IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLIFFORD C. MARSDEN and MING XU, Individually and on Behalf of All Others Similarly Situated,	:	CIVIL ACTION
	:	04-4020
Plaintiffs,	:	
v.	:	
SELECT MEDICAL CORP., MARTIN JACKSON, ROBERT A. ORTENZIO, ROCCO ORTENZIO, and PATRICIA RICE,	:	
Defendants.	:	

MEMORANDUM AND ORDER

JOYNER, J. **January 18, 2005**

Via the motion now pending before this court, Defendants move to deem inadequate Plaintiffs' notice of September 10, 2004 pursuant to the Private Securities Litigation Reform Act of 1995. For the reasons which follow, this motion shall denied.

Factual Background

Plaintiffs Clifford C. Mardsen and Ming Xu filed this class action complaint on August 24, 2004 on behalf of all injured investors who purchased Select Medical stock between July 29, 2003 and May 11, 2004 (the "Class Period"). The Complaint alleges that Defendants artificially inflated Select Medical stock prices by means of material misstatements and omissions. Specifically, Plaintiffs contend that Defendants misled investors during the Class Period by emphasizing Select Medical's strong

financial performance while failing to disclose the imminent possibility of changes to Medicare reimbursement regulations which would negatively impact the company's financial success.

In accordance with § 78u-4(a)(3)(A)(i) of the Private Securities Litigation Reform Act (PSLRA), Plaintiffs' counsel published the following notice (the "Milberg Notice") in the September 10, 2004 edition of Investor's Business Daily:

> The law firm of Milberg Weiss Bershad & Schulman LLP announces that a class action lawsuit was filed on August 24, 2004 on behalf of purchasers of the securities of Select Medical Corp. ("Select Medical" or the "Company") (NYSE:SEM) between July 29, 2003 and May 11, 2004, inclusive, (the "Class Period") seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").
>
> The action, captioned Marsden v. Select Medical Corp., No. 04cv4020, is pending in the United States District Court for the Eastern District of Pennsylvania against defendants Select Medical, Martin Jackson, Robert A. Ortenzio, Rocco Ortenzio, and Patricia Rice.
>
> The complaint alleges that Select Medical, at all relevant times, was an operator of specialty hospitals, including long-term acute care facilities, whose financial performance was heavily dependent on Medicare reimbursements. The complaint further alleges that: (a) throughout the Class Period Select Medical touted its strong operations and financial performance, reported remarkable quarterly increases in revenues, income and earnings per share, and represented that the Company was operating pursuant to a business model that would enable it to grow organically and through acquisitions; (b) unbeknownst to investors, Select Medical at all relevant times operated under the shadow of an imminent regulatory crackdown that could have a devastating effect on the Company's operations and financial performance; (c) defendants knew of or recklessly disregarded this danger but failed to disclose it to investors; and (d) defendants engaged in this conduct so that they and other Select Medical insiders could sell more than 11 million of their personally-held Select Medical shares at artificially

inflated prices to unsuspecting shareholders for proceeds in excess of $270 million.

The truth began to emerge on May 11, 2004. On that date, defendants issued a press release in which they announced that a proposed Medicare reimbursement rate rule change, if adopted, would have a "material adverse effect on Select's results of operations for the periods after the rule becomes effective." On this news, Select Medical shares, which had opened on May 11, 2004 at $18.55, closed the day at $13.68, their low for the day. On May 12, 2004 the shares opened at $11.80 and fell to a low of $10.25 before rebounding slightly to close the dat at $11.20 – for a total two-day decline of 40%. Subsequently, on August 2, 2004, the Centers for Medicare and Medicaid Services announced the phase-in of reduced Medicare reimbursement rates for long-term acute care facilities accepting admissions from host hospitals, such as those operated by Select Medical, and, on August 23, 2004, Select Medical announced that it was scaling back its expansion plans to compensate for the anticipated Medicare cuts.

