IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02351-PAB-KLM (Consolidated With: Civil Action No. 07-cv-02412-MSK, 07-cv-02454-EWN, 07-cv-02465-WYD, and 07-cv-02469-DME)

In Re Crocs, Inc., Securities Litigation

MOTION FOR FINAL APPROVAL OF THE PROPOSED PARTIAL SETTLEMENT, PLAN OF ALLOCATION, AND FINAL CERTIFICATION OF SETTLEMENT CLASS, AND MEMORANDUM IN SUPPORT THEREOF

PLEASE TAKE NOTICE that Plaintiffs[1] in the above-entitled action ("Action"), through their counsel, hereby move this Court for an Order: (1) pursuant to Fed. R. Civ. P. 23(a) and (b)(3), for final certification of the Settlement Class; (2) pursuant to Rule 23(e), for final approval of the proposed partial settlement of the Action ("Settlement") as set forth in the Stipulation and Agreement of Partial Class Settlement, dated May 14, 2012 ("Stipulation");[2] (3) for approval of the proposed plan of allocation ("Plan of Allocation"); and (4) for final approval of the forms and methods for providing notice to the Settlement Class ("Motion").[3] In support of this Motion, Plaintiffs respectfully submit this Memorandum and the Declaration of Charles J. Piven In Support of Plaintiffs' Motions for Final Certification of the Settlement Class; Final Approval of Class Notice; Final Approval of the Proposed Partial Settlement; Final Approval of the Proposed Plan of Allocation; and Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Piven Declaration"), filed herewith.

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[1] All capitalized terms not otherwise defined shall have the meaning as set forth in the Stipulation. All citations and internal quotation marks omitted unless otherwise noted.

[2] In the August 28, 2013 Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), this Court preliminarily certified a class for settlement purposes ("Settlement Class").

[3] Pursuant to Local Rule 7.1, Plaintiffs' Counsel have conferred with the Settling Defendants and they do not oppose the relief requested in this motion. Deloitte & Touche LLP takes no position.

PRELIMINARY STATEMENT

The $10 million cash Settlement is an excellent result for the Settlement Class and merits this Court's approval. The parties have thoroughly weighed the strengths and weaknesses of the claims and defenses as well as the risks facing the parties in the Action's procedural posture, and, after extensive negotiations, have reached an informed and carefully crafted compromise. The Settlement is entirely the product of Plaintiffs' and Plaintiffs' Counsel's diligent efforts in prosecuting this Action, and hard-fought, arm's-length settlement negotiations before Kyle Ann Schultz, the Tenth Circuit Mediator, and United States District Judge Layn R. Phillips (Ret.), as well as follow up discussions between the parties.

The $10 million Settlement represents approximately a 1.3% recovery to Settlement Class members based on Plaintiffs' best possible result in the Action, which is estimated to be $775 million, and falls squarely within the median percentage recoveries in securities class action settlements of this type over the past years. This figure does not take into account any risks associated with reviving the Action on appeal or, even if successful in the Tenth Circuit, losing all or part of the Action, or any of the relative strengths or weaknesses of any of the specific claims of Settlement Class members on the merits. Plaintiffs submit, therefore, that the Settlement represents an outstanding result for the Settlement Class.

Additionally, Plaintiffs' Counsel, who are highly experienced in prosecuting securities class action litigation, have concluded that the Settlement is in the best interests of the Settlement Class and recommend its approval to the Court. Therefore, Plaintiffs respectfully submit that the Court should approve the Settlement.

FACTUAL AND PROCEDURAL BACKGROUND

The Piven Declaration filed simultaneously herewith and adopted by reference herein fully describes the history of the Action, the claims asserted, the risks to Plaintiffs' success on the merits, the damages analysis conducted by Plaintiffs' Counsel's damages expert, and negotiations leading to the Settlement. Accordingly, Plaintiffs will not repeat that information and respectfully refer the Court to the Piven Declaration. This Memorandum addresses the factual and legal matters relevant to the Court's consideration of whether the Settlement and Plan of Allocation should be approved; whether final certification of the Settlement Class is appropriate; and whether the notice program met all the applicable requirements.

