UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

RUSSELL HOFF, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. POPULAR INC., et al., Defendants.	Civil Action No. 3:09-cv-01428-GAG (Consolidated) CLASS ACTION LEAD PLAINTIFFS' MOTION AND MEMORANDUM OF LAW FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AND FINAL CERTIFICATION OF THE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

Page

Page

STATUTES, RULES AND REGULATIONS

SECONDARY AUTHORITIES

Page

TO: THE HONORABLE COURT

NOW COME Lead Plaintiffs General Retirement System of the City of Detroit, Nilda Picó, and José L. Puig-Rivera who respectfully pray and state:

I. PRELIMINARY STATEMENT[1]

Lead Plaintiffs are pleased to submit to the Court a settlement in this Action for $37,500,000, plus interest, for the benefit of the Settlement Class (the "Settlement"). Lead Plaintiffs believe that the Settlement represents an excellent result and creates an outstanding recovery for the Settlement Class. As detailed in the accompanying Joint Declaration and below, the Settlement is the result of hard-fought, arm's-length negotiation by well-informed counsel under the auspices of the Honorable Nicholas H. Politan (Ret.) – a former federal judge and well-respected mediator.

The Settlement represents the culmination of two years of litigation concerning Popular, Inc.'s ("Popular" or the "Company") allegedly improper accounting for its "deferred tax assets" ("DTAs") on its financial statements, in violation of Generally Accepted Accounting Principles ("GAAP"). Through an extensive independent investigation, Lead Plaintiffs were able to plead a detailed complaint that largely survived Defendants' motion to dismiss and which they believe brought Defendants to the negotiating table at a fairly early stage of the litigation. Nevertheless, Lead Plaintiffs were faced with many obstacles to a successful resolution of the case. The parties

[1] An overview of Lead Plaintiffs' claims, the substantial efforts by Co-Lead Counsel, and the negotiations leading to this Settlement are detailed in the Joint Declaration of Salvatore J. Graziano and Robert M. Rothman in Support of (1) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds and Final Certification of the Settlement Class for Settlement Purposes; and (2) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses ("Joint Decl."), which is incorporated herein by reference.

vigorously disagreed on Lead Plaintiffs' ability to establish Defendants' improper accounting or scienter, the materiality of the alleged misstatements, loss causation, and damages.

As detailed herein and in the Joint Declaration, the Settlement constitutes an outstanding result for the members of the Settlement Class and meets all the criteria required for approval. According to Lead Plaintiffs' damage expert, the $37,500,000 Settlement represents a recovery for the benefit of the Settlement Class of approximately 18% of the estimated damages that could reasonably be recovered at trial. Moreover, the Settlement provides a guaranteed recovery and avoids the risk, delay, uncertainty, and expense of further litigation. To date, Lead Plaintiffs have not received any objections to the Settlement and 73 requests for exclusion (68 of which are from the Quetglas Law Offices) have been received.[2]

Co-Lead Counsel also believe that the Settlement described herein confers a substantial benefit upon the Settlement Class and is fair, reasonable, and adequate. Lead Plaintiffs and Co-Lead Counsel have concluded that it is in the best interest of Lead Plaintiffs and the Settlement Class to settle the Action on the terms described herein and, accordingly, respectfully request that the Court grant final approval of this Settlement. In addition, the proposed Settlement Class meets all of the elements of Federal Rules of Civil Procedure 23(a) and (b)(3); therefore, the Court should grant final certification of the Settlement Class. Finally, the Plan of Allocation, which was developed with the assistance of Lead Plaintiffs' professional damages consultant, is a fair and reasonable method for distributing the Net Settlement Fund to Class Members, and should also be approved by the Court.

---

[2] To reduce the volume and number of submissions to the Court, Lead Plaintiffs will address all objections and/or requests for exclusion in a supplemental submission to the Court, to be filed by October 25, 2011, as provided for in the Preliminary Approval Order.

