

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: RAVISANT TECHNOLOGIES, INC. SECURITIES LITIGATION	:	:	CIVIL ACTION
THIS DOCUMENT RELATES TO: ALL ACTIONS	:	:	NO. 00-CV-1014

SURRICK, J.

APRIL 18, 2005

MEMORANDUM & ORDER

Presently before the Court are Lead Plaintiffs’ Motion for Final Settlement Approval (Doc. No. 43) and Lead Counsel’s Joint Application for Attorneys’ Fees and Reimbursement of Expenses (Doc. No. 44). After conducting a fairness hearing on the proposed final settlement and disbursement of attorneys’ fees, and considering all documents filed in support thereof, we will grant the Motions.

I. BACKGROUND

A. Plaintiffs’ Allegations

This litigation arises out of stock purchases made during and after an initial public offering (“IPO”) of Ravisent Technologies, Inc. (“Ravisent”),¹ between July 15, 1999, and April 27, 2000. Ravisent was founded in 1994. In 1999, Ravisent began the transition from a privately-owned company to a publicly-traded corporation with the filing of a Registration Statement with the Securities and Exchange Commission (“SEC”) on July 13, 1999. (Am.

¹ Ravisent is currently known as Axeda Systems, Inc. (Doc. No. 43 at 1.)

Compl. ¶ 15.) The Registration Statement and accompanying Prospectus stated that the IPO would occur between July 15, 1999, and July 22, 1999, and consist of the sale of 5,000,000 shares of stock at \$12 each. (*Id.* ¶¶ 15-16.) The Registration Statement included audited financial statements from 1996 through 1998, as well as an unaudited financial statement for the first quarter of 1999. At the conclusion of the IPO, Ravisent's stock price had increased from \$12 to \$17.63 per share. (Doc. No. 13 at 3.)

Pursuant to SEC regulations, Ravisent filed timely financial statements for the second and third quarters of 1999. However, before releasing its audited fourth quarter and year-end financial statements for 1999, Ravisent announced on February 18, 2000, that the remaining 1999 financial statements would be delayed "due to discussions with its auditors about revenue recognition on some of its contracts." (Am. Compl. ¶ 49.) Ravisent's share price declined by \$9 that day, closing at \$18.56. (*Id.*) One month later, on March 14, 2000, Ravisent released its fourth quarter and year-end 1999 revenues, stating a large decrease in revenue and substantial increase in pro forma net loss.² (*Id.* ¶ 50.) The company also announced that it would be restating its financial statements for the second and third quarters of 1999.³ (*Id.*) On April 27, 2000, Ravisent announced its results for the first quarter 2000, and reported a substantial

² For the fourth quarter 1999, Ravisent reported total revenues of \$5.7 million and a pro forma net loss of \$1.9 million, compared to \$12.5 million in revenue and a pro forma net loss of \$1.2 million in fourth quarter 1998. (Am. Compl. ¶ 50.)

³ On March 30, 2000, the restatements for the second and third quarters of 1999 reported reduced revenues and larger operating and net losses. (Am. Compl. ¶ 53.) For second quarter 1999, total revenues decreased from \$11.601 million to \$7.679 million, the operating loss increased from \$183,000 to \$1.085 million, and the net loss increased from \$248,000 to \$1.15 million. (*Id.*)

decrease in revenues and increase in pro forma net loss compared to the same period in 1999.⁴ (*Id.* ¶ 56.) After the announcement, Ravisent’s stock price fell from \$10.25 to \$6.875. (*Id.*)

B. Procedural History

Beginning on February 25, 2000, eleven putative class actions were filed against Defendants.⁵ (Doc. Nos. 1, 7.) The actions alleged that Defendants publicly disseminated a series of false and misleading statements and/or omissions in the Registration Statement and various financial disclosures that caused the market price of Ravisent’s securities to be artificially inflated. (Am. Compl. ¶¶ 19-24, 39, 42-46; Doc. No. 43 at 1.) On May 26, 2000, the lawsuits were consolidated and, pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), Brian Amburgey, Warren L. Burdue, Randy Tai Nin Chan, Nabil Fariq, and Peter Morrissette were named Lead Plaintiffs, and Spector Roseman & Kodroff, P.C. and the Law Offices of Bernard M. Gross (substituted by our August 25, 2003, Order) were appointed as Co-Lead Counsel. (Doc. Nos. 7, 29.)

On June 14, 2000, Lead Plaintiffs filed and served a Consolidated and Amended Class Action Complaint (“Amended Complaint”), alleging violations of: (1) Sections 11, 12, and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l, 77o; (2) Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78t(a); and (3) rules and regulations

⁴ For first quarter 2000, Ravisent reported revenues of \$5.7 million, compared to \$10.8 million during the same period the prior year. (Am. Compl. ¶ 56.) It also reported a pro forma net loss of \$3.7 million for first quarter 2000, compared to a pro forma net income of \$100,000 in first quarter 1999. (*Id.*)

⁵ The Defendants named in this action are Ravisent Technologies, Inc.; Francis E. J. Wilde, III, President, Chief Executive Officer, and Director of Ravisent at all times relevant to this litigation; and Jason C. Liu, Chief Financial Officer, Vice President of Finance, and Secretary of Ravisent at all times relevant to this litigation. (Am. Compl. ¶¶ 3, 7-8.)

promulgated by the SEC, including Rule 10b-5, 17 C.F.R. § 240.10b-5. (Am. Compl. ¶¶ 1-3.) Defendants filed a motion to dismiss the Amended Complaint, which was denied on July 12, 2004. (Doc. No. 30.)