ARGUMENT

I. STANDARDS FOR APPROVAL OF CLASS ACTION SETTLEMENTS

Settlement of disputed claims is favored. *See Diaz v. Romer*, 801 F. Supp. 405, 407 (D. Colo. 1992) ("A consensual resolution of a dispute is always preferred."). A court must exercise its sound discretion in approving a settlement. *See Jones v. Nuclear Pharmacy, Inc*., 741 F.2d 322, 324 (10th Cir. 1984). A class action settlement is entitled to final approval under Rule 23(e) if it is "fair, reasonable and adequate." *Id.* at 324.[4] Courts in this Circuit consider four factors in assessing whether a proposed settlement is fair, reasonable and adequate:

> (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

[4] In reviewing a settlement under Rule 23, a court is not to substitute its business judgment for that of the parties who negotiated the settlement. *See In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. 1976).

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002); *see also Ramirez v. 3 Margaritas XVIII, Inc.*, No. 12-01357, 2013 U.S. Dist. LEXIS 59273, at *5 (D. Colo. Apr. 25, 2013) (discussing same four factors); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 01-01451, 2006 U.S. Dist. LEXIS 71039, at *15-*20 (D. Colo. Sept. 28, 2006). Here, the Settlement is fair, reasonable and adequate under the each of these factors.

II. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. The Settlement Was Fairly and Honestly Negotiated

A strong presumption of fairness attaches to a class action settlement reached in arm's-length negotiations among able counsel. *See Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006); *Qwest*, 2006 U.S. Dist. LEXIS 71039, at *15-*16. Here, all parties were represented throughout the negotiations by able counsel experienced in class action and securities litigation, and the Settlement was reached by the parties in good faith, after extensive arm's length negotiations, without collusion, and with the assistance of impartial mediators, including the Tenth Circuit's own mediator, Ms. Schultz, and Judge Phillips (Ret.), a highly experienced independent mediator with extensive experience in mediating securities class action settlements throughout the country.

The mediation session before Judge Phillips[5] involved extensive up-front briefing regarding the merits of the Action, as well as discussions regarding the parties' respective claims and defenses. The mediation occurred only after the parties had a solid understanding of the strengths and weaknesses of the Settlement Class' claims; had the benefit of a fully-briefed and decided motion to dismiss; and had

[5] Judge Phillips's role in the negotiations strongly supports a finding that they were conducted at arm's-length. *E.g.*, *Qwest*, 2006 U.S. Dist. LEXIS 71039, at *17 (approving settlement based upon mediator's recommendations); *In re LandAmerica § 1031 Exch. Servs. Inc. IRS § 1031 Tax Deferred Exch. Litig.*, MDL No. 2054, 2012 U.S. Dist. LEXIS 97933, at *9 (D.S.C. July 12, 2012) (settlement was the result of arm's-length bargaining where the parties were "assisted by the Honorable Layn R. Phillips, a mediator recognized for his expertise in complex civil disputes").

completed briefing in the Tenth Circuit. Following the mediation, the parties engaged in subsequent negotiations among themselves, which led to the Settlement. Thus, the Settlement was fairly and honestly negotiated.

B. Serious Questions of Law and Fact Exist

The second factor considered by the Tenth Circuit—"whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt," *see Rutter*, 314 F.3d at 1188—also supports the approval of the Settlement. Plaintiffs brought claims under Sections 10(b), 20(a), and 20(A) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78j(b), 78t(a), and 78t-1, as well as Rule 10b-5 promulgated thereunder by the SEC, which required proof of "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 157 (2008). Failure to prove just one of the factors would have prevented recovery.

