (the "Settlement") for cash consideration in the amount of $1,575,000,000 and for approval of the Plan of Allocation of Settlement proceeds. The terms of the Settlement are set forth in the Stipulation of Settlement, dated June 17, 2016, which was filed with the Court on June 20, 2016 (Dkt. No. 2213).[1]

I. INTRODUCTION

Following 14 years of litigation, Lead Counsel has obtained $1.575 billion for eligible Class Members. This Settlement is nothing short of extraordinary and easily meets the requirements for judicial approval. Class Members will recover between 75% and more than 250% of their damages, depending on the damages model used – far exceeding the percentage recovery of all the other securities settlements valued in excess of $500 million. ***The $1.575 billion recovery is a record***; it is the largest ever following a securities fraud class action trial, the largest securities fraud settlement in the Seventh Circuit and the seventh largest settlement ever in a post-PSLRA securities fraud case. In addition, the case was just the seventh securities fraud case tried to a verdict since the passage of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). This remarkable Settlement is the best possible result for the Class under the circumstances and therefore merits the Court's approval.

The Settlement is notable not only for its record-breaking monetary recovery, but for the significant legal hurdles that Lead Counsel had to overcome in the 14 years of litigation. It would be a gross understatement to say that the case had reached an advanced stage in the Litigation and that the parties were fully informed of its strengths and weaknesses. Indeed, Plaintiffs achieved the record recovery only after seven years of pretrial litigation, a six-week jury trial, post-trial motions, a post-trial claims process that lasted several years and for which there was no precedent, the

[1] Unless otherwise defined herein, all capitalized terms have the same meanings ascribed to them in the Stipulation of Settlement. Additionally, unless noted otherwise, all emphasis is added and citations are omitted.

Defendants' appeal, preparation for a retrial and arm's-length settlement negotiations between the parties with the substantial assistance of an experienced mediator, the Honorable Layn R. Phillips, (Ret.). The parties reached the $1.575 billion Settlement just hours before a second jury trial was scheduled to begin.

Had the Settlement not been reached, Plaintiffs would have faced a myriad of additional factual and legal challenges that could have reduced the recovery significantly below the Settlement or even prevented any recovery at all. For example, the jury could have either determined that there were no damages or chosen a damages model that yielded far less than the $1.575 billion Settlement. Nor is there doubt that Defendants would have appealed any judgment to the Seventh Circuit – a forum in which the Defendants had already achieved success once before. This array of possible outcomes carried with it a high level of uncertainty that could have resulted in a dismissal of Plaintiffs' claims or a reduction of recoverable damages. Further, even if Plaintiffs were successful on the retrial and on the inevitable post-trial appeals, the recovery would have been years down the road. The Settlement eliminates the risk, uncertainty, delay, and expense of continued litigation, and provides a definite – and exceptional – recovery for the Class.

Further, Lead Counsel, who is well respected and has substantial experience in prosecuting securities fraud class actions, has concluded that the Settlement is a very good result for the Class. This conclusion is based on all the circumstances present here, including the substantial risks, expenses, and uncertainties of continued litigation and a retrial, the relative strengths and weaknesses of the claims and defenses asserted, the legal and factual issues presented, the likelihood of obtaining a larger judgment after a retrial and the recoverability of that judgment, and past experience in litigating complex actions similar to the present action. The Plaintiffs, institutional investors who were actively involved in the prosecution of the Litigation throughout its pendency, also believe that the Settlement is in the best interest of the Class. *See* Declaration of James Glickenhaus in Support of Motion for Award of Attorneys' Fees and Expenses and Reimbursement to the Class Representatives Pursuant to 15 U.S.C. §78u-4(a)(4) ("Glickenhaus Decl."), ¶¶7-8, and Declaration of Charles A. Parker in Support of Motion of Final Approval of Class Action Settlement and Award

of Attorneys' Fees and Expenses Pursuant to 15 U.S.C. §78u-4(a)(4) ("Parker Decl."), ¶¶3-4, submitted herewith. So, too, does the mediator himself, a former U.S. Attorney and U.S. District Court Judge. *See* Declaration of Layn R. Phillips in Support of Settlement ("Phillips Decl."), ¶9, submitted herewith.

