UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re GEROVA FINANCIAL GROUP, LTD. SECURITIES LITIGATION	No. 11 MD 2275-SAS ECF CASE
In re STILLWATER CAPITAL PARTNERS INC. LITIGATION	No.11-CV-2737-SAS ECF CASE
MARGIE GOLDBERG, ET AL., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. GEROVA FINANCIAL GROUP, LTD., ET AL., Defendants.	No. 11-CV-07107-SAS ECF CASE
ALI ARAR, ET AL., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, vs. GEROVA FINANCIAL GROUP, LTD., ET AL., Defendants.	No. 11-CV-3081-SAS ECF CASE

MEMORANDUM IN SUPPORT OF THE STILLWATER PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE PROPOSED SETTLEMENT, CLASS CERTIFICATION, AND THE PLAN OF ALLOCATION

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Lead Plaintiffs Maurice Hanan and Prudent Partners (the "*Goldberg* Plaintiffs"),[1] as well as Lead Plaintiffs Jack Hafif, Morris Missry, Valerie Misrahi, Linda Zonana, and Janet Dayan Rutland Baker, Bruce Henry, and Eleanore Kram (the "*In re Stillwater* Plaintiffs", and with the *Goldberg* Plaintiffs, the "Stillwater Plaintiffs"),[2] individually and on behalf of all other members of the Stillwater Class (as defined below) respectfully submit this Memorandum in Support of their Motion seeking Final Approval of the Proposed Settlement, Certification of the Settlement Class, and Approval of the Plan of Allocation. The settlement terms agreed upon by the parties are set forth in the Stipulation of Settlement,[3] which was preliminarily approved by this Court by Order dated February 5, 2014 (Dkt. No. 75). The terms of the agreement to settle set forth in the Stipulation of Settlement are referred to generally herein as the "Settlement."

I. INTRODUCTION

The *In re Stillwater* and *Goldberg* actions (the "Actions") are part of a consolidated multidistrict case comprised of the following constituent class actions: *In re Stillwater Capital Partners, Inc.*, No. 11-cv-2707-SAS (S.D.N.Y.) ("*In re Stillwater*"), *Goldberg v. Gerova Financial Group, Ltd.*, No. 11-cv-7107-SAS (S.D.N.Y.) ("*Goldberg*"), and *Arar v. Gerova Financial Group, Ltd.*, No. 11-cv-3081 (S.D.N.Y.) ("*Arar*") (collectively, the actions are the "Multidistrict Action"). *Arar* is brought by and on behalf of persons who bought *Gerova* stock

[1] The *Goldberg* Plaintiffs are the lead plaintiffs in the action styled *Goldberg v. Gerova Financial Group, Ltd.*, No. 11-CV-07107-SAS.

[2] The *In re Stillwater* Plaintiffs are the lead plaintiffs in the action styled *In re Stillwater Capital Partners*, No.11-CV-2737-SAS.

[3] Unless otherwise defined, capitalized terms herein have the same meanings as in the Stipulation of Settlement dated February 4, 2014, (Dkt. No. 73) (the "Stipulation"). The named defendants in the *Arar* action are Gerova Financial Group, Ltd., Gary T. Hirst, Arie Jan van Roon, Michael Hlavsa, Joseph J. Bianco, Keith Laslop, Stillwater Capital Partners, Inc., Stillwater Capital Partners, LLC, Jack Doueck, and Richard Rudy (the "Open-Market Defendants").

on the open market (the "Open-Market Class"). *In re Stillwater* and *Goldberg* are brought by and on behalf of certain investors in funds managed by the Stillwater Defendants (the "Stillwater Funds" and the "Stillwater Class", and together with the Open-Market Class, the "Classes" or "Class Members.")

The reasons provided by the Open-Market Class Plaintiffs in support of their motion for final approval of the Settlement apply with equal force to the Stillwater Class, and the Stillwater Plaintiffs incorporate them by reference. In sum, the Settlement provides the Classes with the last best chance to maximize through settlement what value remains to their investment by distributing nearly all that is left available from defendants' applicable insurance policies and returning to the Stillwater Class what remains of the assets they contributed to Gerova (the "Stillwater Assets"). The negotiations necessary to reach this point have been arduous, have taken two years, and eventually became a game of inches. If the Court does not grant final approval of the Settlement, it is difficult to imagine another settlement being reached, let alone a better one being reached; the Stillwater Class would have to take the case to judgment and attempt to find assets to satisfy any judgment they may obtain. But by that time, the insurance funds now available for distribution will have dissipated entirely, and the Stillwater Assets may have lost value from lack of funds to maintain them or may have been sold and the sale proceeds dissipated.

Through the Settlement, the parties aim to bring to a resolution all of Actions, as well as claims asserted in the bankruptcies of Gerova and a major Stillwater fund, and a lawsuit brought by large investors in Stillwater funds. Sending the Stillwater Plaintiffs and the Defendants in the Stillwater Actions back to the drawing board jeapordizes the entire Settlement and prevents settlement of all the claims and actions the Settlement seeks to resolve.

The fairness of the Settlement is demonstrated by, among others: the complexity of the Action; the stage of the proceedings; the significant risk of continuing litigation, including establishing and maintaining the action as a class action throughout trial; and the time and expense that would be required to prosecute the case to a final judgment and through any ensuing appeals. For the reasons set forth herein, the Stillwater Plaintiffs respectfully request that the Court grant final approval of the Settlement and the Plan of Allocation, finally certify the Settlement Class, and enter the proposed Final Judgment and Order of Dismissal with Prejudice.

II. RELEVANT PROCEDURAL HISTORY

The Open-Market Plaintiffs' brief succintly sets out the Multidistrict Action's procedural history, and the Stillwater Plaintiffs incorporate it by reference. Briefly, in 2008 and 2009, Stillwater investors made mounting requests to redeem their investments. At the same time, the Stillwater Funds did not have enough cash flows to fund all of their operations. The Stillwater Funds were also illiquid, and did not pay out investors' redemptions.

