

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE FUQI INTERNATIONAL, INC.
SECURITIES LITIGATION

10-cv-2515 (DAB)
MEMORANDUM AND ORDER

This document relates to ALL ACTIONS
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DEBORAH A. BATTIS, United States District Judge.

I. INTRODUCTION AND SUMMARY

On February 18, 2016, the Court held a Fairness Hearing to consider the final certification of the Settlement Class and the substantive and procedural fairness of the terms of the Settlement based on Lead Plaintiff's Amended Motion for Final Approval of Settlement and Plan of Allocation and for Attorneys' Fees, Reimbursement of Expenses, and Lead Plaintiff Awards. At the hearing, the Court indicated that it would file this Memorandum and Order, setting out the Court's rationale for final certification of the Settlement Class and approval of the Settlement.

This Action arises from ten securities fraud class action lawsuits against Fuqi International Inc. ("Fuqi"), as well as certain individual officers, directors, and underwriters of the company. On July 26, 2010, this Court consolidated the ten class actions and appointed as Lead Plaintiff the following entity and individuals: Puerto Rico Government Employees and Judiciary Retirement Systems Administration, Craig B. Laub, J.D.

Pisut, and Sandra Redfern. (ECF No. 47.) This Court designated Abraham, Fruchter & Twersky, LLP as Lead Counsel. (Id.) In that same Order, this Court also consolidated two shareholder derivative actions for purposes of discovery. (Id.) Those derivative actions were subsequently dismissed pursuant to stipulation. (See 10-cv-4028, ECF No. 7 (Dec. 2, 2014); 10-cv-3326, ECF No. 17 (Dec. 2, 2014).)

On November 21, 2014, this Court preliminarily approved the Proposed Settlement, defined the Class and a Subclass, and authorized dissemination of the Settlement Notice. (10-cv-2515 ECF No. 93.) The Settlement Class consists of all persons or entities who purchased or otherwise acquired Fuqi common stock between May 15, 2009, and March 27, 2011, inclusive, ("Class Period") and were purportedly damaged thereby. (Id.) The Subclass consists of all of those who purchased or otherwise acquired Fuqi common stock pursuant to or traceable to Fuqi's secondary offering on or about July 22, 2009. (Id.) Excluded from the Class and Subclass are Defendants herein; the officers and directors of the Company, at all relevant times; members of their immediate families; any entity in which any Defendant has or had a legal controlling interest; and the legal representatives, heirs, successors, or assigns of any Defendant. (Id.) Also excluded from the Class and Subclass are persons and

entities who submitted a timely request for exclusion, listed on Schedule 1 hereto.

The Class members allege that they were damaged when they purchased shares of Fuqi common stock at prices artificially inflated by the Fuqi Defendants' materially false and misleading statements made during the Class Period. (See, e.g., First Amended Class Action Complaint ¶ 8 (Oct. 7, 2014) (ECF No. 89).) The Class members seek remedies under the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder. (Id. ¶ 1.) The members of the Subclass allege that they were damaged when they purchased Fuqi common stock pursuant to a materially false Registration Statement, and Prospectus incorporated therein, issued in connection with Fuqi's secondary offering. (Id. ¶ 9.) The Subclass members seek remedies under the Securities Act of 1933. (Id. ¶ 1.) The Parties notified the Court that they have entered into a Stipulation of Settlement by letter dated September 9, 2014.

The response to the settlement has been relatively positive. Counsel for Lead Plaintiff initially notified the Court that, as of January 14, 2015, Angeion Group ("Angeion"), the Claims Administrator, had mailed 4,771 copies of the Notice and Proof of Claim Form ("Notice") to potential Class Members. (Amended Decl. of Charles E. Ferrara Re: (1) Updated Report on Notice to the Settlement Class; (2) Receipt of Exclusion

Requests and Objections; and (3) Report on Number of Claims Filed ¶ 3 (Aug. 31, 2015) (attached as Ex. 9 to the Amended Decl. of Lawrence D. Levit in Support of Lead Plaintiff's Amended Motion for Final Approval of Settlement and Plan of Allocation and for Attorneys' Fees, Reimbursement of Expenses and Lead Plaintiff Awards (ECF No. 109) ("Ferrara Decl."))