Establishing liability in cases like this is always uncertain. *See In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) (noting that courts "have long recognized that [securities class action litigation] is notably difficult and notoriously uncertain"). In this case, however, that uncertainty was especially great because the Court had already granted Defendants' motions to dismiss on grounds that none of the statements identified in the complaint were materially false or misleading, and that the complaint's allegations failed to establish a strong inference of Defendants' scienter. To have any chance of prevailing, therefore, Plaintiffs would have had to persuade the Tenth Circuit to reverse the Court's rulings. And although Plaintiffs believed they had legitimate grounds for appeal, reversal was anything but a

foregone conclusion, and Plaintiffs' success on the merits was in serious doubt.[6] Further, obtaining reversal of a Rule 12(b)(6) dismissal would not assure Plaintiffs' ultimate success on the merits, At summary judgment or trial, Plaintiffs would still bear the burden of demonstrating, under much higher standards, falsity, materiality, and scienter.

Indeed, even if Plaintiffs were successful before the Tenth Circuit, they would have faced several other hurdles upon remand, including, for example, proving loss causation. Although Plaintiffs believe they could have established the necessary causal connection for loss causation, *see Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341-43 (2005), they faced significant hurdles to doing so. Further, had Plaintiffs established loss causation, there was no guarantee that a jury would have agreed with Plaintiffs' damages' calculation. Calculation of damages in a securities fraud case "is a complicated and uncertain process, typically involving conflicting expert opinion about the difference between the purchase price and the stock's 'true' value absent the alleged fraud." *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004). Finally, even if Plaintiffs prevailed at summary judgment, and then secured a judgment after trial (an event that would likely take several years given the post-verdict claims process), Defendants would likely appeal themselves, a process that would span several years and carry the risk of reversal, in which case the Settlement Class would receive nothing. *See, e.g., Robbins v. Koger Props.*, 116 F.3d 1441, 1446, 1449 (11th Cir. 1997) (reversing jury verdict of $81 million); *Backman v. Polaroid Corp.*, 910 F.2d 10, 18 (1st Cir. 1990) (dismissing action following 11 years of litigation and a $30 million judgment for plaintiffs).

Thus, weighing the foregoing risks creating significant doubt as to the ultimate outcome here

[6] In 2011, the Tenth Circuit's reversal rate in civil cases was only 7.9%. *See* Judicial Business of the United States Courts, Supplemental Tables, "U.S. Courts of Appeals—Appeals Terminated on the Merits, by Circuit, During the 12-Month Period Ending September 30, 2011," *available at* www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2011/appendices/B05Sep11.pdf

against the immediate and substantial benefit conferred by the Settlement strongly supports that the Settlement is highly beneficial to the Settlement Class.

C. Immediate Recovery Outweighs the Mere Possibility of Future Relief

The Settlement guarantees an immediate recovery, which outweighs the mere *possibility* of success at trial. *See Ashley v. Regional Transp. Dist.*, No. 05-01567, 2008 U.S. Dist. LEXIS 13069, at *20-*21 (D. Colo. Feb. 11, 2008). Even if Plaintiffs had overcome the hurdles to proving liability and damages mentioned above, the Action, which has already been pending for almost six years, would most certainly span many more years. By contrast, the Settlement will provide an immediate benefit to the Class.

Additionally, the costs and duration of conducting merits, class, and expert discovery, litigating a motion for summary judgment, trial preparation, the trial itself, post-trial motions, and any appeals in a complex securities class action of this type would no doubt geometrically multiply the substantial time and money already spent. *See In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (settlement favored where "trial . . . would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court"). Thus, the Settlement is highly beneficial because it will provide tangible, certain and immediate relief "without subjecting [the Settlement Class] to the risks, complexity, duration, and expense of continuing litigation." *Global Crossing*, 225 F.R.D. at 456-57.

Moreover, the range of reasonableness of the Settlement amount in light of the best possible recovery and the attendant risks of litigation both support approval of the Settlement. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 242 (3d Cir. 2001). Plaintiffs have estimated maximum recoverable damages, assuming liability is proven for the entire Settlement Class Period, at approximately $775 million. The $10 million Settlement amount represents approximately 1.3% of Plaintiffs' best possible result (assuming

complete ultimate victory on all issues of liability and damages and a 100% claims rate). This percentage is in line with other securities class actions, especially considering that the very real risk that Plaintiffs would lose on appeal and obtain no recovery. For example, one recent analysis by Cornerstone Research found that in 2012, the median settlement as a percentage of estimated damages was 1.1% where estimated damages were in the range of $500-999 million (like here). Securities Class Action Filings--2012 Year in Review (Cornerstone Research), *available at* www.cornerstone.com; *see also* Piven Decl. at ¶¶151-53 (providing additional statistics on estimated damages and settlement ranges).[7]

