

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

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ALAN H. DUGAN, <u>et al.</u> ,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	No. 2:09-cv-5099
	:	
TOWERS, PERRIN, FORSTER & CROSBY,	:	
INC., <u>et al.</u> ,	:	
Defendants.	:	

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**Goldberg, J.**

**September 24, 2013**

**MEMORANDUM OPINION**

**Introduction**

The parties in this consolidated action return to this Court on limited remand from the United States Court of Appeals for the Third Circuit seeking preliminary approval of their proposed settlement, along with a schedule to notify class members and eventually procure final approval of the settlement after an appropriate hearing. Along with approval of the settlement, they also seek preliminary certification of their proposed settlement class. For the following reasons, the motion will be granted.

**Factual Background and Procedural History**

The facts surrounding this matter are set forth in the Court’s Memorandum Opinion granting summary judgment to Defendants (Doc. No. 203), and will not be repeated here. Briefly, this case concerns three complaints filed against Towers, Perrin, Forster & Crosby, Inc. (“Towers Perrin”) by former employee-shareholders who sold their Towers Perrin shares back to the company after 1971, but before the firm merged with Watson Wyatt to form Towers Watson

& Co., a publicly traded company. (Mem. Op. 2, 8-9.) For much of its history, Towers Perrin was privately owned by its employees, who, upon promotion to “Principals,” were permitted to purchase stock from the company at a greatly-reduced book value, as long as they agreed to resell the shares to the firm at book value upon retirement. (Mem. Op. 2-3.) Because the book value was much lower than the price the shares would have brought on the open market, the firm was able to sell shares to the new Principals at affordable rates, and also ensure that it would always have enough funds to repurchase the shares when the Principal’s employment came to an end. (Mem. Op. 2-3 & n.3.) Former Principals who had already resold their shares lost out, however, once the shares became publicly traded, and their value skyrocketed.

These cases all alleged that implicit in the sale-and-buyback arrangement was an additional promise: that Towers Perrin would remain employee-owned. (Mem. Op. 9.) Plaintiffs contended that in conducting what was essentially a public sale of the company, the current Principals breached that agreement. (Mem. Op. 9.) This Court concluded that there was no such promise, and granted summary judgment to Defendants. On appeal, and after consultation with the Third Circuit’s Chief Mediator, the parties reached a settlement agreement. The agreement provides for a gross settlement fund of \$10 million plus interest, to be split among the proposed class members according to the employee’s tenure and the number of shares he or she held at the time of separation from the firm.

### **Discussion**

The Court must address both the preliminary certification of the proposed settlement class and the preliminary approval of the proposed settlement. Because it makes little sense to assess the reasonableness of the settlement without reference to a defined class, the former will be discussed first.

### **A. Preliminary Certification of the Settlement Class**

Plaintiffs seek only the certification of a settlement class, not a litigation class, but that does not relieve the Court of the responsibility to ensure that the proposed class satisfies the Federal Rules of Civil Procedure. As a general matter, “[s]ettlement classes must satisfy the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation.” In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig., 55 F.3d 768, 778 (3d Cir. 1995). In addition, the class must satisfy the relevant requirements of F.R.C.P. 23(b), though obviously the court “need not inquire whether the case, if tried, would present intractable management problems.” Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997).

Plaintiffs seek to certify a class consisting of “all former Towers Perrin Principals . . . who retired or otherwise terminated their service with Towers Perrin and ceased to be Principals on or after January 1, 1971 and on or prior to June 1, 2005,” with several exceptions. (Br. in Support of Mot. 4.) The proposed class excludes any Principals who: (1) received or will receive any consideration arising from the merger with Watson Wyatt, (2) participated in the Voluntary Separation Program,<sup>1</sup> (3) signed a release of claims in favor of Towers Perrin in connection with the sale of stock back to the firm, (4) were employees of Towers Perrin or Watson Wyatt at the time of the merger, or (5) are current employees of Towers Watson. (Br. in Support of Mot. 4-5.)

