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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ROYAL DUTCH/SHELL TRANSPORT SECURITIES LITIGATION	Civ. No. 04-374 (JAP) (Consolidated Cases) Hon. Joel A. Pisano RETURN DATE: MARCH 3, 2008 (Document electronically filed)

LEAD PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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Lead plaintiffs the Pennsylvania State Employees' Retirement System ("SERS") and the Pennsylvania Public School Employees' Retirement System ("PSERS" and, together with SERS, "Lead Plaintiff" or the "Proposed Class Representatives") respectfully submit this memorandum in support of their motion for an order, pursuant to Fed. R. Civ. P. 23(a), 23(b)(3), 23(c)(1), and 23(g)(1), to (1) maintain this action as a class action; (2) certify a class as defined below; (3) certify SERS and PSERS as class representatives; and (4) appoint Bernstein Liebhard & Lifshitz, LLP ("Bernstein Liebhard" or "Lead Counsel") as counsel to the class.[1]

INTRODUCTION

By this motion, Lead Plaintiff seeks certification of a class (the "Class") consisting of All persons and entities who, between April 8, 1999 and March 18, 2004, inclusive, either (i) purchased stock or stock equivalents issued by Shell (including, but not limited to, American Depository Receipts), purchased Shell call options (or like instruments), or sold Shell put options (or like instruments) on a U.S. stock exchange; or (ii) purchased stock or stock equivalents issued by Shell (including, but not limited to, American Depository Receipts) or purchased Shell call options (or like instruments), or sold Shell put options (or like instruments) on an exchange outside the United States and, at the time of such purchase, were residents or citizens of, or incorporated in or created under the laws of, the United States.[2] After conducting class

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[1] As used herein, "Defendants" shall refer to the Royal Dutch Petroleum Company ("Royal Dutch"), The "Shell" Transport and Trading Company, p.l.c. ("Shell Transport" and, together with Royal Dutch, "Shell" or the "Companies"), KPMG Accountants N.V. ("KMPG"), and PricewaterhouseCoopers LLP ("PwC"). "Auditing Defendants" shall refer to KPMG and PwC.

[2] Excluded from the class are Defendants, any entity in which any Defendant has a controlling interest, any entity that is a parent or subsidiary of or is controlled by any of the Defendants, and the current and former officers and directors, affiliates (as defined in 17 C.F.R.

discovery and conferring with Lead Plaintiff, Defendants have stipulated that the Class is appropriate for certification.[3] As shown below, Lead Plaintiff satisfies all the elements of Rule 23 of the Federal Rules of Civil Procedure.

Chief Judge Bissell appointed SERS and PSERS Lead Plaintiff on June 30, 2004. On September 13, 2004, Lead Plaintiff filed the Consolidated Amended Class Action Complaint (the "First Complaint"), alleging, among other things, that Defendants (and others) engaged in a scheme to deceive the investing public by inflating Shell's proved hydrocarbon reserves. The First Complaint was the subject of nine separate motions to dismiss, the first of which was filed in December 2004. By an Opinion and Order dated August 9, 2005, Judge Bissell denied the bulk of Defendants' motions to dismiss. *In re Royal Dutch/Shell Transp. Sec. Litig.*, 380 F. Supp. 2d 509 (D.N.J.), *on subsequent determination*, 404 F. Supp. 2d 605 (D.N.J. 2005).

On September 19, 2005, Lead Plaintiff filed the Second Consolidated Amended Class Action Complaint (the "Second Complaint"), which repeated the allegations of the First Complaint sustained by Judge Bissell and added new allegations concerning former named defendant KPMG International. The Second Amended Complaint is the operative complaint in this action, although the claims against KPMG International have been dismissed. *See In re Royal Dutch/Shell Transp. Sec. Litig.*, Civ. No. 04-374 (JAP), Opinion dated Aug. 14, 2006 (Docket # 296) and Order on Motion to Dismiss dated Aug. 14, 2006 (Docket # 297).

Part 210.1-02.b), legal representatives, heirs, predecessors, successors, or assigns of any of the Defendants.

[3] The Stipulation Regarding Class Certification is attached to the Declaration of Michael S. Bigin, dated February 1, 2008 (the "Bigin Declaration"), as Exhibit A. All exhibit references herein are to the Bigin Declaration.

As the allegations of the Second Complaint make clear, this case is a prototypical class action brought on behalf of millions of investors who, like the Proposed Class Representatives, have been damaged by Defendants' schemes to defraud (and the materially false and misleading statements associated therewith), or other knowing or reckless misconduct, relating to the scope of the Companies' reported proved reserves and certain financial metrics. As the United States Supreme Court, the Third Circuit, and many other courts, both within and without this Circuit, have repeatedly held, securities fraud actions such as this one are properly certified as class actions. *See, e.g.*, *Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3d Cir. 1985).

Accordingly, Lead Plaintiff respectfully requests that the Court grant its motion for class certification.

STATEMENT OF FACTS

A. Defendants' Alleged Misconduct

In a series of announcements beginning on January 9, 2004, Shell disclosed that it had overstated its proved hydrocarbon reserves by 4.47 billion barrels of oil equivalent ("boe") in violation of SEC Rule 4-10 of Regulation S-X [17 C.F.R. § 210.4-10].[4] ¶¶ 473, 480, 486, 492.[5] Shell also lowered its Reserves Replacement Ratio ("RRR") for 2003, from a previously reported

[4] Under Rule 4-10, proved reserves are "the estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions, *i.e.*, prices and costs as of the date the estimate is made." ¶ 106. The Companies were required to include supplemental information regarding their proved oil and natural gas reserves in their annual reports to the SEC. Second Complaint ¶ 105 (citing Financial Accounting Standard ("FAS") 69).

