UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIFFANY M. HUGHES, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ACCRETIVE HEALTH, INC., *et al.*, Defendants.	Civil Action No. 13-cv-3688 Honorable Joan B. Gottschall

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT, CLASS CERTIFICATION AND PLAN OF ALLOCATION

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PRELIMINARY STATEMENT

Lead Plaintiff Pressure Controls, Inc. ("Plaintiff") respectfully submits this memorandum of points and authorities in support of its motion for final approval of the settlement of this securities class action litigation against Defendants[1] (the "Litigation" or the "Action") for cash consideration of $3,900,000 (the "Settlement"), approval of the Plan of Allocation, and certifying the Settlement Class. The terms of the Settlement are set forth in the Stipulation of Settlement (the "Stipulation"), dated February 19, 2016. Dkt. No. 104-1.[2] As set forth herein, and in greater detail in the Declaration of Joshua L. Crowell in Support of Lead Plaintiff's Motion for Final Approval of Settlement, Class Certification, and Plan of Allocation, and Plaintiff's Counsel's Application for an Award of Attorneys' Fees and Expenses and Reimbursement of Lead Plaintiff's Costs, filed concurrently herewith (the "Crowell Declaration"), the merits of the Settlement are demonstrated by a comparison of the significant recovery to the time and expense required to prosecute the case to a final judgment, the outcome of which is uncertain.

The Settlement was achieved only after Lead Counsel conducted an extensive factual investigation of Plaintiff's claims, including interviewing numerous former Accretive employees and individuals employed by Accretive's customers; consulting with experts on accounting, hospital operations, and damages; exhaustively reviewing Accretive's SEC filings and other public disclosures, including those concerning its Restatement; thoroughly reviewing other publicly available information about the Company, such as analysts reports and articles; researching the applicable law; and engaging in arm's-length negotiations during and after mediation. Having thus attained a thorough understanding of the strengths and weaknesses of the Settlement Class's claims, Plaintiff and Lead Counsel are confident that the Settlement's terms are fair and reasonable and provide a great recovery.

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[1] Defendants are Accretive Health, Inc. ("Accretive"), Mary A. Tolan ("Tolan"), John T. Staton ("Staton"), and James M. Bolotin ("Bolotin").

[2] Unless otherwise defined herein, all capitalized terms that are not defined herein have the same meanings as set forth in the Stipulation.

Reaction to the Settlement has been favorable so far. More than 23,800 Claim Packages were sent out to potential Settlement Class Members explaining, among other things, the terms of the proposed Settlement. To date, there has not been a single objection to the Settlement, the Plan of Allocation, or to Plaintiff's Counsel's application for attorneys' fees and Lead Plaintiff's cost reimbursement. Nor has anyone requested to be excluded from the Settlement.[3] *See* Declaration of Carole K. Sylvester Regarding (A) Mailing of the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fee and Expenses, and Settlement Hearing and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Internet Posting, and (D) Requests for Exclusion Received to Date (Dkt. No. 110) ("Sylvester Decl.") at ¶ 15. For this and other reasons set forth below, Plaintiff respectfully requests the Court to grant final approval of the Settlement and Plan of Allocation as fair, reasonable, and adequate to Settlement Class Members.[4]

ARGUMENT

I. The Settlement Is Fair, Reasonable, and Adequate and Should Be Approved

A. Standard for Judicial Approval of a Class Action Settlement

"Compromises of disputed claims are favored by the courts." *Clarion Corp. v. Am. Home Prods. Corp.*, 494 F.2d 860, 863 (7th Cir. 1974) (citing *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910)). This policy is particularly strong where complex class action litigation is concerned. *Air Line Steward & Stewardesses Ass'n., Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166-67 (7th Cir. 1980). Although the parties to the Action believe they have reached a just compromise, Fed. R. Civ. P. 23(e) requires court approval for settlement of a class action. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996).

"A district court may approve a class action settlement if it finds it to be fair, adequate, and

[3] The deadline to request exclusion from the Settlement or to object to the Settlement, the Plan of Application, or the fee application is June 7, 2016.

