

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SANKTOKH SOHAL, Individually and on)	No. 1:15-cv-00393-DAP
Behalf of All Others Similarly Situated,)	
)	Judge Dan Aaron Polster
Plaintiff,)	
)	<u>CLASS ACTION</u>
vs.)	
)	
ELLIS YAN, <i>et al.</i> ,)	
)	
Defendants.)	
)	
_____)	

DECLARATION OF JACK REISE IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION
AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
EXPENSES

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I, JACK REISE, declare as follows pursuant to 28 U.S.C. §1746:

1. I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) and am admitted *pro hac vice* to practice before this Court. Robbins Geller is the Court-appointed Lead Counsel for Lead Plaintiff City of Warren Police & Fire Retirement System (“Warren Police & Fire” or “Lead Plaintiff”) and the proposed Class in this securities class action (the “Litigation”). I have been actively involved in the prosecution of the Litigation, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my close supervision and active participation in the Litigation. If called as a witness, I could and would testify competently thereto.

2. This declaration sets forth the background of the Litigation, the nature of the claims asserted, its procedural history, the legal services provided by Lead Counsel, and the negotiations that led to the proposed Settlement with TCP International Holdings Ltd. (“TCPI” or the “Company”), Ellis Yan (“Yan”), Brian Catlett (“Catlett”) (together, the “TCPI Defendants”), Deutsche Bank Securities Inc., Piper Jaffray & Co., Canaccord Genuity Inc., and Cowen and Company, LLC (the “Underwriter Defendants,” and with the TCPI Defendants, the “Defendants”). This declaration demonstrates why the Settlement and Plan of Allocation are fair, reasonable, and adequate and should be approved by the Court, and why the application for attorneys’ fees and expenses is reasonable and should likewise be approved by the Court.¹

3. The Settlement will resolve all claims asserted in the Litigation against Defendants on behalf of a class that consists of: all persons or entities that purchased or otherwise acquired TCPI common stock during the period from June 26, 2014 through February 26, 2015, inclusive, including purchasers of TCPI common stock pursuant and/or traceable to the Registration Statement for

¹ All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation of Settlement, filed on April 12, 2017 (the “Stipulation”). Dkt. No. 83-3.

TCPI's June 25, 2014 initial public offering (the "Class").² The Court preliminarily approved the Settlement by Order entered April 13, 2017 (the "Preliminary Approval Order") (Dkt. No. 84). To date, there have been no objections and no requests for exclusion from the Class have been received.

I. PRELIMINARY STATEMENT

4. After more than two years of vigorously contested litigation, Lead Plaintiff has successfully obtained a recovery for the Class in the amount of \$7.175 million. As set forth in the Stipulation, in exchange for the Settlement Amount, the proposed Settlement resolves all claims asserted, or that could have been asserted, by Lead Plaintiff and the Class against the Defendants.

5. The Settlement provides a favorable result for the Class, which faced the genuine possibility of a much smaller recovery or no recovery at all had the case continued to be litigated. Lead Plaintiff's expert has estimated, based on certain assumptions and modeling, that the Class' aggregate damages could be as high as \$86 million. Measured against this yardstick, the Settlement recovers approximately 8.3% of the maximum estimated losses - a substantial recovery in light of the countervailing legal arguments and litigation risks. This recovery is well within the range of recoveries approved by courts nationwide. *See, e.g., In re Fannie Mae Sec., Derivative, & ERISA Litig.*, 4 F. Supp. 3d 94, 103-04 (D.D.C. 2013) (approving settlement amounting to 4%-8% of the

² Excluded from the Class are Defendants, members of the immediate families of each of the Defendants, any person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant has a controlling interest, or which is related to or affiliated with any Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. The Defendants or any entity in which any Defendant has a controlling interest (for purposes of this paragraph, together a "Defendant-Controlled Entity") are excluded from the Class only to the extent that such Defendant-Controlled Entity itself purchased a proprietary (*i.e.*, for its own account) interest in TCPI's common stock. To the extent that a Defendant-Controlled Entity purchased TCPI's common stock in a fiduciary capacity or otherwise on behalf of any third-party client, account, fund, trust, or employee benefit plan that otherwise falls within the Class, neither such Defendant-Controlled Entity nor the third-party client, account, fund, trust, or employee benefit plan shall be excluded from the Class with respect to such TCPI stock. Also excluded from the Class is any Class Member that validly and timely requests exclusion in accordance with the requirements set by the Court.

“best case scenario” potential recovery and noting that such percentage “compares favorably with other cases approving securities class action settlements”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) (\$13.75 million settlement yielding 6% of potential damages after deducting fees and costs was “higher than the median percentage of investor losses recovered in recent shareholder class action settlements”); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 U.S. Dist. LEXIS 9450, at *33 (S.D.N.Y. Feb. 1, 2007) (“The settlement . . . represents a recovery of approximately 6.25% of estimated damages. This is at the higher end of the range of reasonableness of recovery in class actions securities litigations.”). Furthermore, this recovery far exceeds the median reported settlement value as a percentage of investor losses, which is 4.7% for a case of this size. See Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review* at 36, Fig. 29 (NERA Jan. 23, 2017), available at <http://www.nera.com/publications/archive/2017/recent-trends-in-securities-class-action-litigation--2016-full-y.html>.

