UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

LOUISIANA MUNICIPAL POLICE EMPLOYEES RETIREMENT SYSTEM, SJUNDE AP-FONDEN, BOARD OF TRUSTEES OF THE CITY OF FORT LAUDERDALE GENERAL EMPLOYEES' RETIREMENT SYSTEM, EMPLOYEES' RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS, AND PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 2:11-cv-289
GREEN MOUNTAIN COFFEE ROASTERS, INC., LAWRENCE J. BLANFORD and FRANCES G. RATHKE,	)	
Defendants.	)	

OPINION AND ORDER

This is a putative class action brought by several institutional investors against Keurig Green Mountain, Inc., formerly known as Green Mountain Coffee Roasters, Inc. ("Green Mountain"), its former Chief Executive Officer, Lawrence Blanford, and its former Chief Financial Officer, Frances Rathke. Now before the Court is Plaintiffs' motion for class certification and appointment of class representatives, brought pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), and for appointment of class counsel under Federal Rule of Civil Procedure 23(g). For the reasons set forth below, the Plainiffs'

motion is **granted**.

Factual Background

Co-lead Plaintiffs in this case are Louisiana Police Employees' Retirement System, Sjunde AP-Fonden, Board of Trustees of the City of Fort Lauderdale General Employees' Retirement System, Employees' Retirement System of the Government of the Virgin Islands, and Public Employees' Retirement System of Mississippi. After their appointment as lead plaintiffs, Plaintiffs filed their Complaint on November 5, 2012, asserting violations of Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5. Plaintiffs now move the Court to certify this matter as a class action on behalf of a class of persons or entities who purchased or otherwise acquired Green Mountain common stock between February 2, 2011 and November 9, 2011 (the "Class Period"), and were injured as a result.[1] Plaintiffs also move for the appointment of Barrack, Rodos & Bacine ("BRB"), Bernstein Litowitz Berger & Grossman ("BLBG"), and Kessler Topaz Meltzer & Check, LLP ("KTMC") as class counsel.

[1] The Complaint excludes from the class: the Defendants and their immediate families; any person who was an executive officer and/or director of Green Mountain during the Class Period; any person, firm, trust, corporation, officer, director, or any other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants; and any legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. ECF No. 71 at 58, ¶ 142.

Green Mountain manufactures the Keurig single-cup brewing system and other coffee-related products. The Complaint alleges that during the Class Period, Defendants made fraudulent misrepresentations about Green Mountain's inventory, business performance, and growth prospects in a manner designed to mislead investors. Specifically, Defendants allegedly assured the market and market analysts that Green Mountain's sales were increasing rapidly, and that the company was straining to meet demand. Defendants also allegedly represented that Green Mountain was not building excess inventory. Plaintiffs claim that, in fact, Green Mountain was accumulating large product inventories, and that representations about its struggles to meet production demands were part of a false "growth story" that was used to drive up the company's stock price.

The allegations in the Complaint focus, in part, upon quarterly statements by Green Mountain executives. On May 3, 2011, company representatives allegedly stated during a conference call that Green Mountain was struggling to meet demand, that product availability had hit "some spot outages," and that efforts were being made to increase production capacity. ECF No. 71 at 48, ¶ 109. On July 27, 2011, Green Mountain executives represented that the company had been able to rectify the prior shortages, and was now at "appropriate inventory levels for the products." *Id.* at 50, ¶ 115.

Plaintiffs claim that these statements were misleading. The Complaint alleges that of the May 3, 2011 conference call, Green Mountain was "not maintaining optimum inventory levels, but instead [was] producing far more product than necessary to meet demand, understating the excessive amount of inventory in the Company's warehouses and otherwise misleading investors." *Id.* at 49, ¶ 112. The Complaint makes the same allegations with respect to the July 27, 2011 conference call, claiming that rather than maintaining appropriate inventories, Green Mountain was "continuing to hide the fact that inventory levels were excessively high causing vast quantities of inventory to become expired and obsolete." *Id.* at 50-51, ¶ 116. Plaintiffs further claim that in addition to the cited misrepresentations to analysts, Green Mountain was "hiding inventory from its auditors, making sham shipments to nowhere, and suspect cross-shipping and inventory transfers . . . ." *Id.* at 51, ¶ 116.

Within days of the July 27, 2011 conference call, Defendant Rathke sold 390,859 shares of Green Mountain stock, rendering proceeds of over $32 million. It was Rathke's first sale of company stock since 2003, and represented 86% of her total holdings. Defendant Blanford sold 135,000 shares of stock during the Class Period, resulting in proceeds of over $16 million.