If you bought the securities of Select Medical between July 29, 2003 and May 11, 2004, and sustained damages, you may, no later than November 9, 2004, request that the Court appoint you as lead plaintiff. A lead plaintiff is a representative party that acts on behalf of other class members in directing the litigation. In order to be appointed lead plaintiff, the Court must determine that the class member's claim is typical of the claims of other class members, and that the class member will adequately represent the class. Under certain circumstances, one or more class members may serve together as "lead plaintiff." Your ability to share in any recovery is not, however, affected by the decision of whether or not to serve as a lead plaintiff. You may retain Milberg Weiss Bershad & Schulman LLP, or other counsel of your choice, to serve as your counsel in this action.

Milberg Weiss Bershad & Schulman LLP (http://www.milbergweiss.com) is a firm with over 100 lawyers with offices in New York City, Los Angeles, Boca Raton, Delaware, Seattle and Washington, D.C. and is active in major litigations pending in federal and state courts throughout the United States. Milberg Weiss has taken a leading role in many important actions on behalf of defrauded investors, consumers, and others for nearly 40 years. Please contact the

> Milberg Weiss website for more information about the firm. If you wish to discuss this action with us, or have any questions concerning this notice or your rights and interests with regard to the case, please contact the following attorneys...

On November 9, 2004, class members Capital Invest, die Kapitalanlagegesellschaft der Bank Austria Creditanstalt Gruppe GmbH (for account of its funds C 43 and GF 5), James Shaver, and Frank C. Bagatta (the "Capital Group") moved to be appointed lead plaintiff. That motion is currently pending before this Court.

Discussion

I. The PSLRA Notice Requirement

The Private Securities Litigation Reform Act (PSLRA) of 1995 was enacted to empower investors so that they, not their lawyers, would retain primary control over private securities class action litigation. S. Rep. No. 104-98 at 4 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 683; H.R. Rep. No. 104-369 at 32 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. To this end, PSLRA imposes procedural protections intended to encourage investors with substantial security holdings, whose interests are likely to be strongly aligned with the interests of the shareholder class, to participate in litigation as lead plaintiffs. S. Rep. No. 104-98 at 6 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 685; H.R. Rep. No. 104-369 at 32 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731; see also 15 U.S.C. 78u-4(a)(3)(B)(iii) (establishing a

rebuttable presumption that the most adequate plaintiff is the party who "has the largest financial interest in the relief sought by the class"). Specifically, the PSLRA instructs that plaintiffs, within 20 days of filing a complaint, "shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class – (I) of the pendency of the action, the claims asserted therein, and the purported class period; and (II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class." 15 U.S.C. 78u-4(a)(3)(A)(i). The PSLRA notice provisions are not intended, however, to replace or supersede other notice provisions provided in the Federal Rules of Civil Procedure. H.R. Rep. No. 104-369 at 49, FN 4 (1995), reprinted in 1995 U.S.C.C.A.N. 730.

In deciding a motion for the appointment of lead plaintiff under PSLRA, courts have an independent duty to "scrutinize the published notice and ensure that the notice comports with the objectives of the PSLRA, that is, encouraging the most adequate plaintiff, the plaintiff with the largest financial stake in the outcome of the litigation, to come forward and take control of the litigation." Janovici, 2003 U.S. Dist. LEXIS 22315 at 17. In this action, Defendants have petitioned the Court to examine

the sufficiency of Plaintiffs' notice in advance of a decision on the outstanding motion for appointment of lead plaintiff.