6. The proposed Settlement was reached only after arm’s-length settlement discussions, including a mediation session conducted under the auspices of Jed Melnick, Esq. of JAMS, a nationally recognized mediator who has substantial experience and expertise in the mediation of complex class actions.

7. Before agreeing to the Settlement, Lead Counsel conducted an extensive investigation into the events underlying the claims, filed a detailed and thorough Amended Complaint (the “First Amended Complaint” or “FAC”), fully briefed Defendants’ motion to dismiss the FAC, filed a Second Amended Complaint (“SAC”) to add substantial new factual allegations and legal claims, fully briefed Defendants’ motion to dismiss the SAC, fully briefed Lead Plaintiff’s motion for reconsideration, and conducted targeted discovery.

8. Lead Counsel carefully analyzed the facts adduced during its investigation, which included, among other things, reviewing and analyzing: (i) publicly available information concerning TCPI, including press releases, news articles, and other public statements; (ii) research reports issued by financial analysts concerning TCPI; (iii) pleadings filed in *Hauser v. Technical Consumer Products, Inc.*, No. CV 15 841097, filed in the Court of Common Pleas in Cuyahoga County, Ohio (the “*Hauser Action*”) against the Company and Defendant Yan concerning similar allegations; (iv) rules and regulations applicable to UL and Energy Star® certifications; and (v) the applicable laws governing the claims and potential defenses. Lead Counsel also interviewed former employees of TCPI and consulted with an expert on damages and causation issues.

9. Thus, at the time the Settlement was reached, Lead Plaintiff and Lead Counsel had a well-founded understanding of the strengths and weaknesses of the claims and defenses, honed through their investigation, consultation with an expert, briefing on the motions to dismiss, and targeted discovery.

II. SUMMARY OF LEAD PLAINTIFF’S CLAIMS

10. Lead Plaintiff’s claims are set forth in the SAC, filed on October 28, 2015 (Dkt. No. 45).³ The SAC asserts claims against Defendants for violations of the federal securities laws, specifically Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 and against the TCPI Defendants for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder. ¶¶1, 92-111, 152-167.⁴

11. Lead Plaintiff’s claims arise from Defendants’ violations of federal law in manufacturing, registering, marketing, and/or selling products with the Underwriters Laboratory

³ On February 25, 2016, the Court dismissed the Second Amended Complaint with prejudice. Dkt. No. 53. On April 27, 2016, the Court reinstated the Second Amended Complaint upon Lead Plaintiff’s motion for reconsideration. Dkt. No. 58.

⁴ Unless otherwise noted, all references herein to “¶____” refer to the paragraph cites of the SAC.

(“UL”) symbol and/or Energy Star® designation without approval and/or that did not meet the requisite standards for approval/certification. Lead Plaintiff also alleges that TCPI’s CEO had been consistently overriding and/or disregarding Company policies regarding, among other things: capital expenditures, customer credit and operating expenditure approvals, new product development processes, and products. ¶¶73-83, 113-121.

12. Lead Plaintiff alleged that as a result of the revelation of the *Hauser* Action concerning those alleged violations, the Company’s stock price fell \$3.67 per share, or over 57%, to close at \$2.74 per share on February 27, 2015. ¶¶70, 82, 128-134.

III. PROCEDURAL HISTORY

A. The Initial Complaint and Appointment of Lead Plaintiff

13. This Litigation was commenced on March 2, 2015, by the filing of an initial complaint alleging violations of the federal securities laws. Dkt. No. 1.

14. On May 1, 2015, Warren Police & Fire moved for appointment as Lead Plaintiff and requested that its counsel, Robbins Geller, be appointed Lead Counsel and Landskroner Grieco Merriman, LLC be appointed as Liaison Counsel. Dkt. Nos. 22-24.

15. On May 29, 2015, the Court appointed Warren Police & Fire as Lead Plaintiff and approved its selection of Robbins Geller as Lead Counsel and Landskroner Grieco Merriman, LLC as Liaison Counsel. Dkt. No. 35.

B. The Investigation

16. The complaints in this Litigation were the result of a rigorous investigation. Lead Counsel undertook, among other things, a review and analysis of: (i) documents filed publicly by TCPI with the SEC; (ii) press releases, news articles, and other public statements issued by or concerning TCPI and Defendants; (iii) research reports issued by financial analysts concerning TCPI; (iv) rules and regulations applicable to UL and Energy Star® certifications; (v) pleadings filed

in the *Hauser* Action involving certain Defendants; and (vi) the applicable laws governing the claims and potential defenses. Lead Counsel also interviewed former employees of TCPI.

17. Lead Counsel continued its investigation after the FAC was filed and added additional, significant factual detail to the proposed second amended complaint based on those efforts.

18. In addition, Lead Counsel consulted with an economic expert for loss causation in connection with the formulation of Lead Plaintiff's claims.

C. The First Amended Complaint

19. On June 12, 2015, Lead Plaintiff filed the FAC against Defendants for violations of Sections 11, 12(a)(2), and 15 of the Securities Act on behalf of a class consisting of those who purchased TCPI common stock in and/or traceable to the Company's initial public offering that took place on or about June 26, 2014 (the "IPO"). Dkt. No. 36, FAC, ¶¶1, 8-14, 17-20. Lead Plaintiff's claims arose from the Company's violations of federal law regarding the Company's manufacturing, registering, marketing, and/or selling products with the UL symbol and/or Energy Star® designation without approval and/or that did not meet the requisite standards for approval/certification. *Id.*, ¶2.

