UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NQ MOBILE, INC. SECURITIES LITIGATION This Document Relates to: All Actions	No. 1:13-cv-07608-WHP

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

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The lead plaintiff members of the "Volin Group", consisting of the Allene E. Mossman Trust, EJ Partners, HR Volin IRA, AM Volin IRA, EM Volin Roth IRA, JE Volin Roth IRA, EM Volin Trust, EM Volin IRA and JE Volin IRA (collectively, "Lead Plaintiffs"), respectfully submit this Memorandum of Law in Support of their Motion for Final Approval of the proposed Settlement and Plan of Allocation. Pursuant to Fed. R. Civ. P. 23(e), Lead Plaintiffs seek entry of an Order (i) granting final approval of the Settlement set forth in the parties' Stipulation and Agreement of Settlement ("Stipulation") (filed at ECF No. 154-1), (ii) finally certifying the Class for settlement purposes[1], and (iii) approving the proposed Plan of Allocation.[2]

I. INTRODUCTION

The proposed Settlement, if approved, will result in a payment of $5.1 million in cash for the benefit of the Class in exchange for a release of all claims against NQ Mobile, Inc. ("NQ") and Individual Defendants Henry Lin, Omar Khan, Wenyong "Vincent" Shi, Suhai Ji and K.B. Teo, who were current or former officers and/or directors of NQ (collectively, "Defendants"). The Settlement represents an excellent result for the Class in the face of substantial litigation risks, including the heightened risks of litigating a case where the defendant company is based in the People's Republic of China, and where much of the key evidence (including third party witnesses and documents) is located in China or elsewhere in Asia. Significantly, the Settlement represents one of the largest ever obtained in a securities action brought against a China-based company that did not also involve §11 claims against U.S.-based underwriter defendants, and the Settlement was only reached after arm's-length negotiations conducted by experienced counsel under the auspices of a highly experienced mediator. Accordingly, and for the further reasons

[1] The Court preliminarily approved the Class for settlement purposes in its November 17, 2015 Order for Hearing and Notice (the "Preliminary Approval Order"). *See* ECF No. 161.

[2] Unless otherwise noted, all capitalized terms are defined in the Stipulation.

detailed below, Lead Plaintiffs and their undersigned counsel respectfully submit that the Settlement is fair, reasonable and adequate, and should be approved.

II. SUMMARY OF PLAINTIFFS' CLAIMS AND PROCEDURAL HISTORY [3]

This securities class action arises from Defendants' allegedly false and misleading statements, and asserts claims under §§10(b) and 20(a) of the Securities Exchange Act of 1934. Lead Plaintiffs allege, *inter alia*, that NQ and the Individual Defendants participated in a fraudulent scheme whereby they: (a) inflated NQ's reported revenue from within China; (b) inflated NQ's reported revenue from its international (non-Chinese) sales; (c) inflated NQ's market share data; (d) inflated NQ's reported cash and cash equivalent balances; and (e) fraudulently failed to disclose material defects in NQ's security software products.

The initial complaint was filed in this Court on October 28, 2013. In April 2014, the Court appointed the members of the Volin Group as Lead Plaintiffs, and appointed Scott+Scott, Attorneys at Law, LLP ("Scott+Scott") as Lead Counsel. In the meantime, Lead Counsel (having worked to consolidate certain other related actions filed in other districts before this Court) continued its own further investigations into the case, and thereafter prepared and filed the Consolidated Amended Class Action Complaint (the "Complaint") on October 24, 2014. *See* ECF No. 123. Based on Lead Counsel's investigations, the amended Complaint added certain defendants and dropped others, substantially expanded the factual allegations underlying the claims, and modified the proposed class (the "Class") to consist of all persons who purchased or otherwise acquired NQ's American Depositary Shares ("NQ ADSs") between March 6, 2013 and July 3, 2014. *Id.*

[3] Lead Plaintiffs respectfully refer the Court to the accompanying Declaration of William C. Fredericks ("Fredericks Decl.") for additional information concerning the history of the action, the claims asserted, the litigation risks presented, and the negotiation of the Settlement.