II. THE STANDARD FOR JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS UNDER FEDERAL RULE OF CIVIL PROCEDURE 23(e)

It is well-established that courts favor settlements of lawsuits over continued litigation. *See, e.g., Durrett v. Hous. Auth. of Providence*, 896 F.2d 600, 604 (1st Cir. 1990); *In re Viatron Computer Sys. Corp. Litig.*, 614 F.2d 11, 15 (1st Cir. 1980).

Before granting final approval of a proposed class action settlement, the court must find that the settlement is "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23 (e); *Voss v. Patrick,* 592 F.3d 242, 251 (1st Cir. 2010). Courts "enjoy great discretion to 'balance [a settlement's] benefits and costs' and apply this general standard." *Id.* (citation omitted). In conducting its evaluation, however, the court should not decide the merits of the case. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

Among the factors traditionally considered in evaluating the fairness of a class action settlement are the following: (i) whether the settlement negotiations were at arm's length; (ii) the stage of the litigation and the amount of discovery completed; (iii) the amount of the settlement compared to the amount at issue in the case; (iv) plaintiff's likelihood of succeeding on the merits and recovering damages on the claims; (v) class counsel's recommendations; and (vi) the nature and merit of any objections. *See, e.g., In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 206 (D. Me. 2003); *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822-23 (D. Mass. 1987).

In this case, an examination of the foregoing factors demonstrates that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Parties Entered into the Settlement Following Protracted Arm's-Length Negotiations and an Extensive Investigation

At the time of the Settlement, both Lead Plaintiffs and Defendants were in a good position to understand the strengths and weaknesses of their respective positions. A great deal of formal discovery is not a "necessary ticket to the bargaining table." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981). *See also Newby v. Enron Corp.*, 394 F.3d 296, 306 (5th Cir. 2004) ("The overriding theme of our caselaw is that formal discovery is not necessary as long as (1) the interests of the class are not prejudiced by the settlement negotiations and (2) there are substantial factual bases on which to premise settlement.").

As set forth in the Joint Declaration, this case was exhaustively investigated, researched, and analyzed before the Settlement was reached. In addition to thoroughly researching and investigating their claims in connection with preparing the Complaint and briefing Defendants' motions to dismiss, Lead Plaintiffs reviewed an extensive document production and prepared a detailed mediation submission (as well as reviewing Defendants' mediation submission) prior to entering into the Settlement. Further, the settlement negotiations took place at arm's length before a highly respected mediator, and ultimately resulted in the Settlement on the second day of the two-day mediation.

The comprehensive investigative and document review efforts initiated by Lead Plaintiffs provided not only a clear picture of the strengths of the case, but also of the legal and factual defenses that Defendants would likely raise at trial. Having completed an exhaustive investigation which allowed them to properly evaluate the case, Lead Plaintiffs have succeeded in obtaining an outstanding settlement without unduly prolonging the litigation. *See In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn. 2005) ("The Federal Rules of Civil Procedure 'shall be construed and

administered to ensure the ***just, speedy, and inexpensive determination*** of every action."') (quoting Fed. R. Civ. P. 1) (emphasis in original).[3] Lead Plaintiffs are satisfied that the Settlement was reached after lengthy investigation, document review, and research to enable them and their counsel to knowledgeably settle the case.

B. The Settlement Represents an Excellent Recovery for the Settlement Class

Under the terms of the Stipulation and Agreement of Settlement dated June 10, 2011 ("Stipulation"), the Settlement consists of $37,500,000, plus interest, for the benefit of the Settlement Class.[4] In light of the risks, costs, and delays that would result from proceeding to trial and appeal of any trial verdict, as discussed below, the Settlement provides a reasonable recovery for the members of the Settlement Class. According to Lead Plaintiffs' damage expert, the $37.5 million Settlement represents a recovery for the benefit of the Settlement Class of approximately 18% of the estimated damages that could reasonably be established at trial, which far exceeds the average recovery in recent securities class action litigation.[5]

