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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MATT WOLTHER, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SHUBHAM MAHESHWARI, et al., Defendants.	Lead Case No. 18CV329690 (Consolidated with No. 18CV332463 and No. 18CV332644) CLASS ACTION MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION DATE: April 21, 2022 TIME: 1:30 p.m. DEPT: 1 JUDGE: Hon. Sunil R. Kulkarni Date Action Filed: June 8, 2018

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Plaintiffs and Class Representatives Iron Workers District Council of New England Pension Fund and Construction Workers Pension Trust Fund – Lake County and Vicinity (together, "Class Representatives") respectfully submit this memorandum in support of their motion for final approval of the settlement of this class action on the terms set forth in the Amended Stipulation of Settlement dated November 30, 2021 (the "Stipulation" or "Settlement"), and for approval of the Plan of Allocation.[1]

I. INTRODUCTION

The Settlement provides for payment by or on behalf of Defendants of $15,000,000 for the benefit of the Class.[2] The Settlement is the culmination of over three years of vigorous litigation, and is the product of arm's-length negotiations between the Parties[3] with the substantial assistance of the Honorable Jay C. Gandhi (Ret.), a well-respected and effective mediator of complex securities litigation. The Settlement, approved by each of the Class Representatives,[4] resolves all claims against Defendants. Plaintiffs' Counsel believe that the Settlement represents a highly favorable result for the Class and warrants this Court's approval.[5]

As an initial matter, the Settlement should be presumed fair because it was reached through arm's-length bargaining, and Plaintiffs' Counsel's investigation and prosecution of this case assured

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[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation.

[2] The "Class" means all Persons who acquired Veeco Instruments, Inc. ("Veeco" or the "Company") common stock in exchange for Ultratech, Inc. ("Ultratech") common stock pursuant to the registration statement and prospectus issued in connection with Veeco's May 26, 2017 Merger with Ultratech. Excluded from the Class are Defendants, the officers and directors of Veeco and Ultratech (at all relevant times), members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which any Defendant has a majority ownership. Also excluded from the Class are those Persons who would otherwise be Class Members but who timely and validly exclude themselves therefrom. Stipulation, ¶1.4.

[3] "Parties" shall mean Class Representatives, on behalf of themselves and the Class, and Defendants Veeco, Shubham Maheshwari, John R. Peeler, John P. Kiernan, Kathleen A. Bayless, Richard A. D'Amore, Gordon Hunter, Keith D. Jackson, Peter J. Simone, and Thomas St. Dennis.

[4] *See* Declaration of Virginia Geraci in Support of Class Representatives' Motion for Approval of Settlement, ¶4; Declaration of Veronica Dyer in Support of Class Representatives' Motion for Approval of Settlement, ¶4, previously filed with the Court.

[5] The Court has already determined that it "agrees that this is a good result for the class." *See* Order Concerning Class Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"), dated December 7, 2021, at 9.

that Class Representatives entered into the Settlement on a fully informed basis. Further, Plaintiffs' Counsel are experienced in securities class action litigation and there have been no objections to the Settlement or Plan of Allocation to date.

Moreover, there is nothing to rebut the presumption of fairness. While Class Representatives and Plaintiffs' Counsel believe that the litigation has substantial merit and they would have prevailed at trial, they considered the numerous risks raised by the arguments Defendants made during the case and in settlement negotiations, as well as the risks in establishing liability and damages at trial. At trial, the jury could have sided with Defendants on some or all of the determinative issues, leaving the Class with little or no recovery.

Plaintiffs' Counsel, who are well-respected and experienced in prosecuting shareholder class actions, have concluded that the Settlement is a highly favorable result and in the best interest of the Class. This conclusion is based on, among other things: (i) the substantial recovery obtained when weighed against the significant risk, expense and delay presented in continuing this litigation through trial and probable appeal, (ii) a complete analysis of the evidence obtained, (iii) past experience in litigating complex actions similar to the present action, and (iv) the serious disputes among the Parties on both merits and damages issues.

For these and other reasons set forth below, as well as those set forth in the previously-filed Joint Declaration of James I. Jaconette and Francis A. Bottini, Jr. in Support of Class Representatives' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Joint Decl."), dated October 26, 2021,[6] Class Representatives respectfully request that the Court grant final approval to the Settlement and approve the Plan of Allocation as fair, reasonable, and adequate to Class Members.[7]

[6] The Joint Declaration details Plaintiffs' claims, the procedural history of the litigation, the efforts of Plaintiffs' Counsel in prosecuting this case, the risks of continued litigation, and why the Settlement is in the best interests of the Class.