Plaintiffs claim that the truth about Green Mountain's "growth story" was revealed in October and November, 2011. On

October 17, 2011, a report by investor David Einhorn described a "variety of shenanigans that appear designed to mislead auditors and to inflate financial results," including production practices that were leading to "inventory and spoilage problems." *Id.* at 6, ¶ 6. On November 9, 2011, Green Mountain reported that it had failed to meet sales and revenue expectations, and that inventory levels had risen dramatically. From November 9, 2011 to November 10, 2011, the stock price of Green Mountain shares dropped from $67.02 to $40.89 per share.

Plaintiffs are each institutional investors that purchased Green Mountain common stock during the Class Period and allegedly suffered financial losses as a result of Defendants' misconduct.

Discussion

I. Class Certification

A plaintiff seeking certification of a class action bears the burden of satisfying the requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. In addition, a plaintiff must show that the proposed class satisfies the requirements of at least one of the subsections of Fed. R. Civ. P. 23(b). Here, Plaintiffs seek certification under Rule 23(b)(3), which provides that a class action may be brought where the court finds that "questions of law or fact common to class members predominate over any questions affecting only individual members" and (2) "that a

class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The Second Circuit has also "recognized an implied requirement of ascertainability in Rule 23," which demands that a class be "sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member." *Brecher v. Republic of Argentina*, 806 F.3d 22, 24 (2d Cir. 2015) (internal quotation marks and citations omitted). "To certify a class, a district court must . . . find that each [Rule 23] requirement is 'established by at least a preponderance of the evidence.'" *U.S. Foodservice Inc. Pricing Litigation*, 729 F.3d 108, 117 (2d Cir. 2013) (quoting *Brown v. Kelly*, 609 F.3d 467, 476 (2d Cir. 2010)).

"Generally, claims alleging violations of Section[ ] 10(b) . . . of the Exchange Act are especially amenable to class certification." *In re Smith Barney Transfer Agent Litig.*, 290 F.R.D. 42, 45 (S.D.N.Y. 2013) (internal quotation marks omitted). "In light of the importance of the class action device in securities fraud suits, [the Rule 23] factors are to be construed liberally." *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 179 (2d Cir. 1990).

A. Numerosity

Plaintiffs must show that the proposed "class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P.

23(a)(1). "'Impracticable' simply means difficult or inconvenient, not impossible." *In re Currency Conversion Fee Antitrust Litig.*, 230 F.R.D. 303, 307 (S.D.N.Y. 2004) (citing *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993)). In the Second Circuit, numerosity is presumed where the proposed class includes more than forty members. *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995).

It is undisputed that more than one hundred persons or entities purchased or acquired Green Mountain Stock during the Class Period. The company's common stock was traded on the NASDAQ throughout the Class Period, with over 140 million shares outstanding. Weekly trading averaged over 6% of total shares outstanding, meaning that millions of shares were traded each week. Given this volume of trading, and the concession that over 100 persons or entities belong to the class, the Court finds that the numerosity element is satisfied.

B. Commonality

Rule 23(a)(2)'s commonality requirement is met when "plaintiffs' grievances share a common question of law or of fact." *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 245 (2d Cir. 2007). "[A]n issue is common to the class when it is susceptible to generalized, class-wide proof." *In re Nassau County Strip Search Cases*, 461 F.3d 219, 227 (2d Cir. 2006). Accordingly, a

court must determine whether the class members' claims "will in fact depend on the answers to common questions," and whether a class action is likely to "generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 356 (2011). Commonality is generally satisfied where there are common issues relating to violations of federal securities laws, misrepresentations of material fact, scienter, and damages. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 245 F.R.D. 147, 158 (S.D.N.Y. 2007), *order aff'd in part, vacated in part*, 574 F.3d 29 (2d Cir. 2009).

In this case, the class members were each allegedly injured as a result of misrepresentations about Green Mountain's performance during the Class Period. When problems were revealed, the stock price dropped and the class members allegedly suffered financial losses. Questions of misrepresentation, scienter, and damages are all common within the proposed class, and Plaintiffs will likely work to resolve those questions through a presentation of common proof. Commonality is therefore satisfied.

C. Typicality

The typicality requirement overlaps with that of commonality. *See Marisol A. v. Giuliani*, 126 F.3d 372, 375 (2d Cir. 1997). "Typicality requires that the claims or defenses of the class representatives be typical of the claims and defenses

of the class members. This requirement 'is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.'" *Brown*, 609 F.3d at 475 (2d Cir. 2010) (internal citation omitted) (quoting *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)). "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).

