



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KAREN J. DESROCHER, INDIVIDUALLY AND :
ON BEHALF OF ALL OTHERS SIMILARLY :
SITUATED, :

Plaintiffs, :

-against- :

COVISINT CORPORATION, ET AL., :

Defendants. :
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**ORDER GRANTING MOTION
FOR CLASS CERTIFICATION**

14 Civ. 3878 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiffs bring claims for violations of sections 11 and 15 of the Securities Act of 1933 related to the Initial Public Offering of common stock for Covisint Corporation on September 26, 2013 (the "IPO"). Plaintiffs allege that the Registration Statement and its amendments contained untrue statements of material fact and omitted material facts, and also allege controlling person liability. Plaintiffs seek to certify a class of those who purchased Covisint stock in and/or traceable to the IPO. Fed. R. Civ. P. 23.

Rule 23 allows a representative to sue on behalf of a class provided that: "(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." Fed. R. Civ. P. 23(a). These prerequisites for class certification are referred to as numerosity, commonality, typicality, and adequacy. A court may certify a class that has satisfied these prerequisites if "the questions of law or fact common to class members predominate over any questions affecting only individual members" – also referred to as

predominance – and “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

I. Rule 23(a)

The parties have stipulated that numerosity and commonality are satisfied. [Dkt. No. 57-1] As for typicality, the liability of the Defendants under sections 11 and 15 depends upon the content of the Registration Statements and its amendments. “When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.” Robidoux v. Celani, 987 F.2d 931, 936-37 (2d Cir. 1993). Defendants argue that lead plaintiff Charles Rankin’s claim is atypical because his purchases came after later revised disclosures, and thus may be subject to certain unique defenses, such as a negative loss causation or knowledge defense. However, lead plaintiff Karen Desrocher’s earlier purchases mean that such defenses would not be availing as against her. Therefore, the “danger that absent class members will suffer if their representative is preoccupied with defenses unique to it,” see Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 903 F.2d 176, 180 (2d Cir. 1990), is sufficiently mitigated by Desrocher’s involvement as a class representative. And “the mere existence of individualized factual questions with respect to the class representative’s claim will not bar class certification.” Id.

As for adequacy, Defendants also argue that the proposed lead representatives are inadequate to represent the various class members, based upon their lack of understanding of the class claims and their duties as a class representative. Rule 23 requires that the lead representatives “will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). From this record, the lead plaintiffs are well able to protect the interests of the class. See In re Pfizer Inc. Sec. Litig., 282 F.R.D. 38, 50 (S.D.N.Y. 2012) (“Defendants’ examples of

[the class representative's] alleged lack of knowledge and supervision . . . are trivial and insufficient to establish that [the lead plaintiff] is an inadequate class representative.” (citing Baffa v. Donaldson, 222 F.3d 52, 61 (2d Cir.2000))).

II. Rule 23(b)

The requirements of Rule 23(a) are satisfied, as are the requirements of Rule 23(b). “Section 11 of the Securities Act prohibits materially misleading statements or omissions in registration statements filed with the SEC.” In re Morgan Stanley Info. Fund Sec. Litig., 592 F.3d 347, 358 (2d Cir. 2010) (citing 15 U.S.C. § 77k(a)). “[C]laims brought pursuant to section[] 11 . . . must plead materiality of the alleged misrepresentation or omission, but not scienter, reliance, or causation.” In re Fuwei Films Sec. Litig., 634 F. Supp. 2d 419, 434 (S.D.N.Y. 2009). And, “[s]ection 15 of the 1933 Act creates liability for an individual or entity that ‘controls any person liable’ under section 11 or 12. Thus, to succeed on a claim under section 15, a plaintiff must demonstrate primary liability under section 11 or 12.” Fait v. Regions Fin. Corp., 655 F.3d 105, 109 (2d Cir. 2011) (quoting 15 U.S.C. § 77o) (internal citations omitted)). The common questions of law or fact that are common to the class will therefore predominate in the litigation.

Defendants in this securities class action registered, offered, or sold 6.4 million shares of Covisint stock. “There is no indication that individual class members have any interest in prosecuting their claims separately, or that any such litigation has already commenced.” In re Pfizer Inc. Sec. Litig., 282 F.R.D. at 53. The consolidation of these claims into a single class actions allows for the most cost-effective and efficient resolution of the dispute, and therefore a class action is superior to other methods of adjudicating the conflict.

III. Conclusion

The motion for class certification is GRANTED. The named plaintiffs Karen Desrocher and Charles Rankin are appointed as Class Representatives, and Robbins Geller and

Johnson & Weaver are appointed as Class Counsel. The Clerk shall mark the motion (Doc. No. 59) terminated.

The status conference previously scheduled for March 18, 2016 at 10:00 a.m. (Dkt. No. 55) shall be held on March 4, 2016 at 10:00 a.m.

SO ORDERED

Dated: February 22, 2016
New York, New York

A handwritten signature in black ink, appearing to read 'Alvin K. Hellerstein', written over a horizontal line.

ALVIN K. HELLERSTEIN
United States District Judge