20. Lead Plaintiff alleged that Defendants failed to disclose that the Company was manufacturing lighting fixtures and labeling those products with UL and Energy Star® approval when no such approvals had been received and Defendant Yan was circumventing corporate policies that impacted the manufacturing and quality control processes of these products which undermined the Company's standards and practices. *Id.*, ¶¶41-50.

21. Upon news of the *Hauser* Action, which alleged improper UL certification of the Company's products and Defendant Yan's misconduct, Lead Plaintiff alleged that the Company's common stock fell \$3.67 per share or over 57% on unusually high and abnormal volume to close at

\$2.74 per share on February 27, 2015, or approximately 75% less than the IPO price, upon. *Id.*, ¶¶64-65.

D. The Motion to Dismiss

22. Defendants filed a motion to dismiss the FAC on July 20, 2015. Dkt. No. 39. Defendants argued, *inter alia*, that Lead Plaintiff failed to state a claim because: (i) Lead Plaintiff's allegations are based on the *Hauser* Action without an independent investigation of the facts; (ii) the alleged misconduct occurred after the IPO; (iii) the alleged misstatements are not actionable as they are general statements of corporate optimism and/or not rendered false or misleading by the alleged omission of the allegations in the *Hauser* Action; and (iv) allegations of corporate mismanagement are not actionable.

23. On August 24, 2015, Lead Plaintiff filed its opposition to Defendants' motion to dismiss (Dkt. No. 40), addressing in detail each of Defendants' arguments and on September 14, 2015, Defendants filed a reply brief in further support of their motion to dismiss (Dkt. No. 42).

24. On September 30, 2015, the Court dismissed the FAC with leave to amend. Dkt. No. 43.

E. The Second Amended Complaint

25. On October 28, 2015, Lead Plaintiff filed the Second Amended Complaint (Dkt. No. 45, SAC, ¶¶3, 11-19) alleging the same alleged misconduct detailed in the FAC, and adding claims for violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC on behalf of all persons or entities that purchased and/or acquired the common stock of TCPI from June 26, 2014 through February 26, 2015, inclusive (the "Class Period"). In addition to alleging that the Registration Statement failed to disclose that the Company was producing products and labeling the products as UL and Energy Star® approved when no such approvals had been received (¶¶73-81), Lead Plaintiff also alleged that TCPI Defendants

misrepresented and concealed the material facts that the Company failed to adhere to its established policies and procedures regarding its quality control measures during the Class Period. ¶¶113-121.

26. Defendants filed a motion to dismiss the SAC on December 14, 2015. Dkt. No. 48. In addition to arguing Lead Plaintiff failed to cure the deficiencies in the FAC regarding the Securities Act claims, Defendants argued, *inter alia*, that Lead Plaintiff's Exchange Act claims are improper and inadequate because: (i) such claims exceeded the scope of the Court's leave to amend; (ii) the delay in asserting such claims was prejudicial; (iii) the alleged misstatements that TCPI produced high quality and energy efficient products, established the largest combined number of Energy Star® compliant lighting products, and affirmation of its effective internal controls are not actionable; and (iv) there is no strong inference of scienter as to Defendant Catlett.

27. On January 19, 2016, Lead Plaintiff filed its opposition to Defendants' motion to dismiss (Dkt. No. 50), addressing in detail each of Defendants' arguments and on February 9, 2016, Defendants filed a reply brief in further support of their motion to dismiss (Dkt. No. 52).

28. On February 25, 2016, the Court dismissed the SAC with prejudice. Dkt. No. 53.

F. Motion for Reconsideration

29. On March 24, 2016, Lead Plaintiff filed a motion to alter or amend the Court's dismissal of the SAC with prejudice. Dkt. No. 55. Specifically, Lead Plaintiff asserted that the Court failed to consider post-IPO filings and statements in support of Lead Plaintiff's allegations that the TCPI Defendants violated Section 10(b) and Rule 10b-5 of the Exchange Act, failed to provide Lead Plaintiff the benefit of all plausible inferences that the alleged problems articulated in the SAC existed at the time of the IPO, and the identified statements were false and misleading at the time they were made.

30. On April 4, 2016, Defendants filed their opposition to Lead Plaintiff's motion for reconsideration (Dkt. No. 56) addressing in detail each of Lead Plaintiff's arguments, and on April

13, 2016, Lead Plaintiff filed a reply brief in further support of its motion for reconsideration (Dkt. No. 57).

31. On April 27, 2016, the Court issued its Opinion and Order granting Lead Plaintiff's motion for reconsideration and reinstated the SAC, except with respect to its Exchange Act claims against Defendant Catlett. Dkt. No. 58.

G. Discovery

32. Following the Court's Order on reconsideration, Lead Plaintiff and Defendants (the "Parties") engaged in narrowly tailored discovery that would facilitate a meaningful and informative mediation prior to undertaking broad discovery.

33. In response to Lead Plaintiff's First Request for Production of Documents, Defendants produced – and Lead Counsel reviewed – almost 6,750 pages of documents.