For all the reasons discussed herein and in the Declaration of Spencer A. Burkholz in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Approval of Attorneys' Fees and Expenses and Award of Expenses to Lead Plaintiffs (the "Burkholz Decl."), the Settlement is an excellent result for the Class under difficult and challenging circumstances and should be approved by the Court. Likewise, the Plan of Allocation of Settlement proceeds, which reflects the jury verdict in May 2009 and is set forth in the Notice of Proposed Settlement of Class Action ("Notice") (Dkt. No. 2213-3), is fair, reasonable, and adequate, and should be approved by the Court.

II. STANDARD FOR JUDICIAL APPROVAL OF A CLASS ACTION SETTLEMENT

Settlement of class action litigation is favored by federal courts. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985). "A district court may approve a class action settlement if it finds it to be fair, adequate, and reasonable." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014) (citing Fed. R. Civ. P. 23(e)(2)); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011). Courts in this Circuit consider the following factors in evaluating the fairness of a class action settlement: (1) the strength of plaintiffs' case compared to the amount of the settlement; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the opinions of counsel; and (5) the stage of the proceedings and amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

The proceedings to approve a settlement should not be transformed into an abbreviated trial on the merits. *See, e.g.*, *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987). Therefore, the judgment of the litigants and their counsel should be given deference

and the court is not required to substitute its own judgment for the judgment of the litigants and their counsel. As the Seventh Circuit has written:

> Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.

Armstrong v. Bd. of Sch. Dirs., 616 F.2d 305, 315 (7th Cir. 1980).

Finally, a "strong presumption of fairness attaches to a settlement agreement when it is the result of this type of [arm's-length] negotiation." *In re Harnischfeger Indus., Inc.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002); *see also Wong*, 773 F.3d at 864 (court did not abuse discretion in approving settlement that was the result of mediator's proposal). Here, the Settlement was negotiated at arm's length with the substantial assistance of Judge Phillips. Moreover, the attorneys who conducted the negotiation for the Class have many years of experience in litigating complex securities cases, and were thoroughly conversant with the strengths and weaknesses of the case – particularly after having tried the case to verdict, which they subsequently defended on appeal. Counsel's decision, therefore, should be given deference. *See Armstrong*, 616 F.2d at 315.

As explained below and in the Burkholz Declaration, when examined under the applicable criteria and given the circumstances present, the Settlement is a highly favorable result for the Class and warrants approval by the Court. Lead Counsel believes that there was a substantial risk as to whether a more favorable result could or would be attained after a retrial and the inevitable post-trial motions and appeals. The Settlement achieves a record recovery for Class Members and is unquestionably superior to the possibility that there might be no recovery at all (or a substantially reduced recovery) after a retrial. Not only was there a risk of losing the retrial and substantial disagreement and uncertainty regarding recoverable damages based on which damages model the jury chose, but even if Plaintiffs prevailed, there was a risk that any judgment could be reversed once again on appeal. Analysis of the relevant factors below demonstrates that the Settlement merits this Court's approval.

III. THE SETTLEMENT MEETS THE SEVENTH CIRCUIT STANDARD FOR APPROVAL

A. The Strength of Plaintiffs' Case Compared to the Amount of the Settlement

The "'strength of plaintiff's case on the merits balanced against the amount offered in the settlement'" supports final approval. *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 963-64 (N.D. Ill. 2011). Under this factor, courts consider whether the proposed settlement is reasonable in light of the risks of proceeding with the litigation. *Id.* at 959, 961, 963-64. The $1.575 billion recovery obtained for the benefit of the Class here is certainly reasonable in light of all of the legal, factual, and practical risks of continued litigation.

