UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER IKAI VAN NOPPEN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. INNERWORKINGS, INC., ERIC D. BELCHER, and JOSEPH M. BUSKY, Defendants.	Case No. 1:14-cv-01416 Hon. John Robert Blakey CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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PRELIMINARY STATEMENT

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court-appointed Lead Plaintiff, Plymouth County Retirement System, on behalf of itself and the Settlement Class,[1] respectfully submits this memorandum of law in support of its motion for final approval of the settlement of this securities class action (the "Action") for $6,025,000 (the "Settlement"), with Defendants InnerWorkings, Inc. ("InnerWorkings" or the "Company"), Eric D. Belcher ("Belcher") and Joseph M. Busky ("Busky") (the "Individual Defendants" and collectively with InnerWorkings, the "Defendants"); affirmance of certification of the Settlement Class for settlement purposes only; and approval of the Plan of Allocation for the proceeds of the Settlement. The terms of the Settlement are set forth in the Stipulation and Agreement of Settlement, dated as of May 11, 2016 (the "Stipulation"), which has been previously submitted to the Court.[2]

The Settlement is the result of extensive, arm's-length negotiations by well-informed counsel with a thorough understanding of the strengths and weaknesses of Lead Plaintiff's claims. These negotiations included a mediation actively supervised by Robert A. Meyer, a well-respected mediator with experience in mediating numerous securities claims involving

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[1] In its Order Granting Preliminary Approval of Class Action Settlement, dated May 25, 2016, the Court certified for settlement purposes only a class of all persons and entities that purchased the publicly traded common stock and/or call options, and/or sold the put options, of InnerWorkings, Inc. during the period from February 15, 2012 through November 6, 2013, inclusive, and who were allegedly damaged thereby. Excluded from the Settlement Class are: (i) the Defendants; (ii) the officers and directors of the Company during the Class Period; (iii) members of the immediate families of the Individual Defendants and the officers and directors of the Company during the Class Period; (iv) Productions Graphics and its officers and directors during the Class Period; (v) any entity in which any Defendant has or had a controlling interest, including but not limited to Productions Graphics; and (vi) the legal representatives, heirs, successors, assigns, and affiliates of any such excluded party. Also excluded from the Settlement Class are any Settlement Class Members who properly exclude themselves by submitting a valid and timely request for exclusion in accordance with the requirements set forth in the Notice. ECF No. 95, at ¶2.

[2] All capitalized terms used herein have the same meaning as set forth in the Stipulation, filed with the Court on May 11, 2016. ECF No. 91-1.

Fortune 500 companies and major financial institutions. The parties engaged in several subsequent settlement discussions in the first three months of 2016. Lead Counsel has significant experience in securities and other complex class action litigation, and has negotiated numerous substantial class action settlements throughout the country. It is counsel's informed opinion that the Settlement is a favorable result in light of the substantial expense, risk, delay and uncertainty of pursuing this Action through trial and any appeals, as addressed herein.

The Settlement was reached at a point when Lead Plaintiff and Lead Counsel had a thorough understanding of the facts and challenges posed by the claims and defenses, and the factors that would impact a future recovery. This understanding was informed by an extensive investigation that included, among other things: (i) contacting more than 100 potential witnesses and interviews with approximately 40 former employees of InnerWorkings and other persons with relevant knowledge, such as former officers of Productions Graphics ("PG"), including its former Chief Executive Officer, Christophe Delaune; (ii) analyzing publicly available information regarding Defendants; (iii) substantive briefing on Defendants' motion to dismiss the Complaint; (iv) Defendants' production of documents, which included those previously made available to French prosecutors as part of legal proceedings in France involving the Company and Delaune and to the Securities and Exchange Commission ("SEC") during the SEC's investigation into the restatement of the Company's Class Period financials; (v) frank discussion with Defendants' Counsel during the mediation process; and (vi) consultation with a damages expert. Lead Plaintiff vigorously pursued its claims, filing a detailed amended complaint and successfully opposing Defendants' contentious motion to dismiss.[3] Lead Counsel consulted

[3] The motion to dismiss was denied with respect to statements about Productions Graphics and InnerWorkings' putative class period financials and granted with respect to statements about the inside sales group, the internationalization of PPM4, and the enterprise client retention rate. ECF No. 69.

extensively with a very experienced expert concerning loss causation and damages analyses.[4]

In reaching the Settlement, Lead Counsel considered the numerous risks associated with continuing the litigation. Despite Lead Plaintiff's success at opposing the motion to dismiss and its belief that it could prove all of the requisite elements of the claims asserted under Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), Defendants would certainly have continued to vigorously challenge these allegations were the Action to continue. Particularly, Defendants would have maintained that Lead Plaintiff could not prove that Defendants knowingly made false and misleading statements and acted with the requisite fraudulent intent, particularly given the Court's dismissal of claims concerning Inside Sales and PPM4. In light of the obstacles to recovery at trial, the certain recovery of $6,025,000 in cash represents a favorable result for the Settlement Class.