C. Co-Lead Counsel Recommend Approval of the Settlement

Co-Lead Counsel each have extensive experience in litigating class actions and have negotiated scores of class action settlements that have been approved by courts in this Circuit and throughout the country. Co-Lead Counsel negotiated the Settlement with the benefit of the extensive

---

[3] "Under Rule 1, as officers of the court, attorneys share the responsibility with the court of ensuring that cases are 'resolved not only fairly, but without undue cost or delay.'" *Id.* (citing Fed. R. Civ. P. 1 Advisory Committee Notes, 1993 Amendments).

[4] All capitalized terms not defined herein have the same meanings set forth in the Stipulation.

[5] *See, e.g.*, Ellen M. Ryan, Laura E. Simmons, *Securities Class Action Settlements, 2010 Review and Analysis*, at 5 (Cornerstone Research 2011) (settlements as a percentage of "estimated damages" averaged 2.8% in 2010).

analysis of the applicable law and the relevant facts, and only after considering the strengths and weaknesses of the claims asserted in the Action and the significant benefits to the Settlement Class in light of the risks, the delay, and the additional expense of continuing this complex litigation. It is the informed judgment of Co-Lead Counsel that the Settlement fully satisfies the requirement of Rule 23(e).

D. The Settlement Class Faced Substantial Risks in Establishing Liability and Damages

The Settlement Class faced significant risks in establishing liability and damages. While Lead Plaintiffs believe that their case is strong and that they would prevail at trial, they recognize that they face formidable obstacles to recovery with respect to both liability and damages. To prevail on their Securities Exchange Act of 1934 claims, Lead Plaintiffs would be required to prove: (1) a material misrepresentation (or omission); (2) made with scienter, *i.e.*, a wrongful state of mind; (3) in connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation. *See In re Stone & Webster, Inc., Sec. Litig.*, 414 F.3d 187, 193 (1st Cir. 2005) (citing *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005)).[6]

As explained in the Joint Declaration, Lead Plaintiffs allege that Defendants improperly recorded hundreds of millions of dollars of DTAs relating to its mainland United States operations on its financial statements in violation of GAAP. Lead Plaintiffs further allege that Defendants' conduct artificially inflated the price of Popular securities during the Class Period, thereby damaging Class Members when they bought Popular securities.

---

[6] Lead Plaintiffs also asserted claims against all Defendants under Sections 11, 12(a)(2),and 15 of the Securities Act of 1933 ("Securities Act") in connection with the public offering of Popular's Series B preferred stock.

Throughout this litigation, Defendants adamantly denied liability and consistently maintained that Popular's public disclosures were not materially false or misleading and their accounting decisions concerning Popular's U.S. DTAs were fully compliant with GAAP. Joint Decl., ¶64. Defendants argued that the express language of SFAS No. 109 required a subjective judgment to be made in determining whether Popular was required to take a full valuation allowance prior to January 22, 2009, and that their decisions not to record a full valuation allowance prior to January 22, 2009 constituted an exercise of reasonable business judgment based on the available evidence, and, therefore, did not violate GAAP. *Id.* Defendants also asserted that they had repeatedly cautioned investors in Popular's SEC filings that it might be necessary to adjust or reassess Popular's valuation allowance determination. *Id.*, ¶65.

Defendants likewise maintained that Lead Plaintiffs could not prove scienter. Among other things, Defendants argued that the subjective judgment involved in the valuation allowance determination under SFAS No. 109 would be incommensurate with establishing their intent to commit fraud. *Id.*, ¶66. Defendants also pointed to the fact that PricewaterhouseCoopers LLP, Popular's auditor, had reviewed and concurred with each of Popular's valuation allowance determinations. *Id.*, ¶67.