[4] This memorandum focuses primarily on the legal standards for approval of a class action settlement under Fed. R. Civ. P. 23(e). For a more complete factual recitation than set forth herein, Plaintiffs' Counsel respectfully refer the Court to the Crowell Declaration filed concurrently herewith.

reasonable." *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014) (citing Fed. R. Civ. P. 23(e)(2)); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011). A strong presumption of fairness exists when the settlement is the result of extensive arm's-length negotiations. *See* 4 NEWBERG ON CLASS ACTIONS, §11.41 (4th ed. 2010); *see also Great Neck Capital Appreciation Inv. P'ship, L.P., v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002). In assessing a proposed class action settlement's fairness, reasonableness, and adequacy, courts in this Circuit consider the following factors: (1) the strength of plaintiff's case compared to the amount of the settlement; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the opinions of counsel; and (5) the stage of the proceedings and amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006); *see also Isby*, 75 F.3d at 1199.

Deference should be given to the opinion of experienced counsel who have handled the matter and are best suited to evaluate the case's strengths and weaknesses. *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 315 (7th Cir. 1980). Consequently, a court is "not called upon to determine whether the settlement reached by the parties is the best possible deal, nor whether class members will receive as much from a settlement as they might have recovered from victory at trial." *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000). Nor should a court substitute its own judgment of fairness and adequacy for that of the litigants and their counsel, *Armstrong*, 616 F.2d at 315, or transform settlement approval proceedings into a mini-trial on the merits. *See Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987); *Armstrong*, 616 F.2d at 314-15. Rather, courts should view settlements in their entirety and consider the facts "in the light most favorable to the settlement." *Isby*, 75 F.3d at 1199.

Here, the Settlement was negotiated at arm's length with the substantial assistance of Jed D. Melnick, Esq., who is highly experienced in mediating securities class actions. Crowell Decl. at ¶¶ 53-56. Further, the attorneys who conducted the settlement negotiations for the Settlement Class have many years of experience in litigating complex securities class actions and were thoroughly familiar with the strengths and weaknesses of the Action. *See* Dkt. Nos. 24-4 & 24-5 (firm resumes).

Both Plaintiff and Defendants were fully prepared to continue to litigate rather than settle for a sum either party deemed unreasonable, as evidenced by the fact that the Parties could not reach a settlement until more than three months after the mediation, during which time the Court could have issued its decision on the motion to dismiss. Crowell Decl. at ¶¶ 55-57. Accordingly, Plaintiff's Counsel's decision to settle should be given deference. *See Armstrong*, 616 F.2d at 315.

As explained below and in the Crowell Declaration, when examined under the applicable criteria, the Settlement is a good result for the Settlement Class and warrants approval by the Court. The Settlement achieves an immediate and substantial recovery and is unquestionably superior to the possibility that, were the Action to proceed to trial or subsequent appeal, there may be a smaller net recovery or no recovery at all.

B. The Settlement Meets the Seventh Circuit Standard for Approval

1. The Recovery Is a Good Result Compared to the Strength of the Merits

The first factor—comparing the strength of Plaintiff's claims against the benefits of the Settlement—is the most important consideration. *See, e.g.*, *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 814 (E.D. Wis. 2009); *Armstrong*, 616 F.2d at 314. "[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985). As long as there are no "suspicious circumstances" surrounding a proposed settlement, a district court may properly within its discretion approve the settlement without quantifying "the net expected value of continued litigation." *See Wong*, 773 F.3d at 864.

Based on an analysis conducted by Plaintiff's damages expert, Plaintiff estimates that aggregate, classwide damages are $61.9 million. Crowell Decl. at ¶ 86. This estimate assumes that Plaintiff will fully prevail on the issue of whether it has standing to assert claims based on Defendants' statements made after Plaintiff's last purchase of Accretive stock. *Id.* If Plaintiff does not prevail on this issue, however, it would reduce damages by tens of millions of dollars. *Id.* Nonetheless, based on the $61.9 million damages estimate, the $3.9 million Settlement Amount represents a recovery of 6.3%, which is well within the range of settlement recoveries that are

routinely approved by courts. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 241 (3d Cir. 2001) (noting that typical recoveries in securities class actions range from 1.6% to 14%); *Brehm v. Capital Growth Fin., LLC*, No. 8:07CV254, 2010 WL 481008, at *2 (D. Neb. Feb. 4, 2010) ("The proposed settlement falls well within a range of what is considered fair, reasonable and adequate in that it amounts to approximately 3% of the total damages of 20 million dollars sought by the class, which compares favorably to the average recovery of 5%–6% in securities fraud class action.").