The reaction of Settlement Class Members to date favors the proposed Settlement. Pursuant to the Preliminary Approval Order, as of September 2, 2016, copies of the long-form Notice were mailed to 19,772 potential Settlement Class Members. In addition, a Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire*.[5] The Notice informed potential Settlement Class Members of their right to object or to request

[4] The Court is respectfully referred to the accompanying Declaration of Jonathan Gardner 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 Payment of Litigation Expenses (the "Gardner Declaration" or "Gardner Decl."), submitted herewith. The declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*, the history of the Action; the nature of the claims asserted; the investigation undertaken; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and a description of the services provided by Lead Counsel.

All exhibits referenced herein are attached to the Gardner Declaration. For clarity, citations to exhibits that have internal exhibits will be referenced as "Ex. __-__." The first numerical reference refers to the designation of the entire exhibit attached to the declaration and the second alphabetical reference refers to the exhibit designation within the exhibit itself.

[5] *See* ¶¶2-7 of the Affidavit of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of Claim; (B) Publication of Summary Notice; (C) Website and Telephone Hotline; and (D) Report on Requests for Exclusion and Objections Received to Date (the "Mailing Affidavit" or "Mailing Aff."), submitted as Exhibit 3 to the Gardner Declaration.

exclusion from the Settlement Class by September 21, 2016. To date, not one Settlement Class Member has objected to any aspect of the Settlement, Plan of Allocation or Lead Counsel's request for attorneys' fees and expenses. Further, no requests for exclusion have been received. Ex. 3 ¶¶11-13. If any objections are received after the date of this submission, Lead Plaintiff will address them, as well as requests for exclusion, in its reply papers, which are to be filed with the Court on October 5, 2016.

For all the reasons discussed herein and in the Gardner Declaration, it is respectfully submitted that the Court should approve the Settlement as fair, reasonable and adequate; affirm its certification of the class for settlement purposes only; and approve the Plan of Allocation.

ARGUMENT

I. STANDARDS FOR APPROVAL OF CLASS ACTION SETTLEMENTS

The Seventh Circuit recognizes that "federal courts favor the settlement of class action litigation." *Freeman v. Berge*, 68 F. App'x. 738, 741 (7th Cir. 2003); *Uhl v. Thoroughbred Tech. & Telecomms, Inc.*, 309 F.3d 978, 986 (7th Cir. 2002); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir.1980) (stating, "In the class action context in particular, there is an overriding public interest in favor of settlement.") (*overruled on other grounds* by *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998)).

In deciding whether a class action settlement merits final approval under Federal Rule of Civil Procedure 23(e), courts must determine whether the proposed settlement is fair, reasonable, and adequate. *Wong v. Accretive Health, Inc.* 773 F.3d 859, 862 (7th Cir. 2014). The Seventh Circuit has identified the following factors that a Court should consider in evaluating the fairness of a class action settlement:

> [T]he strength of plaintiff's case compared to the amount of defendant's settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected

> parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement.

Synfuel Techs Inc. v. DHL Express, Inc. 463 F.3d 646, 653 (7th Cir. 2006).[6]

The proceedings to approve a settlement should not be transformed into an abbreviated trial on the merits. *See, e.g., Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987); *Armstrong*, 616 F.2d at 314-15. Courts should hesitate to substitute their own judgment for the judgment of the litigants and their counsel. As the Seventh Circuit has written in, *Armstrong*, 616 F.2d at 315:

> [b]ecause settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.

Additionally, "[a] strong presumption of fairness attaches to a settlement agreement when it is the result of this type of arm's length negotiation." *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002); *see also, Susquehanna Corp. v. Korholz*, 84 F.R.D. 316, 321 (N.D. Ill. 1979) (a settlement proposal arrived at after arm's-length negotiations by fully informed, experienced and competent counsel may be properly presumed to be fair and adequate).