[5] Citations to "¶ __" and "¶¶ __" shall refer to paragraphs in the Second Complaint.

value of 98% to approximately 82%. ¶ 483. RRR is a metric that expresses the rate at which an oil and gas company replaces extracted hydrocarbons with newly found proved reserves. Like proved reserves, RRR is a key performance indicator for investors evaluating the success of companies in that industry, and is critical to forecasting their future performance. ¶¶ 109, 151, 153, 156.[6]

Davis Polk & Wardwell ("Davis Polk") investigated the recategorization on behalf of Shell's Group Audit Committee (the "GAC"). In the Report of Davis Polk & Wardwell to the Group Audit Committee of March 31, 2004 (the "GAC Report"), Davis Polk found that top management not only knew of the overstated reserves, but also "play[ed] for time" in the hope that they would not have to publicly report the truth about the Companies' proved reserves. ¶ 15. The GAC Report was accepted in full by the GAC on April 15, 2004, and by the Supervisory Board of Royal Dutch and the non-executive Directors of Shell Transport on April 16, 2004. *Id.*

The Companies filed the executive summary of the GAC Report with the SEC on April 19, 2004. The Companies also incorporated the GAC Report's findings into their respective annual reports, which were disseminated to shareholders in May 2004. Throughout the annual reports, the Companies described the overbooking as "inappropriate" and "improper," and explained that "there were deficiencies and material weaknesses in the internal controls relating to proved reserves bookings and disclosure controls that allowed volumes of oil and gas to be improperly booked and maintained as proved reserves." ¶ 16.

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[6] For example, an RRR of 100% means that an oil and gas company is finding new proved hydrocarbon reserves at the same pace that it is extracting previously found hydrocarbons from the ground – a highly desirable situation in the oil and gas industry. ¶ 109.

The reserves recategorization also adversely affected the Companies' previously issued audited financial statements. ¶ 484. On May 24, 2004, the Companies announced that they would restate certain of their financial results for 2001, 2002, and 2003. Several days later, Royal Dutch and Shell Transport issued their Annual Reports, in which KPMG and PwC provided a joint audit report confirming the necessity of the financial restatement. The report stated, "[i]n view of the inappropriate overstatement of unaudited proved reserves information, it was determined to restate the Financial Statements of the Group, and each of the Parent Companies, for prior periods (the Financial Restatement) to reflect the impact of the Reserves Restatement on those Financial Statements (as announced on April 19, 2004)." Exh. B at 52 (of each report). The report also explained that:

> [t]he effect of the restatement was to reduce net income in 2002 by $108 million (2001: $42 million), of which additional depreciation in 2002 was $166 million (2001: $84 million), and to reduce the previously reported net assets as at December 31, 2002 by $276 million.

Id. at 53 (of each report).

As discussed herein, Defendants are charged with knowingly or recklessly disseminating materially false and misleading public reports of the Companies' proved oil and natural gas reserves, overstating the Companies' RRR, and overstating certain of the Companies' financial metrics, including the standard measure of future discounted cash flows (overstated by more than one hundred billion dollars). ¶ 3. The Second Complaint sets out a detailed description of how Shell intentionally manipulated the Companies' reported proved reserves and reported false proved reserves figures to investors. In this regard, the Second Complaint alleges that Defendants, among other things, (a) engaged in practices that were designed to avoid compliance with applicable SEC rules and internal guidelines (which themselves were not compliant with

SEC rules), (b) knew of internal control failures, and (c) participated in a scheme to play for time (*i.e.*, conceal the fraud) by "managing" reserves.

The Auditing Defendants were engaged to provide supposedly independent auditing services to the Group in reviewing its oil and gas reserves and preparing and filing its annual financial statements. In this role as the Companies' external accountants, KPMG and PwC undertook responsibility for auditing and reviewing the Companies' financial statements before they were publicly disseminated in accordance with Generally Accepted Auditing Standards ("GAAS"). KPMG and PwC abrogated their responsibilities by providing materially false audit certifications in which they represented, among other things, that the financial statements were presented fairly, in all material respects, in accordance with Generally Accepted Accounting Principles ("GAAP"), and that they conducted their audits in accordance with GAAS.

As noted, the truth about the Group's proved reserves and its effect on the Companies' reported financial results began to be disclosed on January 9, 2004, when the Companies revealed that, to comply with SEC reserves reporting requirements, they would be reducing previously reported proved reserves by 20%, or approximately 3.9 billion boe. ¶¶ 6, 473; *see also* Exh. C. On March 18, 2004, the end of the Class Period, the Companies announced again that they were restating their proved reserves downward because they "did not strictly follow" SEC rules. ¶ 480; *see also* Exh. D. This reclassification involved the Ormen Lange booking in Norway. The Companies also disclosed that they would have to amend the 2002 Form 20-F "to reflect the recategorisation," and that "[t]he 'Management's Discussion and Analysis of Financial Conditions and Results of Operations' section . . . [would] be amended . . . ." *Id.* By the time of filing of the First Complaint, Shell had reduced its proved reserves by more than 4.47 billion boe, or 23% of the Companies' reported Class Period proved reserves. ¶¶ 8, 492.

The January 2004 partial disclosure triggered a significant decline in the trading price of the ordinary shares of both Shell Transport and Royal Dutch and the ADRs of Shell Transport (Shell Transport dropping by about 6.96% in the United States and 7.48% in London, and Royal Dutch dropping by about 7.87% in the United States and 7.65% in Amsterdam). ¶¶ 6, 475. At the time, Shell securities lost a net $15.7 billion in market value as a result of the alleged misconduct.