[7] This memorandum focuses primarily upon the legal standards for approving the Settlement and evaluating the Plan of Allocation. A separate memorandum is being submitted herewith in support of the motion for an award of attorneys' fees and expenses. For a complete factual recitation, Plaintiffs' Counsel respectfully refer the Court to the Joint Declaration, incorporated by reference herein.

II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND WARRANTS FINAL APPROVAL

A. Standards Governing Final Approval of Class Action Settlements

"A class action shall not be dismissed, settled, or compromised without the approval of the court." Cal. Civ. Code §1781(f). When assessing a proposed class action settlement, the court's inquiry centers on whether the settlement is "'fair, adequate, and reasonable.'" *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).[8] The inquiry "'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *Id*.

Accordingly, the Court need not inquire into the result that might have been obtained at trial. *See Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 245 (2001), *overruled on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018). A review of the likely rewards of settlement and the risks and costs of continued litigation suffices. *See N. Cnty. Contractor's Ass'n v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1091 (1994) (court must determine if settlement is in the "ballpark"). "'In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.'" *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004).[9] Further, longstanding public policy strongly favors settlements. *See, e.g.*, *Hamilton v. Oakland Sch. Dist. of Alameda Cnty.*, 219 Cal. 322, 329 (1933) ("[I]t is the policy of the law to discourage litigation and to favor compromises."). This policy becomes an "overriding public interest" in class actions. *Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1608 (1991).

In determining whether a settlement is fair, adequate, and reasonable, there is a "presumption of fairness . . . where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in

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[8] Unless otherwise noted, citations are omitted and emphasis is added throughout.

[9] California courts also look to the standards developed by federal courts in reviewing and approving class action settlements. *See, e.g.*, *La Sala v. Am. Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971).

similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; *see also Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010) (same).

The court in *Dunk* set forth additional factors to be considered along with this presumption, including: (1) the settlement amount; (2) the risks of continued litigation; (3) the stage of proceedings; (4) the complexity, expense, and likely duration of the litigation absent settlement; (5) the experience and views of class counsel; and (6) the reaction of class members. *Dunk*, 48 Cal. App. 4th at 1801. As discussed below, the Settlement is entitled to a presumption of fairness, and readily satisfies the additional *Dunk* factors.

B. The Settlement Should Be Accorded a Presumption of Fairness

The Settlement is presumptively fair.

First, the Parties negotiated the Settlement at arm's length under the direct supervision of former Magistrate Judge Jay C. Gandhi (Ret.), a highly experienced and effective mediator in cases like this. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008); *see G.F. v. Contra Costa Ctny.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) (the "'assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive'"). The negotiations included two separate full-day mediation sessions during which the Parties' positions on merits and damages issues were fully vetted and informed by detailed mediation briefs and supporting materials exchanged in advance of the negotiations. *See* Joint Decl., ¶10.

Second, the Parties engaged in extensive pretrial investigation and discovery and other proceedings over more than three years to evaluate the strengths and weaknesses of the claims and defenses, and therefore entered into the Settlement on a fully informed basis. Plaintiffs' Counsel, among other things:

(a) conducted an extensive factual investigation of the events underlying the Merger;

(b) engaged in substantial motion practice, including a successful opposition to Defendants' demurrer;

(c) successfully obtained certification of the Class following briefing and discovery of the proposed Class Representatives and the exchange of expert reports;

(d) conducted document discovery, including the receipt, review, and analysis of over 182,000 pages of documents;

(e) retained an expert consultant to analyze damages and have researched the applicable law with respect to Plaintiffs' claims against Defendants and the potential defenses thereto; and

(f) analyzed, briefed, and presented evidence in support of the claims of the Class at mediation.

Joint Decl., ¶9. Given these substantial efforts, Plaintiffs' Counsel plainly were in a position to negotiate the Settlement based on an informed evaluation of the strengths and weaknesses of the claims asserted, the defenses raised, and the risks of continued litigation.