In September 2014, Lead Plaintiffs were forced to file a motion under Fed. R. Civ. P. 4(f)(3) to authorize alternative service on certain China-based Individual Defendants, after those defendants had refused to accept service in the U.S. *See* ECF No. 105. In the face of this motion, Lead Plaintiffs ultimately persuaded those defendants to accept process via service on NQ's U.S.-based counsel. *See* ECF No. 117. In the meantime, Lead Counsel attempted to effect service on NQ's Beijing-based auditors, PriceWaterhouseCoopers Zhong-Tian ("PwC-ZT"), by translating the Complaint into Chinese and forwarding it to the relevant authorities in the People's Republic of China for service on PwC-ZT in China under the Hague Convention.[4]

On December 16, 2014, the NQ Defendants – as well as non-settling defendant PriceWaterhouseCoopers International Ltd ("PwC-IL"), a U.S.-based affiliate of PwC-ZT – filed separate motions to dismiss, together with supporting briefs, declarations, and annexed exhibits. In February 2015, Lead Plaintiffs filed their comprehensive opposition briefs together with their supporting declarations and annexed exhibits, and the NQ Defendants and PwC-IL filed their reply papers later that month. *See* ECF Nos. 128-139.

While these motions were pending, the NQ Defendants and Lead Plaintiffs agreed to enter into settlement discussions under the auspices of a highly experienced mediator, Robert Meyer, Esq., formerly of Loeb & Loeb LLP (the "Mediator"). Following the exchange of mediation briefs and related materials, counsel for Lead Plaintiffs, the NQ Defendants, and NQ's insurers (who were also based in China) participated in a face-to-face mediation in New York on February 23, 2015. Following a full-day, arm's-length mediation, with the Mediator's

[4] Lead Counsel's efforts to effect service on PwC-ZT in China were ultimately unsuccessful, with the result that the Court granted Lead Plaintiffs' request to voluntarily dismiss the claims against it, without prejudice, in October 2015. ECF No. 158.

assistance, the Parties reached an agreement-in-principle to settle all claims against the NQ Defendants, and advised the Court of this agreement on March 3, 2015. Fredericks Decl., ¶11.

Thereafter, Lead Counsel undertook to prepare, negotiate and finalize the "long-form" Stipulation of Settlement and related settlement papers. In the following months, various delays were experienced in finalizing the Settlement papers, due primarily to the time required to obtain comments and sign-offs from NQ's China-based insurance carriers (who lacked the same level of familiarity with U.S. class action procedures and settlements as the Parties' respective counsel). The settling parties' respective counsel thereafter exchanged signed copies of the Stipulation of Settlement on October 8, 2015. Fredericks Decl., ¶13.

On October 23, 2015, Lead Plaintiffs filed the Stipulation and their Motion for Preliminary Approval. ECF No. 152. The Court issued its Preliminary Approval Order on November 17, 2015. ECF No. 161.

III. SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT

The Stipulation defines the Class as those who purchased or otherwise acquired NQ ADSs between March 6, 2013 and July 3, 2014, inclusive, and were allegedly damaged thereby. The Settlement provides for a payment of $5.1 million in cash in exchange for the release of the Class's claims against NQ and the Individual Defendants. The $5.1 million, less court-awarded attorneys' fees and expenses, notice and administration expenses, and any taxes owed by the Settlement Fund, will be distributed to Authorized Claimants (*i.e.* Class Members who timely file valid Proof of Claim and Release forms in accord with the Plan of Allocation discussed at §V below). Fredericks Decl., ¶27; Stipulation, ¶¶11-13.

IV. THE SETTLEMENT IS PROCEDURALLY AND SUBSTANTIVELY FAIR, REASONABLE AND ADEQUATE, AND SHOULD BE APPROVED

Fed. R. Civ. P. 23 provides that a class action settlement should be approved if the Court finds that it is procedurally and substantively "fair, reasonable, and adequate." Fed. R. Civ. P 23(e)(2). To determine whether a settlement is procedurally fair, courts examine the negotiating process leading to the settlement. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). To determine whether a settlement is substantively fair, courts consider the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000) (the "*Grinnell* factors"). In general, however, courts considering the fairness of a proposed class action settlement should be mindful of the "strong judicial policy in favor of settlements . . . ." *Wal-Mart Stores*, 396 F.3d at 116. In sum, although courts should not give "rubber-stamp" approval to a proposed settlement, "[a]bsent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240-CM, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007).