As defined, preliminary certification of the class is appropriate. Plaintiffs estimate that the proposed settlement class includes 1,050 individuals, a number that satisfies the requirement that the class be “so numerous that joinder of all members is impracticable.” F.R.C.P. 23(a)(1);

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<sup>1</sup> As explained in the opinion granting summary judgment, the Voluntary Separation Program was instituted in 2006 following the announcement that Towers Perrin was considering a public sale in an effort to encourage Principals “to retire at normal age” rather than remain with Towers Perrin in hopes that a sale would boost the value of their shares. Principals who participated in the program received book value for their shares, along with \$200,000 and the right to purchase discounted shares of Towers Perrin stock if an initial public offering occurred within three years of their retirement. (Mem. Op. 7.)

see also Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001) (“[G]enerally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.”); Mehling v. N.Y. Life Ins. Co., 246 F.R.D. 467, 474 (E.D. Pa. 2007) (citing cases).

Furthermore, common questions of law and fact exist between the individual class members. F.R.C.P. 23(a)(2). The primary issue in this litigation is whether, in selling and repurchasing the stock from class members, Towers Perrin made an enforceable promise to keep the firm employee-owned. And as our earlier opinion indicated, each class member received a similar “Stock Offer Letter” upon being promoted to a Principal, which set forth the “terms on which Towers Perrin offered to sell stock to Principals.” (Mem. Op. 4.) Thus, this litigation includes common legal questions, the answers to which require reference to an essentially common set of facts. This provides the “necessary glue among class members to make adjudicating the case as a class worthwhile.” Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154, 182 (3d Cir. 2001).

“The concepts of commonality and typicality are broadly defined and tend to merge.” Barnes v. Am. Tobacco Co., 161 F.3d 127, 141 (3d Cir. 1998) (quoting Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994)) (internal quotation marks omitted). The named plaintiffs’ claims are typical if they “arise[] from the same event or practice or course of conduct that gives rise to the claims of the class members,” and are based on the same legal theory. Id. Here, the named Plaintiffs’ claims satisfy the typicality requirement for essentially the same reason that they satisfy the commonality requirement. Each named Plaintiff asserts claims based on an alleged promise made by Towers Perrin in the conduct of its stock sale-and-buyback program. The class members’ claims arise from the same course of conduct. Thus, F.R.C.P. 23(a)(3) is satisfied.

Finally, F.R.C.P. 23(a)(4) requires that the “representative parties will fairly and adequately protect the interests of the class.” This requirement seeks to ferret out “conflicts of interest between named parties and the class they seek to represent,” and is satisfied if the representative “possess[es] the same interest[s] and suffer[s] the same injur[ies] as the class members.” Amchem, 521 U.S. at 625-26 (quoting East Texas Motor Freight Sys., Inc. v. Rodriguez, 431 U.S. 395, 403 (1977)) (internal quotation marks omitted). The named Plaintiffs in this case plainly satisfy this requirement, in that their claims are typical of the absent class members’ claims, and there are no apparent conflicts of interest. See Mehling, 246 F.R.D. at 475. Further, the attorneys for the class have proven themselves equal to the task, vigorously litigating this case from start to finish. In other words, they “clearly possess the expertise to litigate this matter effectively, as evidenced by the quality, timeliness and professional nature of their work before this court.” In re Ikon Office Solutions, Inc., 209 F.R.D. 94, 103 (E.D. Pa. 2002).

In addition to meeting the Rule 23(a) requirements, the proposed class can be properly certified under Rule 23(b)(3). Our earlier opinion sets out the controlling nature of the common questions of law and fact in this litigation: the claims of all class members rise or fall together. This is more than enough to satisfy the predominance inquiry, which merely tests whether a class action “would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated.” F.R.C.P. 23(b)(3) advisory committee notes to 1966 amendment; see also Sullivan, 667 F.3d at 297. Given the common threads tying all the class members’ claims together, class adjudication is plainly superior to hundreds of individual cases challenging essentially the same conduct. This is even truer in the settlement class context, since minor differences in individual claims that might create practical problems at trial are less important when the proposal is that there be no trial. See Sullivan, 667 F.3d at 303-04.