Plaintiffs faced substantial risks in proving causation and damages. While the 2009 jury verdict in favor of Plaintiffs demonstrates the meritorious nature of this case, if Defendants were successful in convincing the jury to reject claims for the first 21 months of the Class Period, Plaintiffs faced significant risks that could have resulted in a defense verdict at the retrial or a serious diminution of any recovery to the Class; a finding in the Class' favor by a jury or fact finder was never assured. At the retrial, the jury would have been tasked with determining whether Plaintiffs proved loss causation with respect to each of the 17 misstatements at issue. The jury would have been required to render a verdict based largely on competing expert testimony and without the benefit of the full evidentiary record that the first jury heard. In the end, this crucial element would be reduced to a "battle of the experts," between Fischel for Plaintiffs and Defendants' two experts. *Wong*, 773 F.3d at 863 (approving settlement and noting that calculating damages would have "resulted in a lengthy and expensive battle of the experts, with the costs of such a battle borne by the class"). Given the unpredictable nature of a jury trial, there was no way of foreseeing which interpretations, inferences or testimony the jury might accept. *See Heekin v. Anthem, Inc.*, No. 1:05-CV-01908-TWP, 2012 WL 5472087, at *5 (S.D. Ind. Nov. 9, 2012) ("There can be no certainty as to which experts a jury would find more persuasive . . . the [damages] issue would be both complex and hotly contested, requiring expert testimony on sophisticated methodologies with uncertain results."). As an example, the jury could have concluded that Plaintiffs failed to prove loss causation, selected

the specific disclosure model, or credited Defendants' expert's quantification of inflation, which ranged from $0 to $4.19 per share. Under any of these scenarios, the class would have recovered nothing or substantially less than what it will recover as a result of the record-breaking Settlement in this case. The risk that the jury would select the specific disclosure model was especially acute in light of the Court's ruling that the jury could not select a daily inflation amount other than one set forth in a damages model. Pursuant to this ruling, had the jury concluded the leakage model captured firm-specific nonfraud inflation on ***any*** day, there was a substantial risk that the jury would have rejected the entire leakage model.

In addition, Defendants certainly would have appealed any verdict at the retrial in favor of Plaintiffs. Not only would such an appeal introduce additional delay to the resolution of the Litigation, but it would present a serious risk to Plaintiffs in light of Plaintiffs' use of the "leakage model" to calculate damages. There was a real risk that, after the retrial, the Court of Appeals would find that Plaintiffs had failed to meet the test for admissibility of the leakage model articulated by that court in its 2015 decision. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 422-23 (7th Cir. 2015). Of course, the Class would recover nothing if the case were reversed on a second appeal.

While Plaintiffs and their counsel believe that the claims asserted have merit, if the Litigation continued, Plaintiffs and the Class would bear the risks of establishing causation and damages – both of which have been vigorously challenged by Defendants. Absent settlement, this contest would have ultimately developed into a battle of competing facts and inferences, competing experts, and a credibility toss-up to be decided by the jury.[2]

[2] Moreover, even a meritorious case can be dismissed at or reversed after trial. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW(EDL), 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (after a lengthy trial, jury returned a verdict for defendants). Further, a successful jury verdict does not eliminate the risk to the class. *See Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing $81 million jury verdict for securities fraud); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (overturning plaintiffs' verdict following two decades of litigation); *In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 WL 238298, at *2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions); *In re Apollo Group Secs. Litig.*, No. CV-04-2147, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (where the case was dismissed by the district court after trial by a directed verdict, and the verdict was reinstated by the Court of Appeals, the

In light of the difficult legal and factual issues present in this Litigation, the fairness of this record Settlement is clearly apparent. Here, the Settlement of $1.575 billion in cash represents between 75% and more than 250% of the damages suffered by the Class, depending on the damages model used – and constitutes the largest securities fraud settlement ever in the Seventh Circuit and the largest percentage recovery of securities settlements in excess of $500 million. By any standard, this record Settlement militates in favor of approval, particularly in light of the risks and uncertainties of continued litigation.

B. The Complexity, Length, and Expense of Further Litigation Supports Approval of the Settlement

In determining the fairness of a settlement, courts also consider "the likely complexity, length and expense of the litigation." *Isby*, 75 F.3d at 1199. There is no doubt that this securities class action involves complex factual and legal issues. Courts have long recognized that "[s]ecurities fraud litigation is long, complex and uncertain." *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *2 (N.D. Ill. Dec. 10, 2001) (collecting cases). This securities fraud case – pending for 14 years and one of the few securities cases to actually go to verdict – is one of the longest running and most complex securities cases ever litigated. Even if Plaintiffs prevailed on the retrial, the case was likely to go on for many years.