C. Settlement and Fairness Hearing

The parties then engaged in settlement negotiations, which resulted in a Stipulation and Agreement of Settlement on December 15, 2004. (Doc. No. 41.) The settlement provided that the proposed class, defined as “all persons or entities who purchased the common stock of Ravisent between July 15, 1999 and April 27, 2000, pursuant or traceable to [Ravisent’s IPO] Registration Statement,” would release all claims against Defendants in consideration for Defendants’ payment of \$7 million into the Settlement Fund. (*Id.* ¶¶ 16-17.) The Settlement Fund would be distributed on a pro rata basis to class members after payment of administrative costs, taxes, and court-approved costs, expenses, and attorneys’ fees. (*Id.* ¶¶ 21-22, 29-30, 33-35.)

On December 21, 2004, we entered an Order preliminarily approving the settlement as a class action. (Doc. No. 42.) We also approved Lead Plaintiffs’ proposed notice and proof of claim forms, finding that they conformed to the requirements of Federal Rule of Civil Procedure 23, and informed the class members of the existence of the action, the terms of settlement, and the class members’ rights with respect to the settlement. (*Id.* ¶¶ 3-6, Exs. 1, 2.) Specifically, the Preliminary Approval Order and notice informed each class member that they had the right to object to and to request exclusion from the class settlement, including the right to appear at the fairness hearing scheduled for April 6, 2005, and the required procedures for objecting and/or requesting exclusion. (*Id.* ¶¶ 8, 10, Exs. 1, 2.) It also informed class members that Co-Lead

Counsel intended to apply for an award of attorneys' fees up to one-third (1/3) of the Settlement Fund, and for reimbursement of expenses incurred in prosecuting the litigation. (*Id.* Ex. 1 at 4-5.) We ordered that copies be mailed to all class members who could be identified with reasonable effort on or before January 3, 2005, and the publication of a summary notice on the Internet within ten (10) days after mailing of the notice. (*Id.* ¶¶ 3-5.)

In accordance with the Preliminary Approval Order, Valley Forge Administrative Services, Inc., the Claims Administrator, timely mailed 13,595 copies of the notice and proof of claim to potential class members. (Doc. No. 43 Ex. A (“Miller Aff.”) ¶¶ 2-3, 5.) A summary form of the notice was also published on numerous financial and news sites on the Internet. (*Id.* ¶ 4.) At the April 6, 2005, fairness hearing, Co-Lead Counsel reported that 961 claims had been filed, and that no potential class members had filed objections or requested exclusion from the class. (Doc. No. 48.) In addition, no potential class members appeared at the fairness hearing to object to the settlement. (Doc. No. 48). Based on the number of claims filed, Co-Lead Counsel estimated that each claimant would be awarded approximately \$1.30 per share before attorneys' fees.

II. CLASS CERTIFICATION

On December 21, 2004, we provisionally certified the class for purposes of reaching a settlement. (Doc. No. 42 ¶ 2.) Before we can approve the final settlement, however, Lead Plaintiffs must demonstrate that the class meets the requirements of Federal Rule of Civil Procedure 23. *See Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action)*, 148 F.3d 283, 308 (3d Cir. 1998) (“[A] district court must first find a class satisfies the requirements of Rule 23, regardless whether it certifies the class for trial or

for settlement.” (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617-18 (1997))). To be certified, the class must meet all four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and at least one of the categories of class actions in Rule 23(b).⁶ *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527 (3d Cir. 2004); *In re LifeUSA Holding, Inc.*, 242 F.3d 136, 143 (3d Cir. 2001).

A. Numerosity

“Numerosity requires a finding that the putative class is so numerous that joinder of all members is impracticable.” *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182 (3d Cir. 2001). “No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001); *see also Johnston v. HBO Film Mgmt.*, 265 F.3d 178, 184 (3d Cir. 2001) (holding that when there are thousands of potential class members, joinder is impracticable and the numerosity requirement is satisfied). Thousands of stockholders held over five million shares of Ravisent common stock during the class period, and over 13,500 notices were mailed to

⁶ Federal Rule of Civil Procedure 23(a) states that:

One or more members of a class may sue . . . as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). “These four elements are often referred to as numerosity, commonality, typicality, and adequacy of representation, respectively.” *In re LifeUSA*, 242 F.3d 136, 143 (3d Cir. 2001).

putative class members. (Doc. No. 43 at 20; Miller Aff. ¶ 5.) The proposed class satisfies the numerosity requirement.

B. Commonality

Second, we must determine whether “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Commonality does not require an identity of claims or facts among class members; instead, ‘the commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.’” *Johnston*, 265 F.3d at 184 (quoting *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 310); *see also Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). Courts in this District have found commonality in a “‘large variety of factual circumstances[,] including allegations of . . . securities fraud.’” *Snider v. Upjohn Co.*, 115 F.R.D. 536, 539 (E.D. Pa. 1987) (citation omitted). Here, common questions of law and fact exist among the class members regarding Defendants’ alleged misrepresentations in the IPO Registration Statement and the 1999 quarterly financial statements, whether the market price of Ravisent’s common stock was artificially inflated due to these alleged misrepresentations, and whether class members suffered damages as a result. These allegations are sufficient to show questions of law and fact common to the class. *See, e.g., Neuberger v. Shapiro*, Civ. A. No. 97-7947, 1998 U.S. Dist. LEXIS 18807, at *5-6 (E.D. Pa. Nov. 24, 1998) (finding commonality based on allegations that defendants engaged in a fraudulent course of conduct resulting in artificially inflated stock prices); *Gruber v. Price Waterhouse*, 117 F.R.D. 75, 79 (E.D. Pa. 1987) (“Questions common to the proposed class here include whether the financial statements . . . omitted or misrepresented the true nature of [defendant’s] financial condition . . . , whether the price of [defendant’s] stock

was artificially inflated as a result of defendant's nondisclosures, and whether class members sustained damage."). The proposed class satisfies the commonality requirement.

