ROBBINS GELLER RUDMAN
& DOWD LLP
RANDALL J. BARON (150796)
A. RICK ATWOOD, JR. (156529)
DAVID T. WISSBROECKER (243867)
MAXWELL R. HUFFMAN (264687)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

FARUQI & FARUQI, LLP
NADEEM FARUQI
685 Third Avenue, 26th Floor
New York, NY 10017
Telephone: 212/983-9330
212/983-9331 (fax)

Interim Class Counsel

[Additional counsel appear on signature page.]



SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

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| In re CERADYNE, INC. SHAREHOLDER LITIGATION<br><br>This Document Relates To:<br><br>ALL ACTIONS. | Lead Case No. 30-2012-00604001-CU-BT-CXC<br>(Consolidated with<br>Case No. 30-2012-00604931-CU-SL-CXC)<br><br>CLASS ACTION<br><br>Assigned to: Judge Thierry P. Colaw<br><br>PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION<br><br>DATE: May 4, 2018<br>TIME: 10:30 a.m.<br>DEPT: CX105<br>DATE ACTION FILED: 10/09/12 |

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**SECONDARY AUTHORITIES**

This is a shareholder class action brought by representative plaintiffs Adam Golovoy, Parmanand Kumar, and City of Hialeah Employees' Retirement System (together, "Plaintiffs"), on behalf of a class of the former public shareholders of Ceradyne, Inc. ("Ceradyne" or the "Company"), bringing claims for breach of fiduciary duty against the former members of the Company's Board of Directors (collectively, the "Board," and together with Ceradyne, "Defendants") in connection with the sale of Ceradyne to 3M Company and its affiliates ("3M") for $35.00 per share in cash (the "Transaction"). Plaintiffs respectfully submit this memorandum in support of the motion for final approval of the settlement of this Action and for approval of the proposed distribution of proceeds (the "Plan of Allocation") based on the terms set forth in the Stipulation of Settlement filed June 14, 2017, and the Notice of Amendments filed September 11, 2017 (together, the "Stipulation" or the "Settlement").[1]

## I. INTRODUCTION

After over four years of hard-fought litigation, which included the filing of five complaints (four amendments to Plaintiffs' initial pleading), four dispositive motions, two motions to compel, over 158,000 pages of document discovery, twelve depositions, hundreds of interrogatories and requests for admission, and with a fiercely contested motion for class certification pending, the parties agreed to the terms of the Settlement as set forth in the Stipulation. The Settlement represents an exceptional outcome for the Class – a common fund recovery of ***$11.3 million***, plus agreed-upon interest.[2] Results like this are demonstrably uncommon. In its most recent study concerning shareholder litigation over corporate mergers and acquisitions, Cornerstone Research reported that, among the hundreds of lawsuits filed during 2015 and the first half of 2016, only six of those cases resulted in any monetary

[1] All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

[2] The "Class" includes all record and beneficial owners of Ceradyne common stock who received consideration for their shares in the sale of Ceradyne to 3M Company at the price of $35.00 per share, pursuant to either the Tender Offer or the second step Merger. Excluded from the Class are the Defendants, their estates, Defendants' respective successors, heirs and assigns, Defendants' immediate family members, and any company, trust, or other entity in which a Defendant owned, or beneficially controlled or held, as of November 27, 2012, a fifty percent or more interest. Also excluded from the Class is any Person who exercised their appraisal rights under Section 262 of the General Corporation Law of the State of Delaware or who validly requests exclusion from the Class.

recovery for shareholders. Ravi Sinha, *Shareholder Litigation Involving Acquisitions of Public Companies*, at 5 (Cornerstone Research 2016) (confirming that in the context of merger-related litigation, "[m]onetary consideration paid to shareholders has remained relatively rare"). *See* accompanying Joint Declaration of Maxwell R. Huffman and Michael Van Gorder in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Joint Declaration"), Ex. A.

