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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KEVIN D. RAMSEY, Individually and on)
Behalf of All Similarly Situated,)

Plaintiff,)

v.)

MRV COMMUNICATIONS INC.,)
NOAM LOTAN, SHAY GONAN,)
MICHAEL BLUS, KEVIN RUBIN, GUY)
AVIDAN, GUENTER JAENSCH, IGAL)
SHIDLOVSKY, SANIEL TSUI,)
BARUCH FISCHER,)

Defendants.)

Case No. CV 08-04561 GAF (RCx)

ORDER & MEMORANDUM REGARDING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT & LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION
EXPENSES, AND REIMBURSEMENT OF
LEAD PLAINTIFF'S EXPENSES

I. INTRODUCTION & BACKGROUND

This is a class action lawsuit against Defendants MRV Communications, Inc. ("MRV"), and various officers and directors of MRV (collectively, "Individual Defendants" and together with MRV, "Defendants") brought by Lead Plaintiff Kwok Wong ("Wong" or "Lead Plaintiff") on behalf of all persons who purchased MRV common stock between March 31, 2003, and June 5, 2008. (Docket No. 59, Second Am. Consol. Class Action Compl. ("SACC") ¶¶ 1, 18, 26–34.)

On July 11, 2008, Plaintiff Kevin D. Ramsey filed the first of several related

1 cases against Defendants. (Docket No. 1.) By the Court's December 1, 2008, Order,
2 two later actions, Anits et al. v. MRV Communications, Inc. et al., No. CV-08-4561-
3 GAF (RCx), and Leopold et al. v. MRV Communications, Inc. et al., No. CV-08-5005-
4 GAF (FMOx), were consolidated with this case. (Docket No. 39, 12/1/10 Order.) That
5 order also appointed Wong as Lead Plaintiff, Labaton Sucharow LLP ("Labaton
6 Sucharow" or "Lead Counsel") as lead counsel, and Glancy Binkow & Goldberg LLP
7 ("Glancy Binkow" or "Local Liaison Counsel") as local liaison counsel. (Id. at 2.)

8 On February 16, 2010, counsel filed a Second Amended Consolidated Class
9 Complaint asserting claims under sections 10(b), 20(a), and 14(a) of the Securities
10 Exchange Act of 1934 ("Exchange Act") and Securities and Exchange Commission
11 Rule 10b-5. (SACC ¶¶ 292, 297, 300.) Specifically, Lead Plaintiff alleged that MRV's
12 directors intentionally back-dated stock options for personal gain, and that they made
13 materially false and misleading statements regarding MRV's financial statements
14 between 2002 and 2008 to artificially inflate the value of MRV stock. (Id. ¶¶ 43, 58,
15 262.) The SACC further averred that, in early June 2008, MRV announced that it was
16 investigating the alleged stock-option back-dating, and declared that it would be
17 restating its financial statements for the years 2002 to 2008. (Id. ¶¶ 266.) Upon
18 dissemination of the June 2008 announcement, MRV's share price allegedly dropped
19 by approximately 24 percent. (Id. ¶ 267.)

20 On April 16, 2010, Lead Plaintiff filed an unopposed motion for preliminary
21 approval of a proposed class action settlement. (Docket No. 66.) Under the proposed
22 settlement, Defendants will deposit \$10 million to an interest-bearing escrow account
23 ("the Settlement Fund") in exchange for release of the claims against them. (Docket
24 No. 67, Plaintiff's Unopposed Mot. for Preliminary Approval of Proposed Class Action
25 Settlement, at 7–8.) In addition, in the Notice of Pendency of Class Action and
26 Proposed Settlement, Lead Plaintiff indicated that Lead Counsel would request
27 attorneys' fees of no more than 25 percent of the Settlement Fund and up to \$125,000
28 in expenses and that Lead Plaintiff might request up to \$22,000 for his reasonable

1 costs and expenses, including lost wages, relating to his representation of the class
2 claims. (Docket No. 66, Ex. 1 [Notice of Pendency Class Action and Proposed
3 Settlement (“Notice”)], at 3.) The Settlement contemplates that court-awarded
4 expenses for these attorneys’ fees, expenses, and Lead Plaintiff’s costs, as well as for
5 taxes and the costs of sending notice and processing claims, would be deducted from
6 the Settlement Fund. (Id. at 2, 22.) The remainder of the Settlement Fund (“Net
7 Settlement Fund”) is to be distributed as provided in the Plan of Allocation in the
8 Notice of Pendency of Class Action and Proposed Settlement. (Id. at 2.) Under the
9 Plan of Allocation, each claimant’s “recognized loss” will be calculated based on the
10 daily per share amount of artificial inflation allegedly present in MRV’s stock price
11 calculated for each share purchased and sold. (Id. at 24.) The notice to claimants
12 indicates that, for those who purchased between March 31, 2003 and June 5, 2008,
13 different recovery amounts would be established: (1) for shares sold on or before
14 June 5, 2008; (2) for share sold between June 6, 2008 and October 9, 2009; (3) for
15 share still held as of close of business on October 9, 2009. For those who purchased
16 between June 6, 2008 and October 8, 2009, different recovery amounts were
17 established for: (1) shares acquired between June 6 and October 8, 2009, and sold on
18 or before October 8, 2008; and (2) shares acquired between June 6 and October 8,
19 2009, and still held as of close of business on October 9, 2009. (Id. at 24–25.). Each
20 claimant will receive an amount equal to her recognized loss unless the Net
21 Settlement Fund is insufficient to permit payment of all recognized losses. (Id. at 23.)
22 In that event, each claimant will receive a pro rata share of the Net Settlement Fund.
23 (Id. at 23–24.)

24 On May 13, 2010, the Court granted preliminary approval with the caveat that it
25 would closely scrutinize Plaintiff’s request for an award of up to \$22,000 for his
26 reasonable costs and expenses related to his representation of the Settlement
27 Claims. (Docket No. 71, 5/13/10 Order at 1.) The next day, the Court certified a
28 Settlement Class comprised of “all persons that purchased the common stock of MRV

1 Communications, Inc. . . . during the period between March 31, 2003 and October 8,
2 2009, inclusive, and were damaged thereby.” (Docket No. 72, 5/14/10 Order at 2.)
3 The Court approved the “Notice of Pendency of Class Action and Proposed
4 Settlement” (the “Notice”) and the “Proof of Claim and Release” form (“Proof of
5 Claim”), and approved the appointment of Berdon Claims Administration LLC
6 (“Berdon” or “Claims Administrator”) as Claims Administrator to administer the notice
7 procedure and processing of claims. (Id. at 4.) The Court noticed a hearing for
8 November 15, 2010. (Id. at 3.)

9 After the Court granted preliminary approval, Berdon mailed copies of the
10 Notice and Proof of Claim to all potential members of the Settlement Class who could
11 be reasonably identified and to known brokers/nominees who may have purchased
12 MRV stock for the beneficial interest of individual investors. (Declaration of Jonathan
13 Gardner (“Gardner Decl.”) ¶ 13.) In all, Berdon mailed 75,969 notices and related
14 documents. (Gardner Decl., Ex. 2 [Declaration of Michael Rosenbaum (“Rosenbaum
15 Decl.”)] ¶ 6.) In addition, Berdon published a notice in Investor’s Business Daily and
16 disseminated it via PR Newswire on June 11, 2010, and posted it on the websites of
17 Berdon and Lead Counsel. (Gardner Decl. ¶¶ 14–15.) The Notice provided that
18 persons seeking exclusion from the Settlement Class must make such exclusion
19 requests by November 1, 2010. (5/14/10 Order at 8.) Berdon has received only two
20 requests for exclusion, only one of which came from a Class Member. (Gardner Decl.
21 ¶ 19; Reply Declaration of Jonathan Gardner (“Gardner Reply Decl.”) ¶ 4.) That
22 opting-out Class Member has a claim for 2,000 shares. (Gardner Decl. ¶ 19.)
23 Further, Berdon has received only two objections to the Settlement. (Id. ¶ 93; id., Ex.
24 3 [Objection Letter from Deepak Shah]; Gardner Reply Decl. ¶ 5; id., Ex. 2 [Objection
25 Letter from Mary Segura].)

1 Plaintiff now moves for Final Approval of the proposed settlement described in
2 the Stipulation and Agreement of Settlement (Docket No. 68, Ex. 5).¹ For the reasons
3 set forth below, the Court concludes that the Stipulation and Agreement of Settlement
4 (“the Settlement”) and the Plan of Allocation described in the Notice of Pendency of
5 Class Action and Proposed Settlement are fundamentally fair, adequate, and
6 reasonable. Accordingly, Lead Plaintiff’s motion is **GRANTED**. Also before the Court
7 is Lead Counsel’s motion for attorneys’ fees, litigation expenses, and reimbursement
8 of Plaintiff’s expenses. The Court also **GRANTS** this motion with some reduction in
9 the lead Plaintiff’s award.

10 II. DISCUSSION

11 A. MOTION FOR FINAL APPROVAL OF SETTLEMENT

12 1. LEGAL STANDARD

13 Under Rule 23(e) of the Federal Rules of Civil Procedure, “claims, issues, or
14 defenses of a certified class may be settled, voluntarily dismissed, or compromised
15 only with the court’s approval.” Fed. R. Civ. P. 23(e). A court must engage in a two-
16 step process to approve a proposed class action settlement. First, the court must
17 determine whether the proposed settlement deserves preliminary approval. Nat’l
18 Rural Telecomms. Coop. v. DirecTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004).
19 Second, after notice is given to class members, the Court must determine whether
20 final approval is warranted. Id. A court should approve a settlement pursuant to Rule
21 23(e) only if the settlement “is fundamentally fair, adequate and reasonable.” Torrise
22 v. Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993) (internal quotation
23 marks omitted); accord In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir.
24 2000) (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)).

25
26 ¹ Lead Plaintiff also requests that this Court enter an order certifying the Settlement Class,
27 appointing him as Class Representative, and appointing Lead Counsel as Class Counsel. This
28 request is unnecessary, however, because the Court already non-provisionally certified the class
and appointed Lead Plaintiff as Class Representative and Lead Counsel as Class Counsel in
its May 14, 2010, Order. (5/14/10 Order at 2–3.)

1 In the Ninth Circuit, a court must balance the following factors to determine
2 whether a class action settlement is fair, adequate, and reasonable:

- 3 (1) the strength of the plaintiff's case;
- 4 (2) the risk, expense, complexity, and likely duration of further litigation;
- 5 (3) the risk of maintaining class action status throughout the trial;
- 6 (4) the amount offered in settlement;
- 7 (5) the extent of discovery completed and the stage of the proceedings;
- 8 (6) the experience and views of counsel;
- 9 (7) the presence of a governmental participant; and
- 10 (8) the reaction of the class members to the proposed settlement.

11 Torrise, 8 F.3d at 1375; accord Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242
12 (9th Cir. 1998); Hanlon, 150 F.3d at 1026. "In addition, the settlement may not be the
13 product of collusion among the negotiating parties." In re Mego Fin. Corp. Sec. Litig.,
14 213 F.3d at 458. These factors are not exclusive, and one factor may deserve more
15 weight than the others depending on the circumstances. Torrise, 8 F.3d at 1376. In
16 some instances, "one factor alone may prove determinative in finding sufficient
17 grounds for court approval." Nat'l Rural Telecomms. Coop., 221 F.R.D. at 525–26
18 (citing Torrise, 8 F.3d at 1376).

19 "The involvement of experienced class action counsel and the fact that the
20 settlement agreement was reached in arm's length negotiations, after relevant
21 discovery had taken place create a presumption that the agreement is fair." Linney v.
22 Cellular Alaska P'ship, Nos. C-96-3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ,
23 C-97-0457 DLJ, 1997 WL 450064, *5 (N.D. Cal. July 18, 1997), aff'd, 151 F.3d at
24 1234.

25 **2. APPLICATION OF TORRISI FACTORS**

26 ***a. Strength of Plaintiff's Case***

27 The class's likelihood of succeeding on the merits of its claims is uncertain. To
28 prevail on the section 10(b) claims, Lead Plaintiff would have had to prove that
Defendants made a "material misrepresentation or omission of fact"; that they were
made with actual knowledge or reckless disregard for the truth; "a connection with the

1 purchase or sale of a security”; “transaction and loss causation”; and economic loss.
2 Gebhart v. S.E.C., 595 F.3d 1034, 1040 n.8 (9th Cir. 2010). Plaintiffs could face
3 trouble establishing several of these elements.

4 First, MRV disputed whether the alleged misstatements were material, false,
5 misleading, or actionable and challenged Plaintiff’s ability to establish scienter.
6 (Gardner Decl. ¶ 72, 84.) Although Plaintiff contends that proof of these elements
7 posed some difficulty, the Court does not agree that these elements constituted major
8 hurdles to success. There is no doubt that the stock options were backdated and that,
9 through that device, high level managers received compensation that was not properly
10 reflected on the books and records of the company. As a result, the company’s
11 revenues were overstated for many years. As to scienter, the Court agrees that
12 Plaintiff would have had to resort to circumstantial evidence to prove the element, and
13 that, to that extent, it presented a greater challenge than had direct evidence been
14 developed. However, the Court believes that proving loss causation would have been
15 the most difficult hurdle had the case not been settled. Defendants would no doubt
16 have argued that MRV’s stock price was not significantly altered as a result of the
17 public dissemination of the alleged misstatements, and that the June 2008 disclosure
18 of the investigation did not concede that a back-dating scheme had occurred. (Id. ¶
19 86.) Ultimate resolution of this question would have turned on the Court’s or a jury’s
20 assessment of competing expert testimony. (Id. ¶ 87.) Finally, Defendants also would
21 have likely disputed reliance, given the widespread knowledge of back-dating
22 schemes in the industry. (Id. ¶ 88.)

23 These factors reflect the complexity and uncertainty surrounding the class’s
24 claims. By negotiating the settlement, Plaintiffs avoid this uncertainty. This factor
25 therefore weighs in favor of granting final approval.

26 ***b. Risk, Expense, Complexity, and Likely Duration of Further***
27 ***Litigation***

28 The central factor relating to the “risk, expense, complexity, and likely duration”

1 prong of the Torrise analysis is the expense of litigation. Nat'l Rural Telecomms.
2 Coop., 221 F.R.D. at 526. "In most situations, unless the settlement is clearly
3 inadequate, its acceptance and approval are preferable to lengthy and expensive
4 litigation with uncertain results." Id. (quoting 4 A. Conte & H. Newberg, Newberg on
5 Class Actions, § 11:50 at 155 (4th ed. 2002)).

6 Plaintiff points out that, without settlement, this case would involve a motion to
7 dismiss, fact and expert discovery, class certification, a summary judgment motion,
8 and trial. (Mem. at 15.) As discussed above, the issues at summary judgment and
9 trial would be complex. Given the risk that Plaintiffs might not prevail on the merits of
10 their claims, and in light of the expense that the parties are certain to incur should they
11 continue litigating this action, the Court concludes that this factor weighs in favor of
12 granting final approval.

13 ***c. Risk of Maintaining Class Action Status Throughout Trial***

14 In its May 14, 2010, Order, the Court certified the settlement class, finding that
15 the proposed class satisfied the numerosity, commonality, typicality, and adequacy
16 requirements of Federal Rules of Civil Procedure 23(a) and 23(b). (5/14/10 Order at
17 2–3.) Having already certified the class for purposes of settlement, and in the
18 absence of any new evidence that would require revisiting the issue, the Court
19 concludes that there is little risk that class action status may not be maintained
20 through trial. Accordingly, this factor does not weigh in favor of granting final
21 approval.

22 ***d. Amount Offered in Settlement***

23 Under the terms of the Settlement, the Settlement Fund is \$10 million.
24 Accounting for the requested award of attorneys' fees in the amount of 25 percent of
25 the settlement fund, \$86,314.91 in litigation expenses, and \$21,525 in expenses to
26 Lead Plaintiff, that leaves the Net Settlement Fund with \$7,392,160.09. Lead
27 Plaintiff's expert calculated aggregate total damages from the alleged price drops to
28 be approximately \$50.5 million. (Gardner Decl. ¶ 5.) Thus, the Settlement, after

1 accounting for the deductions, represents approximately 14.6 percent of the maximum
2 total damages that could be awarded.

3 This represents a fair recovery for the class. As courts have noted, the
4 average settlements of securities class actions provide for lower percentage
5 recoveries. See In re Cendant Corp. Litig., 264 F.3d 201, 241 n.22 (3d Cir. 2001)
6 (citing study noting that securities settlements range from 9–14 percent of claimed
7 damages); In re Ravisent Techs., Inc. Sec. Litig., No. 00-CV-1014, 2005 WL 906361,
8 *9 (E.D. Pa. April 18, 2005) (citing study determining “that since 1995, class action
9 settlements have typically recovered ‘between 5.5% and 6.2% of the class members’
10 estimated losses”). The Court concludes that this settlement amount is reasonable.
11 See In re Merrill Lynch & Co., Inc. Res. Reports Sec. Litig., Nos. 02 MDL 1484(JFK),
12 02 Civ. 3176(JFK), 02 Civ. 7854(JFK), 02 Civ. 10021(JFK), 2007 WL 313474, *10
13 (S.D.N.Y. Feb. 1, 2007) (finding a settlement represented 6.25 percent of estimated
14 damages to be “at the higher end of the range of reasonableness of recovery in class
15 actions securities litigation”). The Court accordingly finds that the amount offered in
16 settlement weighs in favor of granting final approval.

17 ***e. Extent of Discovery Completed and the Stage of the***
18 ***Proceedings***

19 The amount of discovery completed affects approval of a stipulated settlement
20 because it indicates whether the parties have had an “adequate opportunity to assess
21 the pros and cons of settlement and further litigation.” In re Cylink Sec. Litig., 274 F.
22 Supp. 2d 1109, 1112 (N.D. Cal. 2003). Nevertheless, “[i]n the context of class action
23 settlements, ‘formal discovery is not a necessary ticket to the bargaining table’ where
24 the parties have sufficient information to make an informed decision about
25 settlement.” Linney, 151 F.3d at 1239 (quoting In re Chicken Antitrust Litig., 669 F.2d
26 228, 241 (5th Cir. 1982)).

27 In the present case, Lead Plaintiff has not conducted any formal discovery.
28 (Mem. at 17.) Plaintiff did, however, consult with a damages and loss causation

1 expert and with Professor Erik Lie, a statistician with expertise on back-dated options
2 who concluded that MRV had intentionally back-dated options for more than a
3 decade. (Gardner Decl. ¶ 42, 45, 65.) In addition, Lead Counsel and Lead Plaintiff
4 reviewed and analyzed publicly available information about Defendants, Defendant's
5 regulatory filings, securities analyst reports, press releases and media reports, and
6 information regarding 86 former MRV employees who possessed potentially relevant
7 information. (Id. ¶ 64.) Further, before mediation, MRV provided Lead Counsel and
8 Lead Plaintiff with confidential documents showing details about the option grants and
9 analyses of each option grant. (Id. ¶ 69.) Finally, before executing the Stipulation,
10 Lead Plaintiff conducted confirmatory discovery and reviewed 17,000 pages of
11 documents including internal emails and memoranda, corporate minutes of the Board
12 and the Compensation Committee, unanimous written consents concerning the stock
13 options, option agreements, submissions to the SEC, and source materials utilized by
14 MRV in connection with its Restatement process. (Id. ¶ 75.) After analyzing these
15 documents, Lead Counsel interviewed two MRV employees, who confirmed that no
16 one in management back-dated the grant dates intentionally to avoid recording an
17 appropriate compensation expense. (Id. ¶¶ 78–79.)

18 Based on this extensive fact-finding, it appears that the parties had sufficient
19 information from which to make an informed decision about the propriety and
20 sufficiency of the Settlement. This factor therefore weighs in favor of final approval.

21 ***f. Experience and Views of Counsel***

22 “Great weight’ is accorded to the recommendation of counsel, who are most
23 closely acquainted with the facts of the underlying litigation.” Nat’l Rural Telecomms.
24 Coop., 221 F.R.D. at 528 (quoting In re Painewebber Ltd. P’ships Litig., 171 F.R.D.
25 104, 125 (S.D.N.Y. 1997)).

26 In the present case, Lead Counsel is experienced in securities class action
27 cases. As the Court noted in its December 1, 2008, Order appointing Lead Counsel,
28 Labaton Sucharow “has substantial experience representing shareholders in a variety

1 of . . . securities-fraud class-action lawsuits.” (Docket No. 39, 12/1/08 Order, at 6–7.)
2 It has served as lead or co-lead counsel in numerous securities class actions and has
3 successfully litigated cases involving improper stock option granting. (Gardner Decl.,
4 Ex. 5, at 8–17.) Lead Counsel believes that the Settlement is “an excellent result.”
5 (Id. ¶ 91.) Accordingly, this factor also weighs in favor of granting final approval.

6 ***g. Presence of a Governmental Participant***

7 This factor is not applicable because there is no governmental participant in
8 this case. See Nat’l Rural Telecomms. Coop., 221 F.R.D. at 528.

9 ***h. Reaction of Class Members to the Proposed Settlement***

10 Berdon, the Claims Administrator, appears to have made a good faith attempt
11 to notify all potential class members. Berdon mailed nearly 76,000 notices and
12 related documents. (Rosenbaum Decl. ¶ 6.) In addition, Berdon has re-mailed
13 notices to recipients whose mail was returned with forwarding addresses affixed and
14 has conducted an National Change of Address database search to obtain updated
15 addresses for recipients whose mail was returned as undeliverable. (Id. ¶ 7.) In
16 addition, Berdon published a notice in Investor’s Business Daily and disseminated it
17 via PR Newswire on June 11, 2010, and posted it on the websites of Berdon and Lead
18 Counsel. (Gardner Decl. ¶¶ 14–15.) Additionally, Berdon established a toll-free
19 number for potential Settlement Class Members to obtain more information. (See id.,
20 Ex. A [Notice].) The Court concludes that this notice complied with the Court’s May
21 14, 2010, Order and satisfies Federal Rule of Civil Procedure 23(c)(2)’s requirement
22 that notice be “the best notice that is practicable under the circumstances, including
23 individual notice to all members who can be identified through reasonable effort.”
24 Fed. R. Civ. P. 23(c)(2)(B).

25 As of the November 1, 2010, deadline, two potential Settlement Class
26 Members had asked to be excluded from the Settlement, and two potential members
27 had made objections. (Gardner Decl. ¶¶ 19, 93; Gardner Reply Decl. ¶¶ 4, 5.)
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i. Members requesting exclusion

Two potential Settlement Class Members have requested to be excluded from the Settlement. One of the potential members opting out purchased 400 shares “in the year ‘2000.’” (Rosenbaum Decl., Ex. C [Opt-Out Letters].) Thus, this shareholder does fall within the Settlement Class of shareholders who purchased shares between March 31, 2003, and October 8, 2009. The other shareholder opting out bought 1,000 shares on July 22, 2002, and 1,000 shares on March 6, 2009. Thus, only one Settlement Class Member with 2,000 shares has decided to opt out of the Settlement.

ii. Members making objections

Only two purported objections have been filed, by investors Deepak Shah and Mary Segura. (Gardner Decl. ¶ 93; *id.*, Ex. 3 [Objection Letter from Deepak Shah (“Shah Letter”)]; Gardner Reply Decl. ¶ 5; *id.*, Ex. 2 [Objection Letter from Mary Segura (“Segura Letter”).]) Shah bought 2,000 shares of MRV stock on October 2, 2006, at \$2.67 per share and sold 2,000 shares on October 2, 2007, at \$2.87 per share. (Shah Letter at 1.) Shah objects on the grounds that the Settlement allocates zero recognized loss to class members who sold their stock before June 6, 2008, the date that the back-dating investigation was revealed. (*Id.*; *see also* Notice at 24–25.) Shah objects that “the vast majority of class members included in the Settlement [those who sold their stock before June 6, 2008] have no recognized loss” and urges that the class definition be narrowed to include only those class members who sold their stock after June 6, 2008, or that it be broadened to allow recovery by others. (Shah Letter at 1.)

Shah’s objection rests on a faulty premise. The Court identified the certified Settlement Class as “all persons that purchased the common stock of MRV Communications, Inc. . . . during the period between March 31, 2003 and October 8, 2009, inclusive, *and were damaged thereby.*” (Docket No. 72, 5/14/10 Order, at 2 (emphasis added).) Stockholders who purchased MRV stock in the relevant timeframe who sold their shares before June 6, 2008, were not damaged and thus are

1 not members of the Settlement Class. As such, they are not bound by the terms of
2 the Settlement Agreement. For the same reason, Shah is not a Class Member and
3 thus has no standing to object. Cent. States S.E. and Sw. Areas Health & Welfare
4 Fund v. Merck-Medco Managed Care, LLC, 504 F.3d 229, 244 (2d Cir. 2007).

5 The purported objection by Mary Segura similarly does not constitute an actual
6 objection to the Settlement. Segura's objection letter states: "I Object only because
7 my home burnt down a few years ago and cant provide any of the documents you are
8 requesting. Please let me know what I can do to still be a part of this Class action law
9 suit." (Segura Letter at 1.) In substance, this is not an objection to the Settlement, but
10 rather a request for assistance in participating in the suit despite the destruction of
11 documents. Counsel represents that the Claims Administrator has contacted Segura
12 and will provide "whatever assistance it can." (Gardner Reply Decl. ¶ 5.)

13 Thus, only one actual Class Member has opted out of the Settlement, one
14 objector's concerns are based on a misunderstanding of the agreement, and the other
15 objector has concerns only about her ability to participate in the suit. The Court
16 therefore concludes that the reaction of class members favors granting final approval
17 to the Settlement. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d at 459 (finding that
18 reaction of class members supported approving class settlement where only one of
19 5,400 class members opted out and "only a handful" of members objected).

20 ***ii. Collusion***

21 Finally, the Court finds that there was no collusion in reaching this Settlement.
22 Indeed, the parties reached agreement only with the help of an experienced mediator.
23 (Gardner Decl. ¶¶ 73–74.)

24 **3. CONCLUSION RE: FINAL APPROVAL OF SETTLEMENT**

25 Based on the foregoing analysis, the Court concludes that, on balance, the
26 Torrise factors weigh in favor of granting final approval of the Class Settlement
27 because it is fundamentally fair, adequate, and reasonable.
28

1 **4. FINAL APPROVAL OF PLAN OF ALLOCATION**

2 The Plan of Allocation, like the class settlement as a whole, must be fair,
3 reasonable, and adequate. In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1045
4 (N.D. Cal. 2008); see also Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1284–85
5 (9th Cir. 1992). It is reasonable to allocate settlement funds to class members based
6 on the extent of their injuries. In re Omnivision Techs., 559 F. Supp. 2d at 1045. The
7 Court finds that the proposed Plan of Allocation is reasonable.

8 Under the Plan of Allocation, a class member’s recovery will correspond to
9 when she acquired and sold her MRV stocks. Claimants will receive their “recognized
10 loss” or a pro rata share of the total Net Settlement Fund if the fund cannot cover all
11 claims. (Docket No. 66, Ex. 1, at 23–24.) The basis for computing a claimant’s
12 recognized loss has been created by an expert to reflect the reasonable dollar value
13 of alleged artificial inflation during the Class Period and the amount of inflation that
14 was removed by each partially corrective disclosure. (Gardner Decl. ¶ 98.) This
15 computation accounts for the alleged price drops corresponding to the June 5, 2008,
16 and October 8, 2009, disclosures. (Id. ¶ 97.) Because of administrative costs, class
17 members entitled to compensation of less than \$10 will not be able to recover.
18 (Docket No. 66, Ex. 1, at 22.) This allocation plan apportions recovery based on the
19 amount of loss class members sustained. Notably, as discussed above, only three
20 shareholders—only one of whom is a class member—has expressed any
21 dissatisfaction with this plan. The Court accordingly finds it fair and reasonable.

22 **5. CONCLUSION RE: MOTION FOR FINAL APPROVAL**

23 For the foregoing reasons, Lead Plaintiff’s motion for final approval of the
24 Settlement and the Plan of Allocation is **GRANTED**.

25 **B. MOTION FOR ATTORNEYS’ FEES, LITIGATION EXPENSES, AND LEAD PLAINTIFF’S**
26 **EXPENSES**

27 Lead Counsel has also moved for attorneys’ fees, reimbursement of litigation
28 expenses, and reimbursement of Lead Plaintiff’s expenses, including lost wages.

1 (Docket No. 76, Mot. for Atty. Fees.)

2 **1. ATTORNEYS' FEES**

3 ***A. Legal Standard***

4 Ninth Circuit authority provides that class action plaintiffs' attorneys' fees may
5 be based on a percentage recovery from a common fund. See *Torrisi*, 8 F.3d at 1376.
6 Twenty-five percent of the common fund is the "'benchmark' award for attorney fees."
7 Id. (citing *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.
8 1990) and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir.
9 1989)). Courts adjust the benchmark, or replace it with a lodestar calculation, "when
10 special circumstances indicate that the percentage recovery would be either too small
11 or too large in light of the hours devoted to the case or other relevant factors." Id.
12 (quoting *Six Mexican Workers*, 904 F.2d at 1311). Relevant factors include whether
13 counsel achieved "[e]xceptional results," whether the case was risky for class counsel,
14 whether counsel's performance "generated benefits beyond the class settlement
15 fund," how the recovery compares to the market rate, and the time and expense
16 involved. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). District
17 courts can, but need not, calculate the award under the lodestar method "as a 'cross-
18 check' of the percentage method." Id. at 1050; see also *In re Coordinated Pretrial*
19 *Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997).

20 ***B. Application***

21 The Court concludes that a 25 percent fee award is appropriate in this case.
22 Despite significant uncertainties in Plaintiffs' case, as described in Section II.A.2.a
23 above, Lead Counsel has achieved a \$10 million recovery for the class prior to any
24 formal discovery, motions for summary judgment, or trial. In addition, as explained in
25 Section II.A.2.d above, the settlement amount allows class members to recover a
26 higher percentage of their damages than in the average securities class action
27 settlement. In addition, the litigation was risky for class counsel, who represented the
28 class on a contingency fee basis. Further, a 25 percent fee award is in line with

1 market rates. (See Gardner Decl., Ex. 10 (orders awarding a 22.69 percent fee from
2 a \$14 million settlement, a 25 percent fee from a \$17.9 million settlement, and a 25
3 percent fee from a \$11.8 million settlement).) Finally, counsel invested significant
4 resources in this case, spending 2,507.2 attorney-hours and incurring over \$85,000 in
5 litigation expenses. (Gardner Decl., Ex. 6 [Declaration of Jonathan Gardner in
6 Support of Labaton Sucharow LLP's Motion for Attorneys' Fees and Reimbursement
7 of Litigation Expenses] ¶¶ 10, 12.) These factors all suggest that the "benchmark" 25
8 percent recovery is reasonable here.

9 Moreover, a lodestar cross-check confirms that the award is reasonable.
10 Counsel's records show that Labaton Sucharow worked 2,507.2 hours at an average
11 billing rate of \$462 per hour, for a total of \$1,158,651.50. (Gardner Decl., Ex. 6 ¶ 10.)
12 In addition, attorneys and paralegals for Local Liaison Counsel spent 70.95 hours on
13 the case, at an average billing rate of \$471 per hour, for a total of \$33,423.75.
14 (Gardner Decl., Ex. 7 [Declaration of Lionel Z. Glancy] ¶ 4.) The total lodestar would
15 therefore be \$1,192,075.25, just under half of the \$2.5 million fee that represents 25
16 percent of the Settlement Fund. This is reasonable. As the Ninth Circuit noted in
17 Vizcaino, courts routinely enhance "the lodestar to reflect the risk of non-payment in
18 common fund cases." Vizcaino, 290 F.3d at 1051. Typically, a lodestar is multiplied
19 up to four times to yield an enhanced award. Id. at 1051 n.6. Thus, the multiplier of
20 two here is within the range of reasonableness. The lodestar cross-check therefore
21 confirms that a 25 percent recovery is appropriate in this case.

22 The Court therefore **GRANTS** Lead Counsel's motion for attorneys' fees in the
23 amount of 25 percent of the Settlement Fund.

24 **2. LITIGATION EXPENSES**

25 **A. Legal Standard**

26 When analyzing requests for litigation expenses, courts are to consider
27 whether the requested expenses "would normally be charged to a fee paying client."
28 Trustees of Constr. Indus. & Laborers Health & Welfare Trust v. Redland Ins. Co., 460

1 F.3d 1253, 1257 (9th Cir. 2006).

2 **B. Application**

3 Lead Counsel requests \$86,314.10 for expenses that it and Local Liaison
4 Counsel have incurred in prosecuting this lawsuit. (Mot. at 20.) The expenses for,
5 among other things, research, travel, experts, mediation, and photocopying appear
6 reasonable, and are of the type normally charged to typical clients. These expenses
7 are also less than the \$125,000 in potential expenses referenced in the settlement
8 notice, and none of the class members has opposed counsel's request for expenses.
9 (Notice at 3; Gardner Reply Decl. ¶ 7). The Court therefore **GRANTS** Lead Counsel's
10 request for reimbursement of \$86,314.10 in litigation expenses, plus interest.

11 **3. LEAD PLAINTIFF'S EXPENSES**

12 Lead Plaintiff Kwok Wong seeks reimbursement of \$21,525 in lost wages for
13 the time spent working for the benefit of the Settlement Class. (Mot. at 22.)

14 **A. Legal Standard**

15 The Private Securities Litigation Reform Act ("PSLRA") provides that a class
16 representative's recovery in a class settlement "shall be equal, on a per share basis,
17 to the portion of the final judgment or settlement awarded to all other members of the
18 class." 15 U.S.C. § 78u-4(a)(4). That provision, however, also provides that
19 "[n]othing in this paragraph shall be construed to limit the award of reasonable costs
20 and expenses (including lost wages) directly relating to the representation of the class
21 to any representative party serving on behalf of a class." Id.

22 **B. Application**

23 Wong has submitted a declaration attesting that he has spent "at least 71.75
24 hours in this matter—35.75 hours since I was appointed Lead Plaintiff." (Gardner
25 Decl., Ex. 8 [Declaration of Kwok Wong ("Wong Decl.")] ¶ 6.) In particular, after Wong
26 received notice of filing of a class action in July 2008, he researched the claims and
27 potential plaintiff class action firms to represent him as lead plaintiff. (Id. ¶ 3.) In all,
28 he spent 36 hours researching and interviewing plaintiff class action firms. (Id. ¶ 3.)

1 He also spent time discussing the case with Lead Counsel, providing input regarding
2 the litigation and settlement strategy, reviewing the pleadings, reviewing experts'
3 analyses, and participating in the mediation. (Id. ¶ 6.) Wong has submitted an
4 itemized statement detailing how he spent his time. (Id., Ex. A.) Wong attests that he
5 would have otherwise spent this time devoted to his business as a “self-employed . . .
6 professional investment manager, investing my own savings,” and that he has lost
7 business opportunities as a result. (Id. ¶ 9.) For his time spent on this case, Wong
8 seeks reimbursement of \$300 per hour, which he contends is reasonable “given [his]
9 level of experience and expertise.” (Id. ¶ 10.) Wong further represents that an hourly
10 rate derived from his annual income would be “significantly higher than \$300 per
11 hour.” (Id. ¶¶ 9, 10.)

12 Plaintiff presents no authority for the proposition that Wong should be
13 reimbursed for time spent prior to his appointment as lead plaintiff in this case.
14 Moreover, Wong’s “wage,” which is not described in any detail, is really the allocation
15 of his investment earnings over the time he spends managing his own fortune. Thus,
16 the Court cannot truly measure the opportunity cost associated with his involvement in
17 this case. For these reasons, the Court believes that his additional award should be
18 limited to the time spent as lead plaintiff, and on the basis of a reasonable hourly
19 wage, which counsel contends is \$300. Because other courts have approved hourly
20 rates between \$200 and \$300 per hour for lead plaintiffs who, like Wong, work in the
21 financial industry or run a business, the Court will use that figure in this action. See In
22 re Gilat Satellite Networks, Ltd., No. CV-02-1510, *4, *19 (E.D.N.Y. Sept. 18, 2007)
23 (granting award including a \$300/hour reimbursement for time mutual funds spent
24 managing the case); In re Charter Commc’ns, Inc., Sec. Litig., No. MDL 1506, *24–25
25 (E.D. Mo. June 30, 2005) (granting investment advisor company an award at a rate of
26 \$300/hour for time managing director spent on the litigation); In re Immune Response
27 Sec. Litig., 497 F. Supp. 2d 1166, 1173–74 (S.D. Cal. 2007) (awarding Lead Plaintiff
28 reimbursement at a \$200/hour rate, based on his compensation as a CEO). The

1 overall award is likewise in line with other reimbursements to Lead Plaintiffs. See
2 Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving \$25,000 award to
3 Lead Plaintiff who spent hundreds of hours on class action that resulted in a cash
4 recovery of more than \$13 million and other relief); In re Xcel Energy, Inc., Sec.,
5 Derivative, & "ERISA" Litig., 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding
6 eight lead plaintiffs a total of \$100,000); In re Dun & Bradstreet Credit Servs.
7 Customer Litig., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (awarding two class
8 representatives \$55,000 each and three class representatives \$35,000 each).
9 Accordingly, the Court awards lead plaintiff \$11,000 for his work with counsel. This is
10 well within the notice to the class, which indicated that Lead Plaintiff might request up
11 to \$22,000 for his reasonable costs and expenses, including lost wages, relating to his
12 representation of the settlement claims, and no one objected. (See Docket No. 66,
13 Ex. 1 [Notice], at 3; Gardner Reply Decl. ¶ 7.)

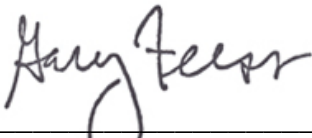
14 For these reasons, the Court **GRANTS** the request for \$11,000 to reimburse
15 Lead Plaintiff for the time spent on this class action.

16 III. CONCLUSION

17 For the reasons explained above, the Court **GRANTS** Lead Plaintiff's motion
18 for final approval of the class settlement and **GRANTS** Lead Counsel's motion for
19 attorneys' fees in the amount of 25 percent of the Settlement Fund, for \$86,314.10
20 plus interest for litigation expenses, and for \$11,000 to reimburse Lead Plaintiff for his
21 lost wages in managing this suit.

22 **IT IS SO ORDERED.**

23 DATED: November 16, 2010

24 
25 _____
26 Judge Gary Allen Feess
27 United States District Court
28