Therefore, the Court will grant Plaintiffs' motion for preliminary certification of the settlement class.

### **B. Preliminary Approval of the Proposed Settlement**

Under the Federal Rules of Civil Procedure, “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” F.R.C.P. 23(e). This requirement exists to allow the court to protect absent class members who will be bound by the settlement, but did not have an opportunity to participate in its negotiation. Rodriguez v. Nat’l City Bank, 2013 WL 4046385 at \*5 (3d Cir. Aug. 12, 2013); Sullivan, 667 F.3d at 319. While the ultimate approval of a class settlement turns on whether the court finds the proposal “fair, reasonable, and adequate,” F.R.C.P. 23(e)(2), preliminary approval may be granted as long as the proposal does not “disclose[] grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys, and whether it appears to fall within the range of possible approval.” Mehling, 246 F.R.D. at 472 (quoting Thomas v. NCO Fin. Sys., 2002 WL 1773035 at \*5 (E.D. Pa. July 31, 2002)) (internal quotation mark omitted).

The settlement in this case is fairly simple. Towers Perrin will make a single payment of \$10 million into a claims fund to be administered by an outside fiduciary. Court-approved attorney’s fees, expenses, and administrative costs will be paid from this fund, leaving a net amount for class members of approximately \$6 million. Class members will be given notice of the settlement and the opportunity to submit a proof of claim. The proceeds from the fund will then be split among the class members who submitted valid claims according to a formula that

accounts for the number of shares the class member sold back to the firm at the time of his or her separation, as well as the member's tenure.<sup>2</sup>

At this stage, the settlement appears within the bounds of reasonableness warranting preliminary approval. While the \$10 million recovery reflects but a fraction of the increased value from the public sale, Plaintiffs were fighting an uphill battle by the time the settlement was reached. This Court had granted summary judgment as to all claims against all Defendants, leaving Plaintiffs with a substantial chance of receiving no recovery at all. Plaintiffs faced an uncertain outcome in the Third Circuit, followed by more litigation in this Court, if they hoped to obtain a favorable judgment. This lengthy process would have resulted in significant cost and delay. When compared to the relatively immediate and certain recovery promised by the settlement, there is good reason to think that the recovery is fair. In addition, the participation of the Third Circuit's mediator suggests an arms-length negotiation, rather than collusion for the benefit of attorneys or named plaintiffs. See Mehling, 246 F.R.D. at 473 (granting preliminary approval to class settlement that was "the result of a hard-fought and lengthy negotiation process overseen by [a] Magistrate Judge"). Class counsel's requested compensation, which Plaintiffs' represent will be no more than \$3 million (not including expenses), or 30% of the total fund, also falls within the bounds of reasonableness. See id. at 472 n.4 (granting preliminary approval to class settlement that provided for attorney's fees of not more than 33% of the gross settlement fund).

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<sup>2</sup> More specifically, a given class member's recovery will be calculated by multiplying the net settlement fund by a fraction that accounts for the number of "share years" the member accumulated in comparison to the body of claimants as a whole. The amount of "share years" accumulated by a member is equal to the number of years the member was a Towers Perrin Principal multiplied by the number of shares the member sold back to Towers Perrin at the time he or she left the firm.

Thus, the Court finds no reason at this stage to doubt the fairness of the settlement, and will grant preliminary approval. Of course, prior to deciding whether to grant final approval, the Court will hold a fairness hearing and consider the views of objectors, if any. See Manual for Complex Litig. (Fourth) § 21.643 (2004).

