IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Master Docket No. 09-md-02063-JLK-KMT (MDL Docket No. 2063)

IN RE: OPPENHEIMER ROCHESTER FUNDS GROUP SECURITIES LITIGATION

This document relates to the following Actions:

In re AMT-Free Municipals Fund
09-cv-1243-JLK (*Prince*)
09-cv-1447-JLK (*Connel*)
09-cv-1510-JLK (*Amato*)
09-cv-1619-JLK (*Furman*)

In re AMT-Free New York Municipal Fund
09-cv-1621-JLK (*Isaac*)
09-cv-1781-JLK (*Kurz*)

In re Rochester National Municipal Fund
09-cv-550-JLK (*Bock*)
09-cv-706-JLK (*Stokar*)
09-cv-927-JLK (*Tackmann*)
09-cv-1042-JLK (*Krim*)
09-cv-1060-JLK (*Truman*)
09-cv-1482-JLK (*Laufer*)
09-cv-1908-JLK (*Lariviere*)

In re Rochester Fund Municipals
09-cv-703-JLK (*Begley*)
09-cv-1479-JLK (*Bernstein*)
09-cv-1481-JLK (*Mershon*)
09-cv-1622-JLK (*Stern*)
09-cv-1478-JLK (*Vladimir*)
09-cv-1480-JLK (*Weiner*)

In re New Jersey Municipal Fund
09-cv-1406-JLK (*Unanue*)
09-cv-1617-JLK (*Baladi*)
09-cv-1618-JLK (*Seybold*)
09-cv-1620-JLK (*Trooskin*)

In re Pennsylvania Municipal Fund
09-cv-1483-JLK (*Woods*)
09-cv-1368-JLK (*Egts*)
09-cv-1765-JLK (*Wunderly*)

MOTION FOR FINAL APPROVAL OF PROPOSED CLASS SETTLEMENTS AND APPROVAL OF PLAN OF ALLOCATION

TABLE OF CONTENTS

Page

I. INTRODUCTION 2

II. FACTUAL AND PROCEDURAL BACKGROUND 5

III. ARGUMENT: THE SETTLEMENT SATISFIES THE CRITERIA FOR FINAL APPROVAL 5

A. The Standard of Review of a Proposed Class Action Settlement 5

B. The Settlement Should Be Approved as Fair, Reasonable, and Adequate to the Classes 7

1. The proposed Settlement was achieved only after arduous arm's-length negotiations by capable and fully-informed counsel and is not the result of collusion. 7

2. The strengths and weaknesses of the Actions and the risks of establishing liability support the proposed Settlement under the second *Gottlieb/Jones* factor. 10

a. Pending motions could be decided against Lead Plaintiffs. 11

b. Defendants could have prevailed on motions for summary judgment or at trial. 11

(1) Defendants contest the claims of misrepresentation. 12

(2) Defendants maintain they did not violate their investment objectives. 12

(3) Defendants could have prevailed on their statute of limitations arguments at trial. 13

(4) Defendants maintain that Lead Plaintiffs cannot show loss causation. 14

3. The amount of the Settlement relative to the most realistic recoverable damages. 15

TABLE OF CONTENTS

Page

4. The parties' judgment that the Settlement is fair and reasonable. 18

C. Class Reaction to Date Supports Approval 19

D. The Plan of Allocation Is Fair and Reasonable and Should be Approved 22

E. The Court Should Affirm Its Certification of the Classes 23

IV. CONCLUSION 24

TABLE OF AUTHORITIES

Page

CASES

Alvarado Partners v. Mehta,
723 F. Supp. 540 (D. Colo. 1989) 6, 10, 15, 19

In re Am. Bank Note Holographics,
127 F. Supp. 2d 418 (S.D.N.Y. 2001) 23

AUSA Life Ins. Co. v. Ernst & Young,
39 Fed. Appx. 667 (2d Cir. 2002) 10

Backman v. Polaroid Corp.,
910 F.2d 10 (1st Cir. 1990) (*en banc*) 10

In re Cendant Corp. Sec. Litig.,
264 F.3d 201 (3rd Cir. 2001) 16

Class Plaintiffs v. Seattle,
955 F.2d 1268 (9th Cir. 1992) 22

In re Core Bond Fund,
No. 09-cv-1186-JLK-KMT, 2011 U.S. Dist. LEXIS 112949
(D. Colo. Sept. 30, 2011) 10

Cotton v. Hinton,
559 F.2d 1326 (5th Cir. 1977) 9

In re Currency Conversion Fee Antitrust Litig.,
263 F.R.D. 110 (S.D.N.Y. 2009) 8

Denney v. Jenkens & Gilchrist,
230 F.R.D. 317 (S.D.N.Y. 2005) 8

Diaz v. Romer,
801 F. Supp. 405 (D. Colo. 1992) 6

Ehrheart v. Verizon Wireless,
609 F.3d 590 (3d Cir. 2010) 5

Gottlieb v. Wiles,
11 F.3d 1004 (10th Cir. 1993) 6, 10, 15, 18

TABLE OF AUTHORITIES

Page

Grady v. De Ville Motor Hotel, Inc.,
415 F.2d 449 (10th Cir. 1969) 6

Horton v. Leading Edge Mktg.,
No. 04-cv-00212, 2007 U.S. Dist. LEXIS 63533 (D. Colo. Aug. 28, 2007) 21

Ingram v. Coca-Cola Co.,
200 F.R.D. 685 (N.D. Ga. 2001) 8

Jones v. Nuclear Pharmacy, Inc.,
741 F.2d 322 (10th Cir. 1984) ..... *passim*

In re King Res. Co. Sec. Litig.,
420 F. Supp. 610 (D. Colo. 1976) 6, 15, 19

Law v. NCAA,
108 F. Supp. 2d 1193 (D. Kan. 2000) 22

Lucas v. Kmart Corp.,
No. 99-cv-01923, 2006 U.S. Dist. LEXIS 51439
(D. Colo. July 27, 2006) 6, 7, 22, 23