If not for this Settlement, Defendants would have fiercely contested loss causation and damages at the retrial. The expense of retrying this case would be substantial. Significant amounts of time would have been expended in retrying this case (and in defending any judgment on a second appeal). Plaintiffs were certainly not guaranteed victory at trial, but even if the Class were to recover a larger judgment after trial, the additional delay, through post-trial motions and appeals, would deny the Class any recovery for years. *See AT&T Mobility*, 789 F. Supp. 2d at 961 ("Were the Class Members required to await the outcome of a trial and inevitable appeal . . . they would not receive benefits for many years, if indeed they received any at all.").

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court acknowledged that "securities class actions rarely proceed to trial" and determined that "[a]n upward departure from the 25% benchmark" for fees in the Ninth Circuit was appropriate because the result was exceptional and "it was extremely risky for Class Counsel to pursue this case through seven years of litigation").

In addition, the loss causation issues embedded in this case were notoriously complex, difficult and uncertain. Indeed, this was the only case to make it to trial on a leakage model of damages. Defendants took every opportunity to exploit the undeveloped state of the law, persuading the Court that the retrial was not limited to determining whether Professor Fischel's leakage model failed to adequately account for Household-specific, nonfraud factors. *See* Dkt. No. 2200 at 3-4. There exists no doubt that the Settlement will spare the litigants the significant delay, risk, and expense of continued litigation. Nor is the prospect of an extensive delay following trial hypothetical. ***More than six years*** elapsed from the time Plaintiffs' obtained a favorable verdict at trial in May 2009 until the Seventh Circuit issued its decision reversing and remanding the case for a retrial.

The $1.575 billion Settlement, at this juncture, results in an immediate and substantial tangible recovery, without the considerable risk, expense, and delay of trial and post-trial litigation. *See Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002) ("To most people, a dollar today is worth a great deal more than a dollar ten years from now."). Consideration of this factor strongly supports approval of the Settlement.

C. The Reaction of Class Members Supports the Settlement

To further support approval of a settlement, courts look to the class' reaction to the settlement. *AT&T Mobility*, 789 F. Supp. 2d at 958. Of course, the fact that some class members object to a settlement does not by itself prevent the court from approving the agreement. *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) (collecting cases in which courts approved settlements despite objections). A relatively small number of class member objections, or no objections, is an indication of a settlement's fairness. *Swift v. Direct Buy, Inc.*, No. 2:11-CV-401-TLS, 2013 WL 5770633, at *6 (N.D. Ind. Oct. 24, 2013); *see also* 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §11.48, at 11-116 (3d ed. 1992).

Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice ("Notice Order") (Dkt. No. 2215), the Court-approved Claims Administrator, Gilardi & Co. LLC ("Gilardi"), has mailed copies of the Notice to over 629,000 potential Class Members and

nominees.[3] In addition, the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on July 18, 2016. Ferguson Decl., ¶14. Gilardi also caused the Notice, the Stipulation of Settlement, the Notice Order, and the lists of valid and rejected claims to be posted on the website specifically established for the Settlement (www.householdlitigation.com). *Id.*, ¶13.[4]

The Notice advised Class Members of their right to object to the terms of the Settlement, Plan of Allocation, and request for attorneys' fees and expenses and explained that any such objections must be received on or before September 12, 2016. While the time for objecting has not yet expired, to date no Class Member has objected to the Settlement, the Plan of Allocation, or the request for an award of attorneys' fees and expenses. In accordance with the Court's June 24, 2016 Notice Order, counsel will respond to any objections on or before September 29, 2016. Thus, the reaction of the Class – those affected by the Settlement – underscores the propriety of the Settlement and weighs in favor of granting approval.