For the most part, courts reviewing the sufficiency of PSLRA notice in the context of motions for lead plaintiff status have taken the minimal requirements of § 78u-4(a)(3)(A)(i) at face value, summarily finding that the notice requirement is satisfied by timely publication setting forth the 60-day period for moving the court. See, e.g., Bobrow v. Mobilmedia, Inc., 1997 U.S. Dist. LEXIS 23806 at 4 (D. N.J. 1997); Greater Pa. Carpenters Pension Fund v. Adolor Corp., No. 04-1728, 2004 U.S. Dist. LEXIS 26205 at 6, 2004 WL 3019235 (E.D. Pa. 2004); A.F.I.K. Holding SPRL v. Fass, 216 F.R.D. 567, 570 (D. N.J. 2003). However, the few courts that have addressed this issue in greater detail have typically found that the full extent of a noticing plaintiff's obligations must be informed by the underlying goals of the PSLRA notice provision. See Burke v. Ruttenberg, 102 F. Supp. 2d 1280, 1311 (N.D. Ala. 2000); Janovici, 2003 U.S. Dist. LEXIS 22315 at 17-18; Ravens v. Iftikar, 174 F.R.D. 651, 658 (N.D. Cal. 1997). We agree. Any analysis of the sufficiency of notice under the PSLRA must be guided by the fundamental purpose of the notice requirement, which is to provide class members with sufficient information about the suit and the requirements for lead plaintiff appointment so that they can make an informed judgment about whether they wish to seek lead plaintiff status. Calif.

Pub. Employees' Ret. Sys. v. The Chubb Corp., 127 F. Supp. 2d 572, 576 (D. N.J. 2001); Burke, 102 F. Supp. 2d at 1312. Furthermore, the notice requirement is intended to give potential plaintiffs an opportunity to make this decision without being forced to contact noticing counsel for additional information, further protecting against "lawyer-driven litigation." Janovici, 2003 U.S. Dist. LEXIS 22315 at 19.

In determining the extent to which these general goals should inform our analysis of the sufficiency of the Milberg Notice, we are guided by the United States District Court for the Northern District of Alabama's thoughtful discussion in Burke v. Ruttenberg, 102 F. Supp. 2d at 1311-12. In that case, the court identified three methods of interpreting the reach of the PSLRA notice requirement. Under the first method, § 78u-4(a)(3)(A)(i) could be construed broadly, requiring "full disclosure of all of the information relevant to the pendency of the action." Id. at 1311. While such robust notice certainly satisfies the aims of the PSLRA, it imposes significant costs on the noticing plaintiffs and appears to be "more than is required by the language" of the statute. Id. At the other end of the spectrum, notice under the PSLRA could require only minimal information, namely, that the suit is pending, that it asserts securities claims, and that the class period extends between two dates. This method is inadequate because it does not provide sufficient

information from which potential lead plaintiffs could evaluate the action without turning to counsel or "fruitlessly" expending time and money searching out and reviewing the complaint. Id. at 1312. The court finally settled on an intermediate method, requiring that notice provide merely enough information to permit reasonable investors to decide whether they wish to perform further investigation and to direct them to further sources of information. Id. at 1311. The court held that such an interpretation accords with the purposes of the notice requirement, "in that it gives members of the putative class sufficient information from which to make basic decisions about deciding whether to act as lead plaintiff while not requiring the named plaintiff, who may not be chosen lead plaintiff, to expend too many of his [] resources in publishing a notice that is wastefully extensive." Id. at 1311-12.

We find the reasoning in Burke highly persuasive. A class member reading notice published pursuant to the PSLRA should be able to (1) determine whether she is eligible for lead plaintiff status based on the class period; (2) learn enough about the asserted claims to make an initial judgment as to whether to obtain a copy of the full Complaint (which will in turn inform her final judgment about whether to pursue lead plaintiff status); and (3) contact the clerk's office to obtain a copy of the Complaint and discover the procedures for filing a motion.

Furthermore, the reader should be able to achieve these three objectives independently, without being forced to contact noticing plaintiff's counsel for additional information or detail.

II. Timeliness of the Instant Motion

Plaintiffs first object to Defendants' November 30, 2004 Motion to Deem Notice Inadequate on the grounds that, while not styled as such, it is essentially an untimely response to the Capital Group's Motion for Appointment as Lead Plaintiff. Pursuant to Local Rule of Civil Procedure 7.1(c), any response to the Capital Group's motion should have been filed with this Court by November 23, 2004.