The record here demonstrates that the Settlement was the product of precisely this type of negotiation, which included a mediation and continued extensive negotiations with Defendants' Counsel. The mediation was conducted under the auspices of Robert A. Meyer, a highly experienced mediator, and the settlement amount was proposed by him. Gardner Decl. ¶¶34-35. Moreover, Lead Counsel is highly regarded, has many years of experience in conducting complex securities litigation, and was thoroughly conversant with the strengths and weaknesses

[6] Internal citations are omitted and all emphasis is added unless otherwise specified.

of the case at the time the Settlement was reached. *Id.* ¶84, Ex. 4-C. Lead Counsel's recommendation to settle should be given great deference. *See, e.g., Isby,* 75 F.3d at 1200 ("[T]he district court was entitled to give consideration to the opinion of competent counsel that the settlement was fair, reasonable and adequate."); *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) ("The court places significant weight on the unanimously strong endorsement of these settlements by Plaintiffs' well-respected attorneys.").

As explained below, and in the Gardner Declaration, when examined under the applicable criteria, the Settlement should be approved by the Court. Lead Counsel believes that there are significant questions as to whether a more favorable monetary result against Defendants could or would be attained after summary judgment, trial and the inevitable post-trial motions and appeals. The Settlement achieves a guaranteed and substantial recovery, especially in light of InnerWorkings' claim that it too was the victim of fraud perpetrated by Christophe Delaune, the former CEO of PG and a source for allegations in the Complaint.

II. THE SEVENTH CIRCUIT STANDARDS FOR APPROVAL ARE SATISFIED

A. The Strength of the Case Compared to the Amount of Settlement

The Settlement, $6,025,000 in cash, is well within the range of reasonableness in light of the best possible recovery at trial and the risks of continued litigation. According to analyses prepared by Lead Plaintiff's consulting damages expert, the maximum aggregate damages Lead Plaintiff could have obtained for the Settlement Class at trial, assuming liability and loss causation were established, is estimated to be in the range of approximately $75 million to $90 million, depending on the amount of the November 7, 2013 stock drop that can be attributed to the alleged fraud. Gardner Decl. ¶7. The $6,025,000 settlement thus represents approximately 7% to 8% of this best case scenario of estimated damages. This recovery falls well within the

range of approval, and courts have generally approved settlements in cases since the Private Securities Litigation Reform Act ("PSLRA") that recover a comparable or smaller percentage of maximum damages. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (settlement yielding 6% of potential damages was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re Merrill Lynch & Co., Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (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"). Of course, Defendants vigorously contested these numbers and would argue that any damages would have been far lower than the Lead Plaintiff's expert's estimate. Moreover, the Settlement is in-line with the median reported settlement amount in similar securities class actions in 2015, which was $6.1 million. *See* Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Securities Class Action Settlements - 2015 Review and Analysis* (Cornerstone Research 2016), Ex. 2 at 1.

The risks posed by adverse rulings on the merits demonstrate the significant value of this recovery to the Settlement Class. As discussed herein and in the Gardner Declaration, Lead Plaintiff faced the possibility that: (i) it would be unable to establish the scienter of the Defendants, which is well-recognized as a difficult and uncertain element in any securities fraud case; and (ii) even if Lead Plaintiff prevailed on establishing liability, Defendants would strenuously challenge the calculation of damages and loss causation.

1. Establishing Scienter

Defendants staunchly maintained that Lead Plaintiff would be unable to prove that Defendants acted with the requisite scienter. The difficulty of establishing scienter is a substantial risk in any action under Section 10(b). Here, credibility issues relating to Mr. Delaune, the former president of France-based PG (acquired by InnerWorkings in 2011),

presented unique challenges. Mr. Delaune has admitted to participating in the fraud at InnerWorkings, but alleges that he did so at InnerWorkings' behest. InnerWorkings in turn has denied any such complicity, and has initiated civil proceedings and an ongoing criminal investigation against Mr. Delaune in France. Lead Plaintiff's case relies substantially on the contention by Mr. Delaune that the fraud scheme was driven by the Defendants, who would surely subject Mr. Delaune to significant cross-examination. On the other hand, Lead Plaintiff's theory of the case would likely be endorsed if Mr. Delaune is believed. Gardner Decl. ¶¶45-49.