Counsel for Lead Plaintiff subsequently notified the Court that, as of February 11, 2015, 39,425 Notices had been mailed to potential Class Members. (Id. ¶ 4.) Counsel for Lead Plaintiff advised the Court that these additional Notices were mailed as a result of subsequent requests from brokers and other nominees. (Id.) This Court previously scheduled the hearing for final approval of the proposed settlement for February 19, 2015. Pursuant to the Order Preliminarily Approving and Providing for Notice of Proposed Settlement, objections and requests for exclusion were to be submitted no later than twenty-one days prior to the hearing, or January 29, 2015. This Court adjourned the hearing sine die on February 18, 2015, due to the significant number of Notices sent after the original deadline for submitting objections and requests for exclusion. On March 17, 2015, Angeion reported that it mailed an additional 12,437 copies of the Notice in response to a request from Scottrade on March 10, 2015. (Id. ¶ 4.) Between February 12, 2015 and March 19, 2015, Angeion received Notice requests from other brokers

and nominees, which resulted in mailing of an additional 3,400 Notices. (Id.) Since March 19, 2015, Angeion received requests for Notices from two other brokers totaling 1,676 Notices, which were mailed on or about April 3, 2015 and April 9, 2015. (Id.) Through August 27, 2015, exclusive of the initial mailing and as a result of requests from brokers and other nominees, Angeion sent, in total, 56,938 Notices, directly or indirectly, to potential Class Members. (Id. ¶ 5; see also id., Ex. A (chart detailing the Notices sent, including the requester's name, number of Notices sent, and the date on which they were sent).) As of August 27, 2015, 81 Notices were returned as undeliverable, and Angeion re-mailed those Notices to the forwarding addresses provided. (Id. ¶ 6.) As of August 27, 2015, 3,036 Notices were returned as undeliverable without a forwarding address. (Id. ¶ 7.) Of those returned, Angeion reports that 876 updated addresses were found and Notices were re-mailed to the updated addresses. (Id.)

Angeion also reports that, in order to accommodate inquiries regarding the Settlement, Angeion made operational on December 22, 2014, a telephone number with an interactive voice response system that provides callers the ability to listen to information about the Settlement. (Id. ¶ 8.) Angeion reports that, as of August 27, 2015, there were 280 calls made to this telephone number. (Id.)

Angeion reports receiving three requests for exclusion, one post-marked before January 29, 2015 and the others postmarked February 2, 2015 and March 25, 2015. (Id. ¶ 9.) On April 29, 2015, the Court granted Lead Plaintiff's Counsel's request that the late filed request for exclusion be accepted. (Order dated Apr. 29, 2015 (ECF No. 105).) In that same Order, the Court extended the deadline for Class Members to submit claims to the Claims Administrator by two months, or until June 21, 2015.

(Id.) At the Fairness Hearing held on February 18, 2016, Lead Plaintiff's Counsel informed the Court that a small number of claims were submitted after the June 21, 2015 deadline. On motion, the Court deemed those claims to be timely submitted and eligible to share in the distribution.

Angeion reports that, as of August 27, 2015, Angeion has received only one objection to the settlement. (Ferrara Decl. ¶ 10.) The objection purports to be submitted by the "FUQI Investor Group (39 Members)." (Id. Ex. C.) The Court denied this objection on February 17, 2015. (Order dated February 17, 2015 (ECF No. 101).)

On May 11, 2015, a Class Member contacted the Court regarding a concern whether Notices were sent to a certain broker, TD Ameritrade. Angeion reports to the Court that Angeion mailed Notices to TD Ameritrade, Inc. and TD Ameritrade

Clearing at their correct addresses on December 12, 2014.

(Ferrara Decl. ¶ 11.)

Finally, Angeion reports that, as of August 27, 2015, Angeion received 2,258 paper claims and 88 electronic files containing approximately 3,189 individual claims, for a total of approximately 5,460 claims filed. (Id. ¶ 12.)