IV. SETTLEMENT NEGOTIATIONS

34. The negotiations that produced this Settlement were substantial and were always conducted at arm's length. Following the resolution of Lead Plaintiff's motion for reconsideration and first case management conference held by the Court, the Parties agreed to pursue an early mediation to explore early resolution of the claims.

35. On November 18, 2016, the Parties participated in a mediation before Jed Melnick, Esq. Prior to the mediation, Lead Plaintiff provided Mr. Melnick with extensive material concerning the case, including a detailed mediation statement. Following the full-day mediation and continuing negotiations over the next several weeks, the Parties reached an agreement-in-principle to resolve this Litigation for \$7.175 million, subject to execution of final documentation. The Parties then extensively negotiated and memorialized the final terms of settlement in the Stipulation, which was filed with the Court on April 12, 2017. Dkt. No. 83-3. The Court granted Lead Plaintiff's unopposed motion for preliminary approval of the Settlement on April 13, 2017. Dkt. No. 84.

V. RISKS OF CONTINUED LITIGATION

36. Based on publicly available documents and information obtained through its own investigation, the filings in the *Hauser* Action, and discussions with an expert consultant on loss causation and damages, Lead Counsel believes that there was support for the allegations asserted in the Litigation. Lead Counsel also realizes, however, that Lead Plaintiff faced considerable risks and obstacles to achieving a recovery, were the case to continue. Lead Plaintiff and Lead Counsel carefully considered the challenges posed in the Litigation during the months leading up to the Settlement and during the settlement discussions with Defendants.

A. Risks Concerning Liability of Defendants

37. Although Lead Plaintiff believes in the merit of the claims asserted against Defendants, securities fraud claims are known to be difficult and complex to litigate and the facts here also presented significant challenges, given, among other things, the vigorous opposition advanced by Defendants.

1. Risks Inherent in Proving a False Scheme

38. Defendants would have argued, as they did in their motions to dismiss, that Lead Plaintiff failed to allege the existence of a scheme to sell products that did not meet UL and Energy Star® certifications. Specifically, Defendants would have argued that Lead Plaintiff could not prove that two isolated instances of improper UL certification amount to nothing more than inactionable corporate mismanagement. It would have been difficult to prove that such a scheme existed given that substantially all of TCPI's manufacturing operations are in China. Lead Plaintiff would have had to prove that the scheme was orchestrated by Defendants and was being actively perpetrated overseas. Given the millions of units of products manufactured, it would have been a challenge to establish the magnitude of improper certification to establish the widespread scheme. In addition, Lead Plaintiff would likely have had to engage experts to review the manufacturing and certification

process to further support a pattern of inappropriate placement of UL and Energy Star® certifications, which would have been both time consuming and expensive for the Class. Given the forgoing, it would be far from certain that a jury would deem that the facts concerning the Company's improper UL and Energy Star® certifications would constitute a scheme to defraud.

2. Risks Concerning Materiality and Falsity of Statements

39. Defendants would be expected to argue at summary judgment and trial, as they had in their motions to dismiss, that Lead Plaintiff could not prove falsity and materiality. First, Defendants would argue that Lead Plaintiff could not prove that any relevant conduct occurred prior to the IPO.

40. Second, Defendants would have argued that their statements of belief as to the Company's commitment to high quality and energy efficient products are statements of corporate optimism, which are inactionable.

41. Third, Defendants would have argued that allegations related to Defendant Yan's misconduct are nothing more than allegations of corporate mismanagement, which are inactionable under the federal securities laws.

42. While Lead Plaintiff has successfully articulated responses to these arguments for pleading purposes, there is no doubt that Defendants would return to these arguments and Lead Plaintiff's continuing ability to overcome them is far from certain, which would dramatically reduce or eliminate the Class' damages.

B. Risks Concerning Loss Causation and Damages

43. Assuming Lead Plaintiff established Defendants' liability, Defendants would have vigorously challenged Lead Plaintiff's ability to establish loss causation and damages. Defendants argued in their motions to dismiss, and would continue to argue at summary judgment and trial, *inter alia*, that Lead Plaintiff could not establish that the Class' losses were caused by the alleged fraud.

44. Regarding the Securities Act claims, Defendants would have argued that news of the Company's performance, and not the *Hauser* Action, caused the Company's stock price fall after the IPO.

45. Regarding the Exchange Act claims, Defendants would have argued that the decline in the Company's stock price in light of the *Hauser* Action is attributable to allegations of inactionable personal misconduct and corporate mismanagement, which do not relate to the issues in this case.

46. In short, Lead Plaintiff faced numerous obstacles to proving both liability and damages and there was no certainty, given Defendants' asserted defenses, that Lead Plaintiff and the Class would prevail. Additionally, Defendants would likely appeal any verdict and damage award. The appeals process would likely span several years, during which time Class Members would have received no distribution on any award. An appeal of any verdict would also carry the risk of reversal, resulting in no recovery for the Class. Because of the risks and delays associated with continuing to litigate and proceeding to trial, there was a real danger that any litigated recovery would be much less than the recovery achieved in this Settlement. Therefore, Lead Counsel believes that the Settlement obtained is fair, reasonable, adequate, and in the best interest of Class Members.