To try to resolve these problems, the Stillwater Defendants agreed to be acquired by Gerova, then a holding company with no assets except a cash bank account. The Stillwater Defendants provided the Stillwater Class a proxy, with an attached letter from certain of the Gerova Defendants (the "Proxy"), requesting that Stillwater investors approve the Stillwater Funds' acquisition by Gerova as part of a larger deal in which Gerova acquired more companies and funds (the "Business Combination").

Stillwater investors' consideration was to be Gerova registered stock. But they never got the stock, and instead were given unregistered stock which they could not lawfully resell on a public market before a year had passed. By that time, Gerova was collapsing amidst accusations of fraud. These actions followed:

- *Goldberg*, filed March 22, 2011, brought on behalf of all investors in Stillwater as of January 20, 2011;[4]
- *In re Stillwater*, two consolidated actions filed on April 21 and June 6, 2011;[5]
- *Arar*, filed on May 5, 2011, on behalf of certain open-market purchasers of Gerova stock.[6]

By way of background, the *Arar* Action alleges that the Open-Market Defendants issued materially false and misleading statements between January 8, 2010 and February 23, 2011 concerning the quality of Gerova's balance sheet and concealing that Gerova was a "pump-and-dump" market manipulation scheme. Specifically, the Open-Market Plaintiffs allege that Gerova failed to inform investors that, among other things, (i) the company was unprofitable and in poor financial condition; (ii) the Stillwater Funds were in poor financial condition at the time they were acquired; (iii) the company engaged in several transactions with related parties and entities

[4] Defined as "All persons or entities who were investors in the Stillwater Funds, other than the Named Defendants or the officers and directors of Gerova or of any subsidiary of Gerova, and such excluded persons family members (only spouse and minor children), affiliates and entities controlled by them, who were promised the common stock of Gerova in exchange for their interests in the Stillwater Funds pursuant to a share exchange agreement dated on or about December 23, 2009, and that was completed on January 20, 2010."

[5] Defined as "all persons or entities, other than the Named Defendants or the officers and directors of Gerova or any subsidiary of Gerova, and such excluded persons' family members (only spouse and minor children), affiliates and entities controlled by them, who invested in any of the Stillwater Funds and whose interests in any of the Stillwater Funds were transferred in the transactions between Stillwater and Gerova consummated on January 20, 2010, and who (1) submitted a request for full or partial redemption of their accounts in the Stillwater Funds prior to December 23, 2009 and have not been paid in full on those redemption requests and/or (2) received Gerova Series A Preferred Stock, which was converted or was to be converted into restricted, unregistered Gerova ordinary shares."

[6] The Open-Market Class is defined as "all persons or entities, other than the Named Defendants or the officers and directors of Gerova or of any subsidiary of Gerova, and such excluded persons defined as family members (only spouse and minor children), who purchased or otherwise acquired Gerova securities from January 8, 2010, through and including February 23, 2011."

controlled by Gerova insiders; and (iv) insiders were permitted to sell Gerova's securities at artificially inflated prices.

Here, the *Goldberg* action alleges that the Stillwater and Gerova Defendants both made false and misleading statements to Stillwater investors in connection with the Proxy, which omitted to disclose that every other transaction described in the Business Combination (other than transactions that did not close) was a related party transaction, and that in so doing they both violated the securities laws and breached their fiduciary duties. The *In re Stillwater* action alleges that the Stillwater Defendants and certain other defendants breached their fiduciary duties in not permitting investors to completely redeem their funds, in never providing investors with Gerova registered stock, in allowing Gerova's assets to deteriorate, and in transferring substantial assets to a third party.

Shortly after the actions were filed, the Stillwater Defendants reached an agreement with Gerova providing for the return of the assets the Stillwater Funds had provided to Gerova (the "Initial Unwind"). The Initial Unwind provided that the Stillwater Defendants would have a $23 million priority claim against the Stillwater Funds, and paid them $1.6 million a year to manage the funds after the Initial Unwind. Settlement negotiations between Plaintiffs and the Settling Defendants began in earnest almost immediately.

Between September and November, three amended complaints were filed in the three actions. All three survived, in part, the defendants' motions to dismiss in March to April of 2012. Discovery began, but was soon interrupted when Gerova filed for bankruptcy. From September 2011 through September 2013, the parties negotiated extensively under the auspices of Michael Young, Esq., and nearly reached a settlement, but talks broke down because the parties could not agree on the Unwind's terms. In the meantime, the case had become more

complex, as certain creditors successfully petitioned to put a major Stillwater Fund, Stillwater Assed Backed Offshore Fund Ltd. ("SWAB"), into bankruptcy.

For the next year, Plaintiffs, the Stillwater Defendants, the Open-Market Defendants, Gerova's liquidator, SWAB's liquidator/Chapter 11 reorganizer, unsecured creditors of SWAB, the committee of unsecured SWAB creditors, the Fund that had pushed SWAB into bankruptcy, and both Stillwater and Gerova's insurers negotiated the Settlement's terms. The negotiations have led to the Settlement.