Given this evidentiary uncertainty, Defendants would have vigorously argued that there is no evidence that they intended to defraud shareholders, and instead that they were victims of a fraud perpetuated by Mr. Delaune. Defendants would have argued that there is no documentary evidence that Defendants Belcher and Busky had any knowledge of Delaune's fraud, and that no one other than Mr. Delaune asserted that Mr. Belcher and Mr. Busky had such knowledge. Notably, the SEC has closed its investigation into the Company's restatement without initiating proceedings against Defendants. *Id*. ¶48. Defendants would also have focused on the theory that no one other than Delaune, whose compensation for the sale of PG to InnerWorkings was dependent on its performance, had a motive to falsify InnerWorkings' financials—results that InnerWorkings itself voluntarily corrected. *Id*. ¶47.

Additionally, Defendants would have attacked the credibility of Delaune, arguing that he is an admitted fraudster and liar with "an axe to grind" against InnerWorkings, the company that fired him and exposed him to criminal fraud charges in France. Defendants would likely have introduced competing testimony from Belcher and Busky—who were accountable for the Company's bottom line—to the effect that they would not have risked criminal penalties and the loss of their livelihoods to participate in a scheme whereby the Company implausibly paid out more in the alleged false invoices than it could have even gained. Although Lead Plaintiff

believed that it had strong evidence that would be able to establish Defendants' scienter, it is far from certain that a jury would find the testimony of Mr. Delaune credible given his admitted participation in the fraud. *Id*. ¶46-48.

2. Establishing Damages

Lead Plaintiff faced risks not only in establishing the liability of Defendants, but also with respect to the calculation and proof of damages. Specifically, Defendants would undoubtedly press that Plaintiff could not demonstrate loss causation under *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). For instance, Defendants would likely have argued that the price declines that occurred on November 7, 2013 were not solely related to the alleged correction of the purportedly fraudulent statements about PG and InnerWorkings' class period financials. Defendants would likely argue that a substantial portion of the price declines was caused instead by statements about the inside sales group, the internationalization of PPM4, and the enterprise client retention rate, which were dismissed by the Court. The impact of such unrelated news would have to be disaggregated from the total drop in stock price on the alleged disclosure dates. It also bears noting that the burden of disaggregating the confounding pieces of information falls on Lead Plaintiff. Defendants would undoubtedly mount a *Daubert* challenge against Lead Plaintiff's experts attempts at disaggregation which, if successful, would leave Lead Plaintiff with no way to meet the burden of proof on this issue. Further, given the number of non-fraud-related pieces of information disclosed, it is not unreasonable to conclude that Lead Plaintiff would only have been able to attribute 50% or less of the stock drop to the revelation of the fraud. In such a case, the damages would have been $45 million (which would translate to a 13% recovery). Gardner Decl. ¶¶50-53.

Such damages issues would no doubt be hotly contested were the litigation to continue and would involve a battle of experts, with each side presenting complicated issues to be decided

by a jury, with the attendant risks of a lesser or no recovery. At trial, the loss causation and damage assessments of Lead Plaintiff's and Defendants' experts would certainly vary substantially. The reaction of a jury to such expert testimony is highly unpredictable and, in such a battle, Lead Counsel recognize the possibility that a jury could find there were no damages or only a fraction of the amount of damages Lead Plaintiff contends. *Id*. ¶54.

B. The Complexity, Length and Expense of Further Litigation

In determining the fairness of a settlement, courts also consider "the likely complexity, length and expense of the litigation." *Isby*, 75 F.3d at 1199. As discussed herein and in the Gardner Declaration, the various obstacles with which the Settlement Class would necessarily be confronted "flow from the complexities and difficulties inherently involved in shareholder securities fraud litigation," but also from the unique factual issues here. *In re Nat'l Student Mktg. Litig.*, 68 F.R.D. 151, 155 (D.D.C. 1974). Courts have long recognized that securities fraud litigation is complex and uncertain. *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-C-7694, 2001 WL 1568856, at *2 (N.D. Ill. Dec. 10, 2001) ("Securities fraud litigation is long, complex and uncertain."). Indeed, courts have recognized that "securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000).

If this case were tried rather than settled, the Parties would have to continue and complete a lengthy, extensive, and time-consuming discovery program, which would delay recovery to the Settlement Class for years. In addition, the Parties would have necessarily continued with expert discovery on the issues of loss causation and damages. After extensive class certification motion practice, and assuming the claims survived Defendants' inevitable summary judgment motions, trial preparation would result in many additional hours of effort, at great additional expense. Continuing the litigation of the Action would involve numerous attorneys, experts, the

introduction of voluminous documentary and deposition evidence, vigorously contested dispositive and *in limine* motions, and the expenditure of enormous amounts of judicial and financial resources, all without the guarantee of a similar recovery or a recovery at all.