The adverse effect of the March 18, 2004 announcement resulted in a decline in the price of Shell Transport's ADRs and Royal Dutch's ordinary shares (in the U.S.). Shell Transport's ADRs declined $.55 per ADR, closing at $40.50 (unadjusted) on March 18th, and Royal Dutch's ordinary shares (in the U.S.) declined $.60 per share, closing at $47.71 (unadjusted) on March 18th. The price of these securities fell further on the following day: Shell Transport's ADRs declined an additional $.25 per ADR, closing at $40.25 (unadjusted) on March 19th, and Royal Dutch's ordinary shares (in the U.S.) declined an additional $.66 per share, to close at $47.05 (unadjusted) on March 19th.

B. The Proposed Class Representatives

SERS and PSERS move for certification as class representatives.

1. SERS

SERS is a Pennsylvania agency that maintains a public pension fund for the benefit of the current and retired employees of the Commonwealth of Pennsylvania. The fund is located in Harrisburg, Pennsylvania, and, as of June 30, 2007, had assets of approximately $34.8 billion. A summary of SERS' foreign and domestic Class Period transaction data in Royal Dutch and Shell Transport common shares and ADRs is attached to the Bigin Declaration as Exhibit E.

SERS purchased the securities of Royal Dutch and Shell Transport at artificially inflated prices on at least one U.S. stock exchange and on foreign exchanges during the Class Period. In

connection with these purchases, and as a direct result of the disclosures of the truth about the Companies' reported proved reserves and financial condition, SERS suffered losses.

SERS has submitted a declaration in support of the lead plaintiff motion demonstrating that it meets the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* Exh. F. Additionally, SERS has complied with Defendants' discovery requests. It has produced documents and responded to Defendants' interrogatories. SERS also produced its Chairman for a deposition. Accordingly, SERS is qualified for appointment as a class representative on behalf of all members of the Class.

2. PSERS

PSERS is a Pennsylvania agency that maintains a public pension fund for the benefit of the current and retired public school employees of the Commonwealth of Pennsylvania. The fund, which has more than 445,000 members, is located in Harrisburg, Pennsylvania, and had total net assets of approximately $67 billion as of June 30, 2007. A summary of PSERS' foreign and domestic Class Period transaction data in Royal Dutch and Shell Transport securities is attached to the Bigin Declaration as Exhibit G.

PSERS purchased the securities of Royal Dutch and Shell Transport at artificially inflated prices on at least one U.S. stock exchange and on foreign exchanges during the Class Period. In connection with these purchases, and as a direct result of the disclosures of the truth about the Companies' reported proved reserves and financial condition, PSERS suffered losses.

PSERS has submitted a declaration in support of the lead plaintiff motion demonstrating that it meets the requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* Exh. H. Additionally, PSERS has complied with Defendants' discovery requests. It has produced documents and responded to Defendants' interrogatories. PSERS also produced its Executive Director and Director of External Public Markets, Risk Management, and Compliance for

depositions. Accordingly, PSERS is qualified for appointment as a class representative on behalf of all members of the Class.

ARGUMENT

I. THE CLASS ACTION MECHANISM IS PARTICULARLY WELL SUITED FOR THE ADJUDICATION OF SECURITIES CLAIMS

A class action affords a single forum in which the same or similar claims can be litigated, and affords an indispensable mechanism to conserve judicial resources.[7]

The Third Circuit has characterized the class action device as a "'particularly appropriate and desirable means to resolve claims based on the securities laws, since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'" *Yang v. Odom*, 392 F.3d 97, 109 (3d Cir. 2004) (quoting *Eisenberg v. Gagnon*, 766 F.2d 770, 775 (3d Cir. 1985).[8] "The Court of Appeals for the Third Circuit has adopted a liberal construction of Rule 23 when considering shareholder suits." *In re Regal Commc'ns Corp. Sec. Litig.*, No. 94-179, 1995 WL 550454, at *3 (E.D. Pa. Sept. 14, 1995). Any doubt should be resolved in favor of allowing a class action. *See, e.g., Yang v. Odom,* No. Civ.A. 02-5968(JAP), 2005 WL 2000156, at *3 (D.N.J. Aug. 19, 2005) (Pisano, J.).[9]

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[7] *See, e.g., Califano v. Yamasaki*, 442 U.S. 682, 701 (1979); *Kennedy v. Tallant*, 710 F.2d 711, 718 (11th Cir. 1983); *Korn v. Franchard Corp.*, 456 F.2d 1206 (2d Cir. 1972); *Frankel v. Wyllie & Thornhill, Inc.*, 55 F.R.D. 330 (W.D. Va. 1972); *Esplin v. Hirschi*, 402 F.2d 94 (10th Cir. 1968).

[8] *See, e.g., Blackie v. Barrack*, 524 F.2d 891, 903 (9th Cir. 1975); *Green v. Wolf Corp.*, 406 F.2d 291, 296 (2d Cir. 1968); *Smith v. Dominion Bridge Corp.*, No. Civ. A. 96-7580, 1998 WL 98998, *1,*2 (E.D. Pa. Mar. 6, 1998); *In re Laidlaw Sec. Litig.*, No. 91-CV-1829, 1992 WL 68341, at *1, *2 (E.D. Pa. Mar. 31, 1992).