Third, although the Court must independently review the Settlement, the judgment of experienced counsel regarding the Settlement is entitled to great weight and supports a presumption of fairness. *See Nat'l Rural*, 221 F.R.D. at 528 ("'Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.'"); *Dunk*, 48 Cal. App. 4th at 1802. Class Counsel here have extensive experience and expertise in the prosecution of securities class actions in federal and state courts throughout the country. *See* Joint Decl., Exs. 1 and 2 (Class Counsel's firm resumes). Plaintiffs' Counsel fully support the Settlement and believe that the substantial and certain recovery of $15,000,000 is a highly favorable result for the Class when weighed against the uncertainty and substantial risk and expense of continuing this litigation through summary judgment, trial, and appeals. The fact that qualified and well-informed counsel endorse the Settlement as being fair, adequate, and reasonable favors this Court's approval of the Settlement.

Fourth, the reaction of the Class to the Settlement further supports a presumption of fairness. Pursuant to the Court's December 1, 2021 Order Preliminarily Approving Settlement and Providing for Notice ("Notice Order"), more than 20,400 copies of the Notice were sent to potential Class Members and their nominees. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶11, submitted herewith. The Notice described the nature of the litigation, the terms of the Settlement, how to qualify for payment, and the manner in which the Net Settlement Fund will be allocated among Class Members. The Notice also

advised Class Members of their right to object and the procedures and deadline for objecting to the Settlement, the Plan of Allocation, and/or counsel's request for an award of attorneys' fees and expenses. In addition, the Summary Notice was transmitted over *Business Wire* and published in *The Wall Street Journal* on December 30, 2021. *Id.*, ¶12. The Notice, Proof of Claim, Stipulation, and Notice Order, including all deadlines, have been made publicly available on the Settlement website. *Id.*, ¶14.

Although Class Members have until February 21, 2022 to object or exclude themselves from the Class, Plaintiffs' Counsel are not aware of any objections to the Settlement or the Plan of Allocation as of the date hereof, and no requests for exclusion from the Class have been received.[10] *See id.*, ¶16. The lack of objections by the Class to date supports a presumption of fairness. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1153 (2000) (one factor that "lead[s] to a presumption the settlement was fair" is that only "a small percentage of objectors" came forward); *Nat'l Rural*, 221 F.R.D. at 529 (small number of objections raises strong presumption that settlement is fair).

C. The Settlement Readily Satisfies the Additional *Dunk* Factors

1. The Amount of the Settlement Balanced Against the Strength of Plaintiffs' Case Favors Approval

Each of the additional *Dunk* factors supports final approval. Under the Settlement, the Company and certain of its insurers have paid $15,000,000 in cash for the benefit of the Class, with no right of reversion. This $15,000,000 Settlement, if approved, would be comfortably in the range of court-approved settlements in recent years in class actions asserting federal statutory claims in California Superior Court for alleged material misstatements in the offering documents for a public stock offering.

Based on the assumption that Plaintiffs would meet their burden of proof and persuade the jury at trial as to each element of their *prima facie* claims, and that Plaintiffs would successfully rebut every affirmative defense Defendants intended to establish, maximum estimated damages could reach as high as $96 million. Accordingly, the percentage of recovery is at least 15%, well above the median settlement as a percentage of estimated damages courts have approved in cases like this only involving

[10] If any objections are received, Plaintiffs' Counsel will address them in a reply memorandum to be filed on or before April 14, 2022, in accordance with this Court's Notice Order.

§§11 and/or 12(a)(2) claims. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2020 Review and Analysis* at 7, Fig. 6 (Cornerstone Research 2021) (analyzing 77 class action settlements asserting §§11 and/or 12(a)(2) claims filed between 2011 and 2020, and finding the median settlement as a percentage of "simplified statutory damages" was 7.4%).[11] Not surprisingly, Defendants estimated damages at a fraction of the amount estimated by Plaintiffs' expert, based on expected loss causation affirmative defenses. Therefore, the recovery here as a percentage of Defendants' version of damages would well exceed 20%.

"A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." *Wershba*, 91 Cal. App. 4th at 250. Regardless of the specific percentage of recovery yielded by the Settlement, however, the Settlement is unquestionably better than another possibility – little or no recovery at all in view of the risks of continued litigation, discussed below. *See id.* ("Compromise is inherent and necessary in the settlement process. . . . even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'").

In preliminarily approving the Settlement, the Court found that "this is a good result for the class." *See* Preliminary Approval Order at 9. This factor supports final approval of the Settlement.