VI. COMPLEXITY, EXPENSE, AND LIKELY DURATION OF THE LITIGATION

47. During the course of the Litigation, a period of over two years, Lead Counsel conducted an extensive investigation, drafted detailed pleadings, engaged in motion practice on Defendants' motions to dismiss and Lead Plaintiff's motion for reconsideration, and spent many hours preparing for mediation, including review and analysis of the targeted discovery, and in negotiations leading to the Settlement. Further litigation against Defendants would have likely consumed significant time and resources for document and deposition discovery, expert discovery, class certification, summary judgment proceedings, trial, and likely appeals thereafter.

48. In particular, discovery would have proven to be exceedingly challenging. During the Class Period, substantially all of TCPI's manufacturing operations were in China. Coordinating and conducting discovery overseas would have been difficult, time consuming and expensive for the Class, with no guarantee that third parties, who are not subject to this Court's jurisdiction, would respond to discovery.

VII. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER AND CLASS REACTION TO DATE

49. Pursuant to the Preliminary Approval Order, the Court appointed Gilardi & Co. LLC ("Gilardi") as Claims Administrator in the Litigation and instructed Gilardi to disseminate copies of (1) the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), and (2) the Proof of Claim and Release ("Proof of Claim") (collectively, the "Claim Package") by mail.

50. The Notice, attached as Ex. A to the accompanying Declaration of Carole K. Sylvester Regarding Dissemination of the Notice and Proof of Claim, Publication of the Summary Notice, and Requests for Exclusion Received to Date ("Mailing Decl."), provides potential Class Members with information on the terms of the Settlement and, among other things: their right to exclude themselves from the Class; their right to object to any aspect of the Settlement, the Plan of Allocation, or the fee and expense application; and the manner for submitting a Proof of Claim in order to be eligible for a payment from the proceeds of the Settlement. The Notice also informs Class Members of Lead Counsel's intention to apply for an award of attorneys' fees of no more than 25% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed \$100,000.

51. As detailed in the Mailing Declaration, on May 4, 2017, Gilardi began mailing Claim Packages to potential Class Members, as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. Mailing Decl., ¶¶5-9. To disseminate the Notice,

Gilardi obtained the names and addresses of potential Class Members from listings provided by TCPI and its transfer agent and from banks, brokers and other- nominees. *Id.* In total, to date, Gilardi has mailed 7,314 Claim Packages to potential nominees and Class Members. *Id.*, ¶¶5-11. On May 9, 2017, Gilardi caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over the *Business Wire*. *Id.*, ¶14, and Exhibit D to the Mailing Decl.

52. Gilardi also maintains and posts information regarding the Settlement on a dedicated website established for the Litigation, www.tcpisohalsecuritieslitigation.com, to provide Class Members with information concerning the Settlement, as well as downloadable copies of the Claim Package, the Stipulation, and the Preliminary Approval Order. *Id.*, ¶13.

53. Pursuant to the terms of the Preliminary Approval Order, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the fee and expense application, or to request exclusion from the Class is July 7, 2017. To date, Lead Counsel has not received any objections and Gilardi has not received any requests for exclusion from the Class. *Id.*, ¶15. Should any objections or further requests for exclusion be received, Lead Counsel will address them in its reply papers, which are due July 20, 2017.

VIII. PLAN OF ALLOCATION

54. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Settlement proceeds must submit a valid Proof of Claim and all required information postmarked no later than September 6, 2017. As provided in the Notice, after deduction of Court-awarded attorneys' fees and expenses, notice and administration costs, and applicable Taxes, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the plan of allocation approved by the Court (the "Plan of Allocation").

55. The Plan of Allocation proposed by Lead Plaintiff, which is set forth in full in the Notice (Mailing Decl., Ex. A at 10-12), is designed to achieve a fair and equitable distribution of the Net Settlement Fund to eligible claimants, but it is not a formal damages analysis that would be submitted at trial. Lead Counsel developed the Plan of Allocation in close consultation with Lead Plaintiff's damages consultant and believes that the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

56. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a pro rata basis based on "Recognized Loss" formulas tied to liability and damages. Lead Plaintiff's consulting damages expert analyzed the movement of TCPI's common stock and took into account the portion of the stock drops allegedly attributable to the challenged statements. The Plan of Allocation ensures that the net settlement proceeds will be fairly and equitably distributed based upon the amount of inflation in the price of TCPI's common stock during the Class Period that was allegedly attributable to the alleged wrongdoing.

57. The Plan of Allocation provides formulas for calculating a claimant's "Recognized Loss" for each acquisition/purchase of TCPI common stock during the Class Period. Calculation of Recognized Loss will depend upon several factors, including when the Authorized Claimant's TCPI's common stock was purchased during the Class Period and whether the stock was sold during the Class Period, and if so, when and at what price.

58. Gilardi, as the Court-approved Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Loss compared to the aggregate Recognized Losses of all Authorized Claimants, as calculated in accordance with the Plan of Allocation.

59. To date, there have been no objections to the Plan of Allocation and Lead Plaintiff and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable, and should be approved.