The Settlement Agreement creates a common fund of \$7,500,000.00 to be distributed pursuant to the Proposed Plan of Allocation after payment of or provision for expenses of notice and administration of the settlement, taxes, tax expenses, and any attorneys' fees, costs, expenses, and interest and awards to Lead Plaintiff as may be provided by the Court ("Net Settlement Fund"). (Decl. of Lawrence D. Levit In Support Of Lead Plaintiffs' Unopposed Motion For Preliminary Approval Of Proposed Settlement, Ex. 1, pg. 3, ¶ 1.22 (Oct. 7, 2014) (ECF No. 92).) The Plan of Allocation contemplates that each authorized claimant will receive an amount equal to the authorized claimant's claims. (Amended Decl. of Lawrence D. Levit in Support of Lead Plaintiff's Amended Motion for Final Approval of Settlement and Plan of Allocation and for Attorneys' Fees, Reimbursement of Expenses and Lead Plaintiff Awards ¶ 57.) Should the amount of the Net Settlement Fund not be sufficient to award payment of the total claim to each authorized claimant, the Plan Allocation contemplates that each authorized claimant

will be paid the percentage of the Net Settlement Fund that each authorized claimant's Recognized Loss bears to the total of the Recognized Losses of all authorized claimants. (Id.) Counsel for Lead Plaintiff reports that there have been no objections filed to the Plan of Allocation. (Id.)

II. Class Certification, Approval of the Settlement, Attorneys' Fees, Expenses, and Lead Plaintiff Awards

<u>CLASS CERTIFICATION</u>		
In order to certify the class as defined by Lead Plaintiff the Court will consider the criteria of Federal Rule of Civil Procedure 23(a) and (b).		
COURT FINDING	EVIDENCE FROM SUBMISSIONS	LEGAL REQUIREMENT(S) SATISFIED
The class is so numerous that joinder of all members is impracticable.	Lead Pl.'s Am. Mem. For Final Approval at 21 ("[T]hroughout the Class Period, there were millions of shares of Fuqi common stock traded in the United States. Beneficial holders of the shares are believed to number in the tens of thousands and are geographically located throughout the United States, making joinder impracticable.").	FRCP 23(a)(1)
	<u>See also</u> First Amended Compl. ¶ 30 ("The members of the Class are so	

<p>The Court finds that there are questions of law or fact common to the class.</p>	<p>numerous that joinder of all members is impracticable. There were 22,005,509 shares of common stock outstanding as of March 31, 2009. The members of the Subclass are also so numerous that joinder of all members is impracticable. There were 4,855,000 shares of common stock sold in the Secondary Offering. . . . Plaintiff believes that there are hundreds or thousands of members in the Proposed Class and in the Subclass.").</p> <p>Lead Pl.'s Am. Mem. For Final Approval at 22 ("All Class Members are purchasers of Fuqi common stock during the Class Period, and allegedly sustained injury due to the artificial inflation of the price of those securities that was caused by Defendants' alleged material misrepresentations throughout the Class Period. In addition, all Class</p>	<p>FRCP 23(a)(2)</p>
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<p>The Court also finds that under Rule 23(b)(3), these questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.</p>	<p>Members make the same legal claims under the federal securities laws. Plaintiffs have alleged common issues of fact and law that affect all Class Members”).</p> <p>Lead Pl.’s Am. Mem. For Final Approval at 24 (“Plaintiffs allege that Defendants engaged in a common course of fraudulent conduct causing the artificial inflation of the price of Fuqi common stock. Proof of that common course of conduct relates to Defendants’ liability as to all Class Members The Common questions include: (1) whether the federal securities laws were violated by Defendants’ acts and omissions; (2) whether statements made by Defendants during the Class Period misrepresented and/or omitted material facts about the business operations of Fuqi; (3) whether the market price of Fuqi common stock was artificially</p>	<p>FRCP 23(b)(3)</p>
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<p>The Court finds that the claims or defenses of the representative parties are typical of the claims or defenses of the class.</p>	<p>inflated during the Class Period due to the material misrepresentations and omissions; and (4) to what extent the members of the Settlement Class have sustained damages and the proper measure of damages.").</p> <p>Lead Pl.'s Am. Mem. For Final Approval 23 ("Plaintiffs, like all Class Members, purchased Fuqi common stock at artificially inflated prices during the Class Period or in the Secondary Offering as a result of Defendants' alleged materially false and misleading statements and [were] damaged thereby.").</p>	<p>FRCP 23(a)(3)</p>
<p>The Court finds that the representative parties will fairly and adequately protect the interests of the class.</p>	<p>Lead Pl.'s Am. Mem. For Final Approval 23 ("Plaintiffs' interests are aligned with those of the Class as the factual and legal claims of Plaintiffs and the Class arise from the same nexus of operative facts and course of conduct by Defendants.").</p>	<p>FRCP 23(a)(4)</p>

Having received no objections to the preliminary class certification, and finding that all of the criteria set forth in Federal Rule of Civil Procedure 23 have been satisfied, THE CLASS CERTIFICATION IS HEREBY FINALLY CONFIRMED.