2. The Substantial Risks of Continued Litigation

a. Risks Related to Establishing Liability

While Plaintiffs believe their claims are strong on the merits, success is hardly assured. The Complaint alleges that the Registration Statement and Prospectus issued in connection with the Merger (the "Offering Documents") were materially false and misleading. Specifically, Plaintiffs allege that the Offering Documents misrepresented and omitted material facts about Veeco's and Ultratech's businesses and the competitive landscape in China, including that: (1) Veeco was being destroyed by one of its main competitors, AMEC; (2) several factors were making it very difficult for Veeco to

[11] *See* Exhibit A to the Declaration of Ellen Gusikoff Stewart in Support of Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Class Representatives Pursuant to 15 U.S.C. §77z-1(a)(4) ("Stewart Decl."), submitted herewith.

compete in China, including in the MOCVD[12] market (*e.g.*, increased pricing pressure and reduced margins); (3) Veeco was already in an acrimonious IP dispute with AMEC and its supplier SGL; (4) the Chinese government's role in the China market made it very difficult for Veeco to retain market share; and (5) many risks that Veeco characterized as hypothetical had already materialized at the time of the Merger. Joint Decl., ¶4. Defendants have vigorously denied Plaintiffs' allegations. Defendants have strenuously argued that Veeco disclosed the very risks the Class Representatives allege they omitted.

While Class Representatives believe the documents and testimony taken to date support their allegations, the uncertainty of continued litigation weighs strongly in favor of approval of the Settlement. As one court has observed:

> It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced. Merely by way of example, two instances in this Court may be cited where offers of settlement were rejected by some plaintiffs and were disapproved by this Court. The trial in each case then resulted unfavorably for plaintiffs; in one case they recovered nothing and in the other they recovered less than the amount which had been offered in settlement.

State of W. Va. v. Chas. Pfizer & Co., 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971); *see also Bellows v. NCO Fin. Sys., Inc.*, No. 3:07-cv-01413-W-AJB, 2008 WL 5458986, at *7 (S.D. Cal. Dec. 10, 2008) ("[W]hile Class Counsel believe strongly in the merit of the class claims, they also recognize that any case encompasses risks and that settlement of contested cases is preferred in this circuit. Indeed, even if Plaintiff were to prevail at trial, risks to the class remain."); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *7 (C.D. Cal. June 10, 2005) ("Also favoring approval of the Settlement is the knowledge that, while Plaintiffs are confident of the strength of their case, it is imprudent to presume ultimate success at trial and thereafter.") (both citing *Chas. Pfizer*, 314 F. Supp. at 743-44). The numerous uncertainties and risks of proving liability at trial support approval of the Settlement.

b. Risks Relating to Establishing Causation and Damages

Although Plaintiffs were confident that they could establish damages assuming a finding of liability, Plaintiffs faced a risk that the Court or jury would substantially reduce or even eliminate damages. Under §11(e) of the Securities Act, 15 U.S.C. §77k(e), a defendant can reduce or eliminate

[12] "MOCVD" refers to metal organic chemical vapor deposition equipment.

damages through a showing that the false or misleading statements or omissions alleged were not the cause, in whole or in part, of the loss sustained by the class. Defendants have consistently argued and would continue to argue "negative causation" at both summary judgment and trial. Defendants argued that purchasers of Ultratech stock prior to the issuance of the Offering Documents could not have been damaged by the alleged misrepresentations or omissions from the Offering Documents. Defendants further argued that purchasers of Ultratech shares after the announcement of the Merger suffered no damages because Ultratech and Veeco stock traded in unison until the closing of the Merger, when the agreed-upon stock for stock merger consideration was fixed. Finally, Defendants argued that the Class could not recover for at least two of the alleged "corrective disclosures" because those events represented the non-actionable materialization of a known risk, not a concealed risk.

The Parties' respective experts would offer sharply divergent testimony concerning damages at both summary judgment and trial, reducing the determination of this element to a "battle of the experts."[13] *See In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) (fact that "trial would likely involve a confusing 'battle of the experts' over damages" supported approval of settlement). Class Representatives faced a substantial risk that the fact finder would credit Defendants' contentions that damages were not linked to the misstatements in the Offering Documents or that damages were a fraction of the amount Class Representatives proffered. *See In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) (approving settlement where "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

Even if Class Representatives were to obtain 100% of their damages, the risks would not end there. *See In re Mfrs. Life Ins. Co. Premium Litig.*, No. 96-CV-230 BTM (AJB), 1998 WL 1993385, at *5 (S.D. Cal. Dec. 21, 1998) ("[E]ven if it is assumed that a successful outcome for plaintiffs at summary judgment or at trial would yield a greater recovery than the Settlement – which is not at all apparent – there is easily enough uncertainty in the mix to support settling the dispute rather than

[13] The experts had already provided vastly competing testimony at class certification.