In determining whether to approve class action settlements, courts recognize that "[s]ecurities fraud litigation is long, complex and uncertain." *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *2 (N.D. Ill. Dec. 10, 2001). To prevail on its claim under Section 10(b) of the Securities Exchange Act of 1934, Plaintiff would have the burden of proving that: (1) Defendants made false or misleading statements or omissions; (2) of material fact; (3) with scienter; (4) in connection with the purchase of Accretive securities; (5) on which the Class justifiably relied; and (6) the actionable statements proximately caused the Class's damages. *See Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011). While Plaintiff believes that it would ultimately prevail on its claims, in view of the many hurdles between the pleading stage and a final appeal of any judgment in the Class's favor, the $3.9 million Settlement is an excellent result.

Plaintiff alleges that Defendants knowingly or recklessly inflated Accretive's financial results by improperly recognizing revenue that was not fixed or determinable, in violation of GAAP and SEC guidance. Crowell Decl. at ¶ 39. Consequently, Plaintiff alleges that Defendants misstated Accretive's historical financial results in the registration statements and prospectuses for its public stock offerings, quarterly and annual earnings press releases, and quarterly and annual SEC filings; made false and misleading statements concerning the Company's revenue recognition policies in its registration statements and annual SEC filings; and made false and misleading statements concerning the Company's financial results during investor conference calls. *Id.* at ¶ 38.

At the time of the Settlement, Defendants' motion to dismiss the operative Complaint was pending. In their motion, Defendants contended that the allegations in the Complaint did not state a claim because, among other things: (i) Plaintiff did not allege facts showing that Defendants knew, at

the time Accretive's revenues were publicly reported, that revenue recognition was improper; (ii) Plaintiff did not allege any contemporaneous objections to the Company's accounting practices; (iii) Defendants reasonably relied on Accretive's outside auditors, who contemporaneously reviewed and approved the Company's revenue accounting; and (iv) the more compelling inference is that Defendants and auditors concluded that revenue recognition was improper only at the end of the Class Period. Dkt. Nos. 88, 92. Although Plaintiff and its counsel were confident that the Complaint would survive the motion to dismiss, the outcome of any such motion was uncertain. *See, e.g.*, Crowell Decl. at ¶¶ 50-51, 99 (discussing potential weaknesses of Plaintiff's claims).

Had the Complaint survived the motion to dismiss, Plaintiff would have had to certify the class, which would have involved costly expert discovery on market efficiency. Further, Defendants would continue to vigorously litigate this case through summary judgment and trial. Indeed, had Plaintiff's claims as alleged in the Complaint survived the motion to dismiss, there was a risk that some or all of these claims could be dismissed at summary judgement, or that the jury could determine that Plaintiff had not established liability. If Plaintiff successfully established liability at trial, Plaintiff would then have to establish what portion of investor losses were caused by Defendants' actionable statements, as opposed to other factors. The determination of loss causation and damages is a complicated process and necessarily requires expert testimony. In the ensuing battle of competing witnesses, credibility toss-ups would be decided by the jury. *See In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 426 (S.D.N.Y. 2001). Even if the Class were to prevail at trial, the verdict might not survive post-trial motions or appeal. Thus, given the weaknesses of Plaintiff's claims and Defendants' highly skilled and resourced counsel, Lead Counsel was aware of the significant risk that judgment could be returned in favor of Defendants.

Moreover, as the Litigation is still at the pleading stage, it could have been several years before Settlement Class Members received any recovery due to the risk that other demands on Accretive's resources and insurance policies would affect its ability to fund any future substantial judgment or settlement. *See* Crowell Decl. at ¶¶ 84-85 (discussing serious concerns about the Company's ability to pay a judgment and the depletion of Defendants' applicable directors and

officers insurance coverage). Indeed, Plaintiff's decision to settle the Litigation took into account that Defendants' directors and officers insurance coverage that applies to Plaintiff's claims is limited, and that the expense of continued litigation would further reduce funds available for any settlement. *Id.* at ¶ 85. *See Wong*, 773 F.3d at 864 (affirming approval of settlement in part based on fact that "[i]nsurance proceeds to fund a settlement or judgment were a limited, wasting asset, *i.e.*, further defense costs would have reduced those funds.").

The Settlement eliminates all of the foregoing risks and allows for an immediate recovery to the Settlement Class, approximately three years after the Action was commenced. Such a recovery now, instead of years down the line, substantially increases its value to the Settlement Class.