In weighing the clear benefits of the Settlement, Plaintiffs also considered the many risks that they faced if this case was taken to trial, including possibly potent defenses such as the business judgment rule and the exculpation provision in Ceradyne's corporate charter that eliminated liability for any and all breaches of fiduciary duty by the Board other than disloyal conduct. Based on a well-informed assessment of the strengths and weaknesses of the underlying claims and defenses, with the advice of experienced counsel, and following a mediation session before Jill Sperber, Esq., a nationally-recognized, neutral mediator with extensive experience in mediating complex actions, Plaintiffs accepted the terms of the Settlement, which they believe to be in the best interests of the Class.

The Class' reaction to the Settlement and the Plan of Allocation has thus far been entirely favorable. To date, over 14,300 Notices and Proofs of Claim (collectively, "Notice Packages") were sent to potential Class Members and their nominees explaining, *inter alia*, the terms of the Settlement and the Plan of Allocation and the procedure and deadline for objection to both.[3] While the deadline for Class Members to object – March 1, 2018 – has not passed, to date, Plaintiffs' counsel ("Plaintiffs' Counsel") are not aware of a single objection, and no one has requested exclusion from the Class. Sylvester Decl., ¶16. For the reasons set forth herein and in the Joint Declaration, Plaintiffs respectfully request that the Court grant final approval of the Settlement and approve the Plan of Allocation as fair, reasonable, and adequate to Class Members.

## II. STANDARDS FOR FINAL APPROVAL OF SETTLEMENT

California Civil Code §1781(f) provides that "[a] class action shall not be dismissed, settled, or compromised without the approval of the court." The court's role in approving a class action settlement

[3] *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, Requests for Exclusion Received to Date, Interim Claims Processing, and Estimate of Administration Fees and Expenses ("Sylvester Decl."), ¶¶4-11, submitted herewith.

is to determine whether, as a whole, the settlement is fair, reasonable, and adequate. *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 (2009); *State of California v. Levi Strauss & Co.*, 41 Cal. 3d 460, 471 (1986); *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 245 (2001); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The approval of settlements in representative lawsuits is a matter committed to the broad discretion of the trial court. *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1138 (1990).[4] The trial court's role, however, is limited to a consideration of the overall fairness, reasonableness, and adequacy of the settlement and does not require a determination of the result which might have been obtained after trial. *Rebney*, 220 Cal. App. 3d at 1138; *see also Wershba*, 91 Cal. App. 4th at 245.

In this context, there is a uniform policy favoring compromises of litigation. *Hamilton v. Oakland Sch. Dist.*, 219 Cal. 322, 329 (1933). This policy is particularly compelling in complex matters, such as the one before the Court. *Bell v. Am. Title Ins. Co.*, 226 Cal. App. 3d 1589, 1607 (1991) (there is an overwhelming public interest in favor of settlement of class actions). In evaluating a class action settlement, the inquiry therefore "'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.'" *Dunk*, 48 Cal. App. 4th at 1801 (citation omitted); *N. Cty. Contractor's Ass'n v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1091 (1994) (court must determine if settlement is in the "ball-park"). "'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) (citation omitted).

## III. THE SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS

A presumption of fairness applies when: "'(1) the settlement [was] 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 similar litigation; and (4) the percentage of objectors is

[4] California courts have adopted the standards developed by federal courts in reviewing and approving class action settlements. *La Sala v. Am. Sav. & Loan Ass'n*, 5 Cal. 3d 864, 872 (1971). Therefore, several federal authorities have been relied upon throughout this memorandum.

small.'" *Wershba*, 91 Cal. App. 4th at 245 (citation omitted); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008); *Cho*, 177 Cal. App. 4th at 734. Here, each of these factors is present.

*First*, the Settlement was the product of extensive arm's-length negotiations by counsel, which included the assistance of an experienced mediator. Prior to the mediation, the parties exchanged mediation briefs explaining their respective positions and submitted them to the mediator. Courts have recognized that "[t]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C03-2659 SI, 2007 U.S. Dist. LEXIS 99066, at *17 (N.D. Cal. Apr. 13, 2007).