III. ARGUMENT

A. Applicable Legal Standards: The Settlement Should Be Approved Because It Is Fair, Adequate, and Reasonable

A settlement of claims brought as a class action is subject to court approval after reasonable notice and a hearing. *See* Fed. R. Civ. P. 23(e)(1)-(2). A court will approve a settlement if it is "fair, adequate, and reasonable, and not a product of collusion." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation omitted). This determination falls within a court's sound discretion. *See Joel A. v. Giuliani*, 218 F.2d 132, 139 (2d Cir. 2000); *In re Visa Check/MasterMoney Antitrust Litig.*, 297 F. Supp. 2d 503, 509 (E.D.N.Y. 2003). In exercising such discretion, a court should be mindful of the "strong judicial policy in favor of settlements." *Wal-Mart*, 396 F.3d at 116 (internal quotations omitted); *see also ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 722 F.2d 988, 998 (2d Cir. 1983). This is particularly true in complex class actions, where "the courts have long recognized that such litigation 'is notably difficult and notoriously uncertain,' and that compromise is particularly appropriate." *In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989) (internal citations omitted). A court determines the fairness of a settlement by looking both at the terms of the settlement and the preceding negotiation process.

See Wal-Mart, 396 F.3d at 116 (citations omitted). With respect to the settlement process, a class action settlement enjoys a strong "presumption of fairness" where it is the product of arm's-length negotiations concluded by experienced, capable counsel after meaningful discovery. *Id.*; *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004).

With respect to the substantive terms of a settlement, courts in this Circuit examine the fairness, adequacy and reasonableness of a class action settlement utilizing the "*Grinnell* factors," to the extent they are applicable: "(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation." *Wal-Mart*, 396 F.3d at 117 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448. 463 (2d Cir. 1974) (citations omitted)). In applying the *Grinnell* factors, a court should not substitute its judgment for the judgment of the parties who negotiated the settlement, or conduct a "mini-trial" on the action's merit. *See Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982).

As set forth herein, the proposed Settlement is fair, reasonable and adequate according to the *Grinnell* factors. Counsel for the Stillwater Plaintiffs have thoroughly weighed the strengths and weaknesses of the claims and defenses thereto and, after extensive negotiations spanning two years, have reached an informed compromise. Under these circumstances, the Stillwater

Plaintiffs respectfully submit that the Settlement should be afforded the presumption of fairness, and that final approval should be granted.

B. The Settlement Is Entitled to a Presumption of Fairness Because It Is the Product of Arm's-Length Negotiations Among Experienced Counsel

As noted above, a strong initial presumption of fairness attaches to the proposed settlement if, as here, the settlement is reached by experienced counsel after arm's-length negotiations. Courts accord great weight to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation. *See In re Michael Milken & Assocs. Sec. Litig*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *Chatelain v. Prudential-Bache Sec., Inc*., 805 F. Supp. 209, 212 (S.D.N.Y. 1992).

A presumption of fairness is appropriate here. The Settlement was entered into by the parties in good faith, at arm's-length, and without a trace of collusion. *See* Declaration of Laurence M. Rosen In Support of the Stillwater Plaintiffs' Motion for Final Approval of the Prosposed Settlement, Class Certification, and the Plan of Allocation ("Rosen Decl."), filed herewith ¶ 21. In addition, in arriving at the Settlement, Counsel for Stillwater Plaintiffs had obtained a thorough understanding of the strengths and weaknesses of the claims through extensive investigation and motion practice, including the filing of an amended complaint and substantial briefing on Defendants' motions to dismiss. *Id.* at ¶¶ 17, 35.

Counsel for all parties in the Multidistrict Action engaged in extensive and lengthy negotiations to reach resolution of this Action, which also involved the participation of, among others, interested parties in the related Chapter 11 case, captioned *In re Stillwater Asset Backed Offshore Fund Ltd.*, Case No. 12-14140 (ALG) and the Chapter 15 case, captioned *In re Gerova Financial Group, Ltd., et al.*, Case No. 12-13641 (ALG), as well as the insolvency proceeding pending in the Supreme Court of Bermuda, captioned *In the Matter of Gerova Financial Group*

Ltd., Matter No. 2011 No. 369. Rosen Decl. ¶¶ 22-23, 32. After approximately two years of difficult negotiations, the Settling Parties agreed to the terms of a settlement and thereafter submitted the Settlement Agreement to the Court for preliminary approval, which was granted by order dated February 5, 2014. (Dkt. No. 75).

C. The Settlement Satisfies the *Grinnell* Factors

1. Continued Litigation Would Be Complex, Expensive, and Protracted

Courts have consistently recognized that the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement, especially in a securities class action. *See, e.g., In re AOL Time Warner, Inc. Sec. & ERISA Litig*., MDL No. 1500, 02 Civ. 5575 (SWK), 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *Hicks v. Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *5-6 (S.D.N.Y. Oct. 24, 2005); *In re Alloy, Inc. Sec. Litig*., No. 03 Civ. 1597 (WHP), 2004 WL 2750089, at *2 (S.D.N.Y. Dec. 2, 2004) (granting approval, noting that complex securities fraud issues "were likely to be litigated aggressively, at substantial expense to all parties").

The Defendants in the Stillwater Actions filed motions to dismiss; the Court granted them in part. In the Goldberg Action, the Court dismissed the claims under Section 14 of the Securities and Exchange Act of 1934, and dismissed certain of the *Goldberg* Plaintiffs' claims that the defendants breached their fiduciary duties. In the *In re Stillwater* Action, the Court dismissed all claims except the claims that the Stillwater Defendants breached their fiduciary duties because they did not not honor redemption requests and the claim that the Gerova Defendants breached their fiduciary duties and breached a contract because they did not register the Stillwater investors' Gerova stock.

Regardless of the ultimate outcome, further litigation would have been expensive and complex. The parties would have had to fully litigate the issue of class certification, which

involves issues overlapping with the merits, and defendants likely would have procured expert opinion(s) on the issue of market efficiency, loss causation, and class wide damages.

With respect to discovery more generally, Counsel for the Stillwater Plaintiffs would anticipate, given the complexities of the issues involved in the Action, reviewing hundreds of thousands or millions of pages of documents and taking numerous depositions.[7] Following the close of merits discovery, the parties would engage in expert discovery. The Stillwater Plaintiffs would have to procure expensive and complex expert testimony to prove loss causation and damages. The Defendants in the *Stillwater* Actions would present their own expert testimony to claim that the alleged stock drops were not proximately caused by their actions, as the *Stillwater* Plaintiffs alleged. Consequently, expert discovery and trial preparation would be expensive and complex.