As with commonality, the typicality requirement is satisfied here. All claims relate to alleged misrepresentations during the Class Period, which misrepresentations led to drops in Green Mountains' stock price and, correspondingly, losses for the class member investors. Although amounts of stock purchased, as well as dates of purchase, may vary from class member to class member, the claims and defenses applicable to each class member will be fundamentally the same.

D. Adequacy

Rule 23(a)(4) requires plaintiffs to show that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "'Adequacy is twofold: the proposed class representative must have an

interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members.'" *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 249 (2d Cir. 2011) (quoting *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006)); *see also Gary Plastic Packaging Corp.*, 903 F.2d at 180 ("[C]lass certification is inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation." (citations omitted)). Adequacy of representation also requires that the plaintiffs' attorneys are "qualified, experienced and able to conduct the litigation." *Baffa v. Donaldson, Lufkin & Jenrette Securities Corp.*, 222 F.3d 52, 60 (2d Cir. 2000).

Plaintiffs in this case each purchased Green Mountain stock during the Class Period and allegedly suffered damages as a result. By the Complaint's definition of the class, these same basic facts underlie the claims of all class members, with no apparent conflicts. Vigorous prosecution of those claims has been evidenced by Plaintiffs' conduct to date, as the case has proceeded for four years, including an appeal to the Second Circuit, with reports of significant discovery. With respect to class counsel, KTMC, BLBG, and BRB represent to the Court that they are among the most experienced class action law firms in the country, and those claims have not been disputed. The adequacy

requirement is therefore satisfied.

E. Implied Requirement of Ascertainability

In addition to the express requirements of Rule 23(a), the Second Circuit recognizes an "implied requirement of ascertainability." *Brecher*, 806 F.3d at 24. "[T]he touchstone of ascertainability is whether the class is 'sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.'" *Id.* (quoting 7A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1760 (3d ed. 1998)). Accordingly, "[a] class is ascertainable when defined by objective criteria . . . and when identifying its members would not require a mini-hearing on the merits of each case." *Id.* at 24–25 (quotation marks and citation omitted); *see also In re Petrobras Securities*, 2017 WL 2883874, at *8 (2d Cir. July 7, 2017) ("The ascertainability doctrine that governs in this Circuit requires only that a class be defined using objective criteria that establish a membership with definite boundaries."). Here, the class is well-defined, and records of shareholder acquisitions of Green Mountain common stock will make it readily feasible to ascertain the members of the class.

F. Rule 23(b)(3)

Once a plaintiff shows that the proposed class meets the above requirements, certification will be permitted if: (1)

"questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "Rule 23(b)(3)'s predominance criterion is even more demanding' than the 'rigorous analysis' mandated under Rule 23(a), and requires a 'close look at whether common issues predominate over individual ones.'" *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 103 (2d Cir. 2015) (quoting *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432 (2013)).

Defendants' opposition to certification focuses on Rule 23(b)(3), and in particular upon the Plaintiffs' damages calculation within the issue of predominance. Defendants argue that the proposed calculation cannot apply, and is thus not predominant, to all class members.

1. Predominance

"Predominance is satisfied 'if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.'" *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (quoting *In re U.S. Foodservice Inc. Pricing Litigation*, 729 F.3d at 118)). A "common question is one where 'the same evidence will suffice for

each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.'" *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (quoting 2 William B. Rubenstein, Newberg on Class Actions § 4:50, at 196–97 (5th ed. 2012)). "Predominance is a test readily met in certain cases alleging . . . securities fraud." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

"Considering whether 'questions of law or fact common to class members predominate' begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011) ("*Halliburton I*"). To sustain a claim for securities fraud under Section 10(b), "a plaintiff must prove (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008). "These elements are generally subject to class wide proof." *In re Pfizer Sec. Litig.*, 282 F.R.D. 38, 52 (S.D.N.Y. 2012).

While the predominance of most of these elements, such as misrepresentations and connections to the sale of securities, is easily established, predominance "in a securities fraud action

often turns on the element of reliance." *Halliburton I*, 563 U.S. at 810. The Supreme Court has recognized that it would be impossible to show predominance if proof of individual shareholder reliance were required. *See id.* ("Requiring proof of individualized reliance from each member of the proposed plaintiff class effectively would prevent such plaintiffs from proceeding with a class action, since individual issues would overwhelm the common ones." (quotation marks and alterations omitted)). Plaintiffs may therefore invoke a rebuttable presumption established by the Supreme Court in *Basic v. Levinson*, 485 U.S. 224, 241-43 (1988).