It is unnecessary for this Court to determine whether the instant motion should be treated as a response to the Capital Group's Motion for Appointment as Lead Plaintiff. Even accepting Plaintiffs' argument to this effect, a court may, pursuant to Rule 7.1(c), consider an untimely response where there is sound rationale for doing so, and where so doing does not unfairly prejudice the moving party. United States v. Eleven Vehicles, 200 F.3d 203, 215 (3rd Cir. 2000). As the instant motion raises significant legal questions regarding the scope of the PSLRA, and as this Court would have an independent duty, upon consideration of the Capital Group's motion, to challenge the sufficiency of the Milberg Notice, there is a sound rationale for addressing the

merits of this Motion to Deem Notice Inadequate. See Avellino v. Herron, 181 F.R.D. 294, 295 n. 4 (E.D. Pa. 1998) (where motion raises important issues of public concern, court may consider merits of a motion despite lack of response); Janovici v. DVI, Inc, 2003 U.S. Dist. LEXIS 22315 at 17, 2003 WL 22849604 (E.D. Pa. 2003) (in considering motions for appointment of lead plaintiff, court has an independent duty to scrutinize the published notice for compliance with PSLRA requirements). Furthermore, Plaintiffs will not be prejudiced by our consideration of the instant motion, as they have had ample opportunity to present their concerns in both a response and surreply.

III. Sufficiency of the Milberg Notice under the PSLRA

Defendants contend that the notice in this action was inadequate because it omitted (i) information about the named plaintiffs and their holdings in Select Medical, (ii) the legal standards governing lead plaintiff motions, (iii) the location of the courthouse and the name of the judge to whom the case is assigned, and (iv) the specific misstatements and omissions underlying Plaintiffs' claims. Defendants further contend that the notice was an "impermissible advertisement" for Milberg Weiss which undermined the objectives of the PSLRA by focusing on self-promotion rather than empowerment of potential lead plaintiffs.

In support of their arguments, Defendants rely primarily on

two cases from the United States District Court of New Jersey in which District Judges Alfred J. Lechner and Garrett E. Brown rejected PSLRA notices as inadequate for want of information not explicitly required by § 78u-4(a)(3)(A)(i), including the address of the court and name of the presiding judge, the release dates and content of alleged misstatements or omissions, the differing effects of each alleged misstatement or omission, the names of the plaintiffs and a description of their holdings, and an explanation of the possibility of intra-class conflicts. In re Lucent, 194 F.R.D. 137 at 147-48; Calif. Pub. Employees' Ret. Sys., 127 F. Supp. 2d at 579-80. However, this Court is not bound by those decisions, and, indeed, finds much of their reasoning unpersuasive in light of the intermediate approach to PSLRA notice which this Court has adopted above.

More significantly, one case within the Eastern District of Pennsylvania has addressed the PSLRA notice requirements as applied to a notice also published by Milberg Weis and similar to the instant Milberg motion in language and level of detail, and upheld its sufficiency under the PSLRA. Janovici, 2003 U.S. Dist. LEXIS 22315 at 26-27. This Court likewise finds that the extra-statutory requirements relied on by Defendants are not necessary to satisfy the objectives of the PSLRA. The Milberg Notice, while lacking in some of the details considered essential in In re Lucent, satisfies both the explicit requirements of §

78u-4(a)(3)(A)(i) and the more general statutory goals. A class member reading the Milberg Notice would learn enough about the nature of the claims to determine his eligibility for lead plaintiff status and make a preliminary decision of whether to seek additional information, and would be able to obtain a copy of the Complaint from the clerk's office if he were so inclined.