Even if Lead Plaintiff could recover a judgment greater than the Settlement Amount at trial, the additional delay of post-trial motions and the appellate process could last for years. Thus, were this Action to continue, the litigation would be complex, time-consuming, and expensive, with the possibility of obtaining a lesser recovery – or no recovery at all. Instead, the Settlement secures a substantial recovery for the Settlement Class without the delay, risk, expense and uncertainty of continued litigation.

C. The Lack of Any Opposition

Notices were mailed to more than 19,000 potential Settlement Class Members. In addition, the Notice was posted on a dedicated website established for this Settlement and a Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire*. Ex. 3 ¶¶6-8. The time for Settlement Class Members to object to the settlement expires on September 21, 2016. As noted above, to date, not one Settlement Class Member has filed an objection to the Settlement, Plan of Allocation, the Lead Counsel's request for attorneys' fees and expenses. In addition, to date, no requests for exclusion from the Settlement Class have been received. Ex. 3 ¶¶11-13. If any objections or requests for exclusion are received, Lead Plaintiff will address them in its reply submission to be filed with the Court on October 5, 2016.

D. The Settlement Is the Product of Good Faith, Arm's-Length Negotiations and Is Recommended by Experienced Counsel

The Settlement, as the descriptions of the proceedings above and in the Gardner Declaration demonstrate, is the result of hard-fought and contentious litigation and no one could credibly suggest that it is the product of collusion among the Parties. The Settlement was

reached following extensive negotiations, which included a formal mediation before Robert A. Meyer – a highly respected and skilled mediator. During this mediation process, the Parties exchanged detailed mediation statements, frankly discussed the merits of the case, including the evidence adduced and Defendants' defenses. Through these negotiations, the mediator made a settlement recommendation, which the Parties ultimately accepted. Gardner Decl. ¶¶34-35.

Here, experienced counsel, who have weighed the risks of continued litigation, endorse the Settlement and the substantial benefits it confers on class members, which is entitled to significant weight. *See, e.g., Isby*, 75 F.3d at 1200 ("the district court was entitled to give consideration to the opinion of competent counsel that the settlement was fair, reasonable, and adequate."); *Mexico Money Transfer*, 164 F. Supp. 2d at 1020 ("The court places significant weight on the unanimously strong endorsement of these settlements by Lead Plaintiff's well-respected attorneys."). Lead Counsel has years of experience litigating and trying securities class actions, has negotiated numerous settlements that have been approved by state and federal courts throughout the U.S., and has recovered nearly $10 billion on behalf of the nation's largest institutional investors, including public pension and Taft-Hartley funds, hedge funds, investment banks, and other financial institutions. Gardner Decl. ¶¶84-85, Ex. 4-C.

Moreover, Lead Plaintiff, a sophisticated institutional investor, closely supervised this litigation. It has strongly endorsed the Settlement. *See* Ex. 1. The endorsement of a settlement by an institutional lead plaintiff that has played an active role in the litigation provides additional support for the fairness of the settlement. *See, e.g., In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004) (participation of sophisticated institutional investor lead plaintiffs in the settlement process supported approval of the settlement).

E. The Stage of the Proceedings and the Amount of Discovery Completed

To ensure that a plaintiff has had access to sufficient information to evaluate both its case and the adequacy of a proposed settlement, courts in the Seventh Circuit consider the stage of the proceedings and the discovery taken. *Isby*, 75 F.3d at 1199; *see also Kolinek v. Walgreen Co.* 311 F.R.D. 483, 487 (N.D. Ill. 2015) (granting final approval of settlement after the motion to dismiss stage but before the commencement of formal discovery). Here, although the case settled closely after the decision on the motion to dismiss, in September 2015, both the knowledge of Lead Counsel and the proceedings themselves have reached a stage where a well-founded evaluation of the claims and propriety of settlement could be made.

For example, in connection with its pre-filing investigation, Lead Counsel reviewed a large volume of publicly available information concerning InnerWorkings, including: (i) documents filed publicly by InnerWorkings with the SEC; (ii) InnerWorkings's annual and quarterly financial statements, and related earnings announcements; (iii) the Company's press releases; (iv) transcripts of InnerWorkings's quarterly analyst conference calls; (v) news articles and wire service reports about InnerWorkings; (vi) analysts' reports and advisories concerning the Company; and (vii) other public statements issued by or concerning InnerWorkings, Mr. Belcher, and Mr. Busky. Lead Counsel also located and interviewed numerous former InnerWorkings employees (including Delaune), more than a dozen of whom were cited as confidential witnesses in the complaint. Lead Counsel also conferred with an expert in loss causation and damages. *See generally*, Gardner Decl. ¶¶3-33.