C. Typicality

Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Typicality ensures the interests of the class and the class representatives are aligned 'so that the latter will work to benefit the entire class through the pursuit of their own goals.'" *Newton*, 259 F.3d at 182-83 (quoting *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998)). The central inquiry in a typicality evaluation is whether the "the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims of other class members will perforce be based.'" *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985) (quoting *Weiss v. York Hosp.*, 745 F.2d 786, 809 n.36 (3d Cir. 1984)); *see also Seidman v. Am. Mobile Sys., Inc.*, 157 F.R.D. 354, 360 (E.D. Pa. 1994) ("The heart of this requirement is that the plaintiff and each member of the represented group have an interest in prevailing on similar legal claims."). Typicality does not require, however, that the named plaintiffs' claims are identical to the rest of the class in every respect. *Eisenberg*, 766 F.2d at 786.

Lead Plaintiffs' claims are typical of those of the other class members. Like the rest of the class, the Lead Plaintiffs allege that they relied on the market price of Ravisent's common stock as reflecting the true value of their shares and that the market price was artificially inflated by Defendants' misdisclosures in the Registration Statement and third and fourth quarter 1999 financial reports. "[T]he claims of the class and the [class] representatives [thus] arise from the same conduct by defendant: omissions or misstatements in connection with the public offering."

Gruber, 117 F.R.D. at 79. In fact, the only issue specific to each class member in this case is the amount of damages each individual member allegedly suffered as a result of Defendants' conduct. This sole difference, however, does not mean that the Lead Plaintiffs' claims are atypical. "The heart of th[e] [typicality] requirement is that [the lead] plaintiff and each member of the represented group have an interest in prevailing on similar legal claims. Assuming such an interest, . . . differences in the amount of damages claimed . . . may not render [the lead plaintiff's] claims atypical." *Stewart v. Assocs. Consumer Disc. Co.*, 183 F.R.D. 189, 196 (E.D. Pa. 1998) (quoting *Zeffiro v. First Pa. Banking & Trust Co.*, 96 F.R.D. 567, 569-70 (E.D. Pa. 1983)); see also *In re Initial Pub. Offering Sec. Litig.*, No. 21 MC 92 (SAS) et al., 2004 U.S. Dist. LEXIS 20497, at *90 (S.D.N.Y. Oct. 13, 2004) ("[W]here plaintiffs allege a market manipulation scheme, typicality may be satisfied despite . . . differences between class members and class representatives in terms of how much, if any, of their loss was caused by an alleged scheme."). The typicality requirement is satisfied as well.

D. Adequacy of Representation

A class representative is adequate if: (1) the class representative's counsel is competent to conduct a class action; and (2) the class representative's interests are not antagonistic to the class's interests. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 800-01 (3d Cir. 1995) ("*In re Gen. Motors Corp.*"); see also *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 532 (stating that the adequacy inquiry "tests the qualifications of the counsel to represent the class" and "seeks 'to uncover conflicts of interest between named parties and the class they seek to represent'" (quoting *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 313)). Co-Lead Counsel are very experienced in

prosecuting class action cases⁷ and have diligently and actively engaged in advancing the interests of the class members since the inception of this action. There is no apparent conflict between Lead Plaintiffs' interests and the interest of the rest of the class members. Accordingly, the proposed settlement class meets all the requirements in Rule 23(a).

E. Rule 23(b)

After meeting the threshold requirements of Rule 23(a), we must also find that the action meets the requirements of one of the three categories of class actions in Rule 23(b). *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 527. We conclude that Plaintiffs meet the requirements of Rule 23(b)(3). To certify a class under Rule 23(b)(3), we must find that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3).

The predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc.*, 521 U.S. at 623. This is “a test readily met in . . . cases alleging consumer or securities fraud.” *Id.* at 625; *see also In re Tyson Foods Sec. Litig.*, Civ. A. No. 01-425, 2003 U.S. Dist. LEXIS 17904, at *9 (D. Del. Oct. 6, 2003) (“A securities fraud action, based upon false and misleading statements to the market, is a prototypical class action claim.”). As discussed above, all class members’ claims arise out of the

⁷ *See, e.g., In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 273 (D. Mass. 2004) (noting Spector, Roseman & Kodroff, P.C.’s “considerable class action experience”); *In re Abbott Labs. Derivative Litig.*, No. 99 C 7246 (N.D. Ill. filed Nov. 1999) (Robert M. Roseman, Esq.; Robert P. Frutkin, Esq.); *In re Unisys Corp. Sec. Litig.*, Civ. A. No. 99-5333 (E.D. Pa. filed Oct. 28, 1999) (Robert M. Roseman, Esq.); *In re Aetna Inc., Sec. Litig.*, MDL No. 1219 (E.D. Pa. filed Apr. 10, 1998) (Deborah R. Gross, Esq.; Robert P. Frutkin, Esq.); *In re Lowen Group Sec. Litig.*, MDL No. 1100 (E.D. Pa. filed Apr. 18, 1996) (Deborah R. Gross, Esq.).

same conduct—Defendants’ alleged omissions or misstatements in connection with Ravisent’s Registration Statement and third and fourth quarter 1999 financial reports. If tried separately, each Plaintiff would be required to establish the same omissions or misrepresentations to prove liability.⁸ Because common issues of law and fact would be central at trial, the predominance requirement is met. *See, e.g., Neuberger*, 1998 U.S. Dist. LEXIS 18807, at *14 (holding that the predominance requirement was satisfied because the “[e]videntiary issues as to misrepresentations and materiality will be substantially identical for all class members”); *Lerch v. Citizens First Bancorp.*, 144 F.R.D. 247, 252 (D.N.J. 1992) (concluding predominance was met because all class members sought determination that defendants misrepresented and omitted material facts in violation of federal securities law).

