UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

WILLIAM MCGILL, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. RALPH HAKE, DAVID F. MELCHER, JOHN J. HAMRE, PAUL J. KERN, HERMAN E. BULLS, PATRICK MOORE, MARK L. REUSS, ROBERT DAVID YOST, BILLIE I. WILLIAMSON, HARRIS CORPORATION, and HARRIS COMMUNICATION SOLUTIONS (INDIANA), INC., Defendants.	)	No. 1:15-cv-00217-TWP-DKL

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Other Authorities

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 23, interim co-lead plaintiffs William McGill and Jesse Mallinger (the "Co-Lead Plaintiffs"), on behalf of themselves and members of the Settlement Class (defined below), respectfully request that the Court grant preliminary approval of the proposed settlement of this putative class action (the "Action") against defendants Exelis Inc. ("Exelis"), Harris Corporation ("Harris"), Harris Communication Solutions (Indiana), Inc. ("Merger Sub"), Ralph Hake, David F. Melcher, John J. Hamre, Paul J. Kern, Herman E. Bulls, Patrick Moore, Mark L. Reuss, R. David Yost, and Billie I. Williamson (the "Individual Defendants" or the "Board", and, collectively with Exelis, Harris and Merger Sub, the "Defendants"). Specifically, Co-Lead Plaintiffs seek entry of the [Proposed] Scheduling Order and Order Preliminarily Approving Proposed Settlement (the "Preliminary Order")[1] that will: (i) preliminarily approve the settlement (the "Settlement") set forth in the Stipulation of Settlement dated October 22, 2015 (the "Stipulation")[2]; (ii) preliminarily certify, for settlement purposes only, a non-opt-out class consisting of Co-Lead Plaintiffs and any and all record holders and beneficial owners of any shares of Exelis at any time between and including September 17, 2014 and May 29, 2015[3]; (iii) approve the form, manner, and content of the notice to be provided to

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[1] A copy of the Preliminary Order is attached as Exhibit B to the Stipulation.

[2] A copy of the Stipulation is attached as Exhibit 1 to the Declaration of William N. Riley in Support of Co-Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement ("Riley Decl.") filed herewith.

[3] Including their respective successors in interest, successors, predecessors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, but excluding Defendants, their subsidiaries or other affiliates, their assigns, members of their immediate families, officers of Exelis, and the legal representatives, heirs, successors, or assigns of any such excluded person (the "Settlement Class").

the proposed Settlement Class[4] and order the direct mailing of the Notice to Class members; and (iv) schedule a hearing (the "Settlement Hearing") at which the Court will consider final approval of the Settlement.[5]

As set forth below, the proposed Settlement Class satisfies the requirements of Rule 23(a), 23(b)(1) and 23(b)(2). Further, the proposed Notice adequately informs the proposed Settlement Class members of: (1) the terms and conditions of the Settlement; (2) the date of the Settlement Hearing; and (3) the proposed Settlement Class members' right to object to the Settlement and to be heard at the Settlement Hearing. The Notice will be mailed to the last known address of each reasonably identifiable member of the proposed Settlement Class by U.S. Mail, first class postage pre-paid, in accordance with the Preliminary Order. Thus, the form and method of Notice is reasonable and comports with due process requirements.

Co-Lead Plaintiffs and Co-Lead Counsel (defined below) believe that the Settlement is fair, reasonable, and adequate and therefore warrants approval by this Court pursuant to Fed. R. Civ. P. 23(e). Accordingly, Co-Lead Plaintiffs respectfully request that the Court preliminarily approve the Settlement and enter the Preliminary Order as submitted.

II. BACKGROUND OF THE LITIGATION

On February 5, 2015, Exelis and Harris finalized the Agreement and Plan of Merger ("Merger Agreement"), pursuant to which Merger Sub merged with and into Exelis, with Exelis surviving as a wholly owned subsidiary of Harris (the "Merger"), and Exelis shareholders

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[4] A copy of the Notice is attached as Exhibit C to the Stipulation. The [Proposed] Order and Final Judgment is attached as Exhibit D to the Stipulation.