In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.,
No. 02 MDL 1484, 2007 U.S. Dist. LEXIS 9450 (S.D.N.Y. Feb. 1, 2007) 16

In re Merrill Lynch,
246 F.R.D. 156, 167 (S.D.N.Y. 2007). 17

In re N.M. Natural Gas Antitrust Litig.,
607 F. Supp. 1491 (D. Colo. 1984) 7, 19

Newton v. Fortis Ins. Co.,
No. 04-cv-1650, 2006 U.S. Dist. LEXIS 33965 (D. Colo. May 26, 2006) 22

In re Omnivision Techs.,
559 F. Supp. 2d 1036 (N.D. Cal. 2007) 22

In re Oppenheimer Champion Income Fund Sec. Fraud Class Action,
No. 09-cv-386-JLK-KMT (D. Colo. Sept. 30, 2011) 10

In re Prudential Sec., Inc. L.P. Litig.,
MDL No. 1005, 1995 WL 798907 (S.D.N.Y. 1995) 17

TABLE OF AUTHORITIES

Page

In re Qwest Commc'ns Int'l, Inc. Sec. Litig.,
No. 01-cv-01451, 2006 U.S. Dist. LEXIS 71039 (D. Colo. Sept. 28, 2006) 6

In re Qwest Comm'ns Int'l, Inc. Sec. Litig.,
625 F. Supp. 2d 1133 (D. Colo. 2009) 21

Robbins v. Koger Props., Inc.,
116 F.3d 1441 (11th Cir. 1997) 10

Rubenstein v. Republic Nat'l Life Ins. Co.,
74 F.R.D. 337 (N.D. Tex. 1976) 15

Rutter & Wilbanks Corp. v. Shell Oil Co.,
314 F.3d 1180 (10th Cir. 2002) 5, 6

In re State Street Bank & Trust Co. Fixed Income Funds Invs. Litig.,
774 F. Supp. 2d 584 (S.D.N.Y. 2011) 14

State of W. Va. v. Chas. Pfizer & Co., Inc.,
314 F. Supp. 710 (S.D.N.Y. 1970) 10, 15

In re Toys "R" Us Antitrust Litig.,
191 F.R.D. 347 (E.D.N.Y 2000) 8

Tuten v. United Airlines, Inc.,
No. 12-cv-1561, 2014 U.S. Dist. LEXIS 68336 (D. Colo. May 19, 2014) 5, 7

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005) 7

Wilkerson v. Martin Marietta Corp.,
171 F.R.D. 273 (D. Colo. 1997) ..... *passim*

Williams v. First Nat'l Bank,
216 U.S. 582 (1910) 6

Winkler v. NRD Mining, Ltd.,
198 F.R.D. 355 (E.D.N.Y. 2000) 10

STATUTES

15 U.S.C. § 77z-1(a)(7) 17

TABLE OF AUTHORITIES

Page

OTHER AUTHORITIES

Dr. Renzo Comolli and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review* (NERA 2013) 17

Laarni Bulan, Ellen Ryan and Laura Simmons, *Securities Class Action Settlements: 2013 Review and Analysis* (Cornerstone Research 2013) 17

Court-appointed Lead Plaintiffs Leonard Klorfine, John Vazquez, Peter Unanue, Victor Sasson, Dharamvir Bhanot, Stuart Krosser, and Carole Krosser ("Lead Plaintiffs")[1] move for final approval of the proposed settlements of the above-captioned six coordinated class action lawsuits against all Defendants on the terms and conditions set forth in the six Stipulations and Agreements of Settlement,[2] dated March 4, 2014 (collectively, the "Settlement" or "Stipulations").[3] The Settlement resolves the Classes' claims against all Defendants in exchange for Defendants' payment in the aggregate of $89,500,000. Should this Court approve the Settlement, the Settlement proceeds will be divided among the Actions as follows:

[1] Each Lead Plaintiff was appointed a class representative for his or her respective Class pursuant to this Court's Order of March 12, 2014, which preliminarily approved the Settlement and certified the various Classes for settlement purposes only. Dkt. 499.

[2] The Stipulations were previously filed with the Court on March 5, 2014. Dkt. Nos. 492-97. All terms not defined herein have the same definition as stated in the Stipulations.

[3] Pursuant to D.C.COLO.LCivR. 7.1A, Lead Plaintiffs' Counsel has conferred with Counsel for Defendants before filing this motion. Although Defendants do not concede liability or wrongdoing or that class certification would be proper if the cases were not to settle, Defendants agree that the Settlement should be approved and take no position on the request for attorneys' fees and reimbursement of expenses or on the Plan of Allocation. Defendants do not agree to any particular language set forth within this Motion. *See* Stipulations ¶¶ 24, 25.

Fund Name	**Settlement Allocation**
Oppenheimer AMT-Free Municipals Fund	$17,109,000
Oppenheimer AMT-Free New York Municipal Fund	$ 4,241,000
Oppenheimer Rochester National Municipal Fund	$26,850,000
Oppenheimer New Jersey Municipal Fund	$ 3,374,000
Oppenheimer Pennsylvania Municipal Fund	$ 4,341,000
Rochester Fund Municipals	$33,585,000
Total for All Six Funds	**$ 89,500,000**[4]

I. INTRODUCTION

This $89,500,000 Settlement is fair, reasonable, adequate, and is in the best interests of the Classes. Indeed, Judge Phillips states:

> In sum, from my involvement as the mediator in the Consolidated Actions, I observed first-hand that these were hard-fought litigations and negotiations, which resulted in significant recoveries for the classes and fair and equitable settlements for all involved. The settlements here were a product of extensive arm's-length negotiations, conducted after five years of targeted and efficient litigation. There was no collusion whatsoever in reaching the terms of the settlements. I believe it was in the best interests of all the parties that they avoid the burdens and risks associated with taking the cases to trial, and that they agree upon the settlements now before the Court.