A. Timely Publication

The Milberg Notice was published in Investor's Business Daily on September 10, 2004, within 20 days of the date the Complaint in this action was filed. Defendants repeatedly suggest, in their motion and reply, that the notice was of a "stealth character" because it was published "a random 17 days after the case was filed," and was "bur[ied]" in Investor's Business Daily rather than disseminated by a national wire service. Defendants' position on this issue is utterly without merit. Investor's Business Daily is a nationally-circulated business-oriented publication catering to investors, and, as such, satisfies the publication requirement of § 78u-4(a)(3)(A)(i). Seamans v. Aid Auto Stores, Inc., No. 98-7395, 2000 U.S. Dist. LEXIS 1749 at 11-12, 2000 WL 33769023 (E.D. N.Y. 2000); Lax v. First Merchants Acceptance Corp., 1997 U.S. Dist. LEXIS 11866 at 15, 1996 WL 461036 (N.D. Ill. 1997).[1]

[1] Defendants further suggest that publication of the Milberg Notice in Investor's Business Daily was inadequate because it was a departure from Milberg Weiss' "usual practice" of serving

Furthermore, this Court cannot conceive of any legitimate argument in support of Defendants' suggestion that a notice published "a random 17 days" after the filing of a complaint somehow fails to satisfy the requirements of § 78u-4(a)(3)(A)(i).

B. The "Pendency of the Action" Requirement

The Milberg Notice adequately informs class members of "the pendency of the action," as it identifies the caption of the case, its civil action number, the Court before which the action was brought, and the names of all five Defendants. The purpose of the "pendency of the action" requirement is to provide interested class members with "accurate information from which [they] may contact the Court and readily obtain a copy of the complaint in a pending action and/or file a motion to be appointed as lead counsel in that case." Janovici, 2003 U.S. Dist. LEXIS 22315 at 18. In Janovici, this Court upheld the sufficiency of a notice, also published by Milberg Weiss, which included only the names of the defendants and the Court, holding that these two identifying facts were sufficient to inform class members of the pendency of the action. Id. at 26-27.[2] We find

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notice by news wire. See Defendants' Reply, p. 2. It should be beyond question, however, that the sufficiency of notice under the PSLRA must be judged against the statutory requirements of § 78u-4(a)(3)(A)(i), rather than any particular law firm's typical practice.

[2] While Defendants make much of the fact that the notice in Janovici provided a web link to a copy of the complaint on the Milberg Weiss website, the Court's decision made no mention of

that a PSLRA notice which includes the court name, case caption, and docket number provides all the information an interested class member needs to contact the Court and obtain a copy of the complaint. In so holding, we reject the United States District Court of New Jersey's requirement that PSLRA notice include the address of the Court and the name of the judge to whom the case is assigned. See Calif. Pub. Employees' Ret. Sys., 127 F. Supp. 2d at 579; In re Lucent, 194 F.R.D. 137 at 147. Surely an investor who reads the Investor's Business Daily on a regular basis and is interested in being lead plaintiff in a class action securities suit is competent enough to consult a telephone directory to find the Court's address and phone number. This

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that fact, explicitly holding that "list[ing] the names of the defendants ... provid[ed] purported class members with sufficient information from which they could contact the Court and obtain a copy of the complaint and/or file a motion for appointment as lead plaintiff." Janovici, 2003 U.S. Dist. LEXIS 22315 at 26-27. Furthermore, this Court fails to see how encouraging class members to visit a law firm's website to view the complaint serves the PSLRA's purpose of protecting investors from lawyer-driven lawsuits. See, e.g., Janovici, 2003 U.S. Dist. LEXIS 22315 at 19 (providing information from which interested class members may contact the Court shields against lawyer-driven litigation because class members "are not forced to contact noticing counsel for additional information"); Calif. Pub. Employees' Ret. Sys., 127 F. Supp. 2d at 580 (where action is not identified by caption or docket number, directing class members to an attorney website to view the complaint does not cure deficiencies of notice and undermines PSLRA goals); Burke, 102 F. Supp. 2d at 1312 (notice directing class members to contact counsel for a copy of the complaint does not comport with the purposes of the PSLRA).