[9] *See also Eisenberg,* 766 F.2d at 785; *In re Mercedes-Benz Antitrust Litig.* 213 F.R.D. 180, 184 (D.N.J. 2003); *Gunter v. Ridgewood Energy Corp.*, 164 F.R.D. 391, 394 (D.N.J. 1996);

Lead Plaintiff bears "the burden of proving each of the prerequisites of a class action under rule 23(a) and that the class fits within one of the three categories of class actions set forth in Rule 23(b)." *Meyer v. CUNA Mut. Group*, No. Civ. A. 03-602, 2006 WL 197122, at *10 (W.D. Pa. Jan. 25, 2006) (citing *Chiang v. Veneman*, 385 F.3d 256, 264 (3d Cir. 2004)). While "[a] court must undertake a 'rigorous analysis' to determine whether the putative class and its proposed representatives satisfy each of the prerequisites to class certification" (*Yang*, 2005 WL 2000156, at *3) (citing *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982)), "it is not necessary for plaintiff to establish the merits of his case at the certification stage . . . . [I]n determining whether the class will be certified, the substantive allegations of the complaint must be taken as true." *Meyer*, 2006 WL 197122, at *10 (citing *Chiang*, 385 F.3d at 262); *In re Pharmaprint, Inc. Sec. Litig.*, No. 00-CV-00061, 2002 WL 31056813, at *1 (D.N.J. Apr. 17, 2002) (Pisano, J.).[10] However, "the court may in some cases 'analyze the elements of the parties' substantive claims and review facts revealed in discovery in order to evaluate whether the requirements of Rule 23 have been satisfied.'" *Yang*, 2005 WL 2000156, at *3 (quoting *In re Ford Motor Co. Ignition Switch Prods. Liab. Litig.*, 174 F.R.D. 332, 339 (D.N.J. 1997)).

Kahan v. Rosenstiel, 424 F.2d 161, 169 (3d Cir. 1970); *Snider v. Upjohn Co.*, 115 F.R.D. 536, 539 (E.D. Pa. 1987); *In re Kulicke & Soffa Indus., Inc. Sec. Litig.*, No. 86-1656, 1990 WL 1478, at *1 (E.D. Pa. Jan. 9, 1990).

[10] *See, e.g., Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974); *Chiang*, 385 F.3d at 262; *Brosious v. Children's Place Retail Stores*, 189 F.R.D. 138, 145 (D.N.J. 1999) ("A motion for class certification should not turn on the court's evaluation of the merits of the parties' legal or factual claims.").

II. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS FOR CERTIFICATION UNDER RULE 23

For a proposed class to be certified, the requirements of Rule 23(a) and 23(b) must be satisfied. *See, e.g.*, *Stewart v. Abraham*, 275 F.3d 220, 226 (3d Cir. 2001); *In re Pharmaprint, Inc. Sec. Litig.*, No. 00-CV-00061, 2002 WL 31056813, at *5 (D.N.J. Apr. 17, 2002) (Pisano, J.). Rule 23(a) identifies four prerequisites to class certification:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class.

These four requirements are commonly referred to as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See In re Honeywell Int'l Inc. Sec. Litig.*, 211 F.R.D. 255, 260 (D.N.J. 2002).

If the four prerequisites of Rule 23(a) are met, Lead Plaintiff must also demonstrate that the action qualifies for class action treatment under one of three criteria set forth in Rule 23(b). *Id.* Lead Plaintiff moves for class certification under Rule 23(b)(3), which requires that "questions of law or fact common to 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). As demonstrated below, Lead Plaintiff has met its burden of showing that the prerequisites of Rule 23(a) and the requirements of Rule 23(b)(3) are satisfied.

A. The Requirements of Rule 23(a) are Satisfied

1. The Members of the Class are so Numerous that Joinder of All of them is Impracticable

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. *See Stewart* 275 F.3d at 226; *Yang v. Odom*, No. Civ. A. 02-5968(JAP), 2005 WL 2000156, at *3 (D.N.J. Aug. 19, 2005) (Pisano, J.); *Brosious v. Children's Place Retail Stores*, 189 F.R.D. 138, 145 (D.N.J. 1999). As this Court stated in *Yang*, to demonstrate impracticability, "a party need not prove that joinder of every class member is impossible," rather proof that joinder is difficult or inconvenient is sufficient. *Yang*, 2005 WL 2000156, at *3. In determining whether a proposed class meets the numerosity requirement, a court may accept common sense assumptions. *In re Cephalon Sec. Litig.*, No. Civ. A. 96-0633, 1998 WL 470160, at *2 (E.D. Pa. Aug. 12, 1998). "There are no specific standards regarding class size and it is not necessary for a plaintiff to allege the exact number of class members to satisfy the numerosity requirement." *In re Centocor, Inc. Sec. Litig.*, No. Civ. A. 98-260, 1999 WL 54530, at *1 (E.D. Pa. Jan. 27, 1999).[11] Courts within the Third Circuit have recognized "a presumption that the numerosity requirement is satisfied when a class action involves a nationally traded security . . . ." *Sinay v. Lepore & Assocs.*, Civ. No. 99-02231(DRD), slip op. at 8 (D.N.J. Feb. 14, 2001).