See Declaration of Lead Counsel in Support of Motion for Final Approval of Proposed Class Settlements, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses ("Lead Counsel Decl."), Ex. 1 (Decl. of Layn R. Phillips ("Phillips Decl.") ¶ 16).

Indeed, these Actions were vigorously litigated for five years, and the arm's-length Settlement was reached only after Lead Plaintiffs' Counsel were well-informed about the strengths and weaknesses of the Actions. Lead Plaintiffs and their Counsel

[4] The methodology used to divide the $89.5 million settlement among the six cases, including the retention of independent allocation counsel and a separate mediation on allocation conducted by Judge Layn Phillips (ret.), is discussed in Lead Counsel's Declaration at ¶¶ 47-52.

worked hard to achieve the Settlement before this Court. Defendants have filed multiple dispositive motions, including motions to dismiss and for partial summary judgment, each of which has been hotly contested. Defendants have also vigorously opposed certification of each Class. Discovery in these Actions has been extensive, and included Defendants' production of over three million pages of documents, including electronic data files on each security held by the Funds on every single day of each respective Class Period. By the time of Settlement, Lead Plaintiffs' Counsel and other plaintiffs' counsel had spent many hours reviewing and analyzing these documents. Defendants also took numerous depositions of both Lead Plaintiffs and their brokers in an effort to challenge Lead Plaintiffs' motion for class certification, which remains pending.

As detailed below, the all-cash $89,500,000 Settlement Amount exceeds the median for securities class actions, both in amount and as a percentage of the estimated potential recovery if the cases were successfully litigated through trial and any appeals. Lead Plaintiffs' damages consultants have calculated the Classes' Section 11 damages. Lead Plaintiffs' Counsel estimates that the proposed Settlement is approximately 4% of Defendants' most generous damages estimate, which is based on Class Members' calculated losses off set by dividends and discounted for Defendants' arguments concerning negative loss causation. A 4% recovery is a reasonable result for the Classes when compared to the risks of continued litigation. Approving the Settlement now is far preferable to the risks inherent in further protracted litigation, including the possibilities that the Classes could fail to achieve class certification, lose at summary judgment, lose at trial, or lose on appeal.

In reaching the determination to settle these Actions with Defendants, Lead Plaintiffs' Counsel have carefully considered the substantial risks and obstacles to achieving a better result after continued litigation. As discussed herein and in the accompanying Lead Counsel Decl., Lead Plaintiffs faced many factual and legal challenges to prosecution of their claims, including disputed issues of liability, causation, and damages. As such, Lead Plaintiffs faced the risk they would not be able to prove their claims or establish significant damages at trial. Defendants vigorously denied Lead Plaintiffs' claims, asserting that the Funds' investment objectives were merely aspirational and therefore not actionable; that the Funds did not fail to identify illiquid securities as alleged by Lead Plaintiffs; and that the true risks of certain investments (*e.g.*, inverse floaters) were adequately disclosed to investors. *See* Defs.' Joint Mot. to Dismiss at 34-39 (Dkt. No. 285). Lead Plaintiffs faced the risk that the trier of fact would favor Defendants' arguments and interpretations of the evidence and absolve them of liability.

Lead Plaintiffs' Counsel, who have extensive experience in prosecuting securities class actions, have concluded that the Settlement is an outstanding result under all of the circumstances present here and clearly in the respective Classes' best interests. This conclusion is well-informed because it is based on, among other things, a comprehensive analysis of the evidence; the legal and factual issues presented; the risk, expense and delay of continuing to litigate through trial; and Lead Plaintiffs' Counsel's past experience in litigating complex actions similar to the present one. Lead Plaintiffs, who were appointed by the Court and have been a part of the litigation and settlement process, have unanimously approved the Settlement.

For all the reasons discussed herein and in Lead Counsel's Declaration, the proposed Settlement is fair, reasonable, and adequate to the Classes and merits approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

An extensive history of this litigation, the issues in dispute, the work performed, and the factors that led to the Settlement are set forth in Lead Counsel's Declaration at ¶¶ 6-53, 63-85. In order to avoid needless repetition, they are not repeated again here in this Motion. Rather, Lead Counsel's Declaration is cited herein extensively and is incorporated by reference.

III. ARGUMENT: THE SETTLEMENT SATISFIES THE CRITERIA FOR FINAL APPROVAL

A. The Standard of Review of a Proposed Class Action Settlement

Approval of a proposed settlement is within the sound discretion of the Court. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187 (10th Cir. 2002); *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). Nonetheless, there is a "strong judicial policy in favor of class action settlement" that "contemplates a circumscribed role for the district courts in settlement review and approval proceedings." *Tuten v. United Airlines, Inc.*, No. 12-cv-1561, 2014 U.S. Dist. LEXIS 68336, at *8 (D. Colo. May 19, 2014) (citing *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010)). "Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts." *United Airlines, Inc.*, 2014 U.S. Dist. LEXIS 68336, at *8-9.

A class action settlement must be approved under Rule 23(e) of the Federal Rules of Civil Procedure if it is "fair, reasonable and adequate." *Gottlieb v. Wiles*, 11 F.3d 1004, 1014 (10th Cir. 1993); *Jones*, 741 F.2d at 324 ("[T]he trial court must approve a settlement if it is fair, reasonable and adequate."). The Tenth Circuit has identified four factors that a district court should consider in assessing whether a proposed class action settlement is fair, reasonable and adequate:

(a) whether the proposed settlement was fairly and honestly negotiated;

(b) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(c) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(d) the judgment of the parties that the settlement is fair and reasonable.