*Second*, as discussed herein and in the Joint Declaration, the Settlement was negotiated between counsel after more than four years of litigation, after briefing and rulings on four potentially dispositive motions, and when the facts and issues were sufficiently developed to allow Plaintiffs to make an intelligent decision about the propriety of the Settlement. The thorough investigation and dogged litigation efforts have allowed Plaintiffs' Counsel to assess the strengths and weaknesses of the Class' claims.

*Third*, Plaintiffs' Counsel have extensive experience and expertise in litigating not just complex class actions, but also stockholders' claims in the context of disputed mergers of public companies. *See In re Dole Food Co., Inc. S'holder Litig.*, No. 8703-VCL, 2015 Del. Ch. LEXIS 223 (Del. Ch. Aug. 27, 2015) (awarding over $148 million in damages in post-trial ruling); *In re Rural/Metro Corp. Stockholders Litig.*, 102 A.3d 205 (Del. Ch. 2014) (awarding over $75.8 million in damages in post-trial ruling), *aff'd sub. nom. RBC Capital Mkts., LLC v. Jervis*, 129 A.3d 816 (Del. 2015).

*Fourth*, although the date for filing objections has not passed, Plaintiffs' Counsel are not aware of a single objection to the Settlement, nor any Class Member electing to opt out of the Settlement. Accordingly, the Settlement is presumptively fair.

## IV. THE SETTLEMENT SATISFIES FACTORS FAVORING FINAL APPROVAL

The Settlement satisfies the standards for approval of a class action settlement set forth in *Dunk*. There, the court set forth several factors to be considered by a court when granting final approval of a settlement, 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. 48 Cal. App. 4th at 1801; *see also Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010). As discussed below and in the Joint Declaration, each of these criteria supports final approval of the Settlement here.

**A. The Amount of the Settlement Favors Final Approval**

Under the Settlement, Defendants agreed to make a cash payment of ***$11.3 million*** for the benefit of the Class. As explained in the Joint Declaration, any monetary recovery in a merger-related shareholder class action is exceedingly rare, let alone a common fund of this magnitude. *See* Joint Decl., ¶¶5, 22-23. This Settlement is unquestionably better than another distinct possibility – little or no recovery for the Class. Even if Plaintiffs were able to successfully prosecute this Action through trial and establish Defendants' liability, there was no guarantee that a jury would have awarded damages in any amount, much less an amount that would exceed the value of the Settlement, and it would have taken years before all appeals were settled and the Class received any payment. *See Wershba*, 91 Cal. App. 4th at 250 ("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.'") (citation omitted).

Moreover, the Settlement was only reached after substantial litigation, and it is the product of each party's evaluation of the strengths and weaknesses of their respective case and the costs of taking the litigation through the completion of merits and expert discovery, trial, and appeals. *See* Joint Decl., ¶¶7-47. Based on all factors involved, the Settlement is a highly favorable result for the Class. Accordingly, this factor militates in favor of the Court granting final approval. *See Wershba*, 91 Cal. App. 4th at 250 ("A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable.").

### B. The Substantial Risks of Continued Litigation

As explained herein, Plaintiffs' case against the Defendants presented unique and substantial risks in terms of establishing both liability and damages.

#### 1. Risks in Establishing Liability

Plaintiffs' claims were multifaceted and complex. Ultimately, Plaintiffs' primary theories of liability were that the Board consciously disregarded Ceradyne's superior value as an independent business and utilized knowingly manipulated financial projections in approving the Transaction for an unfair price. *See* Joint Decl., ¶37. While Plaintiffs and Plaintiffs' Counsel believed in the claims and are reasonably confident that they would have prevailed at summary judgment and eventually at trial, success was not certain. *Id.*, ¶¶36-43. As explained in the Joint Declaration, multiple recent shareholder class actions challenging disputed mergers of public companies have been dismissed at summary judgment, despite the existence of strong claims for relief. *Id.*, ¶41. In fact, Plaintiffs' Counsel are aware of only one post-merger case for monetary damages where the fact finder found that directors breached their fiduciary duties under *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986). *See Rural Metro,* 102 A.3d at 219 (finding that the directors "breached their fiduciary duties by providing materially misleading information in the Proxy Statement").