The parties resolved this action before full briefing on class certification, and before summary judgment and *Daubert* motions, thereby avoiding contentious motion practice, a complex and costly trial, and a likely appeal. Even if a class had been certified and the complaint survived the Defendants in the *Stillwater* Actions' likely motion(s) for summary judgment, continued prosecution of the action would be complex, expensive, and lengthy, with a more favorable outcome than the Settlement highly uncertain. At summary judgment, the Stillwater Plaintiffs would have faced numerous hurdles, including the Stillwater Defendants' challenges to loss causation, and arguments that there were no actionable misrepresentations during the Class Period. Moreover, regardless of which party might prevail at trial, an appeal likely would ensue.

[7] The Stillwater Plaintiffs have already reviewed tens of thousands of pages of documents.

Moreover, the Settlement is one whole agreement. If the Stillwater Plaintiffs and the Defendants in the Stillwater Actions are sent back to the drawing board, so are the parties to all of the other actions and claims that are resolved through the Settlement. The parties to all these claims and actions would again have to go through the enormous expense and effort of settling all the actions and claims at once, or would have to try them all.

Indeed, the present value of a certain recovery at this time, as opposed to the likelihood that, down the road, the remaining distributable assets would have been dissipated, supports approval of a settlement that eliminates the expense and delay of continued litigation, as well as the risk that the Stillwater Class could receive no recovery. The Settlement offers the opportunity to provide definite recompense to the Stillwater Class now. *See Hicks*, 2005 WL 2757792, at *6 ("Further litigation would necessarily involve further costs; justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."). Thus, the likely duration and expense of further litigation also supports a finding that the Settlement is fair, reasonable, and adequate and weighs in favor of final approval.

2. The Lack of Objections and/or Opt-Outs Support Final Approval

The presence or absence of valid objections or investors electing to opt out of the Settlement provides evidence of the Stillwater Class's views of the terms of the Settlement and their desire to share in the proceeds thereof. *See RMED Int'l, Inc. v. Sloan's Supermarkets, Inc.*, No. 94 Civ. 5587, 2003 WL 21136726, at *1 (S.D.N.Y. May 15, 2003). Pursuant to the Preliminary Approval Order, the Stillwater Class members were notified that they have until May 19, 2014 to request exclusion from the Settlement class and until May 19, 2014 to object to the Settlement. *See* Declaration of Donald R. Hall Concerning Mailing of Notice of Pendency and Proposed Settlement of Class Action and Verification of Claim and Release ("Hall Decl.

Concerning Mailing"), filed herewith, ¶ 7. As of March 7, 2014, Notice had been furnished to 886 identified members of the Stillwater Class. *Id.* ¶ 5.

Under the schedule provided in the Preliminary Approval Order and Open-Market Class Notice, requests for exclusion are due May 12, 2014 and objections are due May 19, 2014. As of the date of filing of these papers, no objections or exclusions have been received from Stillwater Class members. *Id*. ¶¶ 9, 10. The Stillwater Plaintiffs will file a supplemental brief promptly after May 19, reporting to the Court on requests for exclusion and objections, if any.

3. The Stillwater Plaintiffs Had Sufficient Information to Make Informed Decisions as to Settling this Case

The third *Grinnell* factor, which looks to the "stage of the proceedings and the amount of discovery completed," *Wal-mart*, 396 F.3d at 117, focuses on whether the plaintiffs "obtained sufficient information through discovery to properly evaluate their case and to assess the adequacy of any settlement proposal." *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 2207 (JGK), 2010 WL 3119374, at *3 (S.D.N.Y. Aug. 6, 2010).

The volume and substance of the Stillwater Counsel's knowledge of the merits and potential weaknesses of the Stillwater Plaintiffs' claims are unquestionably adequate to support the Settlement in this case. By the time the parties agreed to settle this Action, Counsel for the Stillwater Plaintiffs had, among other things:

- researched, investigated, and drafted the initial class action complaint and the amended complaint;
- researched and drafted the motions to appoint Lead Plaintiffs;
- researched and drafted memoranda opposing defendants' motion to dismiss;
- researched and drafted memoranda seeking class certification;
- consulted with economic experts in the areas of loss causation, market efficiency, and damages;
- reviewed tens of thousands of pages of documents produced by Gerova;
- engaged in extensive and lengthy negotiations to reach resolution of the Action,

> which also involved the participation of the Stillwater Defendants, the *Arar* Defendants, Gerova's liquidator, SWAB's liquidator/Chapter 11 reorganizer, unsecured creditors of SWAB, the committee of unsecured SWAB creditors, the Fund that had pushed SWAB into bankruptcy, and both Stillwater and Gerova's insurers.

See Rosen Decl. ¶ 33.

Thus, Counsel for the Stillwater Plaintiffs were extremely knowledgeable of the relevant issues and able to recommend the Settlement. *See Global Crossing*, 225 F.R.D. at 458 ("the question is whether the parties had adequate information about their claims"). Accordingly, this factor also supports approval of the Settlement.

4. The Stillwater Plaintiffs Faced Significant Risks in Establishing Liability and Damages

In analyzing the risks of establishing liability, a court does not "need to decide the merits of the case or resolve unsettled legal questions." *Cinelli v. MCS Claim Servs., Inc*., 236 F.R.D. 118. 121 (E.D.N.Y. 2006) (internal quotations and alterations omitted). Rather, courts should weigh the likelihood of success on the merits against the relief provided by the Settlement. *Id*. Courts routinely approve settlements where plaintiffs would have faced significant legal and factual obstacles to establishing liability. *See Global Crossing*, 225 F.R.D. at 459.