We also find that a class action is “superior to other available methods for the fair and

⁸ To the extent that Plaintiffs must prove reliance, as in their Rule 10b-5 claims, *Newton*, 259 F.3d at 174, we conclude that the class could rely on a “fraud on the market” theory. In *Basic, Inc. v. Levinson*, 485 U.S. 224 (1998), the Supreme Court held that reliance could be presumed “when a fraudulent misrepresentation or omission impairs the value of a security traded in an efficient market.” *Newton*, 259 F.3d at 175 (citing *Basic, Inc.*, 485 U.S. at 241-42). As the Court explained:

The fraud on the market theory is based on the hypothesis that, in an open and developed securities market, the price of a company’s stock is determined by the available material information regarding the company and its business Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements The causal connection between the defendants’ fraud and the plaintiffs’ purchase of stock in such a case is no less significant than in a case of direct reliance on misrepresentations.

Basic, Inc., 485 U.S. at 241-42 (internal quotations and citation omitted). Here, Plaintiffs are entitled to a presumption of reliance under a “fraud on the market” theory because during the class period, Ravisent common stock was listed on NASDAQ, a highly efficient market, had a trading volume in the range of hundreds of thousand of shares per day, and was required to file periodic public reports with the SEC. (Am. Compl. ¶¶ 70-71.)

efficient adjudication” of this case. Fed. R. Civ. P. 23(b)(3). Rule 23(b)(3)’s superiority requirement asks the court to consider the following:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Fed. R. Civ. P. 23(b)(3).

The Third Circuit has stated that “class actions are a particularly appropriate and desirable means to resolve claims based on the securities laws, ‘since the effectiveness of the securities laws may depend in large measure on the application of the class action device.’” *Eisenberg*, 766 F.2d at 785 (quoting *Kahan v. Rosenstiel*, 424 F.2d 161, 169 (3d Cir. 1970)). Part of the reason is that the class action mechanism overcomes the “problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” *Amchem Prods. Inc.*, 521 U.S. at 617 (internal quotations and citation omitted). Here, a class action is superior to individual lawsuits because it provides an efficient alternative to individual claims, and because individual class members are unlikely to bring individual actions given the likelihood that litigation expenses would exceed any recovery. Further, individuals who wished to pursue their own actions would have excluded themselves from the settlement class; the remainder presumably have accepted the efficiencies of class resolution. *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 454 (S.D.N.Y. 2004). We are also unaware of any other individual claims being pressed against Defendants for the wrongs alleged in this action. And finally, when a class is being certified solely for settlement purposes, we need not consider the

manageability issues that would arise if the case were to be litigated as a class action. *Amchem*, 521 U.S. at 620. Lead Plaintiffs have established the superiority requirement of Rule 23(b)(3). We will certify the class and assess the fairness of the proposed settlement.

III. FAIRNESS OF THE SETTLEMENT AGREEMENT

Pursuant to Federal Rule of Civil Procedure 23(e), a district court “may approve a settlement . . . that would bind class members only after a hearing and on finding that the settlement . . . is fair, adequate, and reasonable.” Fed. R. Civ. P. 23(e)(1)(C). In assessing whether the proposed settlement is fair, adequate, and reasonable, we must “‘independently and objectively analyze the evidence and circumstances . . . to determine whether the settlement is in the best interest of those whose claims will be extinguished.’” *In re Gen. Motors Corp.*, 55 F.3d at 785 (quoting 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.41, at 11-88 to 11-89 (3d ed. 1992)); *see also id.* (stating that “the district court acts as a fiduciary who must serve as a guardian of the rights of absent class members”). We must “make findings that support the conclusion that the settlement is fair, reasonable, and adequate . . . in sufficient detail to explain to class members and the appellate courts” the reasons for approving or denying the settlement. Fed. R. Civ. P. 23(e)(1) advisory committee note. Although the ultimate determination of fairness is left to the court, there is a presumption of fairness for a proposed settlement when: “‘(1) the settlement negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.’” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 535 (quoting *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)). In this case, the proposed settlement is entitled to a presumption of fairness because settlement

negotiations have been conducted at arm's length by capable and experienced counsel, sufficient discovery has occurred so that both sides have been able to adequately explore the strengths and weaknesses of their respective positions, and no class members objected to or requested exclusion from the settlement.

The Third Circuit has developed a nine-factor test that provides the analytical framework for making the fairness determination. The factors are: (1) the complexity, expense, and likely duration of 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; (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 in light of all the attendant risks of litigation. *Girsh v. Jepsen*, 521 F.3d 153, 157 (3d Cir. 1975). We will consider each factor in turn.