D. The Recommendation of Plaintiffs and Plaintiffs' Counsel

The fourth factor considered by the Tenth Circuit also strongly supports the approval of the Settlement. *See King Res.*, 420 F. Supp. at 625 ("the Court should also consider the judgment of counsel"). Plaintiffs and Plaintiffs' Counsel have concluded that the Settlement is in the best interests of the Settlement Class and recommend its approval. This conclusion is based on, among other things, the experience of counsel, and careful review and analysis of the relative strengths and weaknesses of the claims, as put forth by Defendants in their motions to dismiss, their briefs on appeal, and during the mediations. *See Lucas*, 234 F.R.D. at 695 ("Counsels' judgment as to the fairness of the agreement is entitled to considerable weight.").

III. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

The standard for approval of a plan of allocation is the same as the standard for approving a settlement: whether it is "fair, reasonable, and adequate." *Lucas*, 2006 U.S. Dist. LEXIS 51439, at *28.

[7] *See also Aramburu v. Healthcare Fin. Servs.*, No. 02-6535, 2009 U.S. Dist. LEXIS 33642, at *13 (E.D.N.Y. Apr. 22, 2009) ("As the Second Circuit has stated, the fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."); *In re Union Carbide*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989) (acknowledging that "a settlement can be approved even though the benefits amount to a small percentage of the recovery sought" and that the "essence of settlement is compromise.").

Further, an allocation formula need only have "a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel." *Id.* at *29. Here, the Plan of Allocation fairly allocates the recovery among Settlement Class members. Importantly, the proposed division of the proceeds of the Settlement among claiming members of the Settlement Class reflects the same formulas and reasoning that Plaintiffs would most likely have utilized at trial to present Settlement Class members' damages. Because the proposed allocation reflects the likeliest damages theories that Plaintiffs would have proffered at trial, Plaintiffs' Counsel submit that the Plan of Allocation is eminently fair, reasonable and adequate, and should be approved.

IV. THE NOTICE PROGRAM MEETS THE APPLICABLE REQUIREMENTS

Pursuant to the Preliminary Approval Order, the Notice of Pendency of Proposed Partial Settlement of Class Action ("Notice") was mailed by the Court-appointed claims administrator, GCG, to 206,524 potential members of the Settlement Class beginning on September 19, 2013. In addition, the Summary Notice was published on *PRNewswire* on September 12, 18 and 24, 2013.[8] The Notice mailed to Settlement Class members provided a detailed background and history of the Action, fully apprised Settlement Class members of the terms of the Settlement, and informed them of the options available to them in connection with the proceedings, including their right to personally appear and/or object to any aspect of the relief requested or to seek exclusion from the Settlement Class. The Notice also explained how to obtain additional information and whom to contact for additional questions. Thus, the Notice program complied with the requirements of the PSLRA, due process, and Rule 23. *See* 15 U.S.C. §78u-4(a)(7); Fed. R. Civ. P. 23(e); *see also Fidel v. Farley*, 534 F.3d 508 (6th Cir. 2008) (approving notice

[8] *See* Affidavit of Jose C. Fraga Regarding the Mailings of the Notice and Proof of Claim ("Fraga Decl."), Senior Director for The Garden City Group, Inc. ("GCG"), dated October 24, 2013, at ¶¶7, 9 attached as Exhibit 1 to the Piven Declaration.

program similar to one in this Action); *Qwest*, 2006 U.S. Dist. LEXIS 71039, at *14 (same).[9]

V. THE SETTLEMENT CLASS SATISFIES THE REQUIREMENTS OF RULE 23

Plaintiffs also seek final certification of the Settlement Class and appointment of Fernando Pedrera Sánchez, Harvey Babitt, and Daniel Lundberg as class representatives. The Court preliminarily certified the Settlement Class on August 28, 2013. Notably, this Court carefully considered all of the other relevant class certification issues in its August 28, 2013 Order and certified the Settlement Class over vociferous opposition. Nothing has changed to alter the propriety of that determination. The proposed Settlement Class should be certified as it satisfies the numerosity, commonality, typicality and adequacy requirements of Rule 23(a)(1)-(4) and the predominance and superiority requirements of Rule 23(b)(3).