### **C. Notice**

Having granted preliminary certification of the settlement class, along with preliminary approval of the settlement itself, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” F.R.C.P. 23(e)(1). Due process requires that the notice be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Further, F.R.C.P. 23(c)(2)(B) requires that in a Rule 23(b)(3) action, the class must receive “the best notice that is practicable under the circumstances.” In the context of a class settlement, the substance of the notice “must inform class members of (1) the nature of the litigation; (2) the settlement’s general terms; (3) where complete information can be located; and (4) the time and place of the fairness hearing.” In re Cendant Corp. Sec. Litig., 109 F. Supp. 2d 235, 254 (D.N.J. 2000); see also F.R.C.P. 23(c)(2)(B).

After reviewing the proposed notice, the Court concludes that it satisfies due process in form and substance. Plaintiffs propose notification by “mailing the Notice to each Class Member for whom Towers Watson has a mailing address and publishing the Notice on a website maintained by the Claims Administrator.” (Br. in Support of Mot. 18.) Individual notice by first-class mail is the best notice practicable in this case, and has long been considered to satisfy due process in the class-action context. See Phillips Petrol. Co. v. Shutts, 472 U.S. 797, 812 (1985)

(concluding that a procedure in which “a fully descriptive notice is sent first-class mail to each class member, with an explanation of the right to ‘opt-out,’ satisfies due process”); In re Agent Orange Prod. Liability Litig., 818 F.2d 145, 167-69 (2d Cir. 1987) (finding notice mailed to more than 70,000 veterans in Agent Orange registry, plus publication, sufficient); Wright and Miller, Federal Practice and Procedure § 1786 & n.43 (citing several cases involving mailed notice). Further, publication on a website devoted to the litigation will allow class members an alternative route to receive notice.

Substantively, the sixteen page notice adequately informs the class members of all the information required by F.R.C.P. 23(c)(2)(B). It covers the nature of the case and the claims, defines the class, and indicates to the class member that he or she can seek to be excluded from the class, can file objections, or can seek assistance from an independent attorney. It also explains in detail the nature of the settlement and the formula that will ultimately be used to allocate payments. Finally, it includes spaces to notify members of their right to participate in a final fairness hearing on a particular date. The Court will therefore approve the notice and manner of service.

### **Conclusion**

The Plaintiffs return to this Court seeking approval for a \$10 million dollar settlement after having lost on summary judgment less than a year ago. Although this recovery is far less than Plaintiffs originally sought, the procedural posture of the case, along with the threat of further lengthy and costly litigation, make the settlement reasonable on its face. In addition, the proposed class is properly defined, and satisfies the requirements of F.R.C.P. 23. Accordingly, Plaintiffs’ motion for preliminary certification of the settlement class and preliminary approval of the settlement will be granted. The Court’s Order follows.

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Plaintiffs,	:	
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v.	:	No. 2:09-cv-5099
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TOWERS, PERRIN, FORSTER & CROSBY,	:	
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Defendants.	:	

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**ORDER**

**AND NOW**, this 24<sup>th</sup> day of September, 2013, upon consideration of Plaintiffs’ unopposed motion for preliminary approval of the proposed settlement and certification of the settlement class (Doc. No. 211), and for the reasons discussed in the Court’s accompanying Memorandum Opinion, it is **ORDERED** that:

1. The terms of this Order shall have the meaning given to them in the August 20, 2013 Stipulation and Agreement of Settlement between the parties, to the extent that they are defined there.
2. Plaintiffs’ motion for preliminary certification of the settlement class under F.R.C.P. 23(b)(3) is **GRANTED**. The class is defined as in paragraph 1(d) of the Stipulation and Agreement of Settlement.
3. Named Plaintiffs Alan H. Dugan, Ronald P. Giesinger, Marvin H. Greene, John G. Kneen, John T. Lynch, Bruce R. Pittenger, J. Russell Southworth, C. Roland Stichweh, Jacobus J. Van de Graaf, and John C. Von Hagen (collectively, the “Dugan Plaintiffs”), Dale S. Allen, Candace M. Block, Deborah Dubois,

Elizabeth J. Scattergood, and Richard P. Norton (collectively, the “Allen Plaintiffs”), and Alice Pao (the “Pao Plaintiff”) are **APPOINTED** as representatives of the settlement class. Additionally, the law firms of Willkie Farr & Gallagher LLP and Berger & Montague, P.C. are **APPOINTED** as class counsel, in accordance with F.R.C.P. 23(g)(1).