D. Lead Counsel Endorses the Settlement

"The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable, and adequate under Rule 23." *AT&T Mobility*, 789 F. Supp. 2d at 965; *see also Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 WL 651727, at *8 (N.D. Ill. Feb. 28, 2012). Indeed, courts should place "[s]ignificant weight" on counsel's "unanimously strong endorsement" of the settlement. *Meyenburg v. Exxon Mobil Corp.*, No. 3:05-cv-15-DGW, 2006 WL 5062697, at *5 (S.D. Ill. June 5, 2006).

This case has been exhaustively litigated and settled by experienced and competent counsel on both sides of the case. Lead Counsel is well known for its experience and success in complex class action litigations and has many years of experience in litigating securities fraud class actions.

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[3] *See* Declaration of Mishka Ferguson Regarding Settlement Notice Dissemination, Publication, Objections Received to Date, and Analysis of Calculated Claim Damages ("Ferguson Decl."), ¶¶4-11, submitted herewith.

[4] As set forth in the Notice, Class Members were previously required to complete and submit Proofs of Claim in 2011 and answer a reliance question set forth in the Proof of Claim form in 2011-2013.

See Exhibit G to the Declaration of Michael J. Dowd Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, submitted herewith. Based on its extensive experience and expertise, Lead Counsel has determined that the Settlement is in the best interest of the Class after weighing the substantial benefits of the Settlement against the numerous obstacles to a better recovery after continued litigation. The recommendations of experienced and qualified counsel favor approval of the Settlement. *See* 5 James Wm. Moore, *Moore's Federal Practice* §23.164[4], at 23-509 (3d ed. 2004) ("The more experience that class counsel possesses, the greater weight a court tends to attach to counsel's opinions on fairness, reasonableness, and adequacy."); *see also Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586-87 (N.D. Ill. 2001) (opinion of counsel with "extensive experience in . . . class actions and complex litigation" weighed in favor of approval). Accordingly, an analysis of this factor strongly favors approval of the Settlement.[5]

E. The Stage of the Proceedings and the Amount of Discovery Completed

To ensure that a plaintiff has had access to sufficient information to evaluate both its case and the adequacy of the settlement proposal, courts in the Seventh Circuit consider the stage of the proceedings and the discovery taken. *AT&T Mobility*, 789 F. Supp. 2d at 958. Here, Lead Counsel negotiated the Settlement only after it had a clear view of the strengths and weaknesses of the parties' claims and defenses.

As discussed in more detail in the Burkholz Declaration, the Settlement occurred after all merits and expert discovery had been completed, after a six-week jury trial on the merits and after additional expert discovery taken in advance of the retrial. Settlement was achieved only after Lead Counsel, *inter alia*: (1) filed a detailed, 154-page Consolidated Complaint; (2) opposed multiple rounds of Defendants' motions to dismiss the Consolidated Complaint; (3) vigorously fought to obtain critical documentary and testimonial evidence during discovery, including filing over 40 motions to compel, multiple requests for reconsideration and multiple objections to the Magistrate

[5] Plaintiffs, who have actively participated in the Litigation, and Layn Phillips, the mediator, also endorse the Settlement. *See* Glickenhaus Decl., ¶¶7, 10; Parker Decl., ¶¶3-4; Phillips Decl., ¶9.