[5] Although this Motion is unopposed, this Memorandum of Law is submitted solely by Co-Lead Plaintiffs and does not represent the views of Defendants.

received $16.625 in cash and 0.1025 of a share of Harris common stock (the "Merger Consideration") in exchange for each share of Exelis common stock they owned.

On February 12, 2015, Co-Lead Plaintiff William McGill filed this Action as a class action alleging that the Individual Defendants breached their fiduciary duties to Exelis' shareholders in connection with the proposed Merger and that Harris and Merger Sub aided and abetted the Individual Defendants' breaches of fiduciary duties.

On March 5, 2015, Harris filed with the United States Securities and Exchange Commission ("SEC") a Form S-4 Registration Statement and certain amendments thereto, relating to the Merger and containing a preliminary proxy statement and prospectus relating to the Merger distributed to Exelis shareholders (the "Form S-4").

On March 20, 2015, plaintiffs the George Leon Family Trust, Stephen Ballweber, Jesse Mallinger, and the Hopper Family Trust c/o Joseph R. Hopper and/or Shirley A. Hopper filed the class-action lawsuit captioned *The George Leon Family Trust, et al. v. Exelis Inc., et al.*, No. 1:15-cv-00466-RLY-DML (the "*George Leon* Action") against the Defendants, alleging substantially the same breach-of-fiduciary duty and aiding-and-abetting claims against the Individual Defendants, Harris and Merger Sub as were alleged in this Action, and also alleging the Individual Defendants and Exelis violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 by causing a materially incomplete and misleading Registration Statement to be filed with the SEC relating to the Merger.

On April 6, 2015, Co-Lead Plaintiffs served a letter requesting certain discovery items from Defendants. After arm's-length negotiations as to the scope of discovery, Defendants produced certain confidential, internal documents related to the Merger (the "Confidential Documents") in response to Co-Lead Plaintiffs' discovery request letter. Plaintiffs' Counsel

(defined below) and their financial expert subsequently reviewed and analyzed the Confidential Documents in connection with their assessment of the claims asserted in the Operative Complaint (defined below).

On April 20, 2015, on unopposed motions by Co-Lead Plaintiffs, the Court consolidated for all purposes the *George Leon* Action into this Action, ordered the Clerk of Court to administratively close the *George Leon* Action, and designated the complaint in the *George Leon* Action—which alleges disclosure claims under the federal securities laws concerning the Form S-4—as the operative complaint (the "Operative Complaint").

By separate order dated April 20, 2015, the Court appointed William McGill and Jesse Mallinger as interim Co-Lead Plaintiffs and the law firms of Faruqi & Faruqi, LLP and Robbins Arroyo LLP as interim co-lead counsel ("Co-Lead Counsel"), and also appointed William N. Riley of the law firm of Riley Williams & Piatt, LLC (formerly of Price Waicukauski & Riley, LLC) as interim liaison counsel, and the law firms of Rigrodsky & Long, P.A., Ryan & Maniskas, LLP, Levi & Korsinsky, LLP, and Kahn Swick & Foti, LLC as members of plaintiffs' executive committee (collectively with Co-Lead Counsel, "Plaintiffs' Counsel").

On April 24, 2015, Defendants caused the definitive proxy statement to be filed with the SEC on Schedule 14A ("Definitive Proxy Statement"). The Definitive Proxy Statement forms part of the registration statement on Form S-4 filed by Harris with the SEC in connection with the Merger.

In early May 2015, counsel for the parties began engaging in arm's-length negotiations concerning a possible resolution of the Action, including the negotiation of various supplemental disclosures that Co-Lead Plaintiffs and Plaintiffs' Counsel demanded that Defendants file with

the SEC sufficiently in advance of the Exelis shareholders meeting to approve the Merger, which was set for May 22, 2015 (the "Shareholders' Meeting").

On May 5, 2015, having reviewed the public filings related to the Merger, the Form S-4, the Definitive Proxy Statement, and the Confidential Documents, and in consultation with their financial expert, Plaintiffs' Counsel sent a written settlement demand to Defendants.