4. Plaintiffs’ motion for preliminary approval of the proposed Settlement is **GRANTED**, subject to further consideration at the Settlement Hearing provided for in paragraph 11 of this Order.
5. Consistent with the Settlement, to the extent Towers Watson possesses such information and such information can be reasonably gathered and delivered, **within 5 business days from the date of this Order**, Towers Watson shall provide Class Counsel and/or the Claims Administrator, in electronic form, the following information for each former Towers Perrin Principal who retired or otherwise terminated his or her service with Towers Perrin and ceased to be a Principal on or after January 1, 1971 and on or prior to June 1, 2005:
  - a. The person’s name, last known address, email address(es), and telephone number(s);
  - b. The date(s) on which the person became a Towers Perrin Principal (if the person had multiple, non-continuous tenures as a Towers Perrin Principal, the start date of each tenure shall be listed);
  - c. The date(s) on which the person ceased to be a Towers Perrin Principal (if the person had multiple, non-continuous tenures as a Towers Perrin Principal, the termination date of each tenure shall be listed);
  - d. The total number of Towers Perrin common shares purchased by the person during the person’s tenure as a Towers Perrin Principal, excluding any common shares received through the recapitalization of preferred shares into common shares or the

issuing of any stock dividends (if the person had multiple, noncontinuous tenures as a Towers Perrin Principal, the total number of Towers Perrin common shares that the person purchased shall be listed separately for each tenure);

e. The total number of Towers Perrin common shares sold by the person back to Towers Perrin upon the person's termination from service as a Towers Perrin principal, excluding any Towers Perrin common shares that were received through the recapitalization of preferred shares into common shares or the issuing of any stock dividends (if the person had multiple, non-continuous tenures as a Towers Perrin Principal, the total number of Towers Perrin common shares that the person sold upon his or her termination from service as a Towers Perrin Principal shall be listed separately for each tenure);

f. The date(s) on which any shares of Towers Perrin preferred stock owned by the person were converted into shares of Towers Perrin common stock, the number of shares converted on each date, and the rate of conversion for each share;

g. The date(s) on which the person received any stock dividends from Towers Perrin and the number of additional Towers Perrin common shares the person received as a result of the stock dividends issued on each date;

h. Whether the person received, or will receive, any consideration arising from the Merger;

i. Whether the person participated in Towers Perrin's Voluntary Separation Program;

j. Whether the person signed a release of claims in favor of Towers Perrin upon the sale of his or her shares to Towers Perrin and, if so, any consideration paid in exchange for such release;

k. Whether the person worked for Towers Perrin or Watson Wyatt at the time of the Merger; and

l. Whether the person is currently employed by Towers Watson.

6. **Within 20 business days of this Order**, Class Counsel shall cause to be mailed by first-class mail, postage prepaid, the Notice and Proof of Claim form, substantially in the form attached as Exhibits A-1 and A-2 to Plaintiffs' motion, to

any Class member whose address was provided by Defendants under paragraph 5 of this Order, or whose identity and address could otherwise be obtained through reasonable effort. The date of the initial mailing shall be referred to as the “Notice Date.” Furthermore, the Notice and Proof of Claim form shall be placed on the website maintained by the Claims Administrator at [www.TowersPerrinRetireeLitigation.com](http://www.TowersPerrinRetireeLitigation.com).