Court is not convinced that investors will be discouraged from participating if "force[d] ... to figure it out for themselves." See Defendants' Brief, p. 8. And while it might be helpful for a PSLRA notice to include the name of the assigned judge, a class member need not provide that information to get a copy of the complaint, and can readily discover the judge's name by contacting the clerk's office. Because an interested class member reading the Milberg Notice would find enough information therein to contact the Court and obtain a copy of the Complaint, the notice satisfies the "pendency of the action" requirement of § 78u-4(a)(3)(A)(i).

C. The Claims Asserted and Class Period

The Milberg Notice satisfies the requirements of § 78u-4(a)(3)(A)(i) relating to information about the claims asserted and the class period. The notice identifies the period between July 29, 2003 and May 11, 2004 as the relevant Class Period. It summarizes the claims asserted in the Complaint, highlighting the allegations that Select Medical, throughout the Class Period, touted its strong financial performance, misrepresented the nature of its business model, and failed to disclose the danger of an imminent regulatory crackdown. The notice further describes the drop in share prices which occurred after Defendants issued a May 11, 2004 press release announcing that the proposed regulatory change would have a material adverse

effect on Select Medical's operations.

In support of their contention that the Milberg Notice is deficient because it does not identify the content or dates of the alleged misrepresentations, Defendants cite In re Lucent, 194 F.R.D. 137 at 147-48. In that case, the United States District Court for the District of New Jersey relied on Ravens v. Iftikar, 174 F.R.D. 651, to hold that a PSLRA notice should describe, in detail, the alleged misstatements or omissions, their release dates, and, if multiple disclosures are at issue, the differing effects of each. In re Lucent, 194 F.R.D. 137 at 148. However, it would be a misreading of Ravens to impose such strict requirements on all PSLRA notices. Ravens addressed a "skeletal" one-paragraph notice which provided no detail about the claims asserted beyond an identification of the statutory grounds (§ 10(b) and 20(a) of the Securities Exchange Act), and no information about the named plaintiffs, who appeared, even on the face of the complaint, "incapable of prosecuting" the action. Ravens, 174 F.R.D. at 658. Far from setting forth a firm rule imposing the requirements considered in In re Lucent, the United States District Court for the Northern District of California held that "the adequacy of notice published under the Reform Act cannot be evaluated standing alone. The notice must be assessed in light of the pleading to which the notice is designed to alert investors." Id. Among the reasons the court gave for finding

the notice inadequate were that "the lengthy and detailed allegations of the complaint [were] not summarized," and that "[a]ctual and potential obstacles to plaintiff's representation of the entire class" were not disclosed. Id.

In contrast, the Milberg Notice adequately summarizes the allegations in the Complaint, without overwhelming readers with a flood of detail. The Complaint in this action identifies twelve dates on which Defendants allegedly misrepresented the strength of their operations while failing to disclose the possibility of a financial downturn if proposed Medicare rate changes were to be adopted. We believe that requiring named Plaintiffs, who may not ultimately be chosen as lead plaintiffs, to expend the resources required to publish a "wastefully extensive" notice containing the exact date, content, and individualized impact of each of twelve or more misrepresentations and omissions is beyond the contemplation of the PSLRA. See Burke, 102 F. Supp. 2d at 1311-12.[3] The Milberg Notice provides a summary of the legal and factual basis of the claims, adequately informing investors of the nature and character of the claims asserted in accordance with the requirements of § 78u-4(a)(3)(A)(i). See Janovici, 2003 U.S. Dist. LEXIS 22315 at 27 (finding that a Milberg Weiss notice

[3] This is particularly so where, as here, it is clear from both the notice and the Complaint that there were no corrective statements made during the Class Period, and that a single disclosure event occurred at the end of the Class Period. See Wenderhold v. Cylink Corp., 188 F.R.D. 577, 582 (N.D. Ca. 1999).

summarizing misrepresentations generally, but not providing dates or other details, adequately informs investors of the "claims asserted").