A. The Settlement Was Reached After Protracted Arm's-Length Negotiations by Experienced Counsel and Is Procedurally Fair

In accord with the foregoing principles, a presumption of fairness, adequacy and reasonableness may attach to a class settlement where, as here, it is the product of "arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart*, 396 F.3d at 116 (quoting MANUAL FOR COMPLEX LITIG. (Third) §30.42 (1995)). "This presumption arises because if the negotiation process is fair 'the forces of self-interest and vigorous advocacy

will of their own accord produce the best possible result for all sides.'" *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013).

The negotiations here bear these key hallmarks. First, the Lead Counsel who negotiated the Settlement have considerable experience prosecuting securities class actions. Fredericks Decl., ¶32. Moreover, as a result of their thorough legal and factual investigation, and the parties' extensive briefing on motions to dismiss, Lead Counsel had a firm understanding of the strengths and weaknesses of the claims asserted. *Id.*, ¶15; s*ee also D'Amato*, 236 F.3d at 85 (presumption of fairness applies where "the settlement resulted from 'arm's-length negotiations'" and plaintiffs' counsel had the experience, ability and information needed to effectively represent the class); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012) ("[G]reat weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation."). Finally, as detailed in the Fredericks Decl. at ¶¶2, 11 and 13, the settlement here was negotiated at arm's length under the auspices of a highly experienced mediator, Robert Meyer, Esq., formerly of Loeb & Loeb LLP (and now a mediator with JAMS). The settlement thus readily meets the test of procedural fairness.

B. The *Grinnell* Factors Further Support Approval of the Proposed Settlement as Substantively Fair, Reasonable, and Adequate

The next step in final approval analysis is determining if the settlement's substantive terms support (or rebut) the presumption of fairness that arises from its procedural fairness. *Citigroup Inc.*, 296 F.R.D. at 155. This analysis is governed by the following *Grinnell* factors:

> (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.

Grinnell, 495 F.2d at 463. Although a court should consider each *Grinnell* factor, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Id.* at 462. In finding a settlement to be fair, not every factor must weigh in favor of settlement; "'rather, the court should consider the totality of these factors in light of the particular circumstances.'" *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 138 (S.D.N.Y. 2010).

1. Complexity, Expense and Likely Duration of the Litigation

Courts consistently recognize the complexity, expense and likely duration of litigation as key factors in evaluating the reasonableness of a settlement. *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 175 (S.D.N.Y. 2014). "[T]he more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court." *Citigroup Inc.*, 296 F.R.D. at 155. This is especially true in securities actions. *See In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006) (securities actions are known for their "notorious complexity," and "the difficulty and uncertainty inherent in long, costly [securities fraud] trials"). For example, the securities claims involved here involved disputed issues of Generally Accepted Accounting Principles ("GAAP") and loss causation, which would have involved multiple, costly and complex "battles of experts." Fredericks Decl., ¶16.

This Action also presented unusual "complexity, expense and duration" issues as it involved claims against a People's Republic of China ("P.R.C.")-based company, which involved (*inter alia*) allegedly improper transactions with related-parties in China and falsification of sales from other Asian countries. Obtaining key documents and testimony (including from third parties) under the Hague Convention would thus have been unusually

difficult, costly, and time-consuming here. *Id.*, ¶18. Moreover, even assuming that Lead Plaintiffs would ultimately prevail on the merits (and any appeals), they might well have had to try to enforce any U.S. judgment in the People's Republic of China (which has no treaty with the U.S. regarding enforcement of foreign judgments). *Id.*, ¶22. Accordingly, this factor weighs heavily in favor of final approval.

2. The Reaction of the Settlement Class to Date

As detailed in the accompanying Declaration of Carole Sylvester (of the Court-appointed claims administrator, Gilardi & Co.) (the "Sylvester Decl.") (Ex. A to the Fredericks Decl.), as of January 26, 2016 Gilardi has mailed over 45,000 copies of the Notice to individual Class members, and has sent an additional 13,100 Notice Packets to brokers and nominees who preferred to forward them to their clients themselves (rather than have Gilardi do so). Sylvester Decl., ¶10. In addition, the summary notice has been published in *Investor's Business Daily* and disseminated via the internet, through *PR Newswire,* and copies of all Settlement-related documents have also been posted on the internet at the dedicated "www.nqsecuritiessettlement.com" website. *Id.*, ¶¶13-14.