In assessing the Settlement here, the Court should balance the benefits afforded the Stillwater Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463. Securities class actions present hurdles to proving liability that are particularly difficult for plaintiffs to meet. *See AOL Time Warner*, 2006 WL 903236, at *11 (noting that "[t]he difficulty of establishing liability is a common risk of securities litigation"); *Alloy*, 2004 WL 2750089, at *2 (finding that issues present in a securities action presented significant hurdles to proving liability).

While Counsel for the Stillwater Plaintiffs believe that they would prevail on their claims, they also recognize that they would face substantial hurdles. The remaining claims would likely be more difficult to prove than the claims that were dismissed. The *Goldberg* Plaintiffs' remaining securities claims would require them to prove that the Defendants acted with scienter, a difficult and unpredictable task. The *In re Stillwater* Plaintiffs may not be able to show that the Stillwater Defendants breached their fiduciary duties in failing to honor redemption requests if these Defendants convinced the jury that the economic collapse of 2008-2009 left them without enough cash to honor the requests, and may not be able to recover anything on their breach of contract claim, since the defendant as to that claim is Gerova and it is in bankruptcy.

Indeed, the Defendants in the *Stillwater* Actions have articulated arguably credible defenses that could be accepted by the Court or jury. Indeed, proving liability and establishing damages was far from a foregone conclusion. *See Michael Milken*, 150 F.R.D. at 54 (approving settlement of a small percentage of the total damages sought because the magnitude of damages often becomes a "battle of experts...with no guarantee of the outcome"); *see also In re Paine Webber Ltd. P'ships Litig*., 171 F.R.D. 104, 129 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997) (same).

Disentangling the market's reaction to various pieces of news to establish loss causation would have required complicated expert testimony and use of methodologies that are debated among economists. "In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions." *See In re Warner Commc'ns Sec. Litig*., 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). For these reasons, vigorous challenges to

loss causation and damages pose a significant risk to the Stillwater Class at summary judgment, trial, and on appeal. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 716 (11th Cir. 2012) (plaintiffs' jury verdict in a Section 10(b) securities fraud reversed based on failure to prove loss causation); *In re Scientific Atlanta, Inc. Sec. Litig*., 754 F. Supp. 2d 1339, 1379-80 (N.D. Ga. 2010) (granting motion for summary judgment on the element of loss causation on the ground that class plaintiffs did not meet their burden of disentangling the fraud-related and non-fraud-related portions of the stock decline).

Indeed, throughout the course of the litigation and the settlement process, the Defendants in the Stillwater Actions repeatedly have denied any allegation of wrongdoing associated with the claims asserted in the actions. For example, the Defendants in the Stillwater Actions contended that the disclosures concerning the Company's related-party transactions in the Proxy were accurate and not misleading; that the Defendants in the Stillwater Actions did not act with scienter in making or causing any alleged material misrepresentation or omission; and that they did not breach their fiduciary duties to the Stillwater Class; that the Stillwater Plaintiffs and the Stillwater Class suffered no damages because the decline in Gerova's share price during February 2011 was not a result of any prior misstatement or omission by the Defendants in the Stillwater Actions.

Given the uncertain prospects for success at trial and on appeal, settlement at this point in the litigation is highly beneficial to the Stillwater Class. The class faced a very real risk, if not a probable result, of no recovery, particularly in light of the bankruptcy proceedings involving Gerova, which are pending in both the United States and in Bermuda. The Settlement, however, will provide tangible and certain relief to the Stillwater Class now, and "without subjecting them to the risks, complexity, duration, and expense of continuing litigation." *Global Crossing*, 225

F.R.D. at 456- 57; *see also Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002).

5. Risks of Maintaining Class Action Status Through Trial

Defendants surely would have raised vigorous challenges to class certification, particularly in light of *Halliburton*. But even if the class were certified, the Stillwater Defendants may have moved to decertify it before trial or on appeal at the conclusion of trial, as class certification may always be reviewed. Indeed, Federal Rule of Civil Procedure 23(c) authorizes a court to decertify a class at any time. *See Chatelain*, 805 F. Supp. at 214 ("Even if certified, the class would face the risk of decertification."); *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130, U.A.*, 657 F.2d 890, 896 (7th Cir. 1981) ("a favorable class determination by the court is not cast in stone"). Given such risk, this *Grinnell* factor weighs in favor of approval of the Settlement.

6. Ability to Withstand Greater Judgment

It is highly questionable whether the Defendants in the Stillwater Actions are capable of withstanding a greater judgment, particularly in light of Gerova's insolvency. Indeed, if the case continued, it is likely that the Stillwater Class Members would receive little or nothing for their claims. In contrast, the Settlement Consideration of $2,058,000 in cash and the return of the Stillwater assets whose value is estimated at $8-50 million permits an average recovery with an economic value of approximately $0.18-0.088 per dollar invested as of December 31, 2009 per share before deduction of Court-approved fees and expenses, and costs of notice and claims administration. Accordingly, this factor also supports approval of the Settlement.

7. The Settlement Amount Is In the Range of Reasonableness in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

The determination of whether a settlement amount is reasonable "does not involve the

use of a 'mathematical equation yielding a particularized sum.'" *Tiro* v. *Public House Invs., LLC, et al.*, Nos. 11-cv-7679, 11-cv-8249, 2013 WL 4830949, at *9 (S.D.N.Y. Sept. 10, 2013) (quotations omitted). "Instead, 'there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Matheson* v. *T-Bone Rest., LLC*, No. 09-cv-4214, 2011 WL 6268216, at *5 (S.D.N.Y. Dec. 13, 2011) (quoting *Frank* v. *Eastman Kodak Co*., 228 F.R.D. 174, 186 (W.D.N.Y. 2005); *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir. 1972)). "[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Grinnell Corp.,* 495 F.2d at 455 n.2; *see also Officers for Justice* v. *Civil Serv. Comm'n,* 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will *not per se* render the settlement inadequate or unfair."). Moreover, when settlement assures immediate payment of substantial amounts to class members, "even if it means sacrificing 'speculative payment of a hypothetically larger amount years down the road,'" the settlement is reasonable under this factor. *Gilliam v. Addicts Rehab Crt. Fund,* No. 05 Civ. 3452 (RLE), 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (Ellis, J) (quoting *Teachers' Ret. Sys. of LA v. A.C.L.N., Ltd.,* No. 01 Civ. 11814 (MP), 2004 WL 1087261, at *5 (S.D.N.Y. May 14, 2004)).