FAIRNESS

Under Federal Rule of Civil Procedure 23(e), to grant final approval of a settlement, the Court must determine whether the proposed settlement is fair, reasonable and adequate. In making this determination, the Court must review both the procedural and substantive fairness of a proposed settlement. To find a settlement procedurally fair, the Court must pay close attention to the negotiating process, to ensure that the settlement resulted from arm's-length negotiations, and that Plaintiffs' Counsel possessed the experience and ability, and engaged in the discovery necessary for effective representation of the classes' interests. To find a settlement substantively fair, the Court reviews the nine Grinnell Factors. See City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974).

COURT FINDING	EVIDENCE FROM SUBMISSIONS	LEGAL REQUIREMENT(S) SATISFIED
<p><u>PROCEDURAL FAIRNESS</u> The settlement resulted from "arm's-length negotiations." Class Counsel possessed the requisite amount of experience and ability, and the parties engaged in the discovery necessary for effective representation of the Classes' interests.</p>	<p>Arm's-Length Negotiations and Class Counsel's Experience and Ability Decl. of Layn R. Phillips in Support of Settlement ¶ 4 (Jan. 19, 2015) ("The mediation process in this case, like the litigation, was hard fought on both sides. . . . There is no doubt that the Settlement is the result of hard-fought, arm's-length negotiations and is the best Settlement that the Class could obtain."); Levit Decl. ¶¶ 31-33 (describing the mediation</p>	<p><u>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</u>, 396 F.3d 96, 116 (2d Cir. 2005) ("A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'")</p>