A. Complexity, Expense, and Likely Duration of Litigation

This factor, which “captures ‘the probable costs, in both time and money, of continued litigation,’” *In re Cendant Corp. Litig.*, 264 F.3d at 233 (quoting *In re Gen. Motors Corp.*, 55 F.3d at 812), weighs in favor of the proposed settlement. Continuing the litigation would likely require additional discovery, extensive pretrial motions practice (including summary judgment motions), a trial, and, if Lead Plaintiffs were successful, the delay and expense of an appeal. Absent a settlement, this action likely would not be resolved for several additional years. The case would also be complex, as Co-Lead Counsel “would rely heavily on the development of a paper trail through numerous public and private documents,” *In re Ikon Office Solutions, Inc.*,

194 F.R.D. 166, 179 (E.D. Pa. 2000), to establish liability to a jury. Furthermore, in light of Ravisent's financial condition, a future recovery may be less valuable to the class than the benefits of the present settlement.⁹

B. The Reaction of the Class to the Settlement

The second *Girsh* factor “attempts to gauge whether members of the class support the settlement.” *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 318. This factor weighs strongly in favor of settlement, since there were no objectors or requests for exclusion. Although the lack of objections to a proposed settlement alone is not dispositive, we believe it to be indicative given the individual notice provided to class members regarding the terms of the proposed settlement. *See, e.g., In re Cendant Corp.*, 264 F.3d at 235 (“The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of settlement.”); *Fanning v. AcroMed Corp. (In re Orthopedic Bone Screw Prods. Liab. Litig.)*, 176 F.R.D. 158, 185 (E.D. Pa. 1997) (stating that a “relatively low objection rate ‘militates strongly in favor of approval of the settlement’” (citation omitted)); *Sala v. Nat’l R.R. Passenger Corp.*, 721 F. Supp. 80, 83 (E.D. Pa. 1989) (“[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.”).

⁹ Ravisent's closing stock price on April 15, 2005 was \$0.34, and the company reported a market value of about \$11 million. Summary Quote, Axeda Systems, Inc., NASDAQ.com, at <http://quotes.nasdaq.com/asp/summaryquote.asp?symbol=XEDAC%60&selected=XEDAC%60> (last visited Apr. 18, 2005). In addition, NASDAQ has commenced administrative proceedings to delist Ravisent from the stock exchange. Form 8-K, Axeda Systems, Inc. (Jan. 10, 2005).

C. Stage of the Proceedings and Amount of Discovery Completed

The third factor “captures the degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *In re Cendant Corp. Litig.*, 264 F.3d at 235 (quoting *In re Gen. Motors Corp.*, 55 F.3d at 813). Here, the parties arrived at the settlement after we ruled on Defendants’ motion to dismiss and after Lead Plaintiffs reviewed a significant number of documents produced by Defendants and third parties, including the SEC and Ravisent’s auditors. (Doc. Nos. 30, 43 at 12.) Co-Lead Counsel also state that during the course of the litigation, they “consulted with experts on matters of accounting, inventory and financial statement presentation, and materiality, causation, and damages to assist with the consideration and analysis of the strengths and weaknesses of their claims.” (Doc. No. 43 at 13.) Thus, the settlement occurred at a stage where “the parties certainly [had] a clear view of the strengths and weaknesses[]’ of their cases.” *Bonett v. Educ. Debt Servs.*, No. 01-CV-6528, 2003 U.S. Dist. LEXIS 9757, at *6 (E.D. Pa. May 9, 2003) (quoting *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff’d*, 798 F.2d 35 (2d Cir. 1986)). This factor also favors approval.

D. Risks of Establishing Liability and Damages

The fourth and fifth factors “survey the potential risks and rewards of proceeding to litigation in order to weigh the likelihood of success against the benefits of an immediate settlement.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 537; *see also In re Cendant Corp. Litig.*, 264 F.3d at 238 (stating that these factors “attempt[] to measure the expected value of litigating the action rather than settling it at the current time”). Both of these factors weigh in

favor of approval of the settlement. Although Lead Plaintiffs believe there is evidence that Ravisent did not follow its stated revenue recognition policies and that its 1999 revenues were artificially inflated by approximately \$4.7 million, there are risks that a jury might disagree. Recovery based on a “‘fraud on the market’ theory . . . requires that ‘the complained of misrepresentation or omission have actually affected the market price of the stock.’” *Nathenson v. Zonagen, Inc. (In re Zonagen Sec. Litig.)*, 322 F. Supp. 2d 764, 775 (D. Tex. 2003) (quoting *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 415 (5th Cir. 2001)); *see also Sparling v. Daou (In re Daou Sys.)*, 397 F.3d 704, 722 (9th Cir. 2005) (“[I]f the [allegedly] improper accounting did not lead to the decrease in [defendant]’s stock price, plaintiffs’ reliance on the improper accounting in acquiring the stock would not be sufficiently linked to their damages.”). Ravisent’s March 14, 2000, announcement that it would restate its second and third quarter 1999 results did not cause a significant decrease in its stock price, however. Lead Plaintiffs recognize that the inconsistency of the market’s reaction to bad news underlying the class’s claims does not support a clear finding of liability with respect to the Defendants’ alleged misrepresentations. (Doc. No. 43 at 13-14.) Plaintiffs would also have to prove that the amount of claimed damages was the result of the Defendants’ alleged misrepresentations and not other market-affecting events, such as changes in the software development market. *See, e.g., In re Initial Pub. Offering Sec. Litig.*, 2004 U.S. Dist. LEXIS 20497, at *172 (stating that in calculating damages, “a jury may be asked to compute the ‘true value’ of a stock over time, including fluctuations due to various price-affecting events, and . . . determine by what degree the stock was inflated at any given time during the class period”). Thus, there is a significant risk for Plaintiffs in attempting to establish liability and/or damages if this action proceeded to trial. This factor also weighs in favor of

approval.