Here, the size of the $2,058,000 settlement in cash for the Stillwater Class and return of their assets for a total estimated recovery of between $0.018-$0.088 provides ample support for its reasonableness when viewed in light of the best possible recovery and all of the risks of continued litigation in this case. *See Wal-Mart*, 396 F.3d at 119 ("there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law

and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion") (internal citation omitted). [8] As explained above, the proposed Settlement was reached only after protracted, arm's length negotiations between the Settling Defendants and through consideration of the advantages and disadvantages of continued litigation. Counsel for the Stillwater Plaintiffs, who have a great deal of experience in prosecuting and resolving complex class action securities litigation, have carefully evaluated the merits of this case and the proposed Settlement. The case is strong, but experience eventually teaches every attorney that even strong cases are lost. And even if a judgment were obtained against the Stillwater Defendants at trial, the Stillwater Plaintiffs would face very substantial challenges in collecting on the judgment and the total recovery might well be less, or nonexistent.

Furthermore, as discussed above, the Settlement is also reasonable in light of the substantial resources that can be conserved by avoiding the time, cost, rigor, and risk of prolonged litigation. Securities litigation is a complex and evolving area of law requiring the devotion of significant resources. There is a high likelihood that the costs involved in shepherding a securities action like this one through the discovery process, pre-trial motions, and trial will far outweigh—and indeed subsume—any recovery that might be realized by the Stillwater Plaintiffs and the Stillwater Class. Moreover, because the Defendants in the Stillwater Actions continue to deny any liability while asserting numerous defenses, the potential for any recovery remains highly uncertain.

And the Settlement has no obvious deficiencies. The Settlement does not mandate excessive compensation for Class Counsel. Class Counsel for the Action is applying for an

[8] In 2013, the median settlement of a securities class action returned 2.1% of damages suffered.

award of $700,000, about 33% of the Cash Settlement Amount, no portion of the Unwind Settlement Amount, plus reimbursement of expenses in the amount of $212,039.73. Any attorneys' fees or reimbursement of litigation costs must be authorized by the Court.

IV. THE PLAN OF ALLOCATION SHOULD BE APPROVED

As part of the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement, the Court preliminarily approved the Plan of Allocation that was published in the Class Notice. Dkt. No. 75 at ¶ 8. The Stillwater Plaintiffs do not seek to change that Plan of Allocation. As part of the settlement process, the Stillwater Plaintiffs now request that the Court give final approval of the Plan of Allocation for the purpose of administering the Settlement.

The Plan of Allocation is fair and reasonable and should be approved. When evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel. "When formulated by competent and experienced class counsel," a plan for allocation of net settlement proceeds "need have only a reasonable, rational basis." *Global Crossing*, 225 F.R.D. at 462 (quotation omitted). A reasonable plan may consider the relative strength and values of different categories of claims. *Id.*; *see also In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 595-96 (S.D.N.Y. 1992) (plan of allocation that distributes greater part of settlement proceeds to those most injured is reasonable). Because they tend to mirror the complaints' allegations, "plans that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatee Sys. Inc. Sec. Litig.*, No. 04-cv-525 (GED), 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007).

Here, the proposed Plan of Allocation related to the Action is rational and consistent with the Stillwater Plaintiffs' theory of the case. The Plan was formulated by Counsel for the

Stillwater Plaintiffs, in consultation with damages experts, with the goal of reimbursing the Stillwater Class members in a fair and reasonable manner. For these reasons, Counsel for the Stillwater Plaintiffs believe the Plan of Allocation fairly compensates the Stillwater Class members and should be approved. *Global Crossing*, 225 F.R.D. at 462. The Stillwater Class members will receive an estimated average recovery of approximately $0.0188-0.088 per dollar invested before deduction of Court-approved fees and expenses and costs of notice and claims administration. Class Notice, at 1-2. The Notice further explains that under the Plan of Allocation, the actual amount recovered will vary across the members of the Stillwater Class and is based on the value of Stillwater Investors' holdings as of December 31, 2009. *Id.*, Class Notice, at pp. 7-10. The Stillwater Plaintiffs submit that the Plan of Allocation represents a fair and equitable method for allocating the Net Settlement Amount among the members of the Stillwater Class, and should be given final approval by the Court.

V. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

In granting preliminary approval of the Settlement, the Court also preliminarily certified the Stillwater Class as set forth in the Stipulation of Settlement. Dkt. No. 75 at ¶¶ 2, 4. The Stillwater Class is defined as follows:

> The Goldberg Class, consist[s] of all persons or entities who were investors in the Stillwater Funds, other than the Named Defendants or the officers and directors of Gerova or of any subsidiary of Gerova, and such excluded persons family members (only spouse and minor children), affiliates and entities controlled by them, who were promised the common stock of Gerova in exchange for their interests in the Stillwater Funds pursuant to a share exchange agreement dated on or about December 23, 2009, and that was completed on January 20, 2010;
> The Stillwater Class, consist[s] of all persons or entities, other than the Named Defendants or the officers and directors of Gerova or of any subsidiarym of Gerova, and such excluded person[s'] family members (only spouse and minor children), affiliates and entities controlled by them, who invested in any of the of the Stillwater Funds and whose interests in any of the Stillwater Funds were transferred in the transactions between Stillwater and Gerova consummated on January 20, 2010, and who (1) submitted a request for full or partial redemption

> of their accounts in the Stillwater Funds prior to December 23, 2009 and have not been paid in full on those redemption requests and/or (2) received Gerova Series A Preferred Stock, which was converted or was to be converted into restricted, unregistered Gerova ordinary shares;

Dkt. No. 75, at 2. a-b.