A. The Numerosity Requirement is Satisfied

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. *In re Intelcom Group Sec. Litig*., 169 F.R.D. 142, 147 (D. Colo. 1996). Here, during the Settlement Class Period, Crocs' publicly traded securities were purchased by hundreds, if not thousands, of persons located throughout the country. Numerosity is also confirmed by the fact that 206,524 notices were mailed to potential Settlement Class members. Fraga Decl. at ¶9. Thus, Rule 23(a)(1) is satisfied. *In re Amerifirst Sec. Litig.*, 139 F.R.D. 423, 427 (S.D. Fla. 1991) (numerosity "assumed to have been met in class action suits . . . involving nationally traded securities").

B. The Commonality and Typicality Requirements Are Satisfied

The commonality and typicality requirements of Rules 23(a)(2) and (3) are discussed together

[9] As of October 24, 2013, no objections have been filed, which further supports that the Settlement should be approved. Previously, National Roofing filed an objection to Plaintiffs' preliminary approval motion, which was found to be baseless by this Court. Dkt. No. 204. However, because the deadline for objections does not expire until November 26, 2013, Plaintiffs' Counsel will respond to any objections to any part of the Settlement before the Final Approval Hearing, as set forth in the Preliminary Approval Order.

because courts treat them as closely linked and evaluate them much the same. *In re Qwest Sav*., No. 02-464, 2004 U.S. Dist. LEXIS 24693, *12 (D. Colo. Sept. 27, 2004) ("The commonality and typicality requirements tend to merge, but both serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are [sufficiently] interrelated."). "A finding of commonality requires only a single question of law or fact common to the entire class." *DG v. Devaughn*, 594 F.3d 1188, 1195 (10th Cir. 2010). Further, "[s]o long as there is a nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class, the typicality requirement is satisfied." *Queen Uno Ltd. P'ship v. Coeur D'Alene Mines Corp.*, 183 F.R.D. 687, 691 (D. Colo. 1998).

In the instant case, the Complaint asserts the same claims under the federal securities laws on behalf of all Settlement Class members based on the same facts. Further, all Settlement Class members, as purchasers of Crocs' publicly traded securities during the Settlement Class Period, sustained injury due to Defendants' alleged material misrepresentations. Thus, Plaintiffs have alleged common issues of fact and law that affect all Settlement Class members, and therefore, the typicality and the commonality requirements are satisfied.

C. The Adequacy Requirement is Satisfied

The adequacy requirement of Rule 23(a)(4) involves the inquiry as to whether: (1) plaintiff's interests are antagonistic to the interests of the other members of the Class; and (2) plaintiff's counsel are qualified, experienced, and capable of conducting the litigation. *Rutter*, 314 F.3d at 1187-88. Both elements are present here.

No conflicts exist between Plaintiffs and the other members of the Settlement Class. Plaintiffs' interests are aligned with those of the Settlement Class as the factual and legal claims of Plaintiffs and the

Settlement Class arise from the same nexus of operative facts and course of conduct by Defendants. "[A] class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997). Plaintiffs, like all Settlement Class Members, purchased Crocs' securities at artificially inflated prices during the Settlement Class Period as a result of Defendants' alleged materially false and misleading statements and were damaged thereby. Further, Plaintiffs retained counsel who have successfully prosecuted numerous securities and other complex class actions in courts throughout the country. *See* firm resumes of Plaintiffs' Counsel, attached to the Piven Declaration. Thus, Fernando Pedrera Sánchez, Harvey Babitt, and Daniel Lundberg are adequate representatives of the Settlement Class, and Plaintiffs' Counsel are qualified, experienced, and capable of prosecuting the Action, in satisfaction of Rule 23(a)(4).