That this case satisfies the numerosity requirement is beyond dispute. As of December 31, 2002, Royal Dutch had 2,099,285,000 ordinary shares outstanding (Exh. I), of which approximately 522,321,706 were available for trading on U.S. exchanges, with the remainder

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[11] *See also In re Pharmaprint*, 2002 WL 31056813, at *5 ("'No magic number exists satisfying the numerosity requirement.'") (quoting *Moskowitz v. Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989)); *Yang*, 2005 WL 2000156, at *3; *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001) (Pisano, J.).

trading on overseas markets. As of that same date, Shell Transport had 9,667,500,000 ordinary shares outstanding (Exh. I), with approximately 48,414,148 ADRs available to trade on U.S. exchanges (with each ADR representing six ordinary shares). The remainder traded on overseas markets. Based on this information, Lead Plaintiff believes that there are hundreds of thousands, if not millions, of putative class members who purchased Royal Dutch and/or Shell Transport common shares or ADRs during the Class Period. Thus, the threshold for a presumption of impracticality of joinder is certainly exceeded. [12]

2. There are Questions of Law and Fact Common to the Class

Like numerosity, the commonality requirement has been construed liberally in securities litigation. *Moskowitz*, 128 F.R.D. at 628. Rule 23(a)(2) is satisfied when the proposed class representatives share at least one question of fact or law with the claims of the prospective class. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 120 (D.N.J. 2002) (Pisano, J.); *Hawker*, 198 F.R.D. at 625.[13] As this Court stated in *In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d

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[12] *See, e.g., Stewart*, 275 F.3d at 226-27 ("generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met"); *Eisenberg v. Gagnon*, 766 F.2d 770, 785-86 (3d Cir. 1985) (allegation of 91 class members satisfied the numerosity requirement); *In re Tel-Save Sec. Litig.*, No. 98-CV-3145, 2000 WL 1005087, at *4 (E.D. Pa. July 19, 2000) ("It is sufficient to say that in this case, where the plaintiffs allege that hundreds of investors have been defrauded, that the numerosity requirement is met."); *In re Honeywell*, 211 F.R.D. at 260 (finding numerosity requirement satisfied for investors who purchased corporation's shares during the designated period, when corporation was a large and prominent publicly held company and SEC filings confirmed that shareholders numbered in the thousands).

[13] *See also Cullen v. Whitman Med. Corp.*, 188 F.R.D. 226, 230 (E.D. Pa.1999) (citing *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)); *Rosen v. Fid. Fixed Income Trust*, 169 F.R.D. 295, 298 (E.D. Pa. 1995); *In re Centocor*, 1999 WL 54530, at *2 (Rule 23(a)(2) "does not require that every question of law or fact be common to every member of the class."); *Neuberger v. Shapiro*, No. Civ. A. 97-7947, 1998 WL 826980, at *1 (E.D. Pa. Nov. 25, 1998) (to satisfy Rule 23(a)(2), "[p]utative class members need not share identical claims").

633, 640 (D.N.J. 2004), "Rule 23 does not require that all class members be identically situated, just that substantial, common questions of either law or fact exist." *See also Yang*, 2005 WL 2000156, at *4.

Among the many questions of law and fact common to the Class in this action are whether:

(a) Defendants violated Sections 10(b) and 20(a) of the Exchange Act;

(b) Defendants engaged in a scheme or acted recklessly to overstate the Companies' proved oil and gas reserves;

(c) Defendants engaged in a scheme or acted recklessly to "play for time" (*i.e.*, conceal the fraud) in the hope that intervening developments would justify, or mitigate, the Companies' proved reserve exposures;

(d) Defendants materially misrepresented the Companies' financial condition during the Class Period;

(e) Defendants materially misrepresented the Companies' Supplemental Information reported to the SEC during the Class Period;

(f) Defendants acted with knowledge or recklessness in executing the schemes and other misconduct alleged in the Second Complaint;

(g) Defendants acted with knowledge or recklessness in making the misrepresentations and failing to disclose the omissions alleged in the Second Complaint; and

(h) Members of the Class have sustained damages and, if so, the appropriate measure thereof. [14]

The commonality requirement is easily satisfied in this action. The existence, nature, and significance of Defendants' misconduct – the most important issues in a securities fraud case –

[14] In connection with Section 10(b) and Rule 10b-5 claims, "[q]uestions of misrepresentations, materiality, and scienter are 'the paradigmatic common question[s] of law or fact in a securities fraud class action.'" *Deutschman v. Beneficial Corp.*, 132 F.R.D. 359, 372 (D. Del. 1990) (quoting *Moskowitz*, 128 F.R.D. at 629).

are issues common to the entire Class. The Class shares a common interest in determining whether Defendants' conduct is actionable. *See Weikel v. Tower Semiconductor, Ltd.*, 183 F.R.D. 377, 389 (D.N.J. 1998) (questions of whether defendants violated securities laws and whether defendants participated in a common course of conduct satisfy commonality requirement); *Eisenberg*, 766 F.2d at 786 ("Plaintiffs presented a sufficient number of common questions of law and fact to meet the requirements of Rule 23(a)(2), in particular the defendants' liability for the alleged omissions and misrepresentations common to the offering and sale of all three limited partnerships.").

In connection with the appointment of PSERS and SERS as Lead Plaintiff, Judge Bissell determined that "[b]ecause of the virtually identical factual predicates" alleged in the numerous putative securities class actions pending against Defendants (and others) – namely that "Royal Dutch and Shell Transport reported reserves and future discounted cash flows that were materially false and misleading" – consolidation was appropriate under Fed. R. Civ. P. 42. *See* Exh. J at 11, 22. The Court made a similar observation in deciding Defendants' motions to dismiss: "The claims in the Complaint stem from the dissemination by RDS of what Plaintiff characterizes as 'materially false and misleading statements' concerning RDS's reported proved oil and natural gas reserves." *In re Royal Dutch/Shell Transp. Sec. Litig.*, 380 F. Supp. 2d 509, 515 (D.N.J.), *on subsequent determination*, 404 F. Supp. 2d 605 (D.N.J. 2005).