Judge's rulings; (4) deposed or defended more than 70 percipient, expert and third-party witnesses; (5) retained three highly-qualified expert witnesses, who submitted detailed expert reports and rebuttal reports; (6) opposed Defendants' summary judgment motion; (7) prepared the Pretrial Order for the 2009 trial and its voluminous supporting exhibits, including filing 10 motions *in limine* and *Daubert* motions and opposing Defendants' seven motions *in limine* and *Daubert* motions, including Defendants' 105-page "omnibus" motion to exclude 14 separate categories of evidence; (8) extensively prepared this case for trial and attended the 8-day Pretrial Conference in 2009; (9) moved a team of approximately 20 Robbins Geller attorneys, paralegals, forensic accountants and support staff from California to Chicago, Illinois for the pretrial hearings and the 26-day trial in 2009; (10) elicited testimony from 22 witnesses and introduced over 200 exhibits into evidence at trial; (11) obtained a jury verdict in favor of Plaintiffs; (12) completed Phase II discovery and successfully opposed Defendants' presumption of reliance briefing; (13) worked with the Court-appointed claims administrator Gilardi to monitor claims administration; (14) responded to Defendants' objections to over 30,000 claims, drafted correspondence related to various claims issues at the request of the Special Master, and worked with defense counsel to resolve certain of their objections; (15) worked extensively with absent Class Members, third-party claims filers, brokers and custodial banks to protect and perfect Class Members' claims; (16) successfully opposed Defendants' post-trial motions; (17) obtained a judgment; (18) vigorously opposed Defendants' appeal to the Seventh Circuit Court of Appeals, successfully convincing the Court of Appeals to reject the vast majority of Defendants' arguments on appeal; (19) engaged in remand proceedings, including expert discovery of Defendants' three new loss causation and damages experts; (20) defeated Defendants' efforts to exclude Plaintiffs' loss causation and damages expert, Professor Daniel Fischel; (21) extensively prepared this case for the retrial, including preparing the Pretrial Order, filing offensive *Daubert* motions and motions *in limine* – successfully excluding one of Defendants' experts – and opposing Defendants' motions *in limine*; (22) attended the four-day Pretrial Conference; and (23) moved a team of approximately 14 Robbins Geller attorneys, a

forensic accountant and support staff from San Diego, California to Chicago, Illinois for the pretrial proceedings and retrial.[6]

As a result, Lead Counsel was in an unusually advantageous position to evaluate the strengths and weaknesses of Plaintiffs' allegations against Defendants, the defenses raised thereto, as well as the risks of continued litigation and to conclude that the Settlement provides a fair, adequate and reasonable recovery in the best interests of the Class. Having sufficient information to properly evaluate the Litigation, Plaintiffs and their counsel settled the Litigation on terms very favorable to the Class without the substantial expense, risk and uncertainty of retrying the case. This factor also weighs heavily in favor of this Court's approval of the Settlement.

For the foregoing reasons, the Settlement is in all respects fair, reasonable and adequate, and should be approved.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Lead Plaintiffs also seek approval of the Plan of Allocation of the Settlement proceeds. The Plan of Allocation is set forth in the Notice mailed to Class Members. Assessment of a plan of allocation in a class action under Federal Rule of Civil Procedure 23 is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair and reasonable. *See Retsky*, 2001 WL 1568856, at *3; *Harnischfeger*, 212 F.R.D. at 410. Where, as here, the allocation plan "ensures that every Class Member who submits a valid claim will receive a portion of the settlement fund," the fairness test is met. *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 911 (S.D. Ill. 2012).

The objective of a plan of allocation is to provide an equitable basis upon which to distribute the settlement fund among eligible class members. Here, the Plan of Allocation is set forth in the Notice of Settlement and was based on the jury's verdict at the 2009 trial and certain post-trial rulings relating to whom was permitted to recover in the Litigation. The Plan of Allocation will result in a fair and equitable distribution of the proceeds among Class Members who submitted valid

[6] The efforts of counsel in prosecuting the Litigation and achieving this Settlement are set forth in greater detail in the accompanying Burkholz Declaration.

claims. No Class Member has objected to the Plan of Allocation to date. As a result, Lead Counsel believes that it is fair, reasonable, and equitable to all Members of the Class and should be approved.

V. CONCLUSION

The Settlement is a favorable result, given the presence of skilled counsel for all parties, the arm's-length settlement negotiations, the considerable risk, expense, and delay if the Litigation were to continue, and the substantial, certain, and immediate benefit of the Settlement to the Class. The Plan of Allocation is equitable to Class Members and is necessarily fair, reasonable, and adequate. Therefore, Plaintiffs respectfully request that this Court approve the Settlement and the Plan of Allocation as fair, reasonable, and adequate.