	<p>and subsequent negotiations); <u>id.</u> ¶ 33 (“Indeed, once Plaintiffs reached agreement with Defendants, it took approximately eight (8) additional months to agree upon all the details of the Settlement as reflected in the Stipulation.”);</p> <p>Lead Pl.’s Am. Mem. For Final Approval at 5 (“[T]he proposed Settlement is the product of extensive, arm’s-length negotiations that occurred during and after full-day, in-person mediation session before Judge Phillips on December 12, 2013. The mediation session included arguments by the parties, as well as representatives of the Company’s insurance carriers, as to the strengths and weaknesses of the case, Plaintiffs’ ability to enforce any judgment in the [People’s Republic of China], and the Plaintiffs’ damages analysis. . . . Further, that all parties were represented throughout the Settlement negotiations by able counsel experienced in class action and securities litigation militates in favor of approving the Settlement.”).</p> <p>The Parties have engaged in discovery necessary for effective representation of the Classes’ interests. Lead Pl.’s Am. Mem. For</p>	<p>(quoting Manual For Complex Litigation (Third) § 30.42 (1995)).</p> <p><u>D’Amato v. Deutsche Bank</u>, 236 F.3d 78, 85 (2d Cir. 2001) (citing <u>Weinberger v. Kendrick</u>, 698 F.2d 61, 74 (2d Cir. 1982)).</p> <p>Also satisfies <u>Grinnell Factor 3</u> (The Stage of the Proceedings and Amount of Discovery Completed) and <u>Goldberger Factor 1</u> (Time and Labor Expended by Counsel) and <u>Factor 4</u> (Quality of the Representation).</p> <p><u>City of Detroit v. Grinnell Corp.</u>, 495 F.2d 448, 463 (2d Cir. 1974).</p>
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<p><u>SUBSTANTIVE FAIRNESS</u> Courts in this Circuit review a proposed settlement agreement for substantive fairness according to the nine <u>Grinnell Factors</u>:</p> <p>(1) Litigation is</p>	<p>Final Approval at 9-10 ("To date, Lead Counsel has investigated the claims by reviewing more than two hundred thousand pages of documents produced by Defendants; conducting extensive interviews of a member of the Board's Audit Committee during the relevant period, and outside counsel retained by the Audit Committee to investigate the cash transfer issues; and retaining investigators that identified and interviewed former company employees. Lead counsel also researched the law as to discovery in China and for enforcing any U.S. judgment in Chinese courts. . . . Plaintiffs also gained a sufficient understanding of the potentially recoverable damages through Defendants' insurers, representatives of which were present at the mediation.").</p> <p>Complexity, Expense and</p>	<p><u>Grinnell Factor</u></p>
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<p>complex, and would likely be costly and lengthy in duration. The Court finds <u>Grinnell</u> Factor 1 and <u>Goldberger</u> Factor 2 satisfied on these facts.</p> <p>(2) The reaction of the class to the settlement has been positive.</p>	<p>Likely Duration Lead Pl.'s Am. Mem. For Final Approval at 6 ("Defendants' adamant contention that Plaintiffs would not be able to establish liability and/or damages would likely have contributed to a lengthy and expensive litigation absent the proposed Settlement. Here, the securities claims advanced by Plaintiffs involved numerous complex factual issues relating to accounting, which were complicated by language issues and accounting procedures in the [People's Republic of China] that differed from those in this country. Moreover, issues of loss causation were disputed as were the amount of damages and the ability to enforce any judgment.").</p> <p>Lead Pl.'s Am. Mem. For Final Approval at 11 ("As of August 27, 2015, Angeion received one timely filed request for exclusion from the Settlement Class postmarked no later than January 29, 2015 and two late-filed requests for exclusion (one postmarked February 2, 2015 and the other postmarked March 25, 2015). On April 29, 2015, the Court granted Plaintiffs' Counsel's request that the late filed request for exclusion be accepted.").</p>	<p>1: The complexity, expense and likely duration of the litigation.</p> <p>Also satisfies <u>Goldberger</u> Factor 2: The magnitude and complexities of the litigation.</p> <p><u>Grinnell</u> Factor 2: The reaction of the class to the settlement.</p> <p><u>D'Amato v. Deutsche Bank</u>, 236 F.3d 78, 86-87 (2d Cir. 2001) (finding that district court properly found that the small number of objections (eighteen objections and seventy-two requests for</p>
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<p>(3) Proceedings have progressed and sufficient discovery has been completed to understand Plaintiffs' claims and negotiate settlement terms.</p>	<p><u>Id.</u> at 12 ("As of August 27, 2015, Angeion has received one timely objection to the settlement. On February 17, 2015, the Court denied this objection. . . . There has not been any objection to the Plan of Allocation.").</p> <p>Lead Pl.'s Am. Mem. For Final Approval at 9 ("To date, Lead Counsel has investigated the claims by reviewing more than two hundred thousand pages of documents produced by Defendants; conducting extensive interviews of a member of the Board's Audit Committee during the relevant period, and outside counsel retained by the Audit Committee to investigate the cash transfer issues; and retaining investigators that identified and interviewed former company employees.")</p>	<p>exclusions after 27,883 notices were sent) weighed in favor of settlement).</p> <p><u>Grinnell</u> Factor 3: The stage of the proceedings and the amount of discovery completed.</p>
<p>(4), (5), and (6) The risks of litigation - including establishing liability, establishing damages, and maintaining the class action through trial - are significant.</p>	<p>Lead Pl.'s Am. Mem. For Final Approval at 13-14 ("The principal claims in this Litigation are based upon §10(b) of the Exchange Act and §11 of the Securities Act. In order to establish liability under §10(b), Plaintiffs would bear the burden of proving, <u>inter alia</u>, that Defendants acted with scienter. The possibility of Plaintiffs proving scienter was made more problematic because of Defendants' lack of Fuqi stock sales during the Class</p>	<p><u>Grinnell</u> Factor 4: The risks of establishing liability.</p> <p><u>Grinnell</u> Factor 5: The risks of establishing damages.</p> <p><u>Grinnell</u> Factor 6: The risk of maintaining the class action through the trial.</p>

	<p>Period, which undercuts the inference of scienter. Defendants contended a profit motive did not exist, which would make it difficult for Plaintiffs to prove their case. Based on the documents reviewed and interviews conducted, and the mediation discussions, the evidence did not uniformly and definitely support Plaintiffs' theory of liability. As to the Securities Act claims, Defendants contended that they had disclosed the problems Fuqi had with its internal controls prior to the Secondary Offering. They also would have contended that at the time of the Secondary Offering only the first quarter 2009 financials had been released and that any restatement applicable to that one quarter was not material. In any event, Defendants disputed that the decline in its stock price was caused by the announcement of the restatement but was instead related to its earnings announcement. These risks would be heightened by problems . . . with obtaining discovery of a Chinese company and of Chinese witnesses. . . . [Additionally, Plaintiffs' damages] figure assumes that every element of the Class' damages theory is accepted by a jury as being correct and recoverable. As such, its viability as an actual calculation for damages</p>	<p>The Court's findings on <u>Grinnell Factors 4, 5 and 6</u> also satisfy <u>Goldberger Factor 3</u>: The risk of the litigation.</p>
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<p>(7) Defendants' ability to withstand a greater judgment is not clear.</p> <p>(8) and (9) The settlement is reasonable in light of: (a) Plaintiffs' best possible recovery, and (b) the attendant risks of litigation.</p>	<p>could be affected by many factors that may arise in the Action, such as Defendants ability to establish 'negative causation.' . . . The determination of damages in this litigation is a complex matter which would require the presentation of expert testimony. As a result, the Class would ultimately face a 'battle of experts' - a battle in which no party is ever assured to prevail.").</p> <p>Lead Pl.'s Am. Mem. For Final Approval 19 ("Defendants are citizens and residents of the [People's Republic of China] and, therefore, virtually immune from judgment in the United States. While the Underwriter Defendants have the ability to pay a judgment, they also have strong defenses, and they may have been able to avoid all liability.").</p> <p>Lead Pl.'s Am. Mem. For Final Approval 17 ("According to estimates by Lead Plaintiff's damages consultants, this recovery represents approximately 4.8-6.1% of the Class' maximum provable damages, depending on certain liability issues Plaintiffs could or could not prove at trial.").</p> <p><u>id.</u> at 18 ("This case has</p>	<p><u>Grinnell</u> Factor 7: The ability of the Defendants to withstand greater judgment.</p> <p><u>Grinnell</u> Factor 8: The range of reasonableness of the settlement fund in light of the best possible recovery.</p> <p><u>Grinnell</u> Factor 9: The range of reasonableness of the settlement fund</p>
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	<p>been pending for more than five years, and could be expected to last additional years had the Settlement not been reached. Moreover, Lead Plaintiff would likely have difficulty trying to enforce and collect any judgment from Fuqi and would likely need to try to enforce any judgment in Chinese courts, which could prove difficult if not impossible.”).</p>	<p>to a possible recovery in light of all the attendant risks of litigation.</p>
<p>The three requests for exclusion are GRANTED. Accordingly, the following individuals are excluded: Mark D. Copen, Matthew C. Mays, Anne Taylor, and Maurice Taylor.</p> <p>Having considered the procedural and substantive factors, the Court finds the proposed settlement to be fair, reasonable and adequate under Federal Rule of Civil Procedure 23 and THE SETTLEMENT IS HEREBY APPROVED.</p>		
<p>To ensure the appropriateness of attorneys’ fees and costs, the Court will now review the six <u>Goldberger</u> criteria. <u>Goldberger v. Integrated Res. Inc.</u>, 209 F.3d 43, 50 (2d Cir. 2000).</p> <p><u>ATTORNEYS’ FEES</u></p> <p>The Second Circuit has recognized that a district court may calculate reasonable attorneys’ fees by either the</p>	<p>Lead Pl.’s Am. Mem. In Support of Attorneys’ Fees 25 (“Plaintiffs respectfully request that this Court grant Plaintiffs’ motion for an award of attorneys’ fees of 33% of the Settlement Fund plus reimbursement of</p>	

<p>lodestar method or the percentage method. <u>Goldberger</u>, 209 F.3d at 50. The proposed attorneys' fee, calculated here according to the percentage method, is reasonable. No matter which method is chosen, District Courts should be guided by the six traditional <u>Goldberger</u> criteria in determining a reasonable common fund fee. <u>Goldberger</u>, 209 F.3d at 50. The six <u>Goldberger</u> Factors are:</p> <p>(1) Counsel has expended considerable time and labor on behalf of Plaintiffs.</p>	<p>expenses in the amount of \$252,602.58, plus interest on both amounts, . . . and awards to Lead Plaintiff[s] of \$10,000 to the Puerto Rico Government Employees and Judiciary Retirement Systems Administration and of \$5,000 each to Craig B. Laub, J.D. Pisut and Sandra Redfern.").</p> <p>Lead Pl.'s Am. Mem. In Support of Attorneys' Fees 6-7 ("From the inception of this case, Lead Counsel and Additional Counsel have spent over 6,579 hours in prosecuting this case on behalf of the Class [D]uring the course of the Action, Plaintiffs' Counsel (a) conducted an extensive investigation, which included implementing and directing a plan to identify, locate and have interviewed potential witnesses (former employees and customers of Fuqi); (b) researched and prepared an</p>	<p><u>Goldberger</u> Factor 1: The time and labor expended by counsel.</p>
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	<p>initial complaint, a Consolidated Complaint and a First Amended Complaint; (c) consulted with experienced damages and stock market efficiency financial experts, who prepared and provided a damages analysis on estimating aggregate damages and assisted Lead Counsel's preparation for the mediation; (d) negotiated document production from Fuqi; (e) reviewed more than 230,000 pages of documents, including highly technical and complex accounting and other documents, and translated many documents that were in Chinese; (f) consulted with an accounting expert regarding the Company's restatement and its internal control issues; (g) interviewed outside counsel retained by Fuqi's Audit Committee to investigate the cash transfer issue; (h) interviewed a member of Fuqi's Board who was a member of the Audit Committee; (i) participated in a mediation session on December 12, 2013; (j) prepared and submitted to the mediator, prior to the mediation, a detailed mediation statement, which included citations to and submission of documents produced from Fuqi and other materials that Plaintiffs' Counsel believed supported Plaintiffs' positions, as well as an evaluation of the legal principles that</p>	
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<p>(2) The litigation is complex and of large magnitude.</p>	<p>Plaintiffs believed applied to their positions; (k) researched the law applicable to enforcing U.S. judgments in China and assessed the possibilities of collecting on any judgment; (l) began selecting and organizing documents applicable to possible deponents and analyzed anticipated testimony from each witness; (m) consulted with Plaintiffs' damages expert in devising the Plan of Allocation; (n) negotiated and prepared the final settlement documents; and (o) worked and coordinated with [the claims administrator] to assure timely mailing of notices and effective and efficient claims administration.").</p> <p>Lead Pl.'s Am. Mem. In Support of Attorneys' Fees at 8-9 ("Plaintiffs advanced numerous complex legal and factual issues under the federal securities laws, each of which would require extensive testimony by both fact and expert witnesses. . . . [T]he expense and length of the Action would have been further exacerbated because Defendants would have undoubtedly filed motions to dismiss and for summary judgment, and likely would have vigorously opposed Plaintiffs' class certification motion. . . . [A] trial of liability</p>	<p><u>Goldberger</u> Factor 2: The magnitude and complexities of the litigation.</p>
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<p>(3) The risks of litigation for Plaintiffs are substantial.</p>	<p>issues alone would have involved substantial attorney and expert time, the introduction of voluminous documentary and deposition evidence, vigorously contested motions, and the considerable expenditures of judicial resources. . . . [S]everal depositions would likely have occurred in China and required translators. . . . In addition, this Action was vigorously contested, and Defendants were represented by very experienced and qualified attorneys.”)</p> <p>The Court’s findings regarding <u>Grinnell</u> Factors (3)-(6) also support <u>Goldberger</u> Factor (2).</p> <p>Lead Pl.’s Am. Mem. In Support of Attorneys’ Fees at 12-13 (“Defendants countered the existence of scienter and convincingly presented their defenses during settlement discussions. . . . Regarding the Exchange Act claims, Defendants were adamant that Plaintiffs would be unable to prove that Defendants had actual knowledge that the financials would need to be restated. . . . Defendants also argued that they informed investors about the Company’s internal control issues. Defendants would never concede their liability and would press these defenses in motions to</p>	<p><u>Goldberger</u> Factor 3: The risk of litigation.</p>
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<p>(4)Representation of class counsel is of high quality.</p>	<p>dismiss and for summary judgment, and ultimately, at trial. Another factor introducing substantial risk into the case is the difficulty of acquiring evidence, given that many of the key witnesses and documents are located in China.”).</p> <p>The Court’s findings regarding <u>Grinnell</u> Factors (4)-(6) and (9) also support <u>Goldberger</u> Factor (3).</p> <p>Lead Pl.’s Am. Mem. In Support of Attorneys’ Fees 16 (“Lead Counsel and Additional Counsel have a long history of being actively engaged in complex federal civil litigation, particularly the litigation of securities class actions. . . . Defendants here were represented by very skilled counsel with reputations for vigorous advocacy in the defense of complex civil cases.”).</p>	<p><u>Goldberger</u> Factor 4: The quality of representation.</p>
<p>(5) The requested attorneys’ fees are reasonable in relation to Parties’ settlement.</p>	<p>Lead Pl.’s Am. Mem. In Support of Attorneys’ Fees at 2 (“If approved in full, the fee requested will be a negative multiplier of 0.79 of Plaintiffs’ Counsel’s combined lodestar.”);</p> <p><u>id.</u> at 16 (“The fee requested in this case - one-third of the proposed Settlement - is reasonable and falls in line with fees awarded in comparable</p>	<p><u>Goldberger</u> Factor 5: The requested fee in relation to the settlement.</p> <p><u>See also Goldberger</u>, 209 F.3d at 50 (stating that “the lodestar remains useful” and “we encourage the</p>

<p>(6) Requested attorneys' fees are not contrary to public policy.</p> <p><u>ATTORNEYS' EXPENSES</u></p> <p>The Court finds that expenses in this matter are reasonable.</p>	<p>actions in this Circuit.") (citations omitted).</p> <p>Lead Pl.'s Am. Mem. In Support of Attorneys' Fees at 17-21 (addressing the litigation risks and that public policy favors granting appropriate financial incentives).</p> <p>Lead Pl.'s Am. Mem. In Support of Attorneys' Fees at 25 ("Plaintiffs respectfully request that this Court grant Plaintiffs'</p>	<p>practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage.");</p> <p><u>In re Hi-Crush Partners L.P. Securities Litig.</u>, No 12-Civ-8557, 2014 WL 7323417, at *12 (S.D.N.Y. Dec. 19, 2014) ("In this Circuit, courts routinely award attorneys' fees that run to 30% and even a little more of the amount of the common fund.") (collecting cases).</p> <p><u>Goldberger</u> Factor 6: Public policy considerations.</p> <p>"[I]t is well established that expenses are properly recovered by</p>
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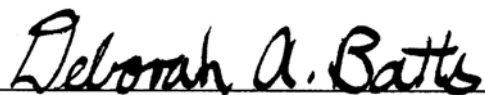
	<p>amended motion for . . . reimbursement of expenses in the amount of \$252,602.58 . . .").</p>	<p>counsel." <u>In re Hi-Crush Partners L.P. Securities Litig.</u>, No. 12-Civ-8557, 2014 WL 7323417, at *18 (S.D.N.Y. Dec. 19, 2014).</p>
<p>Having conducted the <u>Goldberger</u> analysis, the Court finds the requested attorneys' fees of 33% of the Settlement Amount, including reasonable and necessary expenses of \$252.602.58, without interest on both amounts, to be reasonable and the attorneys' fees are HEREBY APPROVED.</p>		
<p><u>INCENTIVE AWARDS Requested</u> Incentive Awards are reasonable and justified to compensate Class Representatives for the services they provided and the risks they incurred during the course of the class action litigation.</p>	<p>Lead Pl.'s Am. Mem. In Support of Attorneys' Fees at 24-25 ("[E]ach of the four members of the Lead Plaintiff PR Group requesting compensation have been fully committed to pursuing the claims of the Class against the Defendants during the more than five years this case has been pending. In devoting substantial effort and time to this Action on behalf of the Class, they each reviewed filings and communicated with Plaintiffs' Counsel, including during the settlement negotiations.").</p>	<p>"Incentive awards are not uncommon in class action cases and are within the discretion of the court. Courts look for the existence of 'special circumstances' when determining whether an award is justified and, if so, in what amount." Factors to consider include: "the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by the plaintiff in assisting in the</p>

		<p>prosecution of the litigation or in bringing to bear added value (e.g., factual expertise), any other burdens sustained by the plaintiff in lending himself or herself to the prosecution of the claim, and of course, the ultimate recovery." <u>In Re AOL Time Warner ERISA Litig.</u>, No. 02 Civ. 08853(SWK), 2007 WL 3145111, at *2 (S.D.N.Y. Oct. 26, 2007) (citations omitted).</p>
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The Fairness Hearing of February 18, 2016, and this Memorandum and Order constitute the Court's findings and rulings in this matter. Except as to those who are excluded from the Class and Subclass, as listed in Schedule 1, the Action is DISMISSED WITH PREJUDICE as to the Plaintiffs and the members of the Class and Subclass. The Clerk of Court is to terminate all open Motions and close the docket in this case.

SO ORDERED.

Dated: February 19, 2016
New York, New York


Deborah A. Batts
United States District Judge

SCHEDULE 1

The following persons and entities are excluded from the
Class and Subclass:

1. Mark D. Copen
2. Matthew C. Mays
3. Anne Taylor
4. Maurice Taylor