To date, however, ***no*** objections to the Settlement have been received. Fredericks Decl., ¶43. *Cf. In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 1695 (CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007) ("[t]he strong favorable reaction of the class [to date] is overwhelming evidence that the Settlement is fair, reasonable and adequate").[5]

3. Stage of Proceedings and Discovery Completed

The pertinent question here is "whether counsel had an adequate appreciation of the merits of the case before negotiating." *Massiah v. MetroPlus Health Plan, Inc.*, No. 11-CV-

[5] Should any objections ultimately be received by the February 10, 2016 deadline for such objections, Lead Plaintiffs will address them in a reply brief.

05669 (BMC), 2012 WL 5874655, at *4 (E.D.N.Y. Nov. 20, 2012). Here, as a result of (*inter alia*) Lead Counsel's (a) extensive pre-filing investigations; (b) consultations with its accounting, loss causation, and damages experts; (c) research into the specific legal issues raised by Defendants' motions to dismiss; and (d) work in conjunction with preparing and exchanging mediation materials, it is respectfully submitted that the Settlement here was reached by experienced counsel who had a clear appreciation for both the strengths and weaknesses of the parties' respective claims and defenses. Fredericks Decl., ¶15. This factor therefore also supports approval of the Settlement.

4. The Risk of Establishing Liability

"Litigation inherently involves risks." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff'd* 117 F.3d 721 (2d Cir. 1997). Indeed, "if [a] settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome." *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969); *see also AOL Time Warner*, 2006 WL 903236, at *11 ("[t]he difficulty of establishing liability is a common risk of securities litigation"); *In re Alloy, Inc. Sec. Litig.*, No. 03 Civ. 1597 (WHP), 2004 WL 2750089, at *2 (S.D.N.Y. Dec. 2, 2004) (discussing "significant hurdles" to proving liability in securities cases).

With respect to liability issues, Lead Counsel believe that evidence existed that would have proved their accounting fraud and related-party transaction-based claims. However, as noted above, there could be no assurance that Lead Plaintiffs would ultimately be able to obtain access to sufficient documentary and testimonial evidence to prove their case from key witnesses (including third parties) that are based in China and elsewhere in Asia. *See China Tire Holdings Ltd. v. Goodyear Tire & Rubber Co.*, 91 F. Supp. 2d 1106, 1111 (N.D. Ohio 2000) ("discovery by American attorneys in the [People's Republic of China] may . . . be impossible"). Moreover, even if such evidence were ultimately obtained, proof of liability would likely turn on disputed

expert testimony on accounting, materiality, and loss causation issues – and such "battles of the experts", including the litigation of related *Daubert* motions, are inherently risky and unpredictable. And even if Lead Plaintiffs succeeded in defeating Defendants' likely motion(s) for summary judgment and prevailed at trial, it would also have to prevail on likely appeals.

Finally, Lead Plaintiffs would have also faced the prospect of having to enforce any judgment obtained in the U.S. against NQ in China, with the prospect of having to relitigate one or more aspects of the Defendants' liability before a Chinese court to be able to enforce the U.S. judgment. In sum, liability risk factors strongly support final approval.

5. Risk of Establishing Damages

Similarly, Lead Plaintiffs also faced challenges in establishing damages. Indeed, it has become routine for securities fraud defendants to challenge plaintiffs' experts on loss causation and damages by, for example, vigorously arguing that factors other than NQ's alleged misstatements caused the price of NQ's ADSs to fall.

6. Risk of Maintaining Class Certification Through Trial

Lead Plaintiffs believe that there was no significant risk that a class would not be certified here. Even so, the Settlement avoids any uncertainty with respect to class certification, and accordingly this factor is, at worst, neutral with respect to final approval.

7. Ability of Defendants to Withstand a Greater Judgment

At the time the Settlement was negotiated, the value of NQ ADSs had fallen sharply compared to the beginning of the Class Period, and during the course of this litigation NQ's financial condition has been uncertain. Fredericks Decl., ¶22. The Court can also take judicial notice of recent volatility and extreme uncertainty on Chinese stock markets. In sum, there can be no assurance that Plaintiffs could have collected a larger judgment from NQ at some date in the future, even if they had fully prevailed after trial and any appeals in the U.S.