Securities fraud actions addressing these types of common questions have repeatedly been held to be "prime candidates" for class certification. *Blackie v. Barrack*, 524 F.2d 891, 902-05 (9th Cir. 1975). *See, e.g, In re Pharmaprint*, 2002 WL 31056813; *In re Honeywell*, 211 F.R.D. 255; *Yang*, 2005 WL 2000156, at *4 (common questions of law and fact exist when the "[d]efendants undertook and participated in a scheme and common course of conduct to

misrepresent and conceal from the investing public material facts . . . in violation of . . . Sections 10(b) and 20(a) of the Securities Exchange Act of 1934"). For all the foregoing reasons, the commonality requirement of Rule 23(a)(2) is satisfied.

3. The Proposed Class Representatives' Claims are Typical of the Claims of the Class

The typicality requirement of Rule 23(a)(3) is satisfied if the Proposed Class Representative's claims arise from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory. *See In re Lucent*, 307 F. Supp. 2d at 640 ("The 'typicality' requirement is satisfied as long as the Lead Plaintiffs, the other representatives, and the Class 'point to the same broad course of alleged fraudulent conduct to support a claim for relief.'") (quoting *Zinberg v. Wash. Bancorp, Inc.*, 138 F.R.D. 397, 401 (D.N.J. 1990). Any individual characteristics of the class representative are of no relevance. *See, e.g., In re Southeast Hotel Props. Ltd. P'ship Investor Litig.*, 151 F.R.D. 597, 605 (W.D.N.C. 1993) (under Rule 23(a)(3) "the crucial issue is whether the claims of the class representatives are typical of the claims of the class members, not whether there is a similarity in personal backgrounds or knowledge between individuals"). Because typicality does not require that all plaintiffs' claims are identical, "even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories." *Baby Neal*, 43 F.3d at 58.[15]

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[15] *See also In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 185 (D.N.J. 2003) ("Typicality does not require that the claims of the named plaintiffs be identical to those of the proposed class members."); *In re Centocor*, 1999 WL 54530, at *2 (the typicality requirement of Rule 23(a)(3) is satisfied when the "'litigation of the named plaintiffs' personal claims can reasonably be expected to advance the interests of absent class members.'") (quoting *Arch v. Am. Tobacco Co., Inc.*, 175 F.R.D. 469, 478 (E.D. Pa. 1997)); *In re Cephalon*, 1998 WL 470160, at

SERS and PSERS propose to serve as class representatives on behalf of all class members. SERS and PSERS are U.S. institutional investors that purchased their Royal Dutch and Shell Transport securities both domestically and abroad. *See* Exhs. E and G. In appointing PSERS and SERS as Lead Plaintiff, Judge Bissell recognized that "[t]heir claims arise from the same course of conduct, and they rely on the same legal theories to prove defendants' liability as those asserted by other class members." Exh. J at 38.

Like the claims of all other members of the Class, the Proposed Class Representatives' claims arise from purchasing Shell ordinary shares and ADRs at prices that were artificially inflated as a result of the inflation of the Companies' proved oil and gas reserves. The foregoing course of conduct gave rise to repeated materially false and misleading statements and/or omissions of material fact. Because SERS and PSERS purchased their Royal Dutch/Shell Transport ordinary shares and ADRs at artificially inflated prices and suffered losses as a result of the disclosures of the truth, the proof needed by them to prevail on their claims will be the same as that needed to prove the claims of the rest of the Class. Accordingly, their claims are typical of the claims of the Class within the meaning of Rule 23(a)(3).[16]

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*2; *Fox v. Equimark Corp.*, Civ. A. No. 90-1504, 1994 WL 560994, at *4 (W.D. Pa. July 18, 1994) ("All purchasers of stock during a class period share a common interest in showing that the stock was unlawfully inflated."); *Zeffiro v. First Pa. Banking & Trust Co.*, 96 F.R.D. 567, 570 (E.D. Pa. 1983) (observing that if the named plaintiff and class members have an interest in prevailing on similar legal claims, "particular factual differences, differences in the amount of damages claimed, or even the availability of certain defenses against a class representative may not render his or her claims atypical").

[16] *In re AremisSoft*, 210 F.R.D. at 121 (finding typicality requirement satisfied where "all claims arise from the same nucleus of operative facts: Defendants' misstatements artificially inflated AremisSoft's stock prices."); *In re Honeywell*, 211 F.R.D. at 260 ("The representative Plaintiffs' claims arise from the same alleged series of related misrepresentations that they claim injured all members of the proposed class. Their claims are therefore typical of those of the class

4. The Proposed Class Representatives Will Fairly and Adequately Protect the Interests of the Members of the Class

Under Rule 23(a)(4) – the adequacy of representation requirement – the Proposed Class Representatives must not have any conflict that might prevent them from representing the interests of the Class, and their counsel must be competent to conduct a class action.[17] *See In re A-P-A Transp. Corp. Consol. Litig.*, No. Civ. 02-3480 WGB, 2005 WL 3077916, at *5 (D.N.J. Nov. 16, 2005).

In appointing PSERS and SERS as Lead Plaintiff, the Court noted that the two funds have "the ability and incentive to represent the claims of the class vigorously." Exh. J at 38. Since the Court appointed them as Lead Plaintiff in June 2004, PSERS and SERS, together with Lead Counsel, have vigorously prosecuted this action as fiduciaries acting in the best interests of all members of the Class. Lead Plaintiff's efforts, in conjunction with the efforts of Lead Counsel, are well known to this Court and include, but are not limited to: (a) filing two amended

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for the purposes of the Rule."); *Fox*, 1994 WL 560994, at *4 (common interests of nominal plaintiffs and class in showing that stock price artificially inflated satisfied typicality requirement); *In re Centocor*, 1999 WL 54530, at *2 (named plaintiffs' claims were typical of the claims of the class because "the claims of the proposed class representatives and all other members of the class arise from false and misleading public statements made by [defendant] during the Class Period"); *Neuberger*, 1998 WL 826980, at *2 ("Because the allegations here include a common course of fraudulent conduct on the part of defendants and the same type of monetary harm to all putative class members, typicality is satisfied.").