E. Risks of Maintaining the Class Action Through Trial

Class certification may be amended or reconsidered at any time before judgment. *See* Fed. R. Civ. P. 23(c)(1)(C) (“[A]n order [granting class certification] under Rule 23(c)(1) may be altered or amended before final judgment.”); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 537 (“A district court retains the authority to decertify or modify a class at any time during the litigation if it proves to be unmanageable.”). There is always some risk that a class certified for settlement purposes would become unmanageable if it became a litigation class. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 537. Defendants might also seek to decertify the class prior to trial. *Orloff v. Syndicated Office Sys., Inc.*, Civ. A. No. 00-CV-5355, 2004 U.S. Dist. LEXIS 7151, at *20 (E.D. Pa. Apr. 20, 2004). This factor is also in favor of approval.

F. Defendants’ Inability to Withstand a Greater Judgment

This factor addresses whether Ravisent “could withstand a judgment in an amount significantly greater than the [proposed] [s]ettlement.” *In re Cendant Corp. Litig.*, 264 F.3d at 240. There is clearly a substantial risk in this case that Defendants would not be able to withstand a greater judgment, as Ravisent’s financial fortunes never recovered after the end of the class period. Ravisent’s present market value is less than \$13 million, and the company’s recent financial statement for 2004 indicates that the company had a net loss of approximately \$9.7 million (\$0.30/share) on total revenues of \$12.9 million. Form 10-K, Annual Report, Axeda Systems, Inc., at 28 (Apr. 12, 2005), *available at* http://www.sec.gov/Archives/edgar/data/1052593/000119312505074874/d10k.htm#tx69626_8. In fact, the proposed settlement is being funded entirely by Ravisent’s insurance carriers from the class period, and constitutes almost all

the coverage available in the first two layers of insurance. (Doc. No. 43 at 17.) The amount recoverable from the remaining coverage would not justify the necessary expenses incurred by several more years of litigation. Therefore, this factor is in favor of settlement.

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

The final two *Girsh* factors consider how the settlement compares to the best and worse case scenarios. In other words, they “evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case. The factors test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 538. Here, Co-Lead Counsel believe that there is significant evidence from which a jury could find that Defendants violated various securities laws and regulations, and that if the class can establish causation, the total possible damages in a best-case scenario would be \$57 million. (Doc. No. 43 at 18.) The proposed settlement is \$7 million, which is 12.2% percent of the maximum possible damages. This percentage of recovery is within the range of reasonable recovery for a securities class action. As another court in this District has noted, a study by Professor John C. Coffee, Jr., Adolf A. Berle Professor of Law at Columbia University Law School, determined that since 1995, class action settlements have typically recovered “between 5.5% and 6.2% of the class members’ estimated losses.” *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001); *see also In re Baan Co. Sec. Litig.*, 284 F. Supp. 2d 62, 66 (D.D.C. 2003) (“Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly six to twelve

percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.” (quoting *In re Newbridge Networks Sec. Litig.*, Civ. A. No. 94-1678, 1998 U.S. Dist. LEXIS 23238, at *8 (D.D.C. Oct. 23, 1998))). Numerous settlements have been approved with percentages of recovery less than the proposed settlement in this case. *See, e.g., In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 633 (E.D. Pa. 2004) (listing various cases where district courts approved settlements less than ten percent of maximum possible recovery). And, as described above, the possibility that the class would actually be able to recover an amount substantially in excess of \$7 million is questionable in view of Defendants’ present financial condition. Accordingly, these factors weigh in favor of approval.

H. Conclusion

All of the *Girsh* factors favor settlement. We therefore conclude that the proposed settlement is fair, adequate, and reasonable. The plan of allocation, which reimburses each class member based on the difference between the purchase and sale prices of Ravisent stock at the date of purchase and sale, is also fair and reasonable. (Doc. No. 43 at 19-20, Ex. A at 5, 11.) The proposed settlement will be approved.

IV. AWARD OF ATTORNEYS’ FEES AND COSTS

“A thorough judicial review of fee applications is required for all class action settlements.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299 (3d Cir. 2005) (quoting *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 333) (brackets omitted). At the fee determination stage, the district judge must protect the class’s interest by acting as a fiduciary for the class. *In re Cendant Corp. Litig.*, 264 F.3d at 231. The final

decision as to the proper amount of attorneys' fees rests with the court. *In re Ikon Office Solutions, Inc.*, 194 F.R.D. at 193.

Here, Plaintiffs' counsel requests an award of \$2,333,333 for attorneys' fees and expenses, which represents one-third (1/3) of the settlement fund.¹⁰ (Doc. No. 44 at 1.) We must determine whether this request is fair and reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *see also* Fed. R. Civ. P. 23(h) ("In an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by law[.]"). We assess the fairness and reasonableness of this request using the percentage-of-recovery method, and then conduct a cross-check by employing the lodestar method of calculation.

A. Percentage of Recovery

In this Circuit, "[t]he percentage-of-recovery method is 'generally favored' in cases involving a common [settlement] fund" *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir. 2001). In fact, Congress has explicitly adopted the percentage-of-recovery method for securities class actions by the Private Securities Litigation Reform Act of 1995. *See* 15 U.S.C. § 78u-4(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300. The percentage-of-recovery method "resembles a contingent fee in that it awards counsel a variable percentage of the amount recovered for the class." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 732 n.10 (internal quotations and citation omitted).

¹⁰ This amount includes \$175,890.66 in expenses incurred by Plaintiffs' counsel during the course of litigation. (Doc. No. 44 at 1.)