The Parties entered into a memorandum of understanding on May 11, 2015 ("MOU"), which set forth an agreement in principle for the settlement of the Action between and among Co-Lead Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants on the terms and subject to the conditions set forth in the MOU.

Pursuant to the MOU, Defendants agreed to make certain supplemental disclosures ("Supplemental Disclosures"), as reflected in the Form 8-K dated May 11, 2015, filed by Exelis with the SEC. As discussed below, the Supplemental Disclosures provided Exelis' shareholders with material information concerning the fairness of the Merger and the Merger Consideration that had been omitted from the Definitive Proxy Statement and was necessary for them to cast a fully informed vote concerning the Merger.

On May 22, 2015, the Shareholders' Meeting was held, and 150,176,055 shares were represented in person or by proxy. The matters submitted to the shareholders and voted upon at this meeting included approval of the Merger Agreement. The Merger Agreement was approved with 146,946,627 shares for, 1,222,805 shares against, and 2,004,632 shares abstaining.

On May 29, 2015, the Merger closed and Exelis became a wholly owned subsidiary of Harris.

Following the execution of the MOU, Plaintiffs' Counsel conducted additional discovery to confirm the reasonableness of the terms of the Settlement (the "Confirmatory Discovery"). In

particular, Plaintiffs' Counsel reviewed thousands of pages of additional non-public documents produced by Defendants and conducted the depositions of Exelis' Chairman Ralph Hake and a representative of J.P. Morgan Securities LLC ("J.P. Morgan"), Exelis' financial advisor. During the course of discovery, Co-Lead Plaintiffs were able to fully ascertain the strengths and weaknesses of their claims. Moreover, through the depositions of Mr. Hake and the J.P. Morgan representative, Co-Lead Plaintiffs assured themselves that the process undertaken by the Individual Defendants to sell the Company and how the Individual Defendants valued the Company was satisfactory. Co-Lead Plaintiffs, only after full evaluation of the strengths and weaknesses of their claims, arrived at the belief that the Action favors Settlement.

From the initiation of this litigation, Co-Lead Plaintiffs vigorously pursued this case and sought discovery in an expedited manner to cure material omissions in the Proxy. Co-Lead Counsel and Defendants' Counsel were able to agree on discovery to explore Co-Lead Plaintiffs' concerns regarding the Proposed Transaction, prior to the Exelis Shareholders' Meeting. Co-Lead Plaintiffs, through the efforts of Plaintiffs' Counsel (who have extensive experience in litigation of this nature),[6] sought and received core documents critical to evaluating the fairness of the Merger and the material omissions in the Proxy, including: (i) minutes of the Exelis Board and (ii) presentations to the Exelis Board by J.P. Morgan. Co-Lead Counsel worked with their financial expert, who has extensive experience in valuing companies like Exelis, to evaluate the consideration to be received by Exelis shareholders and to identify material omissions in the Proxy which Co-Lead Plaintiffs believed needed to cured before the Exelis shareholders' vote.

[6] Copies of the Faruqi Firm and Robbins Arroyo's firm resumes are attached as Exhibits 2 and 3 to the Riley Decl.

Settlement negotiations were extensive and adversarial. Indeed, Co-Lead Counsel and Defendants' Counsel exchanged several proposals and counter-proposals concerning the nature and scope of the Supplemental Disclosures. Ultimately, Defendants agreed to provide Exelis' shareholders with material information concerning, *inter alia*: (i) the unlevered free cash flows of the Company; (ii) the material financial analyses J.P. Morgan utilized in connection with providing its fairness opinion; and (iii) potential conflicts of interest surrounding the Merger. These Supplemental Disclosures resolved many of the issues raised by Co-Lead Plaintiffs in the litigation.

At the conclusion of these negotiations, Co-Lead Plaintiffs and Co-Lead Counsel unanimously agreed to enter into the MOU. The Settlement contemplated by the MOU ensured that Exelis' shareholders were given material information necessary for them to make a fully informed decision about whether to vote for or against the Merger that had been omitted from the Proxy.