As part of the settlement process, the Stillwater Plaintiffs respectfully request that the Court grant final certification of the Stillwater Class for the purpose of administering the Settlement. As set forth below, the Stillwater Class here satisfies the requirements of class certification under Fed. R. Civ. P. 23.

A. Certification Standards Generally

The Supreme Court has recognized the utility and necessity for certifying settlement classes. *See generally, Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). The Second Circuit similarly has recognized that interest. *See Weinberger*, 698 F.2d at 73. In certifying a settlement class, the Court must determine that the criteria established by Fed. R. Civ. P. 23 are met. Whereas this Action seeks damages and not injunctive relief, certification requires that the action meet each of the requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy) and the requirements of Rule 23(b)(3) (predominance and superiority). *Amchem*, 521 U.S. at 613-14.[9] As demonstrated below, each of Rule 23's requirements are readily met in this Action.

B. The Stillwater Class Satisfies the Requirements of Rule 23(a)

1. Numerosity

The class must be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Courts generally assume that the numerosity requirement is met in cases involving

[9] In certifying a Settlement Class, however, the Court is not required to determine whether the action, if tried, would present intractable management problems, "for the proposal is that there be no trial." *Id*. at 620; *see also* Fed. R. Civ. P. 23(b)(3)(D).

nationally traded securities. *In re EVCI Career Colleges Holding Corp. Sec. Litig.,* 05-cv-10240, 2007 WL 2230177, at *12 (S.D.N.Y. July 27, 2007). Indeed, "numerosity is presumed at a level of 40 members." *Consolidated Raid Corp.* v. *Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). Here, numerosity is met. Stillwater's records reveal that there were 899 Stillwater Class Members. As of March 7, 2014, Notice and Release Forms have been mailed to all but 13 of the Stillwater Class members. Specifically, 839 Notice and Release Forms have been mailed to Stillwater Class Members with a mailing address, and 163 have been emailed to Stillwater Class members with email addresses. Hall Decl. Concerning Mailing ¶ 5.

2. Commonality

There also must be questions of either law or fact common to the class. Fed. R. Civ. P. 23(a)(2). Commonality is generally easily satisfied, as it "is established so long as the plaintiffs can identify some unifying thread among the [class] members' claims." *Haddock v. Nationwide Fin. Servs., Inc.*, 262 F.R.D. 97, 116 (D. Conn. 2009). "Securities-fraud cases generally meet Rule 23(a)(2)'s commonality requirement." *Global Crossing*, 225 F.R.D. at 451-452. Securities fraud class actions are "essentially course of conduct cases because the nub of plaintiffs' claims is that material information was withheld from the entire putative class in each action, either by written or oral communication." *In re Oxford Health Plans, Inc*., *Sec. Litig.*, 191 F.R.D. 369, 374 (S.D.N.Y. 2000) (quotation marks omitted).

Because the Stillwater Defendants' actions at issue consist of statements made by or on behalf of a public company, this requirement is readily met. Questions common to all Stillwater Class members include: (1) whether the provisions of the Exchange Act were violated and fiduciary duties breached as alleged in the complaint; (2) whether public statements issued by the Defendants in the Stillwater Actions in the Proxy were false or misleading; and (3) whether these acts caused the Stillwater Class's losses. Additionally, the defenses of the Defendants in the

Stillwater Actions, that the disclosures concerning in the Proxy were accurate and not misleading; that the Defendants in the Stillwater Action did not act with scienter in making or causing any alleged material misrepresentation or omission; that the Defendants in the Stillwater Actions did not breach any fiduciary duties they owed to the Stillwater Plaintiffs and the Stillwater Class; and that the Stillwater Plaintifs and the Stillwater Class suffered no damages because the complete loss of value of Gerova stock was not a result of any prior misstatement or omission or of a breach of fiduciary duties; apply equally to the Stillwater Plaintiffs and the other members of the Stillwater Class alike.

3. Typicality

This prong requires that the claims or defenses of the representative parties must be typical of the class's claims. Fed. R. Civ. P. 23(a)(3). A plaintiff's claim is typical if it arises from "the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *In re Flag Telecom Holdings, Ltd. Secs. Litig*., 574 F.3d 29, 35 (2d Cir. 2009). Like all other Stillwater Class members, the Stillwater Plaintiffs were subject to the alleged false and misleading statements in violation of Sections 10(b) and 20(a) of the Exchange Act and alleged breaches of fiduciary duties of the Defendants in the Stillwater Action. Moreover, the value of the securities acquired by the Stillwater Plaintiffs declined alongside all other Stillwater Class members. Thus, the Stillwater Plaintiffs were affected in the same ways as the other members of the Stillwater Class, thereby satisfying the third criterion of Rule 23(a).

4. Adequacy

The representative parties must fairly and adequately protect the class's interests. Fed. R. Civ. P. 23(a)(4). This inquiry focuses "on uncovering 'conflicts of interest between named parties and the class they seek to represent.'" *Flag Telecom*, 574 F.3d at 35 (quoting *Amchem*, 521 U.S. at 625). The Stillwater Plaintiffs and their Counsel have prosecuted the Action,

negotiated with the Stillwater Defendants, and have obtained a favorable Settlement for the Stillwater Class.