In addition to Lead Plaintiff's pre-filing investigation, the Court permitted the parties to conduct informal discovery to assist in mediation efforts, including the production of core documents by Defendants, which included documents that Defendants previously made available to the French prosecutors as part of the Company's legal proceedings against Delaune in France

and to the SEC during the SEC's investigation into the restatement of the Company's Class Period financials. Gardner Decl. ¶33. The Action involved briefing a contentious motion to dismiss, opposing a motion for a stay, as well as participation in several arm's-length settlement negotiations over a period of time where the strengths and weaknesses of the parties' respective claims and defenses were fully explored. *See generally*, Gardner Decl. ¶¶3-33.

Thus, the Parties reached an agreement to settle the litigation at a point when they had a solid foundation for assessing the legal and factual issues surrounding the claims, which supports approval of the Settlement. In sum, all of the relevant factors discussed *supra* support a finding that the settlement is reasonable and adequate and should be approved.

III. CERTIFICATION OF THE SETTLEMENT CLASS

In presenting the proposed Settlement to the Court for preliminary approval, Lead Plaintiff requested that the Court certify the Settlement Class so that notice of the proposed Settlement, the final approval hearing, and the rights of class members to request exclusion, object, or submit proofs of claim could be issued. In its Preliminary Approval Order, entered on May 25, 2016, this Court certified the Settlement Class. Nothing has changed to alter the propriety of the Court's certification and, for all the reasons stated in the Lead Plaintiff's Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 90), incorporated herein by reference, Lead Plaintiff now requests that the Court reiterate its prior certification (i) of the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3); and (ii) of Lead Plaintiff as Class Representative, as well as its prior appointment of Lead Counsel as Class Counsel.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Lead Plaintiff also seeks approval of the Plan of Allocation for distributing settlement proceeds to eligible claimants. The Plan of Allocation was set forth in full in the Notice and no

one has objected to it. Ex. 3-A at 9-14. As with the approval of a settlement, courts must determine whether a plan of allocation is fair, reasonable, and adequate. *Summers v. UAL Corp. ESOP Comm.,* No. 03 C 1537, 2005 WL 3159450, at *2 (N.D. Ill. Nov. 22, 2005). An allocation need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" counsel. *White v. Nat'l Football League*, 822 F. Supp. 1389, 1420 (D. Minn. 1993).

Here, the Plan of Allocation was developed with the assistance of Lead Plaintiff's damages expert, with a focus on providing a fair and reasonable allocation based upon information that was in the market at the time of a claimant's purchase and sale, if any. This analysis included studying the market reaction to the alleged corrective disclosure and calculating the reasonable amount of artificial inflation present in InnerWorkings' securities that was allegedly attributable to the wrongdoing. Gardner Decl. ¶¶61-62. As explained in the Notice, each Authorized Claimant will be entitled to recover his, her or its *pro rata* share of the Recognized Claim calculated in accordance with the Plan of Allocation. Calculation of a Recognized Claim will depend upon several factors, including when the securities were purchased, whether they were retained or sold after the Class Period, and, if so, when. *Id*. ¶63. After the Claims Administrator has completed the processing of claims, Lead Plaintiff will file a motion with the Court requesting permission to distribute the Net Settlement Fund.

CONCLUSION

For all the foregoing reasons, Lead Plaintiff respectfully requests that the Court: (i) approve the proposed Settlement as fair, reasonable and adequate and enter the proposed Judgment; (ii) affirm its certification of the Settlement Class; and (iii) approve the proposed Plan of Allocation.[7]

[7] Proposed orders will be submitted on October 5, 2016 with Lead Plaintiff's reply papers, after the deadlines for objecting and seeking exclusion have passed.

Dated: September 6, 2016

Respectfully submitted,

By: /s/ Jonathan Gardner

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CERTIFICATE OF SERVICE

I hereby certify that I am a member of Labaton Sucharow LLP, and on the 6th day of September 2016, I caused to be electronically filed the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, which was served on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ *Jonathan Gardner*
Jonathan Gardner

Mailing Information for a Case 1:14-cv-01416
Van Noppen v. InnerWorkings, Inc. et al.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

 (No manual recipients)