IX. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES

60. In addition to seeking final approval of the Settlement and the Plan of Allocation, Lead Counsel is applying for a fee award of 25% of the Settlement Fund (which includes accrued interest) on behalf of all Lead Plaintiff's Counsel that contributed to the prosecution of the Litigation. Lead Counsel also requests payment of expenses incurred in connection with the prosecution of the Litigation from the Settlement Fund in the amount of \$67,602.32, plus accrued interest. This amount is well below the \$100,000 maximum expense amount that the Class was advised could be requested. The legal authorities supporting the requested fees and expenses are set forth in Lead Counsel's separate memorandum of law in support of the fee and expense application. Below is a summary of the primary factual bases for the request.

A. The Risks and Unique Complexities of the Litigation

61. The Litigation presented substantial challenges from the outset of the case. The specific risks Lead Plaintiff faced in proving Defendants' liability and damages are detailed in paragraphs 36-46 above. These case-specific risks are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Litigation was undertaken on a contingent basis.

62. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking this responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Litigation, and that funds were available to compensate staff and to cover the considerable costs

that a case such as this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Lead Plaintiff's Counsel have received no compensation during the course of the Litigation and have incurred \$67,602.32 in expenses in prosecuting the Litigation for the benefit of the Class (*see* Section X, below, for further detail on counsel's incurred expenses).

63. Lead Counsel also bore the risk that no recovery would be achieved (or that a judgment could not be collected, in whole or in part). Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to convince sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

64. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. If this important public policy is to be carried out, courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

65. Here, Lead Counsel's persistent efforts in the face of substantial risks and uncertainties have resulted in a favorable and immediate recovery for the benefit of the Class. In circumstances such as these, and in consideration of Lead Counsel's hard work and the very favorable result achieved, the requested fee of 25% of the Settlement Fund and payment of \$67,602.32 in expenses is reasonable and should be approved.

B. The Work and Experience of Lead Counsel

66. The work undertaken by Lead Counsel in investigating and prosecuting this case and arriving at the present Settlement in the face of serious hurdles has been time-consuming and

challenging. As more fully set forth above, the Litigation was prosecuted for over two years and settled only after Lead Counsel countered multiple legal and factual challenges. Among other efforts, Lead Counsel conducted a comprehensive investigation into the Class' claims; researched and prepared a detailed amended complaint; briefed an extensive opposition to Defendants' motion to dismiss; prepared an even more detailed and extensive second amended complaint upon discovering new facts and evidence; fully briefed a motion for reconsideration; completed targeted discovery; consulted with an economic expert; and engaged in a hard-fought settlement process with experienced defense counsel.

67. At all times throughout the pendency of the Litigation, Lead Counsel's efforts were driven and focused on advancing the Litigation to bring about the most successful outcome for the Class, whether through settlement or trial, by the most efficient means necessary.

68. Filed herewith are declarations from Lead Plaintiff's Counsel to support Lead Counsel's request for an award of attorneys' fees and litigation expenses. *See* Declaration of Jack Reise on behalf of Robbins Geller Rudman & Dowd LLP, dated June 23, 2017 ("Robbins Geller Fee Decl."); and Declaration of Jack Landskroner on behalf of Landskroner Grieco Merriman, LLC (Liaison Counsel), dated June 15, 2017 ("Landskroner Fee Decl.").

69. Included within these declarations are charts that summarize the number of hours worked by each attorney and each professional support staff employed by the firms and the value of that time at current billing rates, *i.e.*, the "lodestar" of the firms, as well as the expenses incurred by category. As set forth in each declaration, the charts were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms.

70. The hourly billing rates of Lead Plaintiff's Counsel here range from \$575 to \$930 for partners and \$435 to \$565 for associates. *See* Exhibit A to the Robbins Geller Fee Decl. and the Landskroner Fee Decl. It is respectfully submitted that the hourly rates for attorneys and

professional support staff included in these declarations are reasonable and customary. The National Law Journal's annual survey of law firm billing rates in 2015 shows that partner billing rates among the nation's largest firms were as high as \$1,295 per hour and associate billing rates were as high as \$975 per hour. See www.nationallawjournal.com, attached as Ex. 1 hereto.

71. Counsel have collectively expended more than 1,800 hours in the prosecution and investigation of the Litigation. See Exhibit A to the Robbins Geller Fee Decl. and the Landskroner Fee Decl. The resulting collective lodestar is \$1,104,143.25. *Id.* Pursuant to a lodestar "cross-check," the requested fee of 25% of the Settlement Fund (or \$1,793,750) results in a slight "multiplier"⁵ of approximately 1.62 of the lodestar, which does not include any time that will necessarily be spent from this date forward administering the Settlement.

72. Lead Counsel is highly experienced in prosecuting securities class actions and worked diligently and efficiently in prosecuting the Litigation. Robbins Geller has 200 lawyers in 10 offices nationwide and, in its capacity as lead counsel, has successfully obtained some of the largest recoveries in history including, *In re Enron Corp. Sec. Litig.*, No. H-01-3624 (S.D. Tex.) (the firm represented, among others, Amalgamated Bank, Regents of the University of California, Washington State Investment Board, and San Francisco City and County Employees' Retirement Fund Systems and secured a \$7.3 billion recovery, which is the largest ever in a securities class action); *Jaffe v. Household International, Inc.*, No. 02-C-5893 (N.D. Ill.) (\$2.46 billion judgment is the largest ever jury trial verdict in a securities class action); and *In re UnitedHealth Group Inc. PSLRA Litig.*, No. 06-cv-01691 (D. Minn.) (the firm represented California Public Employees' Retirement System and others in recovering \$925 million in the largest stock option backdating settlement). See Robbins Geller Fee Decl., Ex. E.