Gottlieb, 11 F.3d at 1014; *Jones*, 741 F.2d at 324; *see also Rutter*, 314 F.3d at 1188 (affirming test); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 01-cv-01451, 2006 U.S. Dist. LEXIS 71039, at *15 (D. Colo. Sept. 28, 2006) (also affirming test); *Alvarado Partners v. Mehta*, 723 F. Supp. 540, 546-48 (D. Colo. 1989) (applying settlement approval factors to securities class action).[5] Where relevant, courts in this Circuit also

[5] Courts have long held that the settlement of disputed claims is favored as a public policy matter, *see*, *e.g.*, *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); *Grady v. De Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969), particularly in the context of class action litigation. *See also Diaz v. Romer*, 801 F. Supp. 405, 407 (D. Colo. 1992) (in approving class action settlement, court explained that a "consensual resolution of a dispute is always preferred"). For that reason, in evaluating the fairness of the Settlement, this Court should neither decide the merits of the cases nor substitute its judgment for that of the parties who negotiated the settlement. *Lucas v. Kmart Corp.*, No. 99-cv-01923, 2006 U.S. Dist. LEXIS 51439, at *23 (D. Colo. July 27, 2006) (citing *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D. Colo. 1997)); *see also In re King Resources Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. 1976) (the court "need not, and should not, decide the merits of the controversy").

consider: (i) the risk of establishing damages at trial; (ii) the extent of discovery and the current posture of the case; (iii) the range of possible settlement; and (iv) the reaction of Class Members to the proposed settlement. *In re N.M. Natural Gas Antitrust Litig.*, 607 F. Supp. 1491, 1504 (D. Colo. 1984); *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (citing *In re New Mexico*). Application of each of these factors supports approval of the Settlement.

B. The Settlement Should Be Approved as Fair, Reasonable, and Adequate to the Classes

The four *Gottlieb*/*Jones* factors indicate that the Settlement is fair, reasonable, and adequate. Lead Plaintiffs believe the Settlement is in the best interests of the Classes.

1. The proposed Settlement was achieved only after arduous arm's-length negotiations by capable and fully-informed counsel and is not the result of collusion.

Where a settlement results from arm's-length negotiations between experienced counsel, "the Court may presume the settlement to be fair, adequate and reasonable." *Lucas v. Kmart Corp.*, No. 99-cv-01923-JLK, 2006 U.S. Dist. LEXIS 51439, at *22 (D. Colo. July 27, 2006) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)); *see also United Airlines, Inc.*, 2014 U.S. Dist. LEXIS 68336, at *7 ("arms-length negotiations between experienced counsel" where counsel "undertook voluntary discovery, negotiated over a methodology for estimating damages, and retained an expert to calculate the damages … show[] that the Settlement was fairly and honestly negotiated") In addition, protracted, difficult settlement negotiations signify the absence of collusion. *See, e.g.*, *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *22 (citing *Wilkerson*,

171 F.R.D. at 284); *Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317, 336-37 (S.D.N.Y. 2005) (finding absence of collusion, given that discussions appeared to break down more than once), *vacated in part on other grounds*, 443 F.3d 253 (2d Cir. 2006).

The Settlement here is the product of extensive arm's-length, informed, non-collusive negotiations. All parties settled only after extensive negotiations, which included a thorough analysis by Lead Plaintiffs' Counsel and their experts; a voluntary meeting of all parties in December 2012 in New York City to discuss merits, damages, and defenses; the exchange of comprehensive mediation statements that honed the issues; and two full days of mediation before Judge Layn R. Phillips (ret.) in New York City in May 2013.[6] *See* Lead Counsel Decl. ¶¶ 42-46.

The final terms of the global Settlement were negotiated over a contentious several months beginning with a two-day mediation session in New York City on May 6 and 7, 2013, followed by months of continued negotiations until all parties signed the Memorandum of Understanding setting forth the terms of the global Settlement in August 2013. These negotiations by experienced counsel were vigorous, with each side pressing its position to the best of its abilities. Phillips Decl. ¶¶ 6-12. As Judge Phillips explains, "The settlements were negotiated aggressively and at arm's-length." Phillips Decl. ¶ 6.

[6] The use of an experienced mediator like Judge Phillips further suggests the absence of collusion. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 693 (N.D. Ga. 2001) ("Parties colluding in a settlement would hardly need the services of a neutral third party to broker their deal"); *In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 352 (E.D.N.Y 2000).

This process resulted in the Stipulations that this Court preliminarily approved on March 12, 2014 (Dkt. No. 499). Throughout those discussions, all parties were represented by counsel with extensive experience in securities litigation in general and securities class actions in particular. Lead Plaintiffs' Counsel brought to the bargaining table many years of experience in litigating securities fraud class actions and in negotiating class action settlements that have been approved by courts throughout the country. Lead Counsel Decl. ¶¶ 98-101.

Lead Plaintiffs' Counsel's extensive factual and legal investigation gave them a thorough understanding of the strengths and weaknesses of the cases at the time of the settlement discussions. Lead Counsel received approximately three million pages of documents and extensive electronic data sets, allowing them to thoroughly evaluate Defendants' conduct and the merits of the Actions. Lead Plaintiffs' Counsel and their experts also performed an extensive review of Defendants' portfolios during the Class Periods and compiled detailed analyses of them, including an analysis of damages. These investigations amply prepared Lead Plaintiffs' Counsel to negotiate with Defendants. All parties were well-informed of the strengths and weaknesses of their respective positions. As such, Lead Plaintiffs possessed "the desired quantum of information necessary to achieve a settlement." *Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977). Thus, the first of the *Gottlieb/Jones* factors militates in favor of approving the Settlement.