7. At or before the Settlement Hearing, Class Counsel shall file with the Court proof of compliance with paragraph 6 of this Order.
8. To effectuate the terms of the Notice and Settlement, Class Counsel are authorized to retain Heffler Claims Group, or such other similarly qualified entity as may be required, as Claims Administrator, without further order of the Court. Class Counsel are also authorized and directed to prepare any tax returns required to be filed on behalf of the Settlement Fund and to cause any taxes due and owing to be paid from the Settlement Fund.
9. Class Counsel shall submit their papers in support of final approval of the Settlement, Plan of Allocation, and the application for attorney’s fees and reimbursement of litigation expenses **on or before January 15, 2014**, and reply papers to objections, if any, shall be submitted **on or before January 31, 2014**.
10. All Class members shall be bound by all determinations and judgments in this Action, unless they request exclusion from the Class in a timely and proper manner. A Class member seeking exclusion shall mail a written request to the address designated in the Notice, postmarked **on or before January 6, 2014**. The request shall be in the form required by the Notice. Class members who properly

request exclusion shall not be entitled to receive any payment from the Net Settlement Fund.

11. In accordance with F.R.C.P. 23(e)(2), a Settlement Hearing will be held at **10:00 a.m. on Wednesday, February 5, 2014, in Courtroom 4-B of the United States Courthouse, 601 Market St., Philadelphia, PA 19106**, to determine whether:

- a. This Action should be finally certified as a class action for settlement purposes;
- b. The proposed Settlement is fair, reasonable, and adequate;
- c. The settled claims against the Defendants should be released and dismissed with prejudice, and the Defendants' claims against the Plaintiff Released Parties should be released, according to the Settlement;
- d. The proposed Plan of Allocation of the Settlement proceeds should be approved; and
- e. Class Counsel's application for attorney's fees and litigation expenses should be approved.

12. Any Class Member who has not requested exclusion from the Class may appear at the Settlement Hearing to show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate; why the Order and Final Judgment should or should not be entered; why the Plan of Allocation should or should not be approved as fair and reasonable; or why Class Counsel should or should not be awarded attorney's fees and reimbursement of litigation expenses in the amounts sought by Class Counsel with the approval of Plaintiffs. However, no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Order and Final Judgment to be entered approving the same, the proposed Plan of Allocation, or Class Counsel's application for an award of attorney's fees and payment of expenses unless, **on or**

**before January 22, 2014**, such Class Member has properly and timely served by hand or by first-class mail for receipt by such date by the counsel listed below written objections and copies of any supporting papers and briefs upon Class Counsel and counsel for Defendants as follows:

Plaintiffs' Class Counsel:  
Francis J. Menton, Jr.  
Willkie Farr & Gallagher LLP  
787 7th Avenue  
New York, NY 10019  
Telephone: 212-728-8000

or

Lawrence Deutsch  
Berger & Montague, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone: 215-875-3000

and

Defendants' Counsel:  
Michael L. Hirschfeld  
Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: 212-530-5000

Any member of the Class may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. Class Members who do not enter an appearance will be represented by Class Counsel. Persons or entities who intend to object to the Settlement or Class Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, and desire to present evidence at the Settlement Hearing must include

in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

13. Any Class member who does not object in the manner prescribed in paragraph 12 of this Order shall be deemed to have waived any objection and shall be forever foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement.
14. In order to be eligible to participate in the Settlement, Class members must follow the procedures prescribed in the Notice and Proof of Claim form. Proof of Claim forms must be postmarked **on or before March 7, 2014**.
15. Pending final determination of whether the Settlement should be approved, all discovery and all proceedings in the Action are stayed, except for proceedings related to the Settlement.
16. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings held in connection therewith shall be without prejudice to the status quo ante rights of the parties to the Stipulation, except as otherwise set forth in the Stipulation.
17. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any claim or right of any person or entity to participate in the distribution of the Net Settlement Fund shall be under the authority of this Court.
18. Pending final determination of whether the Settlement should be approved, Plaintiffs and all Class Members, and each of them, and anyone who acts or

purports to act on their behalf, shall not institute, commence, or prosecute any action that asserts Settled Claims against the Defendant Released Parties.

19. Pending final determination of whether the Settlement should be approved, Defendants, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, or prosecute any action that asserts Released Defendants' Claims against the Plaintiff Released Parties.

**BY THE COURT:**

/s/ Mitchell S. Goldberg

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**MITCHELL S. GOLDBERG, J.**