The Third Circuit has directed district courts to consider the following seven factors when analyzing a fee award's reasonableness under the percentage-of-recovery method:

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2001) (citing *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 336-40). We note that several of these factors are similar to the *Girsh* factors considered in assessing the fairness of a class settlement. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 301 n.9.

Here, we find that all of the *Gunter* factors weigh in favor of approving Plaintiffs' fee request. The settlement fund of \$7 million is a significant cash benefit to the class, especially in light of the fact that a larger settlement runs the risk of nonpayment due to Ravisent's problematic financial condition. Plaintiffs' attorneys are skilled and experienced advocates, and have successfully prosecuted numerous securities class actions in this District and elsewhere. (Doc. No. 44, Exs. 1-7.) The complexity and difficulty of this litigation is substantial, as it involved numerous legal obstacles to achieving a successful resolution for the class under the PSLRA, including establishing causation, scienter, and damages. *In re Ikon Office Solutions, Inc.*, 194 F.R.D. at 194; *see also id.* ("The Court acknowledges that securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA The Act imposes many new procedural hurdles. . . . It also substantially alters the legal standards applied to securities fraud claims in ways that generally benefit defendants rather than plaintiffs."). Co-

Lead Counsel and the members of the class Executive Committee also have spent a substantial amount of time (1,724.9 hours) litigating this matter. (Doc. No. 44 at 14, Exs. 1-7.) It is also important to note that there have been no objections to the request for attorneys' fees or expenses, or to the settlement itself. This is significant evidence that the proposed fee request is fair. See *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *18 (E.D. Pa. June 2, 2004) ("The absence of objections supports approval of the Fee Petition."); *In re Aetna Inc. Sec. Litig.*, MDL No. 1219, 2001 U.S. Dist. LEXIS 68, at *48 (E.D. Pa. Jan. 4, 2001) ("[T]he Class members' view of the attorneys' performance, inferred from the lack of objections to the fee petition, supports the fee award."). Finally, courts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses. See, e.g., *In re CareSciences, Inc. Sec. Litig.*, Civ. A. No. 01-5266 (E.D. Pa. Oct. 29, 2004) (order approving award of attorneys' fees and expenses) (awarding one-third recovery of \$3.3 million settlement fund, plus expenses); *In re Penn Treaty Am. Corp.*, Civ. A. No. 01-1896 (E.D. Pa. Feb. 5, 2004) (order approving award of attorneys' fees and expenses) (awarding 30% of \$2.3 million settlement fund); *In re Corel Corp. Sec. Litig.*, 293 F. Supp. 2d 484, 495-98 (E.D. Pa. 2003) (awarding one-third of \$7 million settlement fund, plus expenses); cf. *In re Ikon Office Solutions, Inc.*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."). We therefore conclude that Plaintiffs' attorneys' fees and expense requests are fair and reasonable.

B. Lodestar Cross-Check

In addition to the percentage-of-recovery approach, the Third Circuit has suggested that it

is “‘sensible’ for district courts to ‘cross-check’ the percentage fee award against the ‘lodestar’ method.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305 (citing *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 333). “The lodestar award is calculated by multiplying the number of hours reasonably worked on a client’s case by a reasonable hourly billing rate for such services based on the geographic area, the nature of the services provided, and the experience of the attorneys.”¹¹ *Id.* The multiplier takes “into account the contingent nature and risk of the litigation, the results obtained and the quality of service rendered by counsel.” *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 434 (E.D. Pa. 2001); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305-06 (“The multiplier is a device that attempts to account for the contingent nature or risk involved in a particular case and the quality of the attorneys’ work.”). “The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method, with an eye towards reducing the award.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306.

Co-Lead Counsel and the Executive Committee spent 1,724.9 hours over a period of four years prosecuting this case. (Doc. No. 44 at 18, Exs. 1-7.) Multiplying the total number of hours for each attorney by that attorney’s hourly billing rate, the lodestar of Co-Lead Counsel and the

¹¹ The reasonable billing rate must take into account “a blended billing rate that approximates the fee structure of all the attorneys who worked on the matter.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306; *see also* Manual for Complex Litigation (Fourth) § 21.724 (2004) (“[A] statement of the hourly rates for *all* attorneys and paralegals who worked on the litigation . . . can serve as a ‘cross-check’ on the determination of the percentage of the common fund that should be awarded to counsel.” (emphasis added)).

Executive Committee is \$693,195.50.¹² (*Id.* at 19, Exs. 1-7.) Using that lodestar, the requested fee of \$2,157,443 equates to a multiple of 3.1. Lodestar multiples of less than four are well within the range awarded by courts in this Circuit. *See, e.g., In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Action*, 148 F.3d at 341 (stating that lodestar “[m]ultiples ranging from one to four are frequently awarded in common fund cases where the lodestar method is applied” (internal quotations and citation omitted)); *In re Linerboard Antitrust Litig.*, 2004 U.S. Dist. LEXIS 10532, at *50 (noting that from 2001 to 2003, the average multiplier approved in common fund class actions was 4.35); *In re Aetna Inc. Sec. Litig.*, 2001 U.S. Dist. LEXIS 68, at *49 (approving a lodestar multiplier at 3.6). The lodestar cross-check supports a percentage fee award of one-third of the settlement amount, including expenses.

An appropriate Order follows.