Finally, even if Lead Plaintiffs could establish falsity, materiality, and scienter, there were substantial hurdles with respect to establishing loss causation and damages. Defendants argued strenuously that the two alleged corrective disclosures – on January 22, 2009 and February 19, 2009 – did not cause the Settlement Class's alleged damages. *Id.*, ¶69. Defendants argued that the price of Popular's Series B preferred stock did not decline materially in response to the January 22, 2009 disclosure, and that, in any event, any decline in the prices of Popular's securities was caused by intervening, non-actionable factors unrelated to the alleged fraud. *Id.* In support of this argument,

Defendants pointed to other negative news about Popular that was revealed on January 22, 2009, including Popular's disclosure of losses in all of its U.S. operating segments, an increase in its allowance for loan losses, a weakening credit environment, decreased net interest income earnings, and further restructuring of certain subsidiaries. *Id.* Defendants made similar arguments with respect to the February 19, 2009 announcement. *Id.*, ¶70. Proving these elements would require expert testimony, and would undoubtedly be reduced to a "battle of experts." There is no guarantee that the fact finder would accept the opinions of Lead Plaintiffs' experts, thereby materially reducing the damages suffered by the Settlement Class.

The Settlement provides a guaranteed recovery for each member of the Settlement Class and avoids the risks of continued litigation, thus militating in favor of final approval of the Settlement.

E. The Complexity, Expense, and Likely Duration of the Litigation

As explained above and in the Joint Declaration, this Action was replete with complexity and uncertainty. Continued fact discovery would be prolonged and expensive, and expert reports and discovery would be extensive. Moreover, whatever the outcome at trial, there would inevitably have been post-trial motions and an appeal. Such proceedings could have prolonged the case for several more years, with, of course, no certainty of a recovery for the Settlement Class.[7] The uncertainty,

---

[7] *See, e.g.*, *In re BankAtlanic Bancorp, Inc.*, No. 07-61542-CIV, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (court granted defendants' motion for a judgment as a matter of law following jury verdict mostly in plaintiffs' favor); *In re JDS Uniphase Corp. Sec. Litig.*, No. 02-1486 CW (EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants); *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on basis of 1994 Supreme Court opinion).

expense, and likely duration of the case, through trial and appeals, also favor approval of the Settlement.

F. The Favorable Reaction of the Settlement Class Supports Approval

The highly favorable reaction of the members of the Settlement Class to the Settlement also supports its approval. Pursuant to the Preliminary Approval Order, the Claims Administrator, under the direction of Co-Lead Counsel, caused the Notice to be mailed, starting on July 12, 2011, to a total of 65,571 potential Class Members. *See* Declaration of Robert Oseas ("Oseas Decl."), ¶¶7-13. Pursuant to the Preliminary Approval Order, the Claims Administrator also caused the Summary Notice to be published in *Investor's Business Daily* and transmitted over the *PR Newswire* on July 22, 2011. *Id.*, ¶¶14-15. Both the Notice and the Summary Notice informed the Class Members, *inter alia*: (i) that the Action has been settled, subject to the Court's final approval at the final approval hearing on November 2, 2011; (ii) of the terms of the Settlement, including a description of the settlement consideration that the Class Members would receive in exchange for releasing their claims; (iii) that they could request to be excluded from the Settlement Class, by submitting a request for exclusion by October 11, 2011; (iv) that Co-Lead Counsel would seek from the Court an award of attorneys' fees not to exceed 27% of the Settlement Fund and expenses not to exceed $1,000,000; and (v) that the Class Members are entitled to be heard at the final approval hearing as to any objections to the Settlement, the Plan of Allocation or to Co-Lead Counsel's fee application, provided that any member of the Settlement Class wishing to object file a written notice of such objection by October 11, 2011.

To date, no objections to the Settlement or Co-Lead Counsel's application for an award of attorneys' fees and expenses have been filed with the Court or served on Co-Lead Counsel and

only 73 potential members of the Settlement Class (68 of which were submitted by the Quetglas Law Offices) have submitted requests for exclusion from the Settlement.