Moreover, as discussed above, obtaining an *enforceable* judgment against Chinese defendants is problematic. Here, NQ lacks significant assets that could be foreclosed on in the U.S., and thus Lead Plaintiffs would have likely had to try to enforce any judgment against Defendants in the People's Republic of China. Such an enterprise would have been fraught with risk, and likely involved additional significant expenses and delays with no assurance of success. Similarly, NQ's insurers are also Chinese companies located in the P.R.C. *See* Fredericks Decl., ¶¶11, 13. Accordingly, this factor also weighs strongly in favor of approving the Settlement.

8. Range of Reasonableness of the Settlement Amount in Light of (a) the Best Possible Recovery and (b) All Risks of Litigation

The proposed Settlement amount – $5.1 million – plainly falls well within the "range of reasonableness," especially when considered in light of the serious, case-specific risks here.

"The 'best possible' recovery necessarily assumes Plaintiffs' success on both liability and damages covering the full Class Period alleged in the Complaint *as well as* the ability of Defendants to pay the judgment." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 365 (S.D.N.Y. 2002). Where, as here, there is "limited insurance coverage, minimal domestic assets, and significant risk of being unable to collect any judgment against the [Company]," such factors favor approval. *See Advanced Battery*, 298 F.R.D. at 179.

Moreover, the best measure of whether a settlement falls within the "range of reasonableness" is arguably to compare it to the results achieved in comparable actions. As set forth in the Fredericks Decl. at ¶24, Lead Counsel's research has identified 31 other securities fraud class actions that have been brought against China-based companies. If one eliminates the five cases which involved both easier-to-prove claims under §11 of the Securities Act of 1933 and U.S.-based underwriter defendants who could be held liable on such claims, this Settlement would effectively rank 3rd (among 27 true comparables) for the largest securities fraud recovery

obtained to date in a case brought against a China-based company. By contrast, 22 of these cases have settled for only $3 million or less (and often for less than $1 million). Lead Counsel, therefore, respectfully submit that this data further confirms that the proposed Settlement falls at the ***high end*** of the "range of reasonableness" for comparable securities fraud class actions against P.R.C.-based corporate defendants – and is in fact one of the top handful of settlements obtained to date (out of of 28 comparables) in an alleged Chinese securities fraud case.

V. THE PROPOSED PLAN OF ALLOCATION IS FAIR AND REASONABLE, AND SHOULD BE APPROVED

Lead Plaintiffs also seek final approval of the proposed Plan of Allocation. "To warrant approval, the plan of allocation must [] meet the standards by which the settlement was scrutinized – namely, it must be fair and adequate." *Chavarria v. N.Y. Airport Serv., LLC*, 875 F. Supp. 2d 164, 175 (E.D.N.Y. 2012). However, plans of allocation need not be tailored to fit each class member with "mathematical precision." *PaineWebber Ltd. P'ships*, 171 F.R.D. at 133. Instead, broad classifications are customarily used to promote "[e]fficiency, ease of administration and conservation [of the settlement fund]." *Id*. at 133-35. Generally, "[a] plan of allocation that reimburses class members based on the extent of their injuries is [] reasonable." *Maley*, 186 F. Supp. 2d at 367.

Here, Lead Plaintiffs' damages expert developed the Plan of Allocation based on the theories of liability, loss causation and damages alleged in this Action, and it treats all potential claimants in a fair and equitable fashion. Fredericks Decl., ¶26. Under the Plan, each Authorized Claimant will be paid their *pro rata* share of the Net Settlement Fund based on each Authorized Claimant's Recognized Claim as defined in the Plan of Allocation. *Id*. The *pro rata* share is based on each Claimant's Recognized Claim compared to the total Recognized Claims of all Authorized Claimants. *Id.* As such, the Plan is designed to equitably distribute the

settlement proceeds to those Class Members who have suffered an economic loss as a proximate result of the alleged wrongful conduct, and who have timely submitted valid Proof of Claims. *Id.* Nothing more is needed to obtain the Court's final approval.