2. The Complexity, Length, and Expense of Further Litigation Support Approval of the Settlement

When evaluating a settlement, a court must consider "the likely complexity, length, and expense of the litigation." *Isby*, 75 F.3d at 1199. "Shareholder class actions are difficult and unpredictable, and skepticism about optimistic forecasts of recovery is warranted," *Great Neck Capital*, 212 F.R.D. at 409, even more so after the passage of the PSLRA. *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000).

Plaintiffs' Counsel have handled securities class action litigation for more than twenty-five years and are intimately familiar with the arc of litigation such cases typically follow. *See* Dkt. Nos. 24-4 & 24-5 (firm resumes). For the Litigation to continue to trial, Plaintiffs would have to survive the motion to dismiss, obtain class certification,[5] conduct substantial merits and expert discovery, and defeat motions for summary judgment. The trial itself would be lengthy and involve numerous attorneys, witnesses, experts, and a voluminous amount of evidence. Motions for a new trial and appeals would likely follow.

Even if the Class could ultimately recover a larger judgment, this possibility must be weighed

[5] There is a substantial risk that certification would be denied or overturned on a Rule 23(f) appeal, or that a certified class could later be decertified. *See, e.g., In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 284 (S.D.N.Y. 1999) (approving settlement because there was "absolutely no guarantee that . . . decertification of portions or all of the class would not occur").

against years of delay and substantial additional litigation expenses—*e.g.*, the cost of electronic discovery, depositions, and experts. For this reason, where "the trial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court[,]" *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998), the recovery of a substantial sum certain today weighs in favor of the Settlement. *See Kaufman v. Am. Express Travel Related Servs.*, Co., No. 07-CV-1707, 2016 WL 806546, at *8 (N.D. Ill. Mar. 2, 2016) ("The time and cost for additional discovery, potential experts, trial, post-trial motions, and appellate proceedings weigh in favor of granting final approval.").

A illustrative example of the risks and delays inherent in securities litigation, even after a favorable jury verdict is a current Seventh Circuit case, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015). *Household* is a large securities class action that was filed in 2002. Plaintiffs obtained a jury verdict in their favor in May 2009 after a month-long trial. It was not until October 2013 that a judgment of $2.46 billion was entered due to post-verdict challenges. However, due to an appeal of this judgment, in May 2015, the Seventh Circuit vacated the judgment and held that the defendants were entitled to a new trial on certain issues. This new trial is scheduled for later this year. Thus, although plaintiffs were able to establish that defendants made false statements with scienter, plaintiffs and members of the *Household* class have yet to receive any compensation for defendants' securities fraud more than a decade after the action was filed.

3. The Reaction of Class Members Supports the Settlement

Courts consider the class's reaction when determining whether to approve a settlement. *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 958 (N.D. Ill. 2011). The fact that some class members object to a settlement does not by itself prevent the court from approving the agreement. *Mangone v. First USA Bank*, 206 F.R.D. 222, 227 (S.D. Ill. 2001) (collecting cases in which courts approved settlements despite objections); *Meyenburg v. Exxon Mobil Corp.*, No. 3:05-cv-15-DGW, 2006 WL 5062697, at *6 (S.D. Ill. June 5, 2006) (stating that nine objections is a "minuscule" amount). "A low rate of opt-outs or objections reflects favorably on a settlement." *Kaufman*, 2016 WL 806546, at *8. Here, as detailed below, Plaintiff and the Claims

Administrator employed a robust notice program to advise Settlement Class Members of the proposed Settlement and Plan of Allocation, including their right to object or request exclusion. Among other things, the Claims Administrator mailed out more than 23,800 copies of the Notice. Sylvester Decl. at ¶ 11. While the June 7, 2016 deadline for objections and requests for exclusion has not yet passed, none have been received so far. This reaction weighs heavily in favor of approving the Settlement.