The Class Members' uniformly positive reaction to the proposed Settlement also supports approval of the Settlement. *See, e.g., M. Berenson*, 671 F. Supp. at 824.

IV. FINAL CLASS CERTIFICATION FOR PURPOSES OF THE PROPOSED SETTLEMENT IS APPROPRIATE

The Court's Preliminary Approval Order preliminarily certified for settlement purposes the following Settlement Class: "all persons and entities who purchased or acquired Popular common stock and/or Series B preferred stock during the period between January 24, 2008 and February 19, 2009, inclusive (the "Class Period"), and were injured thereby (the "Settlement Class").[8]

If all of Rule 23's requirements are met, a class may be certified for purposes of a settlement. *Amchem Prods. v. Windsor*, 521 U.S. 591 (1997); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 68 (D. Mass. 2005). "[A] district court must first find that a class satisfies the requirements of Rule 23, regardless of whether it is certifying the class for trial or for settlement." *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 418 (S.D. Tex. 1999); *see also Amchem*, 521 U.S. at 621 ("The safeguards provided by the Rule 23(a) and (b) class-qualifying criteria, we emphasize, are not impractical impediments – checks shorn of utility – in the settlement class context."). However, "the district

---

[8] Excluded from the Settlement Class are Defendants; members of the immediate families of the Defendants; the subsidiaries and affiliates of Defendants (provided, however, that the Popular, Inc. U.S.A. 401(k) Savings & Investment Plan and the Popular, Inc. Puerto Rico Savings and Investment Plan shall not be deemed affiliates of the Defendants for purposes of this Settlement Class definition); any person or entity who is a partner, executive officer, director or controlling person of Popular or any other Defendant, any entity in which any Defendant has a controlling interest; Defendants' liability insurance carriers, and any affiliates or subsidiaries thereof, and the legal representatives, heirs, successors and assigns of any such excluded party. Also excluded from the Settlement Class are those persons and entities who submit valid and timely requests for exclusion from the Settlement Class."

court may take the proposed settlement into consideration when examining the question of certification. *Amchem*, [521 U.S. at 620-21]. . . . [Additionally], 'a district court [determining whether to certify a class for settlement purposes only] need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.'" *Lease Oil*, 186 F.R.D. at 418 (quoting *Amchem*, 521 U.S. at 620). Moreover, "the law favors class action settlements." *In re Lupron(R) Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005).

The Settlement Class here easily satisfies all of Rule 23's requirements and final certification of the Class should be granted. *See, e.g.*, *Tardiff v. Knox County*, 365 F.3d 1, 4 (1st Cir. 2004).

A. The Settlement Class Is Sufficiently Numerous

For a class action to be appropriate, the proposed class must be so numerous that joinder of is "impracticable." Fed. R. Civ. P. 23(a)(1). There is no fixed number of class members which either compels or precludes the certification; classes consisting of 40 members generally are sufficient to establish numerosity. *McLaughlin v. Liberty Mut. Ins. Co.*, 224 F.R.D. 304, 307 (D. Mass. 2004). District courts "'may draw reasonable inferences from the facts presented to find the requisite numerosity.'" *In re Volkswagen & Audi Warranty Extension Litig.*, 273 F.R.D. 349, 352 (D. Mass. 2011) (citation omitted). Here, as the Oseas Declaration sets forth, over 65,500 individual Notices were sent to Class Members throughout the country. Moreover, Lead Plaintiffs' damages consultant estimates that approximately 138,937,015 shares of Popular common stock and 16,153,793 shares of Popular Series B preferred stock purchased by Class Members may have been affected by the alleged conduct at issue in the Action. Therefore, the threshold for a presumption of impracticability of joinder is thus easily exceeded.