DATED: August 29, 2016

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
LUKE O. BROOKS (90785469)
LAWRENCE A. ABEL (129596)
HILLARY B. STAKEM (286152)

s/ Daniel S. Drosman
DANIEL S. DROSMAN

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
MAUREEN E. MUELLER
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 29, 2016.

s/ Daniel S. Drosman
DANIEL S. DROSMAN

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: DanD@rgrdlaw.com

Jaffe v. Household Int'l, Inc., No. 02-5893 (N.D. Ill.)
Service List

Counsel	E-mail address
Stewart Theodore Kusper Giovanni Antonio Raimondi THE KUSPER LAW GROUP, LTD. 20 North Clark Street, Suite 3000 Chicago, IL 60602 (312) 204-7938 Tim S. Leonard JACKSON WALKER L.L.P. 1401 McKinney Street, Ste. 1900 Houston, TX 77010 (713)752-4439	Stewart.Kusper@Kusperlaw.com Giovanni.Raimondi@Kusperlaw.com tleonard@jw.com
Counsel for Defendant David A. Schoenholz	
Dawn Marie Canty Gil M. Soffer KATTEN MUCHIN ROSENMAN LLP 525 West Monroe Street Chicago, Illinois 60661 (312)902-5253	dawn.canty@kattenlaw.com gil.soffer@kattenlaw.com
Counsel for Defendant William F. Aldinger	
David S. Rosenbloom C. Maeve Kendall McDERMOTT WILL & EMERY, LLP 227 West Monroe Street Chicago, IL 60606 (312) 984-2175	drosenbloom@mwe.com makendall@mwe.com
Counsel for Defendant Gary Gilmer	

Counsel	E-mail address
R. Ryan Stoll Mark E. Rakoczy Andrew J. Fuchs Donna L. McDevitt Patrick Fitzgerald SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 155 North Wacker Drive Chicago, IL 60606 (312)407-0700 Paul D. Clement D. Zachary Hudson BANCROFT PLLC 1919 M Street NW, Ste. 470 Washington, DC 20036 (202)234-0090 Dane H. Butswinkas Steven M. Farina Leslie C. Mahaffey Amanda M. MacDonald WILLIAMS & CONNOLLY LLP 725 Twelfth Street NW Washington DC 20005 202-434-5000 Luke DeGrand Tracey L. Wolfe DEGRAND & WOLFE, P.C. 20 South Clark Street Suite 2620 Chicago, Illinois 60603 (312) 236-9200 (312) 236-9201 (fax)	rstoll@skadden.com mrakoczy@skadden.com Andrew.Fuchs@skadden.com Donna.McDevitt@skadden.com Patrick.Fitzgerald@skadden.com pclement@bancroftpllc.com zhudson@bancroftpllc.com TKavaler@cahill.com Jhall@cahill.com dbutswinkas@wc.com sfarina@wc.com lmahaffey@wc.com amacdonald@wc.com twolfe@degrandwolfe.com ldegrand@degrandwolfe.com
Counsel for Defendant Household International Inc.	

Counsel	E-mail address
Michael J. Dowd Spencer A. Burkholz Daniel S. Drosman Luke O. Brooks Hillary B. Stakem ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 (619)231-1058 619/231-7423 (fax) Jason C. Davis ROBBINS GELLER RUDMAN & DOWD LLP Post Montgomery Center One Montgomery Street, Suite 1800 San Francisco, CA 94104 (415)288-4545 (415)288-4534 (fax) Maureen E. Mueller ROBBINS GELLER RUDMAN & DOWD LLP 120 East Palmetto Park Road, Suite 500 Boca Raton, FL 33432 (561)750-3000 (561)750-3364 (fax)	miked@rgrdlaw.com spenceb@rgrdlaw.com dand@rgrdlaw.com lukeb@rgrdlaw.com hstakem@rgrdlaw.com jdavis@rgrdlaw.com mmueller@rgrdlaw.com
Lead Counsel for Plaintiffs	
Marvin A. Miller Lori A. Fanning MILLER LAW LLC 115 S. LaSalle Street, Suite 2910 Chicago, IL 60603 (312)332-3400 (312)676-2676 (fax)	Mmiller@millerlawllc.com Lfanning@millerlawllc.com
Liaison Counsel for Plaintiffs	