risking no recovery in future proceedings."). There are numerous cases in which a successful verdict has been overturned either by motion after trial or an appeal. In *In re Apple Comput. Sec. Litig.*, No. C-84-20148(A)-JW, 1991 WL 238298, at *1 (N.D. Cal. Sept. 6, 1991), for example, the jury rendered a verdict for plaintiffs after an extended trial. Based upon the jury's findings, recoverable damages would have exceeded $100 million. The court, however, overturned the verdict, entered judgment for the individual defendants, and ordered a new trial with respect to the corporate defendant. *See also, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)); *In re BankAtlantic Bancorp, Inc.*, No. 07-61542-CIV, 2011 WL 1585605, at *20 (S.D. Fla. Apr. 25, 2011) (after plaintiffs' jury verdict, court granted defendants' motion for judgment as a matter of law and entered judgment for defendants), *aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (finding trial court erred, but defendants nevertheless entitled to judgment as a matter of law based on lack of loss causation). Litigation risks on liability and damages support approval of the Settlement.

3. Class Representatives Had Sufficient Information to Negotiate and Obtain a Fair Settlement

This factor focuses on whether the Parties had sufficient information to conduct an informed negotiation for a settlement that adequately reflects the merits of the case.

As detailed above, when the Parties reached the Settlement, Plaintiffs' Counsel had sufficiently investigated and researched the merits of their claims and Defendants' potential defenses to determine that the terms of the Settlement are fair, reasonable, and adequate and in the best interests of the Class. Plaintiffs' Counsel's reasoned judgment was obtained after they conducted an extensive factual investigation, drafted the Complaint, reviewed and analyzed over 182,000 pages of documents, conducted class certification discovery, consulted with a forensic damages consultant, and participated in mediated settlement negotiations during which the strengths and weaknesses of the Parties' positions were fully explored and debated. The knowledge and insight gained through these activities provided Plaintiffs' Counsel with sufficient information to evaluate the strengths and weaknesses of the Class'

claims and Defendants' defenses, as well as the likelihood of obtaining a larger recovery from Defendants had the litigation continued.

This factor weighs significantly in favor of approval.

4. Balancing the Certainty of an Immediate Recovery Against the Complexity, Expense, and Likely Duration of Continued Litigation and Trial Favors Settlement

The immediacy and certainty of a recovery balanced against the complexity, expense, and duration of continued litigation is another factor for the Court to balance in determining whether the Settlement is fair, adequate, and reasonable. *See Wershba*, 91 Cal. App. 4th at 244-45; *Dunk*, 48 Cal. App. 4th at 1801. The benefit of the present settlement must be balanced against the expense of achieving a more favorable result at a trial in the future.

Approval of the Settlement assures a prompt and significant recovery for Class Members. If not for the Settlement, this litigation would continue to proceed through the completion of document and deposition discovery, expert discovery, summary judgment, trial, and likely appeal. A trial would occupy teams of attorneys for weeks and would require substantial and costly expert testimony on both sides. Further, a judgment favorable to the Class, in light of the contested nature of virtually every aspect of this case, would unquestionably be the subject of post-trial motions and appeals, which would prolong the case for several more years. *See Warner Commc'ns*, 618 F. Supp. at 745 (delay from appeals is factor to be considered). Delay, not just at the trial stage, but through post-trial motions and the appellate process as well, could force Class Members to wait many more years for any recovery, further reducing its value. Settlement of this litigation ensures an immediate recovery, and eliminates the risk of no recovery at all.

The essence of a settlement is compromise, "'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982). "'[T]he agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation.'" *Id*. The certainty of recovery balanced against the complexity, expense, and duration of continued litigation weighs in favor of approval of the Settlement. *See* Joint Decl., ¶¶14-20.

5. The Recommendation of Experienced Counsel Favor Approval of the Settlement

The views of the attorneys actively conducting the litigation, while not conclusive, are entitled to weight in the fairness analysis. *Dunk*, 48 Cal. App. 4th at 1802; *see also In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) ("'The recommendations of plaintiffs' counsel should be given a presumption of reasonableness.'"). Plaintiffs' Counsel, who have extensive experience in the prosecution of securities class actions, recommend the Settlement to the Court as in the best interests of the Class.

In sum, because each of the *Dunk* factors supports a finding that the Settlement is fair, reasonable, and adequate, the Court should approve the Settlement.

III. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

Class Representatives also seek approval of the Plan of Allocation. The Plan of Allocation is set forth in full in the Notice mailed to potential Class Members. The objective of a plan of allocation is to provide an equitable basis upon which to distribute the settlement fund among eligible class members. *See Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978). Assessment of a plan of allocation in a class action is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair and reasonable. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). An allocation formula "'need only have a reasonable, rational basis, particularly if recommended by experienced and competent'" class counsel. *See, e.g.*, *In re Zynga Inc. Sec. Litig*., No. 12- cv-04007-JSC, 2015 WL 6471171, at *12 (N.D. Cal. Oct. 27, 2015). No objections to the Plan of Allocation have been filed to date.

Here, the Net Settlement Fund will be divided *pro rata* to the Class Members who submit valid claim forms based on the number of shares of Veeco common stock that Class Members held throughout the Class Period and at the closing of the Merger, and were exchanged for Ultratech common stock. The Net Settlement Fund will be disbursed by the Claims Administrator following completion of the claims administration process. The objective of this plan is to provide an equitable basis upon which to distribute the Net Settlement Fund among eligible Class Members.

IV. NOTICE TO THE CLASS SATISFIES DUE PROCESS AND CALIFORNIA LAW

Pursuant to the Court's Notice Order, and as described above, §II.B., Class Representatives have provided the Class with adequate notice of the Settlement. Class Representatives, through their counsel and the Claims Administrator, have disseminated more than 20,400 copies of the Court-approved Notice to potential Class Members and their nominees who could be identified with reasonable effort, from multiple sources. *See* Murray Decl., ¶11. Also, the Court-approved Summary Notice was published in the national edition of *The Wall Street Journal*, and published electronically over the *Business Wire* on December 30, 2021. *Id*., ¶12. The Claims Administrator also provided all information regarding the Settlement online through the Settlement website, www.VeecoSecuritiesSettlement.com, which included the Notice and Proof of Claim. *Id*., ¶14. This method of giving notice, previously approved by the Court, is appropriate because it "'fairly apprise[d] the class members of the terms of the proposed compromise and the options open to dissenting class members.'" *Laffitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 874 (2014), *aff'd*, 1 Cal. 5th 480 (2016).

The Notice provides the necessary information for Class Members to make an informed decision regarding the proposed Settlement. It informs the Class of, among other things: (1) the amount of the Settlement; (2) the reasons why the Parties propose the Settlement; (3) maximum amount of attorneys' fees and expenses that will be sought; (4) the name, telephone number, and address of representatives of Class Counsel who will be reasonably available to answer questions from Class Members concerning matters contained in the Notice; (5) the right of Class Members to object to the Settlement or seek exclusion from the Class, and the consequences thereof; and (6) the dates and deadlines for certain Settlement-related events. The Notice further explains that the Net Settlement Fund will be distributed to eligible Class Members who submit valid and timely Proofs of Claim under the Plan of Allocation, as described in the Notice.

In sum, the notice program here fairly apprises Class Members of their rights with respect to the Settlement, is the best notice practicable under the circumstances, and complies with the Court's Notice Order, Cal. Ct. R. 3.766(d), the PSLRA (15 U.S.C. §77z-1(a)(7)), and due process. *See Wershba*, 91 Cal. App. 4th at 251 ("'notice given to the class must fairly apprise the class members of the terms of

the proposed compromise and of the options open to dissenting class members'"). In addition, notice of entry of the Judgment, once entered by the Court, will be provided to the Class by posting it on the Settlement website.

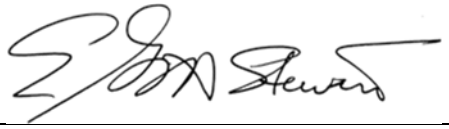
V. CONCLUSION

The Settlement reached by Plaintiffs' Counsel and approved by Class Representatives is a very good one, and for the foregoing reasons, Class Representatives respectfully request that the Court grant final approval to the Settlement, approve the Plan of Allocation, grant final certification of the Class, and enter the proposed Judgment and Order Granting Final Approval of Class Action Settlement.

DATED: February 7, 2022

Respectfully Submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
JAMES I. JACONETTE



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Additional Counsel for Plaintiffs

DECLARATION OF SERVICE BY EMAIL

I, Marianne Maloney, am and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action, and have a business address of 655 West Broadway, Suite 1900, San Diego, California 92101.

I hereby declare that on February 7, 2022, I served the attached MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION on the parties in the within action by emailing a copy to the addresses below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on February 7, 2022, at San Diego, California.

MARIANNE MALONEY