4. The Settlement Is the Product of Good Faith, Arm's-Length Negotiations Between Experienced Counsel with the Assistance of a Mediator

Approval of a settlement is favored if it is "clearly and fairly arrived at through arms-length negotiations between and among some exceptionally talented attorneys, with help from some equally experienced and talented mediators." *See Williams v. Rohm & Haas Pension Plan*, No. 4:04-CV-0078, 2010 WL 1490350-SEB, at *4 (S.D. Ind. Apr. 12, 2010). The opinions of the attorneys who negotiated the deal are entitled to significant weight in determining whether a settlement is reasonable. *See, e.g.*, *Isby*, 75 F.3d at 1200; *In re Mexico Money*, 164 F. Supp. 2d at 1020. Here, Plaintiffs' Counsel have many years of experience in litigating securities class actions and have negotiated many other class action settlements that have been approved by courts across the country. *See* Dkt. Nos. 24-4 & 24-5 (firm resumes). Defendants are represented by national law firm Kirkland & Ellis LLP, which zealously defended its clients.

In large part because of an alarming development in Accretive's business outlook, Plaintiff was open to efforts to achieve early resolution of the Litigation. In the middle of briefing the pending motion to dismiss, Accretive announced that its largest customer, accounting for half of its revenues, had indicated that it would not renew its contract with the Company, causing a 50% fall in its stock price. *See* Crowell Decl. at ¶¶ 52-53. The parties agreed to participate in a private mediation and engaged a highly experienced third-party mediator, Jed D. Melnick, Esq. *Id.* at ¶ 53.

In advance of the mediation, Lead Counsel thoroughly analyzed Defendants' motion to dismiss arguments in consultation with its hospital operations and accounting experts. *Id.* at ¶ 54. Lead Counsel also consulted with its damages expert to get a better understanding of classwide

damages, including the potential reduction of damages if Plaintiff lost standing on certain statements. *Id.* On August 6, 2015, the Parties participated in an all-day mediation session before Mr. Melnick. *Id.* at ¶ 55. Both sides made detailed, adversarial presentations—followed by extended debate—about the merits of Plaintiff's claims and the defenses to those claims. *Id.* As part of the mediation, Defendants discussed certain documents that they expected to produce in discovery, which informed Plaintiffs' decision to settle, rather than to continue, the Litigation. *Id.* During these discussions, the parties addressed the chance that Plaintiff's claims would survive Defendants' motion to dismiss, what would be revealed during fact and expert discovery, class certification, and comparable settlements. *Id.* By the end of the mediation, the parties had not reached an agreement to settle. *Id.*

Following mediation, the parties engaged in numerous settlement communications, both orally and in written form, both directly and through Mr. Melnick. *Id.* at ¶ 56. Several months passed and the parties were still at an impasse. *Id.* In an effort to bridge this impasse, on November 17, 2015, Mr. Melnick issued a mediator's recommendation that the Litigation be settled for $3.9 million. *Id.* The parties accepted the mediator's recommendation on November 25, 2015. *Id.* These facts demonstrate that the Settlement was the result of arm's-length negotiations. Moreover, the fact that the $3.9 million Settlement Amount was proposed by an independent mediator who is experienced in mediating securities class actions bolsters the noncollusive nature of the Settlement. *See Wong*, 773 F.3d at 864 ("[I]mportantly, the settlement was proposed by an experienced third-party mediator after an arm's-length negotiation where the parties' positions on liability and damages were extensively briefed and debated.").

5. The Stage of the Proceedings and the Amount of Discovery Completed Weigh in Favor of Settlement

To ensure access to sufficient information to evaluate both the merits of the case and the adequacy of the settlement proposal, courts in this Circuit take into consideration the stage of the proceedings and the amount of discovery completed. *Rohm & Haas Pension Plan*, 2010 WL 1490350, at *7. The Seventh Circuit, however, has expressly rejected the contention that a district court should not approve a settlement without first "testing" plaintiffs' claims by ruling on the

motion to dismiss. *Wong*, 773 F.3d at 865 (stating that such a contention is "without merit").

Here, due to the PSLRA's heightened pleading standards and the automatic discovery stay, before filing the Complaint, Lead Counsel conducted an exhaustive factual investigation, including interviewing numerous former Accretive employees and individuals employed by the Company's customers, and consulting with hospital operations and accounting experts. Crowell Decl. at ¶ 61 (setting forth Lead Counsel's investigation and litigation efforts). Critically, Lead Counsel were able to scrutinize Accretive's Restatement disclosures, which set forth the nature of the Company's accounting violations, the reasons for such violations, and the extent of the financial misstatements. *Id.* at ¶ 37. With the able assistance of its experts, Lead Counsel closely analyzed the Restatement. *Id.* Further, as part of the mediation, Defendants discussed certain documents that they expected to produce in discovery. *Id.* at ¶ 55. Finally, Lead Counsel relied on an expert to estimate likely provable damages. *Id.* at ¶ 54.