VI. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE CLASS

The Parties stipulated to, and on November 17, 2015 (*see* ECF No. 161) this Court preliminarily approved the certification of, the following Class for settlement purposes: all persons or entities that purchased or otherwise acquired NQ ADS between March 6, 2013 and July 3, 2014, inclusive, and were allegedly damaged thereby.[6] The reasons supporting certification of the Class have already been detailed in Lead Plaintiffs' brief in support of their Motion for Preliminary Approval (and preliminary class certification), ECF No. 153, at 12-17. Rather than simply restate its prior brief, Lead Plaintiffs respectfully refer the Court to that brief for more detailed discussion of the relevant class certification considerations, which are only briefly summarized below. The lack of any objections from the Class also confirms that the proposed Class should be granted final certification.

A. The Proposed Class Satisfies the Requirements of Rule 23(a)

1. Numerosity

Class certification under Rule 23(a)(1) requires a finding that the proposed class contains so many members that joinder of all would be "impracticable." Joinder is generally presumed to be impracticable when a putative class exceeds 40 members. *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 90 (D. Conn. 2010). Here, the Claims Administrator has identified (and provided

[6] Excluded from the Class are: all Defendants; all current or former officers, directors or partners of NQ, its affiliates, parents or subsidiaries; any corporation, trust or other entity in which any Defendant has or had a controlling interest; the members of the immediate families of the Individual Defendants; the parents, subsidiaries and affiliates of NQ; and the legal representatives, heirs, successors, or assigns of any excluded Person, and any Person who timely and validly seeks exclusion from the Class in accord with the requirements of the Notice. *Id.*

individual notice to) over 58,000 likely Class members who purchased NQ ADSs during the Class Period. Sylvester Declaration ¶11. The numerosity requirement is thus easily met.

2. Common Question of Law and Fact

Commonality exists where there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This is not a demanding standard, as it "is established so long as the plaintiffs can 'identify some unifying thread among the [class] members' claims.'" *Haddock v. Nationwide Fin. Services, Inc*., 262 F.R.D. 97, 116 (D. Conn. 2009). Plaintiffs' allegations here, namely that the NQ Defendants injured investors by making public and materially inflated misstatements concerning, *e.g.*, NQ's reported revenues, market share data, and cash balances raise common questions of law and fact as to every member of the proposed Class. Thus, there are (multiple) unifying threads among the claims, and Rule 23(a)(2) is easily satisfied.

3. Typicality

Rule 23(a)(3) requires that the claims of the class representatives be "typical" of the claims of the class. The critical question is whether both the proposed class representatives and the class can point to a "common course of conduct" by defendants to support a claim for relief. *See Teachers' Ret. Sys. of La. v. ACLN Ltd*., No. 01 Civ. 11814 (LAP), 2004 WL 2997957, at *5 (S.D.N.Y. Dec. 27, 2004). Here, as noted above, each Class Member's claim – and each Lead Plaintiff's claim – arises from the same general course of events, and they would all rely on common legal arguments and facts to prove Defendants' liability. Typicality is thus satisfied.

4. Adequacy of Representation

"Adequacy" requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement is met when: (1) the proposed class representative's interests are not antagonistic to those of the other class members; and (2) proposed class ***counsel*** are qualified, experienced, and able to conduct the litigation. *See Denney*

v. Deutsche Bank AG, 443 F.3d 253, 268 (2d Cir. 2006). Here there is no basis to suggest that Lead Plaintiffs' interests are in conflict with the Class; to the contrary, Lead Plaintiffs have been actively involved in bringing this case and seeking a recovery for the Class. Similarly, it is respectfully submitted that the Court-appointed Lead Counsel, Scott+Scott, has ample qualifications, experience, and ability to conduct this action. *See also* Scott+Scott firm résumé (Fredericks Decl., Exh. F). Adequacy is therefore also readily met here.

B. The Proposed Class Satisfies the Requirements of Rule 23(b)

1. Common Legal and Factual Questions Predominate

"Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *UFCW Local 1776 v. Eli Lilly & Co.*, 620 F.3d 121, 131 (2d Cir. 2010). The central issues here arise out of allegations concerning the NQ Defendants' dissemination of allegedly false and misleading statements (and/or material omissions) concerning, *e.g.*, NQ's reported financial results, (non-)compliance with GAAP, undisclosed related-party transactions, and undisclosed defects with its mobile security products. With respect to these claims, common questions plainly predominate, and all Class members have common interests in proving Defendants' participation, through common evidence, in a scheme that harmed all Class members in the same way. Thus, the proposed Class meets Rule 23(b)(3)'s predominance requirement.