2. **The strengths and weaknesses of the Actions and the risks of establishing liability support the proposed Settlement under the second *Gottlieb/Jones* factor.**

The second *Gottlieb*/*Jones* factor is whether there were "serious questions of law and fact … placing the ultimate outcome of the litigation in doubt." *Gottlieb*, 11 F.3d at 1014; *Jones*, 741 F.2d at 324; *see also Alvarado Partners*, 723 F. Supp. at 546.[7] At the time they reached the Settlement, Lead Plaintiffs' Counsel believed that this was a strong case. They nevertheless recognized that they faced numerous risks and uncertainties[8] – and Lead Plaintiffs' Counsel were well aware that many other securities class actions have been prosecuted in the belief that they were meritorious, only to lose on summary judgment, at trial, or on appeal.[9] The most salient of these risks and uncertainties, which

[7] In these Actions, Lead Plaintiffs' Counsel investigated and pursued claims on behalf of the Classes in the absence of an SEC investigation or state attorney general investigation of Defendants. As such, Lead Plaintiffs' Counsel had to develop the cases entirely on their own without the advantage of a government investigation or the fact record such investigations provide to civil litigants. The circumstances of these Actions were thus unlike and less favorable than those in *In re Core Bond Fund*, No. 09-cv-1186-JLK-KMT, 2011 U.S. Dist. LEXIS 112949, at *1 (D. Colo. Sept. 30, 2011) and *In re Oppenheimer Champion Income Fund Sec. Fraud Class Action*, No. 09-cv-386-JLK-KMT (D. Colo. Sept. 30, 2011).

[8] *See, e.g.*, *Wilkerson*, 171 F.R.D. at 285 ("the one constant about litigation, based on my experiences as a trial attorney and now as a judge, is that the ultimate jury result is uncertain, unknown and unpredictable"); *State of W. Va. v. Chas. Pfizer & Co., Inc.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced"), *aff'd*, 440 F.2d 1079 (2d Cir. 1971).

[9] Many plaintiffs have won huge judgments at trial, only to lose on appeal. *See, e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing on appeal an $81 million jury verdict and dismissing securities action with prejudice); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (*en banc*) (action dismissed following 11 years of litigation and a $30 million judgment for plaintiffs following trial that was largely affirmed by the first appellate panel); *See also AUSA Life Ins. Co. v. Ernst & Young*, 39 Fed. Appx. 667 (2d Cir. 2002) (affirming district court's dismissal after a full bench trial and earlier appeal and remand); *Winkler v. NRD Mining, Ltd.*, 198 F.R.D. 355 (E.D.N.Y. 2000) (granting defendants' motion for

were considered by Lead Plaintiffs' Counsel and Lead Plaintiffs and informed their recommendation to support the Settlement, are discussed below and outlined in Lead Counsel's Declaration.

a. Pending motions could be decided against Lead Plaintiffs.

Pending before this Court are Lead Plaintiffs' motion for class certification and one of Defendants' motions for partial summary judgment. Defendants' opposition to class certification contends that, because various sources of public information about the Funds' risks were available to investors, the level of knowledge about such risks – and about Plaintiffs' claims – varied among the putative class members, and therefore common issues do not predominate. Defendants' pending partial summary judgment motion argues that certain Lead Plaintiffs testified at their depositions that statements in the relevant prospectuses were at odds with their understanding of capital preservation and thus put them on notice of their claims. There was a very real risk that either of these motions could have been decided against Lead Plaintiffs at any time, in whole or in part. This possibility is a factor that weighed in favor of settlement.

b. Defendants could have prevailed on motions for summary judgment or at trial.

Although Defendants' motions to dismiss the Actions were denied, Defendants almost certainly would have re-litigated issues, including the issues below, on motions for summary judgment or at trial. Indeed, the Court expressly stated that although it would not dismiss the Amended Complaints on various grounds, it reserved the right to

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judgment as a matter of law after jury verdict for plaintiffs), *aff'd sub nom., Winkler v. Wigley*, 242 F.3d 369 (2d Cir. 2000).

revisit its decisions on these issues later. There was, at all times, a very real risk that Lead Plaintiffs would ultimately not prevail on these issues, particularly since, once the MDL had been dissolved, these cases would return to transferor courts where judges would examine them anew, in light of the evidence.

(1) Defendants contest the claims of misrepresentation.

Defendants argue that Lead Plaintiffs cannot prove that Defendants misrepresented the risk of investing in any of the Funds at issue in these Actions. Defendants maintain that they disclosed all of the Funds' investments and criteria for investing the monies placed in the Funds, and maintained the Funds' investments within the limits as described in the relevant prospectuses. Further, Defendants assert that they always believed the Funds' investments were appropriate and offered adequate returns for the risks involved. Defendants also contend that the Funds' investments were appropriate at the time they were made and that they cannot be held liable for failure to predict the future. There is a material risk that these arguments would resonate with a jury, and that the Court could find a failure to plead an actionable misrepresentation. Lead Counsel Decl. ¶¶ 15, 69-79.

(2) Defendants maintain they did not violate their investment objectives.

Defendants also maintain that the Funds did not violate any of their disclosed investment policies. Defendants maintain that there were no misrepresentations or omissions of material fact in any of the Offering Documents, and that the Funds alerted investors to the fact that they would hold certain percentages of below-investment-grade

bonds, illiquid bonds, and inverse floaters, and that there were no cognizable damages. *See* Defs.' Joint Mot. to Dismiss at 34-46 (Dkt. No. 285); Lead Counsel Decl. ¶¶ 15, 69-79. Complex analysis would be required to show that Defendants had violated investment policies, which would be contentious and complicated to explain to a jury at trial. After a significant decline, the Funds' NAVs rebounded in 2009 and thereafter, and the Funds continued to pay dividends without interruption. Defendants could have relied on these facts to argue before a jury that they did not violate their investment policies and that the decline was due to the freeze in credit markets in 2008. Indeed, the Funds' NAVs rebounded even before the end of the recession.

(3) Defendants could have prevailed on their statute of limitations arguments at trial.