B. Common Questions of Law or Fact Exist

The commonality requirement of Rule 23(a)(2) is satisfied when common questions of law or fact are present. *See Payne v. Goodyear Tire & Rubber Co.*, 216 F.R.D. 21, 25 (D. Mass. 2003). It is not necessary that all issues of fact and law be common. *Volkswagen*, 273 F.R.D. at 352; *Relafen*, 231 F.R.D. at 69. In fact, only a single common question of fact or law is necessary to meet this requirement. *In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. 125, 131 (D. P.R. 2010). Here, the Complaint spells out a "common course of conduct," the hallmark of Rule 10b-5 securities class actions. Indeed, where, as here, a class of stock purchasers is defrauded over a period of time by similar misrepresentations due to defendants' common course of conduct, cases are regularly certified. *See, e.g.*, *Blackie v. Barrack*, 524 F.2d 891, 904-05 (9th Cir. 1975). Rule 23(a)(2) is therefore satisfied.

C. Lead Plaintiffs' Claims Are Typical of Those of the Settlement Class

Lead Plaintiffs' claims are typical of Class Members' claims. Under Rule 23(a)(3), claims are typical where "'named plaintiffs' claims arise from the same course of conduct that gave rise to the claims of the absent [class] members.'" *Rodrigues v. Members Mortg. Co.*, 226 F.R.D. 147, 151 (D. Mass. 2005) (citation omitted). *See also Volkswagen*, 273 F.R.D. at 352; *Payne*, 216 F.R.D. at 26. "For purposes of demonstrating typicality, '[a] sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *Relafen*, 231 F.R.D. at 69 (citation omitted).

In this case, the typicality requirement is met. There is no conflict or antagonism between Lead Plaintiffs' interests and those of the Settlement Class. Like all of the Class Members, Lead Plaintiffs purchased Popular securities at prices artificially inflated by Defendants' materially false

and misleading statements or omissions, without knowledge of material facts Defendants either knew or concealed.

D. Lead Plaintiffs Are Adequate Class Representatives

Under Rule 23(a)(4), plaintiffs must also "fairly and adequately protect the interests of the class." Adequacy "'requires that Plaintiff demonstrate that [his] interests will not conflict with those of class members and that [his] counsel is qualified, experienced and able to vigorously conduct the proposed litigation.'" *Rodrigues*, 226 F.R.D. at 151 (citation omitted). *See also Volkswagen*, 273 F.R.D. at 353. Only a conflict that goes to the very subject matter of the litigation will defeat a finding of adequacy.

The adequacy test is met here. The Lead Plaintiffs' interests are co-extensive, do not conflict with the Class Members' interests, and are typical of the clams of the Settlement Class. Substantial common questions of fact and law exist and the Lead Plaintiffs' interests are aligned with those of the Settlement Class. Lead Plaintiffs retained experienced counsel to prosecute this case, and participated in all aspects of the litigation. Co-Lead Counsel possess extensive experience in the area of securities litigation and have successfully prosecuted scores of securities fraud class actions across the country. *See* Joint Decl., ¶98.

E. The Proposed Settlement Class Satisfies Rule 23(b)(3)

Rule 23(b)(3) authorizes certification where, in addition to the prerequisites of Rule 23(a), common questions of law or fact predominate over any individual questions and a class action is superior to other available means of adjudication. *Amchem*, 521 U.S. at 591-94; *Volkswagen*, 273 F.R.D. at 353. This case easily meets Rule 23(b)(3)'s requirements.

1. Common Questions of Law and Fact Predominate Over Individual Questions

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "The Rule 23(b)(3) predominance inquiry is satisfied 'unless it is clear that individual issues will overwhelm the common questions and render the class action valueless.'" *Volkswagen*, 273 F.R.D. at 353. As discussed above, there are a host of common questions of law and fact as to the members of the Settlement Class which Lead Plaintiffs seek to represent. These questions clearly predominate over individual questions because Defendants' alleged conduct affected all Class Members in the same manner – by artificially inflating the price of Popular securities. "Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem*, 521 U.S. at 625. The First Circuit does not require an "entire universe" of common issues, but does require a "'sufficient constellation'" of them. *Relafen*, 231 F.R.D. at 70 (citation omitted).[9] As described above, this requirement is clearly met.