Defendants did and were prepared to further argue that neither Delaware substantive law nor the facts of this case would support any claim for liability against Ceradyne's directors. For example, Ceradyne's certificate of incorporation contained an exculpatory provision pursuant to §102(b)(7) of Delaware General Corporation Law that prohibited any liability for the Board for breaches of fiduciary duty except in the instances of disloyal or bad faith conduct. Joint Decl., ¶38. Defendants argued that this provision protects the Board from liability even for negligent and careless mistakes and for all breaches of the fiduciary duty of due care. *Id.* As a result, to survive even a motion for summary judgment and to take the case to trial, Plaintiffs would have needed to show evidence that Defendants' misconduct rose to the level of intentional and bad faith acts. *Id*.

Moreover, Defendants also argued that a number of facts precluded liability, including that: (1) the Transaction price represented a 43% premium over the Company's stock price on the day before the

announcement of the Board's approval of the merger agreement; (2) 87% of Ceradyne shareholders tendered their shares in connection with the Transaction; (3) the Board included eight members, including seven outside and facially independent directors; (4) each member of the Board owned Ceradyne stock, thereby aligning his interests with public shareholders and achieving the greatest price possible in a sale of Ceradyne; (5) the Board was advised by outside legal and financial advisors; and (6) no other potential buyer submitted a higher bid for Ceradyne after the public announcement of the merger agreement. *Id*., ¶39.

While Plaintiffs were prepared to make counterarguments to each of these positions, the Court or the jury may have found Defendants' factual and legal arguments persuasive and dispositive as to liability for Plaintiffs' claims. Thus, a meaningful chance existed that the Class could walk away with nothing if this litigation continued.

**2. Other Risks Under Delaware Substantive Law**

During the Action, the Delaware Supreme Court issued a decision that presented another factor of risk on the claims alleged here. *See Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015). Under *Corwin* and its current progeny, where a disinterested and fully informed, uncoerced majority of stockholders approve a transaction, whether through tender offer or vote, an "irrebuttable" business judgment rule applies. Joint Decl., ¶40. In that scenario, all challenges to a merger are extinguished, other than those predicated on waste. The tender on the Transaction was concededly accomplished by a majority of disinterested and uncoerced stockholders. And, of course, Plaintiffs did not plead a waste claim, nor could one exist under the facts alleged. Thus, unless Plaintiffs could prove at trial that the stockholder tender was uninformed, Plaintiffs were going to lose because the Board would have the benefit of an "irrebuttable" business judgment rule under these circumstances. *Id*. While serious disclosure issues existed in this case which prevented a fully informed vote, Plaintiffs' arguments were not unassailable. *Id*. Accordingly, this represented a situation whereby Plaintiffs could prove disloyal and bad faith conduct, and Plaintiffs still recover nothing. *Id*.

**3. Risks Relating to Damages**

A crucial issue in this case related to the value of Ceradyne at the time of the Transaction. Plaintiffs alleged that Ceradyne was worth more than the Transaction price, as demonstrated by the

Company's financial projections that existed at the time 3M first expressed its interest in an acquisition. Defendants argued that these projections included a number of optimistic assumptions unlikely to be met by the Company, and subsequent forecasts that represented more reasonable estimates for future earnings supported the fairness of the consideration. Defendants also argued that the Transaction price was supported by the formal fairness opinion issued by the Company's outside financial advisors at Citigroup Global Markets. As a result, there was a substantial risk that the finder of fact would agree with Defendants' contention that no damages existed, or that damages were substantially less than the amount Plaintiffs asserted. *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); *In re Tyco Int'l, Ltd*., 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) ("even if the jury agreed to impose liability, the trial would likely involve a confusing 'battle of the experts' over damages"). Thus, Plaintiffs faced the prospect of winning the liability phase at trial, but recovering nothing for the Class. That is precisely what happened in *In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013), where plaintiffs proved directors' breaches of fiduciary duty at trial in connection with a disputed merger, but the Court of Chancery found that the price was fair and damages were zero.