In both Defendants' motions to dismiss and in their opposition to Lead Plaintiffs' motion for class certification, Defendants contended that evidence "proves" that Lead Plaintiffs (and Class Members) could have discovered their claims regarding the Funds' deviations from their stated investment objectives more than one year prior to filing suit. Defendants argued that Lead Plaintiffs and other Class Members had or should have discovered their claims over a year before filing suit because of public reports about the Funds or because their investments had performed in a manner that was contrary to their understanding of capital preservation. *See* Defs' Joint Mot. to Dismiss the Consolidated Complaints at 71-75 (Dkt. No. 285); Defs' Mem. in Opp. to Mot. for Class Cert. at 54-62 (Dkt. No. 392). With respect to their opposition to class certification, Defendants based

these arguments on what they alleged to be admissions that Lead Plaintiffs had made at their depositions.

(4) Defendants maintain that Lead Plaintiffs cannot show loss causation.

Defendants' loss causation defenses also presented substantial concerns, and have been the subject of extensive analysis and briefing. Defendants contend that, because mutual fund share prices are determined by summing up the value of the fund's assets and are not affected by information disclosed by the fund, there is no way that an alleged misrepresentation about the riskiness of the Funds could affect their share prices. Defendants also argue that the Funds' NAV declines resulted not from any purported misstatements or omissions but from an unprecedented, worldwide credit crisis and resulting panic that was unforeseen by government officials, economists, and the Fund's portfolio managers. As explained in Lead Counsel's Declaration (¶ 76), a recent decision, *In re State Street Bank & Trust Co. Fixed Income Funds Investments Litigation*, 774 F. Supp. 2d 584 (S.D.N.Y. 2011), highlights the risk that Lead Plaintiffs' claims might fail. Although this Court declined to follow *State Street* at the motion to dismiss stage, it recognized that the "issue of loss causation is a seminal one in this litigation" (Amended Order Granting in Part and Denying in Part Defendants' Joint Mot. to Dismiss at 52 (Dkt. No. 359)), and one that it was willing to revisit, creating a risk that the Court could eventually dismiss the Actions in whole or in part on loss causation grounds.

3. **The amount of the Settlement relative to the most realistic recoverable damages.**

The third *Gottlieb*/*Jones* factor for evaluating the adequacy of a class action settlement, *i.e.*, whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation (*see Gottlieb*, 11 F.3d at 1014; *Jones*, 741 F.2d at 324; *Alvarado Partners*, 723 F. Supp. at 546) also indicates that the proposed Settlement is fair, reasonable, and adequate. As many courts have noted, "[t]he bird in the hand is to be preferred to the flock in the bush and a poor settlement to a good litigation." *E.g.*, *Rubenstein v. Republic Nat'l Life Ins. Co.*, 74 F.R.D. 337, 347 (N.D. Tex. 1976). *See also Alvarado Partners*, 723 F. Supp. at 547; *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625; *State of W. Va. v. Chas. Pfizer & Co., Inc.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970).

In considering whether to enter into the Settlement, Lead Plaintiffs weighed the value of an immediate settlement against the prospect that significant proceedings remained ahead, including additional discovery, additional summary judgment briefing, *Daubert* motions, trial preparation and, of course, a trial. Lead Plaintiffs also considered the risks inherent in litigating a securities class action through trial and the particular risks at issue in these Actions as further detailed above and in Lead Counsel's Declaration.

In light of these risks, the proposed Settlement of $89,500,000 represents a very meaningful recovery of the damages allegedly suffered by the Classes and is in or above

the range of what is typically considered fair, reasonable, and adequate.[10] With the diligent assistance of consulting experts Candace Preston and Cynthia Jones of Financial Markets Analysis, LLC, Lead Plaintiffs' Counsel have estimated the *most realistic* recovery at trial, taking into consideration defense arguments. Based on that analysis, Lead Plaintiffs' Counsel estimate that the Settlement provides a recovery in the range of about 4% of Defendants' most generous damages estimate, pursuant to Sections 11 of the 1933 Act. Lead Counsel Decl. ¶¶ 53, 68. This is a favorable result. *See, e.g., In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 242 & n.22 (3rd Cir. 2001) (noting that approved settlement recoveries in securities class actions typically range from 1.6% to 14% of claimed damages); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484, 2007 U.S. Dist. LEXIS 9450, at *33 (S.D.N.Y. Feb. 1, 2007) (finding that a recovery representing 6.25% of damages was "at the higher end of the range of reasonableness of recovery in class actions securities litigations"). A study by National Economic Research Associates ("NERA"), an economic consulting firm that frequently provides expert analysis to defendants, states that in 2013, the median percentage of investor losses recovered in shareholder class action settlements was 2.1%. *See*

[10] The division of the Settlement proceeds between the National Fund on the one hand and the five Capital Preservation Funds on the other hand was independently negotiated before Judge Phillips by separate allocation counsel, not previously involved in the Actions. Lead Counsel Decl. ¶¶ 47-52. Judge Phillips decided the ultimate division of Settlement proceeds based on allocation counsel's arguments addressing the relative strength of the claims in the National Fund case vis-à-vis the other five Fund cases. The Settlement proceeds were further divided among the five Capital Preservation Funds based on the respective recoverable damages for each Fund. *Id.* As such, the division of the Settlement proceeds among the Funds is fair, reasonable, and adequate for the same reasons as the Settlement as a whole.

Dr. Renzo Comolli and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review*, at 33 (NERA 2013). Furthermore, the median percentage of investor losses recovered in shareholder class action settlements between 2002 and 2013 ranged between 2.2% and 3.1% each year. *Id.* The Settlement here clearly compares favorably to these medians.

The Settlement Amount also exceeds the national median settlement in 1933 Act cases as well as the median for securities cases in the Tenth Circuit. The median settlement for cases brought under Sections 11 and 12 of the 1933 Act, since the enactment of the Private Securities Litigation Reform Act ("PSLRA") in 1995 (*see* 15 U.S.C. § 77z-1(a)(7)) through 2013, is $3.4 million. *See* Laarni Bulan, Ellen Ryan and Laura Simmons, *Securities Class Action Settlements: 2013 Review and Analysis*, at 12 (Cornerstone Research 2013) ("Cornerstone Study").[11] Likewise, the estimated 4% recovery in this Settlement exceeds the median recovery from 2004 to 2013, which ranges from 1.3% to 3.1% of total damages (Cornerstone Study at 8) – a range typical of many court-approved settlements.[12]

[11] *Available at* http://securities.stanford.edu/research-reports/1996-2013/Settlements-Through-12-2013.pdf.