⁵ The multiplier is calculated by dividing the \$1,793,750 fee request by the \$1,104,143.25 lodestar of Lead Plaintiff's Counsel.

C. Standing and Caliber of Defense Counsel

73. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants are represented by Skadden, Arps, Slate, Meagher & Flom LLP and Shearman & Sterling LLP, well-known and respected law firms with attorneys who vigorously represented the interests of their clients. In the face of this experienced, formidable, and well-financed opposition, Lead Counsel was nonetheless able to achieve a settlement very favorable to the Class.

D. The Reaction of the Class to the Fee and Expense Application

74. As mentioned above, consistent with the Preliminary Approval Order, more than 7,300 Claim Packages have been mailed to potential Class Members advising them that Lead Counsel would seek an award of attorneys' fees that would not exceed 25% of the Settlement Fund, and payment of expenses in an amount not greater than \$100,000. *See* Mailing Decl., Ex. A at 2. Additionally, the Summary Notice was published in *The Wall Street Journal* and disseminated over the *Business Wire*. *Id.*, ¶14. The Claim Package, Stipulation, and Preliminary Approval Order have also been available on the Settlement website maintained by Gilardi. *Id.*, ¶13. While the July 7, 2017 deadline set by the Court for Class Members to object to the requested fees and expenses has not yet passed, to date no objections have been received. Lead Counsel will respond to any objections received in its reply papers.

X. REQUEST FOR PAYMENT OF LITIGATION EXPENSES

75. Lead Counsel seeks, on behalf of Lead Plaintiff's Counsel, payment from the Settlement Fund of \$67,602.32 in litigation expenses reasonably and necessarily incurred in connection with commencing and prosecuting the claims against Defendants.

76. From the beginning of the case, Lead Plaintiff's Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the

Litigation was successfully resolved. Thus, counsel were motivated to take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

77. As set forth in the fee and expense declarations, Lead Plaintiff's Counsel have incurred a total of \$67,602.32 in litigation expenses in connection with the prosecution of the Litigation. As attested to, these expenses are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are set forth in detail in each firm's declaration, which identifies the specific category of expense – *e.g.*, online/computer research, expert and investigator fees, travel costs, mediation fees, duplicating, telephone, fax and postage expenses, and other costs incurred for which counsel seek payment. These expense items are billed separately and such charges are not duplicated in the respective firms' billing rates.

78. Of the total amount of expenses, \$39,441.75, or more than 50%, was expended on investigators and an expert. Early in the litigation, Lead Counsel retained an outside investigative firm to assist in drafting the detailed and extensive complaints and investigating the claims. Lead Counsel also worked with its consulting damages expert to assist in developing a fair and reasonable Plan of Allocation.

79. Another large component of the litigation expenses was for online legal and factual research. In addition to researching the law pertaining to such complex areas such as, *inter alia*, falsity, materiality, scienter, and causation, Lead Counsel necessarily spent considerable time and expense performing factual research.

80. The other expenses for which Lead Plaintiff's Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour.

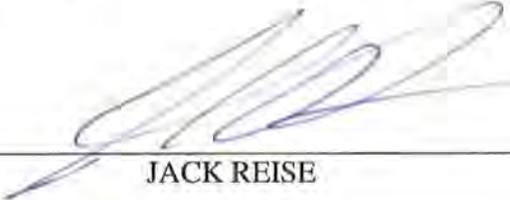
These expenses include court fees, costs of out-of-town travel, copying costs, long distance telephone and facsimile charges, and postage and delivery expenses.

81. All of the litigation expenses incurred, which total \$67,602.32, were necessary to the successful prosecution and resolution of the claims against Defendants.

XI. CONCLUSION

82. In view of the significant recovery to the Class and the substantial risks of this Litigation, as described above and in the accompanying memoranda of law, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, and the standing and experience of Lead Counsel, as described above and in the accompanying memoranda of law, Lead Counsel respectfully submits that a fee in the amount of 25% of the Settlement Fund be awarded, and that the requested litigation expenses in the amount of \$67,602.32, plus accrued interest be paid.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 22nd day of June, 2017, at Boca Raton, Florida.



JACK REISE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART (*pro hac vice*)

EXHIBIT 1



2016 NLJ Billing Survey

Source: National Law Journal

Category: National Law Journal

ALM Legal Intelligence, in association with The National Law Journal, reached out to law firms to provide a range of hourly billing rates for partners, associates, of counsel, and paralegals. For firms that did not report their rates to ALI directly, in many cases we were able to supplement rate data derived from public records. This year, we have anonymized the rates and broken the data out by firm size and region.