**4. Risks Relating to Appeal**

Even if Plaintiffs were to prevail at trial, the risks would not end there. *See In re Mfrs. Life Ins. Co. Premium Litig.*, MDL No. 1109, 1998 U.S. Dist. LEXIS 23217, at *17 (S.D. Cal. Dec. 21, 1998) ("even 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 risking no recovery in future proceedings"). There are many cases in which a successful verdict has been overturned either by motion after trial or an appeal. For example, in *In re Apple Comput. Sec. Litig*., No. C-84-20148(A)-JW, 1991 U.S. Dist. LEXIS 15608 (N.D. Cal. Sept. 6, 1991), 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 notwithstanding the verdict for the individual defendants, and ordered a new trial with respect to the corporate defendant. *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (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 Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)); *In re BankAtlantic Bancorp, Sec. Litig.*, No. 07-61542-CIV-UNGARO, 2011 U.S. Dist. LEXIS 48057 (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).

In sum, the risks posed by continued litigation were substantial, and they would be present at every step of the litigation if it were to continue. Plaintiffs took into account all of the above factors and risks in accepting the Settlement and the $11.3 million common fund recovery, which is an extraordinary outcome for the Class.

### C. The Stage of Proceedings and Available Evidence Gave the Parties Sufficient Information to Negotiate a Fair, Reasonable and Adequate 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. When applying this factor, "[t]he question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it." *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 U.S. Dist. LEXIS 19210, at *39-*40 (E.D. La. Mar. 2, 2009). Moreover, the trial court "may legitimately presume that counsel's judgment [that it has the information necessary to evaluate a settlement] . . . is reliable." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981).

As detailed above and in the Joint Declaration, by the time the parties reached the Settlement, Plaintiffs and their counsel had sufficiently investigated and researched the merits of their claims and

the potential defenses to determine that the terms of the Settlement are fair, reasonable, and adequate and in the best interest of the Class. Joint Decl., ¶¶7-43. Plaintiffs and Plaintiffs' Counsel actively litigated the merits of this case over four years and engaged in significant factual discovery, whereby Defendants, 3M and Citigroup produced more than 158,000 pages of documents. *Id.*, ¶¶7-31. Plaintiffs also took the depositions of key members of Ceradyne's senior management team and members of the Board. *Id.*, ¶¶13, 23. The merits of the parties' respective positions were also extensively debated through settlement discussions, including in mediation which further highlighted the legal and factual issues in dispute. *Id.*, ¶¶30-31, 35. The knowledge and insight gained through these activities provided Plaintiffs and Plaintiffs' Counsel with sufficient information to evaluate the strengths and weaknesses of the Class' claims and the Board's defenses, as well as whether a larger recovery could be obtained through continued litigation. *Id.*, ¶¶37-47.

**D. Balancing the Certainty of an Immediate Recovery Against the Expense and Likely Duration of Continued Litigation and Trial Favors Settlement**

The immediacy and certainty of a recovery is another factor for the Court to balance in determining whether the Settlement is fair, adequate, and reasonable. *See, e.g., Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). Courts have held that "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1984); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982). Thus, the benefit of the present settlement must be balanced against the expense of achieving a more favorable result at a trial in the future. *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971).