Based on the foregoing investigation, consultations with experts, and mediation discussions with Defendants, Plaintiff and Lead Counsel were sufficiently well-informed to evaluate the strengths and weaknesses of the Action. "[E]xtensive formal discovery, when measured against the cost that would be incurred, would [not] place the parties in a better position than they are now to determine an appropriate settlement value of this litigation." *Kaufman*, 2016 WL 806546, at *10.

II. The Plan of Allocation Is Fair and Reasonable and Should Be Approved

Plaintiff also seeks approval of the proposed Plan of Allocation of the Settlement proceeds that was set forth in the Notice mailed to potential Settlement Class Members. A court's evaluation of a plan of allocation in a class action is governed by the same standards of review applicable to the settlement as a whole—the plan must be fair and reasonable. *See Great Neck Capital*, 212 F.R.D. at 410 (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992)). An allocation formula must only have a reasonable, rational basis, particularly if recommended by "experienced and competent" Plaintiffs' Counsel. *White v. Nat'l. Football League*, 822 F. Supp. 1389, 1420 (D. Minn. 1993). "[P]lans that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-cv-525 (GEB), 2007 WL

4225828, at *5 (D.N.J. Nov. 28, 2007). The objective of a plan of allocation is to provide an equitable basis upon which to distribute the settlement fund among eligible class members.

Here, the Plan of Allocation was developed by Lead Counsel's damages expert and reflects an assessment of the theories of the claims asserted in the Action. Crowell Decl. at ¶ 65. In particular, damages are calculated based upon the timing of securities purchases and sales, giving effect to the removal of artificial inflation in the price of Accretive Securities after the disclosure of corrective information to the market. *Id.* The Plan of Allocation also attempts to eliminate the effects of market forces unrelated to the alleged misrepresentations and omissions and factors in the relative strengths and weaknesses of the corrective disclosure dates and movement of the price of Accretive Securities. *Id.* For these reasons, the Plan of Allocation will result in an equitable distribution of the proceeds among all Settlement Class Members who submit valid claims, which comports with Section 21 D of the PSLRA, 15 U.S.C. §78u-4(e)(1). Plaintiffs submit that the Plan of Allocation is a fair and reasonable method for allocating the Net Settlement Fund among the members of the Class, as further demonstrated by the absence of any objections to it so far.

Further, as stated in the Notice, "[n]o distributions to Authorized Claimants who would receive less than twenty dollars ($20.00) will be made because of the administrative expenses of processing and mailing such checks." Courts have found such provisions in a plan of allocation to be reasonable. *See, e.g.*, *Slipchenko v. Brunel Energy, Inc.*, No. CIV.A. H-11-1465, 2015 WL 5332219, at *2 (S.D. Tex. Sept. 14, 2015) (stating that "distributing very small amounts is not economically feasible" and approving distribution of amounts over $20.00).

III. The Class Has Received Adequate Notice

Procedural due process requires that in a class action, notice of the settlement and an opportunity to be heard must be given to absent class members. *See* Fed. R. Civ. P. 23(e). Trial courts are given substantial latitude to determine fair and expedient procedures. *See, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *Gottlieb v. Wiles*, 11 F.3d 1004, 1013 (10th Cir. 1993) (content and form left to the court's discretion). The generally accepted method to provide notice to class members is by direct mail and publication in newspapers. *See Diamond Chem. Co.*,

Inc. v. Akzo Nobel Chems. B.V., 205 F.R.D. 33, 34 (D.D.C. 2001); MANUAL FOR COMPLEX LITIGATION (FOURTH) §21.312, at 294 (2004).

The Notice advises Settlement Class Members of the proposed Settlement and Plan of Allocation, including the Settlement terms, claims, releases, and distribution of the Net Settlement Fund; the process for objecting or opting out; instructions on submitting a claim; all pertinent deadlines; the contact information of Lead Counsel and the Claims Administrator; and the details of the Final Approval hearing. Sylvester Decl. at Exh. A (copy of mailed Notice). To date, more than 23,800 copies of the Notice have been mailed to potential Settlement Class Members and Nominees. *Id.* at ¶ 11. In addition, the Summary Notice was published in the *Investor's Business Daily* on April 13, 2016, and transmitted over the *PR Newswire* on April 14, 2016. *Id.* at ¶ 14 & Exh. D. Finally, the Notice, Proof of Claim, Stipulation, and Preliminary Approval Order were posted on a website dedicated to the Litigation on March 8, 2016, and a toll-free phone number was set up to accommodate any questions from potential claimants. *Id.* at ¶¶ 12-13.