[17] As a result of the 2003 amendments to the Federal Rules of Civil Procedure, the issue of appropriate class counsel is guided by Rule 23(g), rather than Rule 23(a)(4). *See* 2003 Advisory Comm. Notes to Rule 23 ("Rule 23(a)(4) will continue to call for scrutiny of the proposed class representative, while [Rule 23(g)] will guide the court in assessing proposed class counsel as part of the certification decision."); *accord, e.g., Jones v. Ford Motor Credit Co.*, 00 Civ. 8330RJHKNF, 2005 WL 743213, at *18 (S.D.N.Y. Mar. 31, 2005); *see also* 5 James Wm. Moore et al., Moore's Federal Practice § 23.25[3] (3d Ed. 2001). For the sake of convenience, however, Lead Plaintiff discusses the adequacy of counsel here.

securities class action complaints (Docket Nos. 39, 184); (b) filing a motion to partially lift the automatic stay of discovery under the PSLRA, defending the Court's order granting the motion on appeal to the Third Circuit, opposing the Companies' motion to enforce the stay of discovery during the pendency of their appeal, and filing a motion to enforce the Court's order (Docket Nos. 29, 35, 42); (c) defeating in substantial part Defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket Nos. 109, 128, 130); (d) defeating various Defendants' motions to reconsider aspects of the Court's August 9th decision (Docket Nos. 178, 179); (e) defeating the Companies' request for certification of an interlocutory appeal of the Court's denial of their motion to dismiss the claims of foreign purchasers who purchased their ordinary shares on foreign exchanges (Docket No. 179); (f) succeeding on reconsideration in securing the reversal of the Court's dismissal of the claims of Class members who held their Shell ordinary shares and ADRs after the 90-day look back period under the PSLRA (Docket Nos. 165, 204); (g) opposing KPMG-I's motion to dismiss the Second Complaint (Docket No. 242); (h) serving over 20 subpoenas on non-parties seeking the production of documents; (i) reviewing more than 2 million pages of documents produced to date; (j) conducting scores of depositions; and (k) various other discovery-related activities.

Lead Plaintiff and Lead Counsel have vigorously prosecuted this litigation precisely as the Court envisioned they would, and the Proposed Class Representatives will continue to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *In re Napster, Inc. Copyright Litig.*, No. C MDL-00-1369 MHP, 2005 WL 1287611, at *5 (N.D. Cal. June 1, 2005) (prior efforts of plaintiffs and counsel demonstrate adequacy to continue litigating on behalf of the class).

Moreover, there are no conflicts of interest between the Proposed Class Representatives and the other members of the Class. Indeed, the Class is particularly well represented by the Proposed Class Representatives, which are institutional investors who purchased Shell ordinary shares and/or ADRs both in the United States and abroad. The presence of the Lead Plaintiff, which made substantial purchases both domestically and abroad, should suffice to negate any concern about the fair and adequate representation of the Class members. As the Court recently recognized in its Memorandum of Approval of Payment, dated January 14, 2007, Lead Plaintiff's (and Lead Counsel's) efforts have been vigorous in the exercise of their fiduciary duties.

That the Proposed Class Representatives have no conflicts with the other members of the Class is further demonstrated by the fact that the Proposed Class Representatives, like the other Class members, were damaged as a result of Defendants' misconduct (and the materially false and misleading statements associated therewith) concerning the Companies' reported proved oil and gas reserves and financial statements. The Proposed Class Representatives will have to establish the materially false and/or misleading nature of the same statements as the absent Class members to establish Defendants' liability. The Proposed Class Representatives have incurred substantial damages and will vigorously prosecute the claims brought in this action on behalf of themselves and the Class. Thus, no Class members will be disadvantaged by the Proposed Class Representatives' representation in this action.

Finally, Lead Plaintiff has retained attorneys who are qualified, experienced, and able to conduct this litigation. Bernstein Liebhard & Lifshitz, LLP, appointed by Judge Bissell on June 30, 2004 to serve as Lead Counsel, has extensive experience litigating complex securities class actions and similar matters. Given the lack of any conflict of interest and the retention of competent counsel, the Proposed Class Representatives are adequate Class representatives.

Accordingly Lead Plaintiff requests that Lead Counsel be appointed as class counsel pursuant to Fed. R. Civ. P. 23(g)(1).[18]

B. The Requirements of Rule 23(b)(3) are Satisfied

In addition to meeting the requirements of Rule 23(a), Lead Plaintiff must also demonstrate that the requirements of Rule 23(b)(3) are satisfied. Rule 23(b)(3) states:

> (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> * * *
>
> (3) the court finds 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.

As discussed below, both requirements of Rule 23(b)(3) – predominance and superiority – are satisfied here.