Approval of the Settlement will mean a significant, prompt recovery for the Class. If not for this Settlement, the case would have continued at great cost and substantial duration. Fact and expert discovery would need to be completed, and Plaintiffs would have needed to successfully defeat Defendants' Motion for Summary Judgment. Assuming Plaintiffs were successful and the Action went to trial, a trial would have occupied a number of attorneys for weeks and would have required substantial and costly expert testimony on both sides. Furthermore, 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 further appeals, which could prolong the case for several more years. *See, e.g., Warner Commc'ns*, 618 F. Supp. at 745 (delay from appeals is a factor to be considered). Therefore, 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 Action ensures an immediate recovery and eliminates the risk of no recovery at all. *See In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 373-74 (S.D. Ohio 2006) (explaining "the difficulty Plaintiffs would encounter in proving their claims, the substantial litigation expenses, and a possible delay in recovery due to the appellate process, provide justifications for this Court's approval of the proposed Settlement").

As the Ninth Circuit has made clear, the very essence of a settlement agreement is compromise that necessitates "'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (citations omitted). "'Naturally, the 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*. (citation omitted); *see also Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 19 (N.D. Cal. 1980) ("As a quid pro quo for not having to undergo the uncertainties and expenses of litigation, the plaintiffs must be willing to moderate the measure of their demands."), *aff'd*, 661 F.2d 939 (9th Cir. 1981). Accordingly, the fact that the Class potentially could have achieved a greater recovery after trial does not preclude the Court from finding that the Settlement is within a "range of reasonableness" for approval. *E.g.*, *Warner Commc'ns*, 618 F. Supp. at 745.

### E. The Recommendations of Experienced Counsel Heavily Favor Approval of the Settlement

While a court must independently review a proposed 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.'") (citation omitted); *Dunk*, 48 Cal. App. 4th at 1802. Indeed, as one court recognized, "'[t]he recommendations of plaintiffs' counsel

should be given a presumption of reasonableness.'" *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007) (citation omitted). As discussed above, Plaintiffs' Counsel are known for their experience and success in complex and class action litigation and fully support the Settlement as in the best interest of the Class. This factor heavily favors this Court's approval of the Settlement.

### F. The Reaction of the Class Supports Approval of the Settlement

A court may also consider the reaction of the class in determining whether to approve a settlement. *Dunk*, 48 Cal. App. 4th at 1801; *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 906 (S.D. Ohio 2001). A "relatively small number" of objections is "an indication of a settlement's fairness." *Brotherton*, 141 F. Supp. 2d at 906 (citing Herbert Newberg & Alba Conte, 2 *Newberg on Class Actions* §11.48 (3d ed. 1992)); *see also Meyenburg v. Exxon Mobil Corp.*, No. 3:05-cv-15-DGW, 2006 U.S. Dist. LEXIS 97057, at *18 (S.D. Ill. June 6, 2006) (nine objections is a "minuscule" amount). However, "[t]he fact that some class members object to the Settlement does not by itself prevent the court from approving the agreement." *Brotherton*, 141 F. Supp. 2d at 906.

In this case, 14,351 Notice Packages were sent to potential Class Members and their nominees, the Summary Notice was published in *The Wall Street Journal*, *Investor's Business Daily*, and over the *Business Wire*, and relevant documents, including the Stipulation, the Notice, and the Proof of Claim, were posted to the Settlement website, www.ceradyneshareholdersettlement.com, which was identified in the Notice and Summary Notice. *See generally* Sylvester Declaration. Although the time for objections has not yet expired, to date, no Class Member has objected to the Settlement, and no Class Member has requested exclusion from the Class. *Id.*, ¶16. Thus, the reaction of the Class weighs heavily in favor of approving the Settlement. *See Nat'l Rural*, 221 F.R.D. at 529 (absence of large number of objections raises a strong presumption settlement is fair to the class); *Dunk*, 48 Cal. App. 4th at 1802 (one of the factors leading to a presumption that the settlement is fair, reasonable and adequate is that "the percentage of objectors is small").