The *Basic* presumption rests "on what is known as the 'fraud-on-the-market' theory, which holds that 'the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations.'" *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2408 (2014) (quoting *Basic*, 485 U.S. at 246). To establish the presumption of reliance, a plaintiffs must show: "(1) that the alleged misrepresentations were publicly known, (2) that they were material, (3) that the stock traded in an efficient market, and (4) that the plaintiff traded the stock between the time the misrepresentations were made and when the truth was revealed." *See id.* at 2412. The Supreme Court has clarified that materiality need not be proven at the class

certification stage. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013).

Plaintiffs allege that Green Mountain made public misrepresentations about the company's performance during the Class Period. Plaintiffs also assert that those misrepresentations were material. The designated class purchased or otherwise acquired Green Mountain stock between the time of the alleged misrepresentations and, according to Plaintiffs, the end of the Class Period when the company's true inventory and performance status was revealed.

Efficiency of the market is undisputed. Briefly stated, "indirect evidence of market efficiency—including that a stock trades in high volumes on a large national market and is followed by a large number of analysts—will typically be sufficient to satisfy the *Basic* presumption on class certification." *Strougo v. Barclays PLC*, 312 F.R.D. 307, 322 (S.D.N.Y. 2016). Here, Plaintiffs have shown that Green Mountain shares were traded in high volume on the NASDAQ and were followed by a large number of analysts. ECF No. 226 at 8-10 (Expert Report of David I. Tabak, Ph.D.). Furthermore, under the oft-cited factors for efficiency set forth in *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989), Green Mountain was eligible to file a Form S-3 registration statement, and its stock price responded to material news. ECF No. 226 at 13-21; *Teamsters Local 445 Freight Div. Pension Fund*

v. Bombardier Inc., 546 F.3d 196, 204 n.11 (2d Cir. 2008) (noting that *Cammer* factors have been "routinely applied by district courts considering the efficiency of equity markets").

Defendants contend that Plaintiffs "have not identified a damages model corresponding to their theory of liability that can be applied consistently across the entire class period, as required by the holding in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013)." ECF No. 259 at 4. With respect to the calculation of damages, Plaintiffs have offered Dr. Tabak's event study methodology, which isolates allegedly misleading disclosures. Dr. Tabak will quantify the alleged artificial inflation in Green Mountain's stock price resulting from such disclosures, and calculate the impact for each day of the Class Period. Plaintiffs submit that this analysis can be used to calculate damages for each class member. ECF No. 260-2 at 30.

Defendants submit that Dr. Tabak's methodology is flawed because: (1) Plaintiffs' claim of a "false growth story" is undermined by the fact that public statements about Green Mountain's sales prospects prior to July 27, 2011 were true, and even *underestimated* projected sales growth, thus limiting any potential class to those who suffered losses after that time; and (2) Plaintiffs' claims about being "capacity constrained" were rectified on July 27, 2011, when Green Mountain reported that production was no longer straining to meet demand and that

inventories had been returned to appropriate levels. Because Dr. Tabak's calculations do not, under either theory, account for the impacts claimed by Defendants as of the July 27, 2011 disclosures, Defendants contend that his methodology cannot be applied consistently over the course of the Class Period.

Defendants' first argument is belied by the Plaintiffs' allegations. Plaintiffs have never alleged that this case was about false sales forecasts. Instead, the Complaint alleges that "Defendants told investors that the Company was straining its production capacity in an effort to meet skyrocketing consumer demand for its Keurig and K-Cup products," when, in fact, the company was accumulating large inventories of product. ECF No. 71 at 4. Indeed, the Second Circuit summarized the Complaint as asserting that "Green Mountain was hiding stockpiled and expiring coffee products . . . while it fraudulently continued to assure investors that it was straining to meet an increasing demand for its products, all in an effort to drive up its stock price." *Employees' Ret. Sys. of Gov't of the Virgin Islands v. Blanford*, 794 F.3d 297, 306 (2d Cir. 2015).