Furthermore, while Defendants contend that a PSLRA notice must identify the named plaintiffs and describe their holdings, we are not persuaded that the reasoning of the two cases cited in support of that proposition is applicable in this action. In Calif. Pub. Employees' Ret. Sys., the named plaintiff clearly lacked standing to sue because he held no shares during the class period, a fact obvious on the face of the complaint. Calif. Pub. Employees' Ret. Sys., 127 F. Supp. 2d at 580-81. Likewise, in Ravens, there were numerous obstacles to representation by the named plaintiffs, including unique defenses, concerns regarding their qualifications, and the possibility of intra-class conflicts. Ravens, 174 F.R.D. at 657. We note, initially, that this Court is not currently in a position to investigate the sufficiency of the Complaint or the named Plaintiffs' qualifications, and Defendants have identified no conspicuous obstacles to Plaintiffs' representation. Furthermore, where issues of standing or qualification are not obvious on the face of a complaint, we cannot imagine that the drafters of the PSLRA expected named plaintiffs to make inquiries as to these issues and present their findings in notice form. Neither the explicit requirements of § 78u-4(a)(3)(A)(i) nor the general goals of the

PSLRA demand the imposition of such an obligation.

D. Moving for Lead Plaintiff Status

The Milberg Notice advises class members who have sustained damages that they may, within 60 days, move the court to be appointed lead plaintiff. The notice briefly explains the significance of the lead plaintiff, summarizes the typicality and adequacy of representation requirements, specifies that multiple class members may serve together as lead plaintiffs, and notes that class members who do not attain lead plaintiff status are nonetheless entitled to share in any recovery. This information clearly satisfies the § 78u-4(a)(3)(A)(i)(II) requirement that notice published pursuant to the PSLRA advise class members of their right to move for lead plaintiff status within 60 days.

Defendant's citation to In re Lucent is inapposite. In that case, the notice in question informed class members of their right to move the court within 60 days, and indicated only that they "must meet certain legal requirements" to serve as lead plaintiff. See In re Lucent, 194 F.R.D. 137 at 147. The court found such notice inadequate because it did not "even summarily describe the legal requirements" for lead plaintiff status. Id. In contrast, the Milberg Notice in this action does "summarily describe" the requirements for lead plaintiff status.

Nonetheless, Defendants object to the fact that the Milberg Notice does not mention the PSLRA's rebuttable presumption that

the most adequate plaintiff is the one with the "largest financial interest." See 15 U.S.C. § 78u-4(a)(3)(B)(iii). We note initially that, while the PSLRA was drafted to encourage plaintiffs with the greatest financial interest to take control of the litigation, the statute by no means requires that lead plaintiffs have the largest financial interest, and explicitly allows for rebuttal of this presumption. 15 U.S.C. § 78u-4(a)(3)(B)(iii). Furthermore, this Court has upheld the adequacy of a similar notice published by Milberg Weiss which described the requirements for lead plaintiff status in language identical to the language at issue in this case. Janovici, 2003 U.S. Dist. LEXIS 22315 at 26-27 (finding that the notice was sufficient because it advised the class that a member may move to serve as lead plaintiff, explained the significance of a lead plaintiff, and specified the date by which such a motion must be filed). The Milberg Notice is not rendered inadequate by its failure to include information concerning the significance of a lead plaintiff's financial stake in the litigation.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLIFFORD C. MARSDEN and MING XU, Individually and on Behalf of All Others Similarly Situated,	:	CIVIL ACTION
	:	04-4020
Plaintiffs,	:	
v.	:	
SELECT MEDICAL CORP., MARTIN JACKSON, ROBERT A. ORTENZIO, ROCCO ORTENZIO, and PATRICIA RICE,	:	
Defendants.	:	

ORDER

AND NOW, this 18th day of January, 2005, upon consideration of Defendants' Motion to Deem Notice Inadequate (Doc. No. 8), and all responses thereto (Docs. No. 9, 10, 11), it is hereby ORDERED that the motion is DENIED.

BY THE COURT:

s/J. Curtis Joyner

J. CURTIS JOYNER, J.