Hourly Billing Rates for 2015

	Partner			Associate	
	High	Low	Median	High	Low
Overall Hourly Rates	\$1,295	\$90	\$395	\$950	\$50

Rates by Firm Size

1 - 25 lawyers	\$1,080	\$90	\$350	\$950	\$90
26 - 150 lawyers	\$1,050	\$190	\$460	\$900	\$100
151 or more lawyers	\$1,295	\$100	\$595	\$975	\$125

Rates by State

AL	\$725	\$200	\$375	\$375	\$175
AZ	\$750	\$125	\$375	\$750	\$175
CA	\$1,080	\$200	\$495	\$950	\$300
CO	\$893	\$350	\$443	\$642	\$150
CT	\$1,200	\$295	\$350	\$625	\$175
DC	\$1,095	\$975	\$1,035	\$655	\$350
DE	\$1,050	\$295	\$650	\$850	\$260
FL	\$625	\$175	\$375	\$525	\$100
GA	\$500	\$250	\$358	\$450	\$110
IL	\$985	\$200	\$420	\$710	\$150
IN	\$400	\$250	\$305	\$400	\$200
KY	\$340	\$200	\$290	\$350	\$200
LA	\$575	\$150	\$333	\$500	\$100
MA	\$650	\$300	\$475	\$500	\$260
MD	\$560	\$250	\$363	\$580	\$150
MI	\$375	\$190	\$265	\$400	\$125
NC	\$675	\$250	\$425	\$435	\$150
NJ	\$880	\$250	\$400	\$400	\$150
NM	n/a	n/a	n/a	\$350	\$175
NV	\$450	\$295	\$375	\$500	\$200
NY	\$1,295	\$100	\$420	\$975	\$90
OH	\$545	\$250	\$313	\$330	\$155
OR	\$485	\$315	\$370	\$325	\$230
PA	\$875	\$200	\$350	\$565	\$86
PR*	\$300	\$100	\$200	\$350	\$100
TN	\$735	\$225	\$300	\$350	\$150
TX	\$925	\$90	\$395	\$650	\$150
VA	\$545	\$220	\$335	\$495	\$175
WA	\$965	\$275	\$460	\$375	\$150
WI	\$595	\$560	\$578	n/a	n/a

n/a: data not available

*Puerto Rico is a U.S. Territory

Of Counsel			Paralegal			
Median	High	Low	Median	High	Low	Median
\$350	\$1,120	\$125	\$350	\$325	\$25	\$125

\$300	\$645	\$125	\$350	\$325	\$25	\$115
\$300	\$620	\$225	\$393	\$305	\$75	\$173
\$325	\$1,120	\$270	\$610	\$325	\$35	\$220

\$300	\$495	\$290	\$393	n/a	n/a	n/a
\$250	\$750	\$250	\$300	\$250	\$75	\$125
\$350	\$595	\$175	\$450	\$325	\$25	\$150
\$325	\$400	\$325	\$363	\$285	\$75	\$158
\$350	\$550	\$325	\$438	\$290	\$75	\$100
\$375	\$775	\$275	\$750	n/a	n/a	n/a
\$388	\$525	\$260	\$275	\$305	\$125	\$235
\$300	n/a	n/a	n/a	\$255	\$65	\$123
\$275	\$250	\$240	\$245	\$160	\$50	\$120
\$300	\$1,120	\$395	\$430	\$215	\$75	\$120
\$275	\$300	\$225	\$295	\$220	\$90	\$100
\$275	n/a	n/a	n/a	\$150	\$75	\$105
\$250	\$425	\$200	\$350	\$285	\$45	\$83
\$350	n/a	n/a	n/a	n/a	n/a	n/a
\$325	\$350	\$250	\$275	\$280	\$75	\$125
\$275	n/a	n/a	n/a	\$125	\$75	\$103
\$275	n/a	n/a	n/a	\$180	\$75	\$110
\$298	\$565	\$225	\$325	\$195	\$65	\$120
\$200	n/a	n/a	n/a	n/a	n/a	n/a
\$325	n/a	n/a	n/a	\$240	\$75	\$152
\$350	\$930	\$250	\$573	\$325	\$60	\$130
\$250	n/a	n/a	n/a	\$135	\$85	\$100
\$300	\$450	\$310	\$380	\$220	\$145	\$185
\$257	\$440	\$300	\$325	\$325	\$75	\$105
\$200	\$250	\$125	\$188	\$150	\$45	\$75
\$250	\$300	\$270	\$300	\$150	\$50	\$90
\$298	\$740	\$225	\$320	\$290	\$35	\$100
\$295	\$400	\$300	\$350	\$325	\$75	\$95
\$350	n/a	n/a	n/a	\$215	\$125	\$143
n/a	n/a	n/a	n/a	n/a	n/a	n/a

Other Documents

[1:15-cv-00393-DAP Sohal v. Yan et al](#)

[Cat12,Lead,Protect,Reopen,Ruiz](#)

U.S. District Court

Northern District of Ohio

Notice of Electronic Filing

The following transaction was entered by Stewart, Ellen on 6/23/2017 at 12:07 PM EDT and filed on 6/23/2017

Case Name: Sohal v. Yan et al

Case Number: [1:15-cv-00393-DAP](#)

Filer: City of Warren Police & Fire Retirement System

Document Number: [87](#)

Docket Text:

Affidavit/Declaration of Jack Reise in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses filed by City of Warren Police & Fire Retirement System. Related document(s)[86], [85]. (Attachments: # (1) Exhibit 1 - NLJ Billing Survey)(Stewart, Ellen)

1:15-cv-00393-DAP Notice has been electronically mailed to:

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1:15-cv-00393-DAP Notice has been delivered by other means to:

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Thomas C. Michaud
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Document description:Exhibit 1 - NLJ Billing Survey

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