¹² In making these calculations, we rely on summaries of billing records provided by Plaintiffs’ attorneys and filed in support of their fee application. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: RAVISENT TECHNOLOGIES, INC.	:	
SECURITIES LITIGATION	:	CIVIL ACTION
	:	
THIS DOCUMENT RELATES TO:	:	NO. 00-CV-1014
ALL ACTIONS	:	
	:	

ORDER & FINAL JUDGMENT

AND NOW, this 18th day of April, 2005, after having held a hearing to determine whether the terms and conditions of the Stipulation and Agreement of Settlement dated December 14, 2004 (the "Stipulation") should be approved as fair, adequate, and reasonable to settle the claims raised in the Consolidated and Amended Class Action Complaint ("Complaint"), including the release of the Defendants and the Released Persons, as those terms are defined in the Stipulation; whether judgment should be entered dismissing the Complaint on the merits and with prejudice in favor of Defendants and against all Class Members who have not requested exclusion therefrom; whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the Class Members; whether to approve Plaintiffs' counsels' application for an award of attorneys' fees and reimbursement of expenses; whether a Notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased Ravisent Technologies, Inc. ("Ravisent") shares on the open market during the period between July 15, 1999, and April 27, 2000, inclusive (the "Class Period"), pursuant or traceable to Ravisent's IPO Registration Statement, except those persons or entities excluded from the definition of the Class; and whether a summary notice of the hearing substantially in the form approved by the Court was

published on the Internet pursuant to the specifications of the Court;

IT IS ORDERED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this Action, the Plaintiffs, all Class Members, and the Defendants.
2. The prerequisites for a class action under Federal Rule of Civil Procedure 23(a) and (b)(3) have been satisfied in that:
 - a. The number of Class Members is so numerous that joinder of all members thereof is impracticable;
 - b. There are questions of law and fact common to the Class;
 - c. The claims of the Class Representatives are typical of the claims of the Class they seek to represent;
 - d. The Class Representatives have and will fairly and adequately represent the interests of the Class;
 - e. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and
 - f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.
3. This action is certified as a class pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons who purchased Ravisent shares on the open market during the Class Period, pursuant or traceable to Ravisent's IPO Registration Statement, and who were damaged thereby, excluding the following: Defendants; the officers and directors of Ravisent during the Class Period; any entity in which any

Defendant has a controlling interest; the underwriters of the IPO; any officer, director, partner, subsidiary, parent, or affiliate of any of the underwriters of the IPO; and the legal representatives, heirs, successors, or assigns of any such persons.

4. Notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 87u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), due process, and any other applicable law, constituted the best possible notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.
5. The Settlement is approved as fair, reasonable, and adequate, and the parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.
6. The Complaint, which was filed on a good faith basis pursuant to the PSLRA and Federal Rule of Civil Procedure 11 and all publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against the Defendants. Upon the Effective Date hereof, Lead Plaintiffs and each of the Class Members shall be deemed to have, and by operation of this judgment shall have, fully, finally, and forever released,

relinquished, and discharged all settlement claims against each and all of the Released Persons, whether or not such Class Member or Lead Plaintiff executes and delivers a Proof of Claim and Release.

7. Plaintiffs and all Class Members, on behalf of themselves, their heirs, executors, administrators, successors, and assigns, upon the Effective Date of the Settlement, shall be deemed to have covenanted not to sue and be permanently barred and enjoined from instituting further legal action based upon all Settled Claims, including Unknown Claims, against the Released Persons, as those terms are defined in the Notice.
8. The Released Persons, upon the Effective Date of the Settlement, are hereby permanently barred and enjoined from instituting, commencing, or suing based upon any and all claims, rights, demands, causes of action, or suits against any of the Plaintiffs, Class Members, or their attorneys, which arise out of or relate to the institution, prosecution, or settlement of the Action, except claims arising out of or related to the obligations of the Plaintiffs, Class Members, or their attorneys embodied in this Stipulation or the implementation or enforcement of this Stipulation or the Settlement of this Action.
9. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, shall be:
 - a. Offered or received against Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by

Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of the Defendants;

- b. Offered or received against Defendants as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant, or against Plaintiffs and the Class as evidence of any infirmity in the claims of Plaintiffs and the Class;
- c. Offered or received against the Defendants or against the Plaintiffs or the Class as evidence of a presumption, concession, or admission with respect to liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties of the Stipulation, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants may refer to the Stipulation to effectuate the liability protection granted them thereunder;
- d. Construed against the Defendants or the Plaintiffs and the Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or
- e. Construed as or received in evidence as an admission, concession, or presumption against Plaintiffs of the Class, or any of them, that any of

their claims are without merit or that damages recoverable under the
Complaint would not have exceeded the Settlement Fund.

10. The Plan of Allocation is approved as fair and reasonable and Co-Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.
11. The Court finds that all parties and their counsel have complied with each requirement of Federal Rule of Civil Procedure 11 as to all proceedings herein.
12. Co-Lead Counsel, on their own behalf and on behalf of Plaintiffs' counsel, are hereby awarded one-third (1/3) of the Settlement Amount in fees, and in reimbursement of expenses, which the Court finds to be fair and reasonable, which fees and expenses shall be paid directly to Co-Lead Counsel from the Settlement Fund with interest from the date the Settlement Amount was paid to the Escrow Agent to the date of payment pursuant to this Order, at the same interest rate earned by the Settlement Fund. Co-Lead Counsel shall allocate these fees among Plaintiffs' counsel of record in a fashion and amount that, in their sole discretion, fairly compensates all counsel for their respective contributions to the prosecution of this Action.
13. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Class Members.
14. Without further order of the Court, the parties may agree to reasonable extensions

of time to carry out any provisions of the Stipulation.

15. The Clerk shall close this case for statistical purposes.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge