UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE RAYONIER INC. SECURITIES LITIGATION	Case No. 3:14-cv-01395-TJC-JBT

LEAD PLAINTIFFS' UNOPPOSED MOTION FOR (I) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (II) CERTIFICATION OF THE SETTLEMENT CLASS; AND (III) APPROVAL OF NOTICE TO THE SETTLEMENT CLASS, AND INCORPORATED MEMORANDUM OF LAW

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MOTION

Lead Plaintiffs, the Pension Trust Fund For Operating Engineers ("Operating Engineers") and the Lake Worth Firefighters' Pension Trust Fund ("Lake Worth") (together, "Lead Plaintiffs"), move pursuant to Fed. R. Civ. P. 23 for entry of the Parties' agreed-upon Proposed Order Preliminarily Approving Settlement And Providing For Notice (the "Preliminary Approval Order"), attached hereto as Exhibit 1. If entered, the Preliminary Approval Order will, among other things:

(1) Preliminarily approve the proposed class action settlement for $73,000,000.00, subject to notice to the Settlement Class and later consideration of final approval to resolve this Action in its entirety;

(2) Certify the Settlement Class for purposes of the Settlement;

(3) Approve the form, content and manner of the class notices to Settlement Class Members; and

(4) Schedule a hearing, and certain deadlines related thereto, on final approval of the Settlement, proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses.

The specific terms of the proposed Settlement are set forth in the Stipulation And Agreement Of Settlement dated April 12, 2017 (the "Stipulation"), attached hereto as Exhibit 2.[1]

Pursuant to Local Rule 3.01(g), counsel for Lead Plaintiffs conferred with counsel for Defendants. Defendants do not adopt the arguments or positions taken in this motion by

[1] All capitalized terms used herein that are not otherwise defined herein shall have the meanings provided in the Stipulation.

Lead Plaintiffs, but they do not oppose the relief sought in this motion. Lead Plaintiffs are aware of no opposition to this Motion.

MEMORANDUM OF LAW

I. PRELIMINARY STATEMENT

Following over two and a half years of contested litigation as well as extensive negotiations, the Parties have reached a proposed Settlement of this securities class action in exchange for a cash payment of $73,000,000.00 for the benefit of the Settlement Class.[2] Lead Plaintiffs now request that the Court preliminarily approve the proposed Settlement. As set forth below, the Settlement is the product of good-faith, arm's-length negotiations between experienced counsel, including significant mediation efforts conducted by a nationally-recognized mediator, the Honorable Layn R. Phillips (Fmr.). The Settlement represents a substantial recovery that falls well within the range of possible approval. To put the $73,000,000.00 Settlement Amount into context, Lead Counsel believes that the Settlement represents the second-largest recovery from a securities class action ever achieved in the Middle District of Florida.

Entry of the Parties' agreed-upon proposed Preliminary Approval Order, attached hereto as Exhibit 1, will begin the process of considering the proposed Settlement by authorizing notice to the Settlement Class of the Settlement's terms and conditions. A final approval hearing (the

[2] "Settlement Class" means all persons and entities who purchased or otherwise acquired Rayonier common stock during the period from October 26, 2010, through November 7, 2014, inclusive, and who were damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any person who was an Officer or director of Rayonier during the Settlement Class Period; (iv) any firm or entity in which any Defendant has or had a controlling interest during the Settlement Class Period; (v) any affiliates, parents, or subsidiaries of Rayonier; (vi) all Rayonier plans that are covered by ERISA; and (vii) the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in their respective capacity as such. Also excluded from the Settlement Class are any persons and entities who exclude themselves by submitting a request for exclusion that is accepted by the Court.

"Settlement Hearing") will then be conducted so that the Parties and Settlement Class Members may present evidence enabling the Court to make a final determination as to whether the Settlement is fair, reasonable, and adequate.

If the Court grants preliminary approval of the Settlement, notice will be given to the Settlement Class, informing members of their right to object or opt out of the Settlement Class and of the date set for a final Settlement Hearing. In advance of the final Settlement Hearing, Lead Plaintiffs will submit comprehensive final approval papers that set forth the full record for the Court. These papers will include Lead Plaintiffs' motion for final approval of the proposed Settlement and Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, along with detailed supporting declarations.

II. HISTORY OF THE LITIGATION

This securities fraud class action was commenced with the filing of an initial complaint on November 12, 2014. ECF No. 1. Following briefing, and pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), on February 25, 2015, the Court appointed Operating Engineers and Lake Worth as Lead Plaintiffs for the proposed class and approved Lead Plaintiffs' selection of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") and Saxena White P.A. ("Saxena White") as Lead Counsel for the class. ECF No. 61.

Lead Counsel conducted a thorough investigation to support the allegations in a consolidated complaint. That investigation included, among other things, a review and analysis of: (i) Rayonier's public filings with the SEC; (ii) research reports by securities and financial analysts; (iii) transcripts of Rayonier's earnings conference calls and presentations; (iv) economic analysis of the price movement in Rayonier common stock; (v) information obtained from former Rayonier employees and other knowledgeable individuals; and (vi) other publicly available material and

data. On April 7, 2015, Lead Plaintiffs filed their Consolidated Class Action Complaint For Violations Of The Federal Securities Laws (the "Consolidated Complaint"), asserting claims on behalf of purchasers of Rayonier common stock between September 22, 2011, and November 7, 2014, against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. ECF No. 64. Among other things, the Consolidated Complaint alleged that Defendants made materially false and misleading statements about Rayonier's harvesting practices, its reported merchantable timber inventory, and certain financial results. The Consolidated Complaint further alleged that the price of Rayonier common stock was artificially inflated as a result of the allegedly false and misleading statements, and declined when, according to the Consolidated Complaint, the truth was revealed.

On May 15, 2015, Defendants filed motions to dismiss the Consolidated Complaint. ECF Nos. 69-72. Defendants argued, among other things, that the Consolidated Complaint failed to identify material misrepresentations or omissions regarding Rayonier's forestry practices, that Defendants' forward-looking statements are not actionable, and that the Consolidated Complaint did not sufficiently plead scienter. ECF No. 71. On June 15, 2015, Lead Plaintiffs filed their opposition (ECF No. 76) and, on July 15, 2015, Defendants filed their consolidated reply. ECF No. 78. Following a hearing on the motions, in August 2015, the Court granted Defendants' motions to dismiss with leave for Lead Plaintiffs to amend the complaint. ECF No. 80.

Thereafter, on September 25, 2015, Lead Plaintiffs filed their Amended Consolidated Class Action Complaint For Violations Of The Federal Securities Laws (the "Complaint"). ECF No. 84. The Complaint alleged claims on behalf of purchasers of Rayonier common stock between October 26, 2010, through November 7, 2014, against all Defendants under Section 10(b) of the

Exchange Act and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The Complaint included additional allegations concerning the Defendants' alleged materially false and misleading statements regarding Rayonier's harvesting practices, its reported merchantable timber inventory, and certain financial results.

On October 26, 2015, Defendants filed motions to dismiss the Complaint. ECF Nos. 85-88. Defendants argued, among other things, that their statements about Rayonier's Company-wide "sustainable" forestry practices do not establish securities fraud, that their statements regarding Rayonier's harvesting practices in Washington are not actionable, and that the Complaint's allegations do not give rise to a strong inference of scienter. ECF No. 85.

On December 4, 2015, Lead Plaintiffs filed an opposition and a motion to strike. ECF Nos. 89, 90. Lead Plaintiffs argued, among other things, that the Complaint sufficiently alleged actionable false statements by Defendants, that Defendants' false statements and omissions are not protected by the PSLRA's Safe Harbor, that the misstatements were not mere "puffery," that the Complaint raises a strong inference of scienter, and that the Complaint adequately pleads control person liability. ECF No. 90. On December 18, 2015, Defendants filed their reply brief in support of dismissal and their opposition to Lead Plaintiffs' motion to strike. ECF Nos. 91-92. On January 11, 2016, Lead Plaintiffs filed their reply in support of their motion to strike. ECF No. 95.

On April 7, 2016, while Defendants' motions to dismiss the Complaint were pending, Lead Counsel and Rayonier participated in a mediation session with an experienced mediator. The Parties reached an impasse, however, and litigation continued.

On April 20, 2016, the Court heard oral argument on Defendants' pending motions to dismiss the Complaint. On May 20, 2016, the Court entered an Order denying Defendants'

motions to dismiss the Complaint, and denying as moot Lead Plaintiffs' motion to strike. Although the Court sustained the claims as meeting the heightened pleading standards of the PSLRA, the Court expressly reserved that it "expresses no view on the ultimate merit of Lead Plaintiffs' claims," and that it was "skeptical regarding the viability of the allegations about merchantable timber inventory." ECF No. 102 at 3. Defendants thereafter filed their Answers to the Complaint on June 23, 2016. ECF Nos. 103-106.

Following the Court's Order sustaining the Complaint and lifting the PSLRA automatic discovery stay, the Parties commenced extensive discovery efforts, including propounding numerous document requests directed to the Parties and various third parties. The Parties also conducted several meet and confers and negotiated and entered into a Confidentiality Agreement, which the Court approved. Discovery was conducted during a period of approximately ten months. Defendants began their rolling production of documents beginning on July 23, 2016. In total, Defendants produced over 1.56 million pages. Lead Plaintiffs began their production of documents on September 6, 2016. In total, Lead Plaintiffs produced over 70,000 pages. The Parties also obtained approximately 21,000 pages of documents from 18 third parties.

The Court held a discovery and case management conference on September 1, 2016, and entered a Case Management And Scheduling Order ("Scheduling Order") on September 15, 2016, that included deadlines for resolution of Lead Plaintiffs' motion for class certification, completion of discovery – fact and expert – and submission of summary judgment motions. Pursuant to the Scheduling Order, on December 15, 2016, Lead Plaintiffs filed their motion for class certification, supported by an expert declaration, seeking certification for litigation purposes of a class consisting of purchasers of Rayonier common stock from October 26, 2010, through November 7, 2014. ECF No. 123. Over the course of the next two months, Defendants deposed

representatives from Operating Engineers and Lake Worth, as well as Lead Plaintiffs' expert opining on market efficiency. Defendants filed their opposition on February 13, 2017. ECF No. 138.

III. SUMMARY OF THE SETTLEMENT NEGOTIATIONS

In January 2017, as the Parties continued to undertake extensive fact and expert discovery as well as brief Lead Plaintiffs' motion for class certification, the Parties engaged Judge Phillips as mediator. The Parties conducted telephonic discussions and prepared submissions to Judge Phillips in advance of a mediation session. These discussions and submissions addressed issues of liability, damages, and collectability.

On March 6, 2017, the Parties participated in the second full-day mediation session. The mediation ended without any agreement being reached. The Parties and Judge Phillips participated in further arm's-length discussions, ultimately resulting in an agreement in principle to settle the Action that was memorialized in a confidential term sheet (the "Term Sheet") executed on March 13, 2017. The Term Sheet set forth, among other things, the Parties' agreement to settle for a cash payment of $73 million for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of a stipulation and agreement of settlement and related papers. The Parties subsequently negotiated the Stipulation (and the exhibits thereto), which sets forth the final and binding agreement to settle the Action, along with a confidential Supplemental Agreement.[3]

[3] As disclosed in the Notice, the Stipulation provides that Rayonier has the right to terminate the Settlement if valid requests for exclusion from persons or entities entitled to be members of the Settlement Class exceed an amount agreed to by Lead Plaintiffs and Rayonier, as set forth in the confidential Supplemental Agreement. The Supplemental Agreement is available for the Court's *in camera* review upon request.

In light of the substantial benefit achieved ($73 million for the benefit of the Settlement Class), the significant costs and risks of continuing litigation through trial and appeals, and the fact that the proposed Settlement is the result of arm's-length negotiations by experienced counsel overseen by a well-respected mediator, it is respectfully submitted that the Settlement warrants preliminary approval so that notice can be provided to the Settlement Class. It is further submitted that preliminary certification of the Settlement Class for purposes of the Settlement is warranted.

IV. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL

Courts have long recognized a "strong judicial policy favoring settlement." *Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984).[4] "Particularly in class action suits, there is an overriding public interest in favor of settlement [because it] is common knowledge that class action suits have a well-deserved reputation as being most complex." *Strube v. Am. Equity Inv. Life Ins. Co*., 226 F.R.D. 688, 698 (M.D. Fla. 2005) (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)); *see also Mashburn v. Nat'l Healthcare, Inc*., 684 F. Supp. 660, 667 (M.D. Ala. 1988) ("securities fraud class actions readily lend themselves to settlement"). Indeed, the promotion of fair, adequate, and reasonable settlements is a fundamental tenet of litigation in the federal courts and there is a strong initial presumption that the compromise is fair and reasonable. *See Hernandez v. Tropical Constr. & Maint. Corp*., 2007 WL 1201143, at *2 (M.D. Fla. Apr. 23, 2007) (adding that a "settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution."); *Ferguson v. Upscale Saturday Night, Inc*., 2007 WL 2774196, at *1 (M.D. Fla. Sept. 6, 2007) (same).

[4] *See In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits."); *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982) ("[O]ur judgment is informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement.").

Federal Rule of Civil Procedure 23(e) requires court approval of any proposed settlement of a class action. Judicial review of a proposed class action settlement consists of a two-step process: (1) preliminary approval, and (2) a subsequent settlement fairness hearing. *See, e.g., Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2 (S.D. Fla. June 15, 2010).

In the first step, the Court makes a preliminary evaluation of the fairness of the settlement before directing that notice be given to the class. Preliminary approval "is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *In re Checking Account Overdraft Litig.*, 2012 WL 4173458, at *5 (S.D. Fla. Sept. 19, 2012). Settlement negotiations that "involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness." *Id*. Once the court has made a preliminary evaluation of the Settlement's fairness, notice must be given to class members of a formal fairness hearing. *Wrigley*, 2010 WL 2401149, at *2.

Thus, at this point, the Court need not answer the ultimate question: whether the Settlement is fair, reasonable, and adequate. When the Court makes that ultimate determination at a later point, the Court will be asked to review the following "*Bennett* factors": (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *See, e.g., Wrigley*, 2010 WL 2401149, at *2 (citing *Bennett*, 737 F.2d at 986).

Lead Plaintiffs here request only that the Court take the first step in the settlement approval process and grant preliminary approval of the Settlement such that notice of the Settlement can be

sent to the Settlement Class. As summarized below, and as will be detailed further in a subsequent motion for final approval of the Settlement supported by detailed declarations, the factors considered by courts in granting final approval of class action settlements also show that this Settlement is well within the range of possible approval, and therefore warrants preliminary approval.

A. The Settlement Is The Result Of Good Faith, Arm's-Length Negotiations By Well-Informed And Experienced Counsel

Courts accord considerable weight to the opinion of experienced and informed counsel in evaluating a proposed class action settlement. *See, e.g., Francisco v. Numismatic Guar. Corp. of Am.*, 2008 WL 649124, at *12 (S.D. Fla. Jan. 31, 2008) ("[c]ounsel's conclusions that the [s]ettlement is fair, adequate and reasonable provides strong evidence that the settlement merits the Court's approval. Here, the Court gives 'great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation.'"). Accordingly, "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." Manual for Complex Litigation § 30.42, at 240 (3d ed. 1995); *see also In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661-62 (S.D. Fla. 2011) (same).

As noted above, the Settlement was achieved only after two separate mediations, followed by additional arm's-length discussions overseen by Judge Phillips, a highly respected and experienced mediator. As part of those discussions, Lead Counsel and Defendants' Counsel prepared and presented several submissions concerning, among other things, their respective views regarding the merits of the litigation, including the evidence adduced during the course of discovery, Defendants' defenses, and issues relating to damages. After intense back-and-forth negotiations, the Parties reached an agreement in principle to settle the Action and executed the

binding Term Sheet. *See, e.g., D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("[M]ediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Holman v. Student Loan Xpress, Inc*., 2009 WL 4015573, at *5 (M.D. Fla. Nov. 19, 2009) (no fraud or collusion on reaching settlement because the settlement is the product of "an arm's length, 'protracted and contentious' negotiation with a mediator"); *Checking Account*, 275 F.R.D. at 662 (approving settlement that was "the product of informed, good-faith, arm's-length negotiations between the parties and their capable and experienced counsel, and [which] was reached with the assistance of a well-qualified and experienced mediator").

In addition, the Parties and their counsel were knowledgeable about the strengths and weaknesses of the case prior to reaching the agreement to settle. Lead Plaintiffs had conducted an extensive investigation prior to drafting and filing the amended complaints, which included interviews with former Rayonier employees and a thorough review of publicly available information; had briefed Defendants' motions to dismiss and Lead Plaintiffs' motion to strike; had consulted with damages and industry experts; had reviewed and analyzed over 1.56 million pages of documents produced by the Defendants and third parties; and had the benefit of the Parties' mediation submissions setting forth their arguments on liability, damages and loss causation.

As a result, Lead Plaintiffs and Lead Counsel had a solid basis for assessing the strength of the Settlement Class's claims and Defendants' defenses when they entered into the Settlement. Lead Counsel have decades of experience prosecuting securities class actions, as numerous courts around the country have recognized. *See* Firm Resumes, previously filed as ECF Nos. 136-7, 136-8. Additionally, Lead Plaintiffs are institutional investors who oversaw the litigation and authorized the Settlement.

Accordingly, this Court should give considerable weight to Lead Counsel's judgment that this Settlement is in the best interests of the Settlement Class, especially where the settlement process was supervised by Judge Phillips, a distinguished former federal judge and experienced mediator.

B. The Substantial Benefits For The Settlement Class, Weighted Against Litigation Risks, Support Preliminary Approval

Defendants have agreed to settle this Action for $73 million in cash. This substantial recovery – the second largest federal securities class action settlement in Middle District of Florida history – is a tremendous benefit to the Settlement Class, especially in light of the significant risks posed by continued litigation. While Lead Plaintiffs were prepared to continue litigating and eventually go to trial in this case against Defendants, and remain confident in their ability to ultimately prove their claims, further litigation and a trial is always a risky proposition. *Gutter v. E.I. Dupont De Nemours & Co*., 2003 U.S. Dist. LEXIS 27238, at *5 (S.D. Fla. May 30, 2003) ("[T]he risks associated with proceeding to trial in . . . complex securities litigation, particularly the risks associated with establishing materiality, causation and damages favor approval of the [s]ettlement.").

Although Lead Plaintiffs and their counsel believe their case to be strong, they acknowledge that Defendants advanced several substantial arguments disputing liability and damages. Indeed, the Court granted Defendants' first round of motions to dismiss. Even though the Court sustained the claims alleged in the second consolidated Complaint at the pleading stage, the Court expressly reserved that it "expresses no view of the ultimate merit of Lead Plaintiffs' claims." ECF No. 102 at 3. The Court also noted that "the Court is skeptical regarding the viability of the allegations about merchantable timber inventory." *Id.* As to the other category of alleged misstatements, Defendants argued that the statements were vague or non-actionable puffery.

Defendants also argued that they did not act with scienter. Lead Plaintiffs understood that it was unhelpful to their case that no criminal charges had been brought, and that the SEC had decided not to pursue its investigation after receipt of documents and depositions of multiple witnesses.

Even if Lead Plaintiffs established liability, the Parties would have also hotly contested damages. Defendants would continue to argue that the alleged corrective disclosure on November 10, 2014, disclosed factors that impacted the Company's stock price and that are not related to the allegations in the case. In addition, Defendants argued that no damages can be recovered from the stock price drop on November 11 because the market had already reacted to the news on November 10.

Moreover, Lead Plaintiffs would need to prevail on all matters at class certification, summary judgment and pretrial motions, trial, and subsequent appeals, a process that could possibly extend for years. *See, e.g.*, *Robbins v. Koger Props. Inc*., 116 F.3d 1441 (11th Cir. 1997), *reh'g en banc denied*, 129 F.3d 617 (11th Cir. 1997) (finding no loss causation and overturning $81 million jury verdict); *In re BankAtlantic Bancorp, Inc. Sec. Litig*., 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning jury verdict in favor of plaintiff class and granting judgment as a matter of law in favor of defendants); *Berkey Photo, Inc. v. Eastman Kodak Co*., 603 F.2d 263, 308 (2d Cir. 1979) (reversing $87 million judgment after trial), *cert. denied*, 444 U.S. 1093 (1980).

The Settlement balances the risks, costs, and delay inherent in complex cases evenly with respect to all Parties. Thus, the benefits created by the Settlement weigh heavily in favor of granting the motion for preliminary approval. Lead Plaintiffs respectfully submit that, considering the risks of continued litigation and the time and expense which would be incurred to prosecute

the Action through a trial, the $73 million Settlement represents a meaningful recovery that is in the best interests of the Settlement Class.

C. The Stage Of The Proceedings At Which The Settlement Was Achieved Supports Preliminary Approval

The stage of the proceedings also supports preliminary approval of the Settlement. As will be further detailed in Lead Plaintiffs' final approval papers and supporting declarations, Lead Plaintiffs' decision to enter into the Settlement was based on their thorough understanding of the strengths and weaknesses of their claims and Defendants' defenses. This understanding was based on Lead Counsel's diligent prosecution of the Action, which included, among other things: (i) drafting the consolidated complaints subject to the heightened pleading standards of the PSLRA; (ii) conducting an extensive factual investigation, including identifying and contacting percipient witnesses with direct knowledge of the facts; (iii) consulting with relevant experts; (iv) opposing two rounds of Defendants' motions to dismiss, resulting in the Court sustaining the claims in the Complaint; (v) drafting the comprehensive papers in support of Lead Plaintiffs' motion for class certification, including an expert declaration; (vi) conducting extensive fact discovery, which included seeking and obtaining over 1.56 million pages of documents from Defendants and various third parties, as well as preparing for, defending, and participating in depositions; and (vii) preparing for and participating in two mediation sessions before professional mediators and additional settlement negotiations. There can be no question that, at the time the Settlement was reached, Lead Plaintiffs and their counsel had a clear view of the strengths and weaknesses of the claims and defenses.

Lead Plaintiffs respectfully submit that this is an excellent result that further supports the fairness, reasonableness, and adequacy of the Settlement, especially given that Lead Plaintiffs still faced significant hurdles in the prosecution of this Action. The Settlement's $73 million cash

recovery is well within the range of reasonableness, compares very favorably against other securities class action settlements in recent years,[5] and achieves the certainty of a substantial recovery to the Settlement Class. Thus preliminary approval is warranted.

V. CERTIFICATION OF THE SETTLEMENT CLASS FOR PURPOSES OF THE SETTLEMENT IS APPROPRIATE

It is "well established" that "[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue." *Checking Account*, 2012 WL 4173458, at *2 (quoting *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006)). Under the terms of the Stipulation, Defendants have agreed, for the sole purpose of settlement and without adjudication of the merits, to certification of the Settlement Class.[6]

A settlement class, like other certified classes, must satisfy all of the requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation, and one of the three requirements of Rule 23(b). *Borcea*, 238 F.R.D. at 672. Lead Plaintiffs submit that the Settlement Class satisfies each of the requirements as set forth below.

[5] For example, a study of such settlements by NERA Economic Consulting, a firm that frequently provides damages expertise to defendants in securities cases, reported that between January 1996 and December 2016, since the passage of the PSLRA, median settlement amounts in securities class actions ranged from $3.7 million to $12.3 million. *See* Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review*, at 31 (NERA Jan. 2017). Additionally, a recent study by Cornerstone Research reported that approximately 80 percent of post–PSLRA settlements have settled for under $25 million. *See* Laarni T. Bulan, Ellen M. Ryan and Lauren E. Simmons, *Securities Class Action Settlements: 2016 Review and Analysis*, at 5 (Cornerstone Research 2017). In regards to securities class action settlements within the Eleventh Circuit specifically, Cornerstone Research reported that between 2007 and 2016, the median settlement amount was $5.2 million. *Id*. at 23.

[6] Lead Plaintiffs incorporate by reference herein the evidence submitted in support of their motion for class certification for litigation purposes, including the expert report, previously filed as ECF No. 136.

A. The Requirements Of Rule 23(A) Are Met

1. Numerosity Is Established

The Settlement Class meets the numerosity requirement of Rule 23(a)(1). The number and location of putative class members is such that it is impracticable to join all of the Settlement Class Members in one lawsuit. *See In re Miller Indus. Sec. Litig.*, 186 F.R.D. 680, 685 (N.D. Ga. 1999) (plaintiffs "need only show that it would be extremely difficult or inconvenient to join all members of the class"). Rayonier's common stock traded continuously on the New York Stock Exchange under the symbol "RYN." As of the end of the Settlement Class Period, on November 10, 2014, there were over 126 million shares of Rayonier common stock outstanding. In addition, Rayonier had an average weekly trading volume of 3.94 million shares. Accordingly, the members of the Settlement Class are so numerous that their joinder would be impracticable. *See AAL High Yield Bond Fund v. Ruttenberg*, 229 F.R.D. 676, 684 (N.D. Ala. 2005) (finding that class of at least eighty bondholders met numerosity requirement).

2. Commonality Is Established

Rule 23(a)(2) provides that a suit may be maintained as a class action if "there are questions of law or fact common to the class." Commonality "does not require that all the questions of law and fact raised by the dispute be common." *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1557 (11th Cir. 1986). Rather, "[t]he threshold for establishing commonality. . . is not onerous – where a common scheme of deception is credibly alleged, Rule 23(a)(2) is met." *Cooper v. Pac. Life Ins. Co.*, 229 F.R.D. 245, 257 (S.D. Ga. 2005). These requirements are satisfied here, where Defendants issued a series of material misstatements to investors, which allegedly artificially inflated the price of Rayonier common stock.

The questions of law and fact common to the Settlement Class in this Action include: (1) whether Defendants' misrepresentations violated the federal securities laws; (2) whether Defendants misrepresented or omitted material facts; (3) whether Defendants engaged in deceptive devices and a fraudulent scheme through Rayonier's harvesting practices; (4) whether Defendants acted with scienter; (5) whether the Individual Defendants controlled Rayonier and its violations of the securities laws; (6) whether Defendants' misrepresentations and omissions caused Settlement Class Members to suffer a compensable loss; and (7) whether the members of the Settlement Class have sustained damages, and the proper measure of damages. Accordingly, the commonality requirement is met.

3. Typicality Is Established

Rule 23(a)(3) requires that the proposed representative's claims be "typical" of the claims of the class. Here, Lead Plaintiffs' claims are "typical" of other Settlement Class Members' claims because they arise out of the same alleged conduct. *See, e.g., Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 WL 4006661, at *8-10 (S.D. Fla. Mar. 16, 2016) (typicality established in securities fraud action because "[t]he alleged fraudulent statements comprise the wrongful acts which will serve as the ***same*** factual predicate for [p]laintiffs and all members of the class and which will determine whether [d]efendants are liable under the ***same*** securities fraud theories") (emphasis in original). The Rule 23(a) typicality requirement ensures that the class representative has the same interests as the class. That is, "typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large." *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1322 (11th Cir. 2008).

Lead Plaintiffs' claims against Defendants are typical because, like other members of the Settlement Class, they all allege that they purchased Rayonier common stock at artificially inflated

prices due to Defendants' material misstatements and omissions regarding Rayonier's harvesting practices and financial statements, and were damaged when the truth emerged. Thus, the claims of both Lead Plaintiffs and the Class relate to the adequacy of such public statements and will rely on the same facts and legal theories to establish liability. Accordingly, the typicality requirement is established. *See In re Amerifirst Sec. Litig.*, 139 F.R.D. 423, 429 (S.D. Fla. 1991) ("As long as Plaintiffs assert, as they do here, that Defendants committed the same wrongful acts in the same manner against all members of the class, they establish the necessary typicality.").

4. Adequacy Is Established

To determine whether the proposed class representatives will "fairly and adequately protect the interests of the class" under Rule 23(a)(4), courts consider "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Busby*, 513 F.3d at 1323. Lead Plaintiffs readily satisfy Rule 23(a)(4) here.

First, based upon their purchases of Rayonier common stock during the Settlement Class Period and the losses suffered as a result of Defendants' misconduct, Lead Plaintiffs' interests are directly aligned with (rather than "antagonistic" to) the interests of other Settlement Class Members, who were injured by the same materially false and misleading statements as Lead Plaintiffs. Moreover, Lead Plaintiffs are pension funds, overseeing millions of dollars in assets under management belonging to hard working men and women (heavy equipment operators, construction workers, public employees, and firefighters) and are precisely the type of institutional investors that Congress sought to ensure were given leadership roles in securities class actions when enacting the PSLRA. As institutional investors, Lead Plaintiffs are also aware of and understand the fiduciary obligations they owe to the Settlement Class.

Lead Plaintiffs have also retained experienced counsel, receive regular status updates from their lawyers, and participate in strategic decisions. As discussed above, Lead Plaintiffs' selected counsel – Bernstein Litowitz and Saxena White – are qualified and experienced, capable of vigorously prosecuting this Action, and satisfy the requirements of Rule 23(g). By the time the Settlement was reached, Lead Counsel were informed of the strengths and weaknesses of Lead Plaintiffs' claims. They were able to use this knowledge to engage in a rigorous negotiation process. Lead Counsel are skilled and experienced litigators who were able to develop the case and convince Defendants and their insurers to settle on terms favorable to the Settlement Class. Thus, the adequacy requirement is also met.

B. The Requirements Of Rule 23(b)(3) Are Met

A party seeking class certification must also satisfy one of the three subparts of Rule 23(b). Pursuant to Rule 23(b)(3), the Court must consider: (1) whether questions of law or fact common to class members predominate over questions affecting only individual members; and (2) whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

1. Common Questions Predominate

As demonstrated above, this litigation involves both questions of law and fact common to the Settlement Class. The predominance inquiry of Rule 23(b)(3) asks whether "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). In determining whether this standard is met, courts in this Circuit emphasize that "all questions of law or fact need not be common." *In re HealthSouth Corp. Sec. Litig.*, 257 F.R.D. 260, 276 (N.D. Ala. 2009). Moreover, "[t]hat the defendant might attempt to pick off the occasional class member here or there through individualized rebuttal does not cause

individual questions to predominate." *Halliburton Co. v. Erica P. John Fund, Inc*., 134 S. Ct. 2398, 2412 (2014).

Lead Plaintiffs proffer that there are no significant – let alone predominant – individual issues in this case. Indeed, Lead Plaintiffs submit that it is difficult to discern any liability issues not common to all Settlement Class Members. Where, as here, Settlement Class Members are subject to the same alleged misrepresentations and omissions, and it is alleged that Defendants' misrepresentations were part of a common course of conduct, common questions predominate. If Lead Plaintiffs and each Settlement Class Member were to bring individual actions, they would each be required to prove the same wrongdoing by Defendants in order to establish liability. *See In re BellSouth Corp. Sec. Litig*., 2006 WL 870362, at *4 (N.D. Ga. Apr. 3, 2006) (finding the class action to be superior method for litigating a federal securities action because "prosecution by individual shareholders would be prohibitive from both the individual plaintiff's and the court's perspectives").

2. A Class Action Is A Superior Method Of Adjudicating Plaintiffs' Claims

The class action device is also the superior method for resolving the claims in this Action. Courts have long recognized that the class action is not only a superior method, but also may be the only feasible method to fairly and efficiently adjudicate a controversy involving a large number of purchasers of securities injured by violations of the securities law. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (noting that "[m]ost of the plaintiffs would have no realistic day in court if a class action were not available").

Further, certification of the Settlement Class for settlement purposes is the superior method for resolving the claims of Lead Plaintiffs and the Settlement Class. Without the settlement class device, Defendants could not obtain a class-wide release, and therefore would have had little, if

any, incentive to agree to the Stipulation. Moreover, certification of the class for settlement purposes will allow the Settlement to be administered in an organized and efficient manner. In light of the foregoing, all of the requirements of Rules 23 are satisfied, and thus, the Court should certify this Settlement Class for purposes of the Settlement.

VI. NOTICE TO THE SETTLEMENT CLASS IS WARRANTED

As outlined in the agreed-upon proposed Preliminary Approval Order, Lead Counsel will cause the Claims Administrator to notify Settlement Class Members of the Settlement by mailing the Notice and Claim Form to all Settlement Class Members who can be identified with reasonable effort. The Notice will advise Settlement Class Members of: (i) the pendency of the class action; (ii) the essential terms of the Settlement; and (iii) information regarding Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses. The Notice will also provide specifics on the date, time and place of the Settlement Hearing and set forth the procedures, as well as deadlines, for opting out of the Settlement Class, for objecting to the Settlement, the proposed Plan of Allocation and/or the motion for attorneys' fees and reimbursement of Litigation Expenses, and for submitting a Claim Form. The proposed Preliminary Approval Order also requires Lead Counsel to cause the Summary Notice to be published once in *Investor's Business Daily* and to be transmitted over the *PR Newswire*. Lead Counsel will also cause a copy of the Notice and Claim Form to be readily available on the Settlement website created specifically for this Settlement.

The form and manner of providing notice to the Settlement Class satisfy the requirements of due process, Rule 23, and the PSLRA, 15 U.S.C. § 78u-4(a)(7). The Notice and Summary Notice "concisely and clearly state, in plain, easily understood language, the nature of the action; the definition of the class certified; the class claims, issues, and defenses; that a class member may enter an appearance through counsel if the member so desires; and the binding effect of a class

judgment on class members." *Fresco v. Auto Data Direct, Inc*., 2007 WL 2330895, at *8 (S.D. Fla. May 14, 2007). The manner of providing notice, which includes individual notice by mail to all Settlement Class Members who can be reasonably identified, represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. *See Aranaz v. Catalyst Pharm. Partners Inc*., 2014 WL 11870214, at *3 (S.D. Fla. Dec. 3, 2014) (notice distributed by first class mail to all class members "who can be identified with reasonable effort . . . constitute[s] the best notice practicable under the circumstances; and constitute[s] due and sufficient notice to all persons and entities entitled thereto").

VII. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Lead Counsel respectfully submits the following procedural schedule for the Court's review and approval, which summarizes the deadlines in the proposed Preliminary Order. The dates set forth in the right-hand column are potential dates in the event that preliminary approval is granted on or before April 26, 2017.

Event	**Proposed Deadline**	**Potential Date**
Deadline for mailing the Notice and Claim Form to potential Settlement Class Members, which date shall be the "Notice Date" (*See* Preliminary Approval Order ¶7(b))	Not later than 10 business days after entry of Preliminary Approval Order	May 10, 2017
Deadline for publishing the Summary Notice (*See* Preliminary Approval Order ¶7(d))	Not later than 10 business days after the Notice Date	May 24, 2017
Deadline for filing of papers in support of final approval of the Settlement, Plan of Allocation, and Lead Counsel's application for attorneys' fees and expenses (*See* Preliminary Approval Order ¶26)	35 calendar days prior to the Settlement Hearing	June 28, 2017
Deadline for receipt of exclusion requests or objections (*See* Preliminary Approval Order ¶¶13, 17)	21 calendar days prior to the Settlement Hearing	July 12, 2017

Deadline for submission of reply papers in support of final approval and attorney's fees and expenses (*See* Preliminary Approval Order ¶26)	7 calendar days prior to the Settlement Hearing	July 26, 2017
Settlement Hearing (*See* Preliminary Approval Order ¶5)	At least 100 days after the filing of this Motion, or at the Court's earliest convenience thereafter	August 2, 2017, or at the Court's earliest convenience thereafter
Deadline for Submitting Claim Forms (*See* Preliminary Approval Order ¶10)	120 calendar days after the Notice Date	Sept. 7, 2017

VIII. CONCLUSION

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court enter the Parties' agreed-upon form of proposed Preliminary Approval Order, attached hereto as Exhibit 1.

Dated: April 12, 2017

Respectfully Submitted,

SAXENA WHITE P.A.

/s/ Maya Saxena

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 12, 2017, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. This system will send electronic notice of filing to all counsel of record by operation of the Court's electronic filing system.

/s/ Maya Saxena
Maya Saxena