Further, Lead Counsel's application for attorneys' fees and expenses will be posted to the Litigation's website so that Settlement Class Members will know the specific amount of fees and expenses being sought before the June 7, 2016 deadline for objections, as required by this Court. *See Kaufman*, 2016 WL 806546, at *6.

Substantive due process requires that a notice "fairly apprise the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *See Consol. Edison, Inc. v. Northeast Utils.*, 332 F. Supp. 2d 639, 652 (S.D.N.Y. 2004). The notice program employed for this Settlement meets that standard.

IV. Certification of a Settlement Class Is Appropriate and Warranted

The Seventh Circuit and courts within this Circuit have long articulated a "strong policy favoring class actions in securities fraud actions." *In re Gen. Instrument Corp. Sec. Litig.*, No. 96 C 1129, 1999 WL 1072507, at *4 (N.D. Ill. Nov. 18, 1999); *Tatz v. Nanophase Techs. Corp.*, No. 01-C-8440, 2003 WL 21372471, at *3 (N.D. Ill. June 13, 2003) ("Class certification is particularly appropriate in securities cases."); *In re Bank One S'holders Sec. Litig.*, No. 00 CV 0767, 2002 WL

989454, at *2 (N.D. Ill. May 14, 2002) ("[S]ecurities fraud cases are uniquely situated to class action treatment since the claims of individual investors are often too small to merit separate lawsuits."). For this reason, "[t]he Seventh Circuit Court of Appeals has liberally construed Rule 23 in shareholder suits." *Tatz*, 2003 WL 21372471, at *3.

Plaintiffs must show that the four requirements of Fed. R. Civ. P. 23(a) and of at least one subsection of Fed. R. Civ. P. 23(b) are met. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 606-07, 614 (1997); *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 985 (7th Cir. 2002). The four prerequisites of Rule 23(a) are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a); *see also Amchem*, 521 U.S. at 606-07. Additionally, where, as here, plaintiffs seek to certify a class under Rule 23(b)(3), they must also show that: (1) common issues predominate and that (2) class treatment is the superior method to resolve the dispute. Fed. R. Civ. P. 23(b)(3); *Bank One*, 2002 WL 989454, at *7.

The Court's Preliminary Approval Order (Dkt. No. 108), which granted conditional class certification for settlement purposes, defines the proposed Settlement Class as follows:

> [A]ll Persons who purchased or otherwise acquired the common stock of Accretive Health, Inc. ("Accretive" or the "Company"), purchased or otherwise acquired call options on Accretive common stock, or wrote put options on Accretive common stock, between May 20, 2010, through December 30, 2014, inclusive (the "Settlement Class"), and were allegedly damaged thereby. Excluded from the Settlement Class are Defendants, members of the immediate families of the Individual Defendants, the officers and directors of Accretive during the Settlement Class Period, the legal representatives, heirs, successors, or assigns of any of the foregoing excluded Persons and any entity in which any of the Defendants have or had a controlling interest. Also excluded from the Settlement Class are those Persons who submit valid and timely requests for exclusion in accordance with the requirements set forth in the Notice.

For the reasons set forth in Plaintiff's brief in support of preliminary approval of the Settlement (Dkt. No. 103 at pp. 10-13), each of the requirements under Rule 23(a) and the Rule 23(b)(3) requirements has been met. The Settlement Class should be therefore be finally certified for settlement purposes.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the Settlement in its entirety and enter the Final Judgment and Order of Dismissal with Prejudice.

Dated: May 24, 2016

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By: */s Joshua L. Crowell*

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PROOF OF SERVICE BY ELECTRONIC POSTING PURSUANT TO NORTHERN DISTRICT OF ILLINOIS ECF AND LOCAL RULES

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old.

On May 24, 2016, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Northern District of Illinois, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of May, 2016, at Los Angeles, California.

s/ Joshua L. Crowell
Joshua L. Crowell

Mailing Information for a Case 1:13-cv-03688 Hughes v. Accretive Health, Inc. et al

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Manual Notice List

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