The Stillwater Plaintiffs adequately represent the Stillwater Class since they have no individual interests or claims that are antagonistic to the class and have at all times zealously represented the interests of the class. Rosen Decl. ¶ 32. The interests of the Stillwater Plaintiffs in obtaining a fair, reasonable, and adequate settlement of the claims asserted are consistent with the interests of the remaining Stillwater Class members, since under the proposed Plan of Allocation, the Stillwater Plaintiffs will receive the same *pro rata* share of the Settlement Fund as the rest of the Stillwater Class; there is no conflict of interests between the StillwaterPlaintiffs and the Stillwater Class. Moreover, the Stillwater Plaintiffs have regularly communicated with Counsel for the Stillwater Class throughout this action, thereby fairly and adequately protecting and advancing the interests of the Stillwater Class. Rosen Decl. ¶ 32.

Additionally, Rule 23(g) states that the adequacy of counsel is determined by four factors: (1) the work counsel has done in identifying or investigating potential claims; (2) counsel's experience in handling class actions; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). Counsel for the Stillwater Class have extensive experience and solid reputations in the field of class action and securities litigation. *See* Rosen Decl., Ex. 1; (Firm resumes of The Rosen Law Firm; Frank & Bianco LLP; and Kaplan Fox & Kilsheimer LLP). They have been appointed as lead or co-lead counsel in many complex securities class actions, and have recovered substantial monies for their clients and class members. They have prosecuted hundreds of such cases to successful resolution. Thus, the Stillwater Plaintiffs and their Counsel together have adequately represented the Stillwater Class and fulfilled the requirements of Rule 23(a)(4).

C. The Stillwater Class Satisfies the Requirements of Rule 23(b)(3) Because Common Questions Predominate

In addition to satisfying the criteria of Rule 23(a), this Action meets the requirements of Rule 23(b)(3). To satisfy predominance, "a plaintiff must show that those issues in the proposed action that are subject to generalized proof outweigh those issues that are subject to individualized proof." *In re Salomon Analyst Metromedia Litig*., 544 F.3d 474, 480 (2d Cir. 2008). This inquiry "tests whether a proposed class is sufficiently cohesive to warrant adjudication by representation." *Id*. Questions of law or fact common to the Stillwater Class members predominate over questions affecting only individual members of the class where, as here, the central issues relate to whether the Stillwater Defendants' alleged actions violated federal securities laws and whether those violations were knowing or reckless.

Moreover, permitting the claims of the entire Stillwater Class to be resolved in a single forum is superior to other available methods of fairly and efficiently adjudicating the controversy. Although the losses to individual members of the Stillwater Class are significant, for most class members they are not sufficiently large to justify the expense of individual actions in light of the quite limited resources available to pay any judgment.[10] Accordingly, it is desirable to concentrate the prosecution of the claims in this forum and in a single, more cost-effective class action.

Because the Stillwater Class meets the requirements of Rules 23(a) and (b)(3), the Court should grant final certification of the Stillwater Class.

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[10] Class treatment is often deemed superior in "negative value" cases, in which each individual class member's interest in the litigation is less than the anticipated cost of litigating individually. *Menkes*, 270 F.R.D. at 100; *see also Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758, 1783 (2010) ("When adjudication is costly and individual claims are no more than modest in size, class proceedings may be 'the thing,' *i.e.*, without them, potential claimants will have little, if any, incentive to seek vindication of their rights") (citation omitted).

VI. NOTICE TO THE STILLWATER CLASS COMPLIED WITH DUE PROCESS

Rule 23(e) provides that "notice of the proposed dismissal or compromise [of a class action] shall be given to all members of the class in such manner as the court directs." Fed. R. Civ. P. 23(e). The purpose of the notice is to "afford members of the class due process which, in the context of the [R]ule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974)). A notice program must provide the "best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *See Eisen*, 417 U.S. at 173 (citing Fed. R. Civ. P. 23(c)(2)). The Notice program utilized here, as set by the Preliminary Approval Order, easily meets this standard.

The Notice program was carried out by Class Counsel Kaplan Fox Kilsheimer ("KFK").[11]. Hall Decl. Concerning Mailing ¶ 3. KFK provided individual notice via first-class mail to each member of the Stillwater Class whose address was reasonably ascertainable. Hall Decl. Concerning Mailing ¶ 4. In addition, KFK caused the Publication Notice to be published electronically once on the *Globe Newswire* on April 14, 2014, and the *Investor's Business Daily* on April 16, 2014. *Id.* ¶ 6.

The Notice amply describes the terms of the Settlement, including (a) the manner in which objections can be lodged; (b) the nature, history, and progress of the litigation; (c) the proposed Settlement; (d) the process to opt in or opt out of, or object to, the Settlement; (e) a description of the Plan of Allocation; (f) the fees and expenses to be sought by Class Counsel;

[11] Time spent by Kaplan Fox Kilsheimer in mailing notice to the Class is not included in the firm's lodestar and they are not seeking any moneys for their work administering the Settlement other than reimbursement of actual incurred expenses.

and (g) the necessary information for any Stillwater Class Member to examine the Court records should they desire to do so. *Id.* ¶ 8. These efforts to inform class members of the Settlement, and their rights and obligations associated therewith, are more than sufficient to satisfy due process. *See In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104-05 (5th Cir. 1977) (holding that notice must contain "an adequate description of the proceedings written in objective, neutral terms, that . . . may be understood by the average absentee class member").

VII. CONCLUSION

Based on the foregoing, the Stillwater Plaintiffs respectfully requests that the Court enter an order and judgment: (i) granting final approval of the Settlement and Plan of Allocation; (ii) finally certifying the Stillwater Class for purposes of the Settlement; (iii) finding that notice to the Stillwater Class satisfied due process; and (iv) entering the proposed Judgment and Order of Dismissal with Prejudice of this action.

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Respectfully submitted,

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