2. A Class Action Is Superior to Other Available Methods for Resolving This Controversy

The requirement of superiority "ensures that resolution by class action will 'achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Relafen*, 291 F.R.D. at 70 (citing *Amchem*, 521 U.S. at 615). As further explained in *Amchem*, "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. R. Civ.

---

[9] The fact that individual Class Members' damages may vary or that individual Class Members may not recover does not defeat predominance. *Volkswagen*, 273 F.R.D. at 354.

P. 23(b)(3)(D), for the proposal is that there be no trial." 521 U.S. at 620. Any management problems that may have existed here are eliminated by the Settlement. Therefore, because each of the other elements of Rule 23 are satisfied, a class action is the superior method of adjudicating the relatively small claims of Class Members.

V. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

Assessment of a plan of allocation of settlement proceeds in a class action under Rule 23 of the Federal Rules of Civil Procedure is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 343 (S.D.N.Y. 2005). District courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978); *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). "'As a general rule, the adequacy of an allocation plan turns on . . . whether the proposed apportionment is fair and reasonable' under the particular circumstances of the case." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 518 (E.D.N.Y. 2003) (citation omitted), *aff'd sub. nom. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96 (2d Cir. 2005). An allocation formula need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992).

Here, the Plan of Allocation was developed by Co-Lead Counsel in consultation with their professional damage consultant and reflects the requirements for establishing damages promulgated by *Dura Pharms.*, 544 U.S. 336 and complies with the PSLRA. The Plan of Allocation calculates

and allocates damages consistent with Lead Plaintiffs' damage analyses, and also weighs the strength of the various claims at different times during the Class Period by providing for a smaller recovery for those Class Members who purchased Popular securities after the first disclosure on January 22, 2009. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004) ("A reasonable plan may consider the relative strength and values of different categories of claims."). The Plan of Allocation is set forth in the Notice and summarized in ¶¶75-79 of the Joint Declaration.

The Plan of Allocation here is equitable to all Class Members and is similar to allocation plans routinely approved by courts. Moreover, the information required from a Class Member is easily obtainable and verifiable by the Claims Administrator. The Plan of Allocation is, therefore, a fair and reasonable method of allocating the proceeds of this Settlement among Class Members. Further, no objections to the Plan of Allocation by Class Members have been received.

Lead Plaintiffs, therefore, respectfully request that the Court approve the Plan of Allocation as submitted.

VI. CONCLUSION

For the reasons set forth above, Lead Plaintiffs respectfully request that this Court approve this outstanding Settlement as fair, reasonable, and adequate, enter the proposed Final Judgment certifying the Settlement Class, and approve the Plan of Allocation of settlement proceeds as fair, reasonable, and adequate.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico, this
4th day of October, 2011

THE LAW OFFICES OF ANDRÉS W. LÓPEZ, P.S.C.
ANDRÉS W. LÓPEZ (USDC NO. 215311)

s/ Andres W. López
ANDRÉS W. LÓPEZ

207 Del Parque Street, Third Floor
San Juan, PR 00912
Telephone: 787/641-4541
787/641-4544 (fax)

Liaison Counsel for Lead Plaintiffs and the Settlement Class

ROBBINS GELLER RUDMAN
& DOWD LLP
ROBERT M. ROTHMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101-3301
Telephone: 619/231-1058
619/231-7423 (fax)

BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
SALVATORE J. GRAZIANO
LAURA H. GUNDERSHEIM
JEREMY P. ROBINSON
1285 Avenue of the Americas, 38th Floor
New York, NY 10019
Telephone: 212/554-1400
212/554-1444 (fax)

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class