[12] *See In re Merrill Lynch*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving a settlement that was between approximately 3% and 7% of estimated damages and within the range of reasonableness for recovery in the settlement of large securities class actions.); *In re Prudential Sec., Inc. L.P. Litig.*, MDL No. 1005, 1995 WL 798907 (S.D.N.Y. 1995) (approving settlement of between 1.6% and 5% of claimed damages).

4. **The parties' judgment that the Settlement is fair and reasonable.**

The final factor highlighted in *Gottlieb* for assessing the adequacy of any settlement – the parties' own view of the settlement (*Gottlieb*, 11 F.3d at 1014; *Jones*, 741 F.2d at 324) – also weighs heavily in favor of the determination that the Settlement should be approved. The Settlement has the full support of six separate Lead Plaintiffs. Lead Plaintiffs' Counsel believe in the exercise of their judgment based on extensive knowledge of the facts of the case and the legal issues facing the Classes, as well as judgments about the strengths and weaknesses of the claims, that the Settlement provides an excellent recovery to the Classes. After an extensive analysis, Lead Plaintiffs' Counsel concluded that the terms of the Settlement Agreements are fair, just, and adequate to Lead Plaintiffs and the Classes.[13] *See* Lead Counsel Decl. ¶¶ 63-85.

Lead Plaintiffs' Counsel are extremely well-versed in the facts and legal issues to be tried in these cases, having undergone extensive document discovery, fourteen depositions of Lead Plaintiffs, named Class Representatives and their brokers, and a Rule 30(b)(6) deposition (spanning two days) of Oppenheimer in these Actions, and having

[13] Lead Plaintiffs have merged the discussion of the four additional factors suggested in *In re New Mexico* and *Wilkerson*, *see supra* at 7, into the previous discussion. The "risk of establishing damages at trial" is discussed *supra* at 16-17; *see also* Lead Counsel Decl. ¶ 69. Lead Plaintiffs discuss the "extent of discovery and the current posture of the case" *supra* at 3; 18; *see also* Lead Counsel Decl. ¶¶ 20-41. Next, while any discussion of the "reaction of class members to the proposed settlement" is preliminary because the deadline for objections and exclusions is July 2, 2014, Lead Plaintiffs discuss this factor *infra* at 19-21; *see also* Lead Counsel Decl. ¶¶ 109-110.

engaged in extensive expert analysis of the evidence.[14] *Id*. Given their backgrounds and their extensive experience and success in prosecuting class actions,[15] Lead Plaintiffs' Counsel's judgment is entitled to substantial weight. *See, e.g.*, *Wilkerson*, 171 F.R.D. at 288-89; *Alvarado Partners*, 723 F. Supp. at 548 (the "views and experience of counsel are legitimate factors to consider"); *In re New Mexico*, 607 F. Supp. at 1506 (court "place[d] great weight on" experienced counsel's "recommendation that the settlement be approved"); Manual for Complex Litigation (Fourth) § 21.633 at 321-22. *See also King Resources*, 420 F. Supp. at 625 ("Courts have consistently refused to substitute their business judgment for that of counsel, absent evidence of fraud or overreaching").

In light of the substantial recovery to the Classes, the arm's-length nature of the negotiations, the involvement of an independent and highly experienced mediator, and the participation of sophisticated Lead Plaintiffs' Counsel and Lead Plaintiffs throughout the litigation, the proposed Settlement is more than fair, reasonable, and adequate to merit final approval.

C. Class Reaction to Date Supports Approval

Lead Plaintiffs' Counsel issued notice to absent settlement Class Members in the manner ordered by this Court and required by Rule 23, due process principles, and the pertinent provisions of the PSLRA. *See also Alvarado Partners*, 723 F. Supp. at 546-47

[14] Plaintiffs William E. Miles, Jr. and John P. Galganovicz also sought to be certified as representatives of the Pennsylvania Fund Class (together with the six Lead Plaintiffs, "Class Representatives").

[15] Lead Plaintiffs' Counsel attach their firm résumés as exhibits to their declarations documenting their respective firms' time and expenses in this litigation.

("In a securities fraud class action … the size of the class" and "the total amount of the potential claims … can be fairly estimated through stock registration information" and such "precise information" weighs in favor of approval of settlement).

Specifically, the Court's Order Preliminarily Approving Settlement and Providing for Notice was entered on March 12, 2014 (Dkt. No. 499) ("Preliminary Approval Order"), and directed Lead Plaintiffs' Counsel, no later than May 7, 2014, to cause the mailing of the Notice to all Class Members who could be identified with reasonable effort.[16]

Lead Plaintiffs' Counsel selected a qualified and experienced claims administrator, Epiq, who has mailed 577,712 copies of the Court-approved Notice of Pendency and Proposed Settlement, of Class Actions and Notice of Motion for Awards of Attorneys' Fees and Reimbursement of Expenses (the "Notice") to all known settlement Class Members and published the Court-approved Summary Notice in the *Investor's Business Daily* and over PRNewswire. Lead Counsel Decl. ¶ 109; Epiq Decl. ¶¶ 25-26. In addition, the Notice and the Proof of Claim were posted on the dedicated Settlement website and the website of Lead Counsel. Epiq Decl. ¶ 33. This method of giving notice, previously approved by the Court, is appropriate because it directs notice in a "reasonable

[16] This was a substantial undertaking. As detailed in the Declaration of Lead Counsel's claims administrator, Epiq Class Action & Claims Solutions ("Epiq") (attached as Exhibit 12 to Lead Counsel's Declaration), Epiq developed a mailing list and generated personalized Records of Fund Transactions for thousands of Class Members using names, addresses, and transactional data provided by Oppenheimer and by brokers/nominees who responded to a vigorous notice campaign. Accordingly, a large segment of the Classes will not need to complete a Proof of Claim to recover. Epiq has essentially done this for them. Unidentified Class Members do need to complete a Proof of Claim. Epiq Decl. ¶¶ 18-19.

manner to all class members who would be bound by the propos[ed judgment]." Fed. R. Civ. P. 23(e)(1); *see also Horton v. Leading Edge Mktg.*, No. 04-cv-00212, 2007 U.S. Dist. LEXIS 63533, at *14-16 (D. Colo. Aug. 28, 2007) (approving similar notice regimen).