Defendants' second argument, that any representations about Green Mountain being "capacity constrained" were rectified on July 27, 2011, constitutes a question of truth that is inappropriate for consideration at the class-certification stage. *See* ECF NO. 259 at 17 (Defendants' brief arguing that " . . . at

the very latest, the market knew the 'true' level of demand as of July 27, 2011.").[2] The Supreme Court has held that while a defendant may "demonstrat[e] that 'news of the [truth] credibly entered the market and dissipated the effects of [prior] misstatements . . . [p]roof of that sort is a matter for trial' (and presumably also for a summary-judgment motion under Federal Rule of Civil Procedure 56)." *Amgen*, 568 U.S. at 482 (quoting *Basic*, 485 U.S. at 248-49, 249 n.29) (parenthetical in *Amgen*). Defendants further argue that because the November 9, 2011 statements were not corrective given the July 27, 2011 disclosures, Plaintiffs cannot establish loss causation. The Supreme Court has determined that "loss causation . . . need not be adjudicated before a class is certified." *Amgen*, 568 U.S. at 475.

Furthermore, Defendants misapply *Comcast*. The Second Circuit has construed the "principal holding of *Comcast* [as being] that a 'model purporting to serve as evidence of damages . . . must measure only those damages attributable to th[e] theory' of liability on which the class action is premised." *Roach v.*

[2] Dr. Tabak opines in his Reply Expert Report that "while the [July 27, 2011] sales results provided some insight into the true level of demand, they did not dispel the alleged inflated view that the market had about that level. . . . Because the July 27, 2011 news did not reveal that Green Mountain was not likely to be capacity-constrained even when demand was high, the alleged fraud regarding the way that Defendants hid the true level of demand from the market remained unchanged." ECF No. 267-1 at 13-14.

T.L. Cannon Corp., 778 F.3d 401, 407-08 (2d Cir. 2015) (quoting *Comcast*, 133 S. Ct. at 1433); *see also Sykes v. Mel S. Harris & Assocs.*, 780 F.3d 70, 88 (2d Cir. 2015) ("All that is required at class certification is that the 'plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability.'") (quoting *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013)). Here, Plaintiffs have offered a damages methodology that can be applied on a class-wide basis, and that is consistent with their theory of the case. *See, e.g., In re JPMorgan Chase & Co. Sec. Litig.*, 2015 WL 10433433, at *7 (S.D.N.Y. Sept. 29, 2015) (finding predominance where "Plaintiffs' expert proposes to calculate classwide, per-share damages through an event study analysis of the stock price inflation caused by Defendants' alleged misrepresentations or omissions."). Indeed, Dr. Tabak's analysis proposes to calculate damages throughout the Class Period as alleged by the Plaintiffs, and based upon their single theory of fraud perpetrated through November 2011. That methodology does not run afoul of *Comcast*. *See Comcast*, 133 S. Ct. at 1434 (noting that expert's damages model "did not attribute damages to any one particular theory of anticompetitive impact" and could no longer be applied after some of the alleged theories had been dismissed).

"Rule 23(b) requires a showing that *questions* common to the

class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen*, 568 U.S. at 459. Here, Defendants have raised issues that are either inconsistent with the Plaintiffs' claims and assertions, or premature for resolution at this stage in the case. Plaintiffs have made a sufficient showing, including a common method of damages calculation, to satisfy the requirement of predominance under Rule 23(b)(3).

2. Superiority

"The superiority requirement asks courts to balance, in terms of fairness and efficiency, the advantages of a class action against those of alternative available methods of adjudication." *In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 91 (S.D.N.Y. 2007), *aff'd sub nom. In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223 (2d Cir. 2016). As described by the Second Circuit, the rule requires courts to determine whether "substituting a single class action for numerous trials in a matter involving substantial common legal issues and factual issues susceptible to generalized proof will achieve significant economies of time, effort and expense, and promote uniformity of decision." *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d at 130.

In this case, a single class action will make it unnecessary to bring individual suits involving the same questions, and will promote uniformity of decision. Furthermore, Plaintiffs will

represent a large class, of which some members would be unlikely to have losses sufficient to justify the time and expense of individual litigation. The Court therefore finds that a class action is a superior method of adjudicating the merits of this case.

II. Appointment of Class Counsel

When appointing class counsel, a court must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). Here, Plaintiffs' counsel have filed two consolidated complaints, litigated a successful appeal before the Second Circuit, and engaged in significant discovery, all of which evidence the resources that counsel have committed to this case. Their filings demonstrate a knowledge of the applicable law, and they have represented to the Court that they are experienced in bringing class action lawsuits. BRB, BLBG, and KTMC are therefore appointed class counsel.

Conclusion

For the reasons set forth above, Plaintiffs' motion for class certification and appointment of class representatives and class counsel is **granted**.

DATED at Burlington, Vermont, this 21st day of July, 2017.

/s/William K. Sessions III
William K. Sessions III
District Court Judge