2. Superiority

Courts consider the following non-exhaustive factors in determining whether class certification is the "superior" method of litigation: "(A) the class members' interests in individually controlling the prosecution . . . of separate actions; (B) the extent and nature of any

litigation concerning the controversy already begun by . . . class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). All four prongs support certification here. First, the claims of each Class Member are likely far too small to warrant the cost of litigating individually. Second, Lead Plaintiffs are unaware of any parallel individual actions currently pending against the Defendants asserting securities law violations. Third, given the large and geographically dispersed Class, multiple actions would risk disparate results, threatening to increase litigation costs for all parties and unnecessarily burdening the court system. Finally, no "manageability" issues exist here in the present settlement context.

In sum, the Court should make final its prior preliminary class certification order.

VII. NOTICE OF THE SETTLEMENT HERE HAS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

Notice of a settlement satisfies Rule 23(e) and due process where it fairly apprises class members "of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart*, 396 F.3d at 114. "Notice need not be perfect, but need be only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members." *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *8 (S.D.N.Y. Feb. 1, 2007); *see also* Fed. R. Civ. P. 23(e)(1) (court must direct notice "in a reasonable manner to all class members who would be bound by the [settlement]"). Notice is adequate "if the average person understands the terms of the proposed settlement and the options provided to class members thereunder." *Merrill Lynch,* 2007 WL 313474, at *8 (citing *Wal-Mart*, 396 F.3d at 114).

In its November 17, 2015 Preliminary Approval Order, the Court appointed Gilardi & Co., LLC to administer the issuance of Notice, and specifically approved the parties' proposed "notice plan" (including both the text of the individual and publication notices, and the methods for disseminating the same) as consistent with Rule 23 and due process. ECF 161 at ¶¶8-12.[7]

The relevant question here, therefore, is whether the Claims Administrator, Gilardi & Co., has complied with the Court's Preliminary Approval Order in terms of implementing the previously approved Notice plan. As the Sylvester Declaration (Fredericks Decl. Ex. A) makes clear, the answer to that question is "yes." For example, based on stock transfer records and information obtained from brokers and nominees, Gilardi itself has mailed 45,539 copies of the Notice Packet directly to likely members of the Class (i.e., investors who transacted in NQ ADSs during the relevant period), and has sent an additional 13,100 Notice Packets to brokers and nominees who preferred to forward them to their clients themselves (rather have Gilardi do so). *Id*., ¶10. Accordingly, as of January 26, 2016, 58,639 individual Notice Packets have been disseminated. *Id*., ¶11.

In addition, the Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire,* and the Notice materials have also been posted on the NQ settlement website, www.nqsecuritiessettlement.com, all in accord with the Preliminary Approval Order. *Id*., ¶¶13, 14. The Claims Administrator also established a toll-free telephone number where Class Members can obtain additional information related to the Settlement. *Id*.

[7] For example, the individual Notice described the nature, history, and status of the Action, summarized the terms of the Settlement, explained the rights of the Class Members (including their rights to object to the Settlement or "opt out", and advised of the Settlement's binding effect on Class members that did not choose to opt out. The Class Notice also disclosed the amount of attorneys' fees and expenses that Lead Plaintiffs' Counsel intended to seek, described Class members' rights to object thereto, identified the date, time and place of the Final Approval Hearing, and detailed the procedure for appearing and being heard at that Hearing. A copy of the individual Notice is attached to the Sylvester Decl. (Exh. A to the Fredericks Decl.).

In sum, "the best notice . . . practicable under the circumstances," in accord with the requirements of due process and Rule 23(c)(2)(B), has been provided here.

VIII. CONCLUSION

Based on the foregoing, Lead Plaintiffs respectfully request that the Court enter the proposed Final Approval Order (attached as Exhibit A to Plaintiffs' Notice of Motion) and (a) grant final approval of the proposed Settlement and Plan of Allocation as fair, reasonable and adequate, and (b) grant final certification to the Class.

Dated: January 27, 2016

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27th day of January, 2016 at New York, New York.

/s/ William C. Fredericks

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