## V. THE PLAN OF ALLOCATION IS A FAIR METHOD OF DISTRIBUTING THE SETTLEMENT PROCEEDS AND SHOULD BE APPROVED

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) (courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably"); *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). Assessment of the plan of allocation is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). An allocation formula must only have a reasonable, rational basis, particularly if recommended by "experienced and competent" plaintiffs' counsel. *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993); *In re Am. Bank Note Holographics Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001). Because they tend to mirror the complaints' allegations, "plans that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatec Sys. Inc. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 U.S. Dist. LEXIS 87428, at *15 (D.N.J. Nov. 28, 2007).

Here, the Net Settlement Fund will be divided *pro rata* based upon the number of shares of Ceradyne common stock that Class Members held at the closing of the Transaction. The Net Settlement Fund will be disbursed by the Claims Administrator to the Settlement Payment Recipients and will be allocated on a per-share basis amongst the Settlement Payment Recipients who have submitted to the Claims Administrator a valid Proof of Claim by the deadline provided in the Notice based on the number of shares of Ceradyne common stock held by the applicable Settlement Payment Recipient upon the closing of the Transaction. The objective of this plan is to provide an equitable basis upon which to distribute the Net Settlement Fund among eligible Class Members. This will result in a fair distribution of the Net Settlement Fund among Class Members, as it is consistent with how post-trial damages are calculated and distributed for cases of this nature that proceed through trial. *See Rural/Metro*, 102 A.3d at 224 (explaining that monetary damages are "'equal to the "fair" or "intrinsic" value of their stock at the time of the merger, less the price per share that they actually received'"). Thus, the Plan of Allocation is appropriate and should be approved.

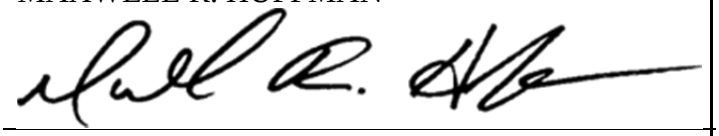
## VI. CONCLUSION

The substantial and certain monetary recovery obtained for the benefit of the Class is a highly favorable result and clearly fair, reasonable, and adequate. Moreover, the Plan of Allocation is a simple and straightforward method of allocating the net settlement proceeds among Class Members, consistent with how damages would be calculated at trial, and is thereby necessarily fair, reasonable, and adequate. For all the foregoing reasons, Plaintiffs respectfully request that the Court approve the Settlement and the Plan of Allocation.

DATED: February 15, 2018

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
RANDALL J. BARON
A. RICK ATWOOD, JR.
DAVID T. WISSBROECKER
MAXWELL R. HUFFMAN



MAXWELL R. HUFFMAN

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

FARUQI & FARUQI, LLP
NADEEM FARUQI
685 Third Avenue, 26th Floor
New York, NY 10017
Telephone: 212/983-9330
212/983-9331 (fax)

FARUQI & FARUQI, LLP
MICHAEL VAN GORDER
20 Montchanin Road, Suite 145
Wilmington, DE 19807
Telephone: 302/482-3182
302/482-3612 (fax)

Interim Class Counsel

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is 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; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on February 15, 2018, declarant served the PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 15, 2018, at San Diego, California.

JACLYN STARK

**Counsel for Defendant(s)**

Marc J. Schneider
Stephen L. Ram
Justin N. Owens
Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive
Suite 1600
Newport Beach, CA 92660
949/725-4000
949/725-4100 (Fax)

**Counsel for Plaintiff(s)**

Michael Van Gorder
Faruqi & Faruqi, LLP
20 Montchanin Road, Suite 145
Wilmington, DE 19807
302/482-3182
302/482-3612 (Fax)

Nadeen M. Faruqi
Faruqi & Faruqi, LLP
685 Third Avenue, 26th Floor
New York, NY 10017
212/983-9330
212/983-9331 (Fax)

Randall J. Baron
A. Rick Atwood
David T. Wissbroecker
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423 (Fax)