1. Common Questions of Law and Fact Predominate over any Individual Issues

To ensure that class litigation is more efficient than individual actions, Rule 23(b) requires that common issues predominate over issues that are particular to a proposed class representative. "Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues." *Smith v. Dominion Bridge Corp.*, No. Civ. A. 96-7580, 1998 WL 98998, at *5 (E.D. Pa. Mar. 6, 1998); *see also Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 (S.D.N.Y. 1981) ("To be sure, individual issues will likely arise in this as in all class action cases. But, to allow various

[18] The firm resume of Lead Counsel is submitted as Exhibit K.

secondary issues of plaintiffs' claim to preclude certification of a class would render the rule an impotent tool for private enforcement of the securities laws."). "The predominance inquiry 'focuses on the number and significance of common questions as opposed to individual issues.'" *Yang*, 2005 WL 2000156, at *7 (quoting *Jerry Enters., Inc. v. Allied Beverage Group, L.L.C.*, 178 F.R.D. 437, 446 (D.N.J. 1998)).

In determining whether common questions predominate, the Court's inquiry is directed towards the issue of liability. When a complaint alleges a "common course of conduct" of misrepresentations, omissions, and other wrongdoing that affects all members of the Class in the same manner, common questions predominate. *See Weikel*, 183 F.R.D. at 399-400 ("The present case, involving allegations of a common scheme to defraud[,] falls within the category of cases for which the predominance requirement is easily met."). The United States Supreme Court has stated that "[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *see also Brosious*, 189 F.R.D. at 147 (same). This Court has noted that "[t]he predominance test is readily met in most securities fraud actions." *In re AremisSoft*, 210 F.R.D. at 122 (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 314 (3d Cir. 1998).

Here, common questions will predominate over any individual issues that theoretically might exist. The Second Complaint alleges that Defendants engaged in misconduct that artificially inflated the Companies' proved oil and gas reserves, and that they covered up that misconduct by "playing for time." If the Proposed Class Representatives and each Class member were to bring individual actions, they would each be required to prove the existence of these same schemes (and the materially false and misleading statements associated therewith) to

establish liability. *See, e.g., Neuberger,* 1998 WL 826980, at * 4 ("Evidentiary issues as to misrepresentations and materiality will be substantially identical for all class members."). Indeed, courts have repeatedly held that common issues predominate over individual issues, even when the false and misleading representations were issued over significant lengths of time in many different documents.[19]

2. A Class Action is Superior to Numerous Individual Actions

A class action is superior to other available methods for the fair and efficient adjudication of this litigation within the meaning of Rule 23(b)(3) because: (i) absent certification of a class, the Court would be faced with the potential burden of adjudicating thousands if not millions of individual lawsuits, all of which would arise out of the same set of operative facts alleged in the Second Complaint; (ii) the resolution of common issues in one action will yield an efficient use of judicial resources and a single, uniform outcome; (iii) any administrative difficulties in handling potential individual issues under the class action device are less burdensome than the problems that are likely to arise in handling the claims in thousands or millions of separate actions; and (iv) because of the prohibitive expense of maintaining individual actions, denial of class certification here would effectively prevent numerous individuals from asserting their

[19] *See Blackie,* 524 F.2d at 894 (material misrepresentations contained in forty-five documents issued over a two year period); *Green v. Wolf Corp.*, 406 F.2d 291, 294 (2d Cir. 1968) (material misrepresentations contained in three prospectuses issued over the course of two and one-half years); *Peil v. Nat'l Semiconductor Corp.*, 86 F.R.D. 357, 368 (E.D. Pa. 1980) ("it should not be permissible for a defendant to escape the possible effect of a class action merely because the wrong alleged was elaborately conducted over a long period of time and by a variety of different activities.").

claims against the Defendants, and render meaningless the causes of action provided under the federal securities laws.[20]

Moreover, where, as here, the damages suffered by individual Class members would not likely justify the time and expense associated with bringing individual actions, a class action is the superior method of securing a remedy. Individual litigants would incur the cost and expense of retaining their own counsel, experts, and investigators, together with the cost of attempting to develop an adequate record in discovery – including the 2 million plus pages of documents, investigative reports, and other documents and materials discovered or developed to date in the global efforts engaged in by Lead Plaintiff before this Court.

Certification of this litigation as a class action is therefore superior to any other available method for the fair and efficient adjudication of the controversy. There is no doubt that, absent certification, many of the Class members who were injured by the Defendants' wrongdoing would never receive compensation for any of their damages. Such a result would be inimical to the notions of fundamental fairness and justice that underlie Rule 23, and should be rejected by this Court in favor of certifying the Class.

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[20] *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (class action plaintiffs pool claims that are uneconomical to litigate individually); *Eisenberg*, 766 F.2d at 785 ("Class actions are a particularly appropriate and desirable means to resolve claims based on the securities laws, 'since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'") (quoting *Kahan v. Rosenstiel*, 424 F.2d 161, 169 (3d Cir. 1970)); *Gunter v. Ridgewood Energy Corp.*, 164 F.R.D. 391, 400 (D.N.J. 1996) ("[C]lass actions are usually seen as the appropriate vehicle for resolving securities fraud cases because 'those who have been injured are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive.'") (internal quotation marks omitted; quoting *Zinberg*, 138 F.R.D. at 410).

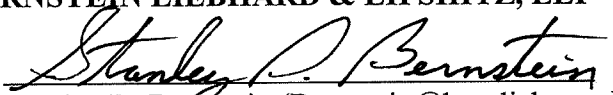
CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court enter an Order, pursuant to Fed. R. Civ. P. 23(a), 23(b)(3), and 23(g)(1): (1) certifying this action as a class action; (2) certifying a Class as defined herein; (3) appointing SERS and PSERS as class representatives; and (4) appointing Bernstein Liebhard & Lifshitz, LLP as class counsel.

DATED: February 1, 2008

Respectfully submitted,

BERNSTEIN LIEBHARD & LIFSHITZ, LLP

By: 
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