The Notice informs Class Members of the terms of the Settlement; the Plan of Allocation for the allocation of proceeds of the Settlement; the nature of the settled claims; the estimated per share recovery; the status of the litigation; the date, time, and place of the hearing on the motions to approve the Settlement and to award attorneys' fees and reimbursement of expenses; the parameters of the fee application; and the procedure allowing Class Members to comment on, object to, or request exclusion from the Settlement. *In re Qwest Comm'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1137 (D. Colo. 2009) ("a notice of a class action and a proposed settlement generally must contain 'an adequate description of the proceedings written in objective, neutral terms, that, insofar as possible, may be understood by the average absentee class member'"). Counsel's adherence to this well-established procedure protects the rights of absent Class Members. *See id*.

Simply put, any Class member who may have reason to object to the Settlement has been provided fair notice, and had an opportunity to either opt-out or appear before the Court. The Court-ordered deadline to object to any aspect of the Settlement — July 2, 2014 — has not yet passed. To date, the parties have received zero objections from Class Members. *See* Lead Counsel Decl. ¶ 110. Lead Plaintiffs' Counsel will address any future objections received as part of their reply papers (due by July 24, 2014), which

will be filed after the July 2, 2014 deadline for objecting or requesting exclusion from the Classes has passed.

D. The Plan of Allocation Is Fair and Reasonable and Should be Approved

Lead Plaintiffs have also proposed a plan to distribute the proceeds of the Settlement among Class Members, which was created with the assistance of Financial Markets Analysis, LLC. Lead Counsel Decl. ¶¶ 40, 58-62. The plan was set forth in full in the Notice mailed to the Classes. The objective of the proposed Plan of Allocation is to equitably pay the Settlement proceeds to those Class Members who suffered economic losses as a result of the alleged false and misleading statements. The $89,500,000 in cash, less attorneys' fees and any expenses awarded by the Court, notice and administration expenses, and any tax expenses payable from the Settlement Fund (the "Net Settlement Fund"), will be distributed to Authorized Claimants in accordance with the Plan of Allocation. Stipulations ¶¶ 13, 16.

Assessment of the adequacy of a plan of distribution in a class action is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *28; *Law v. NCAA*, 108 F. Supp. 2d 1193, 1196 (D. Kan. 2000); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *In re Omnivision Techs*., 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2007); *see also Newton v. Fortis Ins. Co*., No. 04-cv-1650, 2006 U.S. Dist. LEXIS 33965, at *6-7 (D. Colo. May 26, 2006) (applying standard). "An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced

and competent class counsel." *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *29 (quoting *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001)).

The goal of an equitable plan of distribution is fairness to the class as a whole. Based on the damages provisions of Section 11 of the 1933 Act, the proposed Plan of Allocation in these Actions is fair and falls within the mainstream of allocation plans routinely approved by courts. Each Class Member's share of the settlement proceeds will be calculated based upon Section 11 of the 1933 Act, and within the same Fund, profits will offset Class Members' losses, but profits on shares bought in one Fund (*e.g.*, the Rochester Fund), will not offset losses in another Fund (*e.g.*, the Pennsylvania Fund).

The method by which the proposed Plan of Allocation calculates Recognized Losses is explained in detail in Lead Counsel's Declaration at ¶¶ 60-61. A Class Member is eligible to receive a distribution from the Net Settlement Fund only if he or she has a net loss, after all profits from transactions in a specific Fund's shares during the Class Period are subtracted from all losses.

The distribution methodology is adequately explained in the Notice sent to Class Members. It was prepared in consultation with Lead Plaintiffs' damages consultant, tracks the theory of damages asserted by Lead Plaintiffs, and is fair, reasonable, and adequate to the Classes as a whole. *See* Lead Counsel Decl. ¶ 62.

E. The Court Should Affirm Its Certification of the Classes

In presenting the proposed Settlement to the Court for preliminary approval, Lead Plaintiffs requested that the Court certify the Classes for settlement purposes so that notice of the proposed Settlement, the Settlement Hearing, and the rights of Class

Members to request exclusion, object, or submit Proofs of Claim could be issued. In its Preliminary Approval Order, this Court certified the Classes for settlement purposes. Nothing has changed that would call into question the propriety of the Court's certification and, for all the reasons stated in Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Settlement and Approval of Notice Plan (Dkt. No. 498), incorporated herein by reference, Lead Plaintiffs now request that the Court reiterate its prior certification (i) of the Classes for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and (b)(3); and (ii) of Lead Plaintiffs as Class Representatives, as well as its prior appointment of Class Counsel.

IV. CONCLUSION

For the reasons stated herein and in Lead Counsel's Declaration, it is respectfully submitted that the proposed Settlement merits final approval by this Court, and the proposed Plan of Allocation should be approved.

Dated: June 11, 2014

Respectfully submitted,

s/ Kip B. Shuman

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Certificate of Service

I hereby certify that the foregoing was filed with this Court on June 11, 2014 through the CM/ECF system and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants.

s/ Rusty E. Glenn
Rusty E. Glenn