D. The Proposed Settlement Class Satisfies the Requirements of Rule 23(b)(3)

In addition to the four requirements of Rule 23(a), a class must also satisfy one of the three subparts of Rule 23(b). Plaintiffs seek class certification under Rule 23(b)(3), which requires that:

> the court find[] that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b)(3).

1. Common Questions of Law and Fact Predominate

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Anderson v. Merit Energy Co.*, No. 07-00916, 2008 U.S. Dist. LEXIS 47743, at *17-*18 (D. Colo. June 19, 2008). Predominance "is a test readily met in certain cases alleging consumer or securities fraud." *Amchem*, 521 U.S. at 625. Because the issues pertinent to liability in this case are common to all Settlement Class members, the predominance requirement of Rule 23(b)(3) is

satisfied. Plaintiffs allege that Defendants engaged in a common course of fraudulent conduct to artificially inflate the price of Crocs' securities. Proof of that common course of conduct relates to Defendants' liability as to all Settlement Class members. *See In re Ribozyme Pharms., Inc. Sec. Litig.*, 205 F.R.D. 572, 578-79 (D. Colo. 2001) ("[T]here are numerous common issues of law and fact in this case. In fact, it seems that the liability issues are identical to all members of the class. The common issues thus predominate over the individual issues."). Because the central and predominant focus of the Action is Defendants' alleged fraudulent conduct, each Settlement Class member is similarly situated and common questions predominate over individual questions.[10]

2. A Class Action Is Superior To Other Methods of Adjudication

Rule 23(b)(3) also requires that the class action be "superior to other available methods for fair and efficient adjudication of the litigation." Courts have found that the superiority requirement is satisfied where:

> The potential class members are both significant in number and geographically dispersed. The interest of the class as a whole in litigating the many common questions substantially outweighs any interest by individual members in bringing and prosecuting separate actions.

Cromer Fin. Ltd. v. Berger, 205 F.R.D. 113, 133 (S.D.N.Y. 2001).

Here, the utility of presenting the claims asserted through the class action method is substantial since the Settlement Class members who have been injured number in the hundreds, or even thousands, but most have not been damaged to a degree that would induce them to institute litigation on their own behalf.

[10] Here, the common questions include: (1) whether Defendants violated the federal securities laws; (2) whether statements made by Defendants during the Settlement Class Period misrepresented and/or omitted material facts; (3) whether Defendants knew or recklessly disregarded that their statements were false and/or misleading; (4) whether the market price of Crocs' securities was artificially inflated during the Settlement Class Period due to the material misrepresentations and omissions; and (5) to what extent the members of the Settlement Class have sustained damages caused by Defendants' conduct and the proper measure of those damages.

See Ribozyme, 205 F.R.D. at 579 ("Likewise, the class action device is a superior vehicle for adjudicating this case. Securities fraud actions of this type involve geographically disbursed plaintiffs and involve such costs that if this litigation was not brought via class action, the costs of litigation would likely outweigh any benefit obtained."). Further, certification of the Settlement Class is the superior method to facilitate the resolution of Plaintiffs' claims because without the settlement class device, Settling Defendants could not obtain a Class-wide release, and therefore would have had little, if any, incentive to enter into the Settlement. Moreover, certification of a Settlement Class for settlement purposes will enable Plaintiffs' Counsel to handle the administration of the Settlement in an organized and efficient manner.

CONCLUSION

Thus, Plaintiffs respectfully request that this Court certify the Settlement Class for settlement purposes, approve the Settlement and the Plan of Allocation, and find that the notice program met all the of the applicable requirements.

Dated: October 25, 2013

Respectfully submitted,

BROWER PIVEN, A Professional Corporation

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Attorneys for Plaintiffs and Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2013, I electronically filed the foregoing Motion For Final Approval of The Proposed Partial Settlement, Plan Of Allocation, and Final Certification of Settlement Class, and Memorandum In Support Thereof with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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