After fully analyzing the merits of all parties' contentions, including the impact of the proposed Settlement on Co-Lead Plaintiffs and absent Settlement Class members, Co-Lead Plaintiffs and Co-Lead Counsel entered into the Stipulation providing for the Settlement described below. Importantly, during the negotiations, all parties had a clear view of the strengths and weaknesses of their respective claims and defenses, and the Settlement is the product of arm's-length negotiations between the parties, who were all represented by counsel with extensive experience and expertise in shareholder litigation. Accordingly, Co-Lead Plaintiffs submit that the proposed Settlement is fair, adequate and reasonable and merits the Court's preliminary approval.

III. THE SETTLEMENT TERMS

The Settlement required Exelis to disclose certain material information to members of the Settlement Class that Co-Lead Plaintiffs believed was critical to Exelis' shareholders' ability to make a fully informed decision regarding whether to vote for, or against, the Merger.

The Supplemental Disclosures, which were set forth in a Form 8-K filed by Exelis with the SEC on May 11, 2015, provided material information to Exelis shareholders in advance of the Shareholders' Meeting concerning the following:

- With respect to the non-public financial forecasts that Exelis provided to J.P. Morgan, Harris and Harris' financial advisor in connection with the negotiation of the Merger, which were prepared by Exelis' management for the Board to use in connection with evaluating the Merger, the Supplemental Disclosures provided Exelis' projections for unlevered free cash flow and earnings before interest and taxes ("EBIT") for 2014-2019;
- With respect to the material financial analyses J.P. Morgan utilized in connection with providing its fairness opinion, the Supplemental Disclosures provided the multiples calculated for each of the eleven companies selected for the Public Trading Multiples Analysis for Exelis;
- With respect to the material financial analyses J.P. Morgan utilized in connection with providing its fairness opinion, the Supplemental Disclosures provided the multiples calculated for each of the seven companies selected for the Public Trading Multiples Analysis for Harris;
- With respect to potential conflicts of interest involving the Merger, the Supplemental Disclosures provided that there had not been any substantive

discussions between Exelis and Harris regarding post-Merger employment of any of Exelis' executive officers by Harris, or regarding post-Merger board membership of any director or officer of Exelis on the Harris board of directors;

- With respect to potential conflicts of interest involving J.P. Morgan, the Supplemental Disclosures provided additional information about J.P. Morgan's role as the joint lead arranger, joint bookrunner and agent on a 2015 Exelis credit facility; and
- With respect to the run rate synergies that Exelis management estimated could result from the Merger, which were cited as a benefit Exelis shareholders will reap in connection with the Merger, the Supplemental Disclosures explained where those synergies were expected to result from.

As discussed below, courts have consistently found information of this nature, concerning a company's financial projections, a financial advisor's analyses, and potential conflicts of interest in connection with a corporate transaction, to be material and therefore sufficient for purposes of approving a settlement similar to the one reached here. *See, e.g., In re Schering-Plough/Merck Merger Litig.*, No. 09-CV-1099 (DMC), 2010 U.S. Dist. LEXIS 29121, at *48-49 (D.N.J. Mar. 25, 2010) (granting final approval of settlement where "the supplemental disclosures facilitated communication and informed shareholders of previously undisclosed material information permitting shareholders to exercise their voting rights accordingly."); *In re Wm. Wrigley Jr. Co. S'holders Litig.*, No. 3750-VCL, 2009 Del. Ch. LEXIS 12, at *21 (Del. Ch. Jan. 22, 2009) (granting final approval where "the disclosure claims advanced in the complaint were fully and fairly addressed in the settlement."). The Stipulation provides that, if the Court approves the Settlement, and in consideration of the Supplemental Disclosures, Co-Lead

Plaintiffs, on behalf of the Settlement Class, agree to release all claims asserted against Defendants in the Action and potential future claims involving the facts and circumstances that gave rise to the Action.

IV. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

A. The Role of the Court

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for any compromise of claims brought on a class wide basis. The Seventh Circuit has endorsed as an overriding public interest the settling of litigation, particularly class actions. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."). "Settlement should be facilitated at as early a stage of the litigation as possible." 6A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 2d § 1522, at 225-26 (2d ed. 1990) (citing 1983 Advisory Committee Notes).

"District court review of a class action settlement proposal is a two-step process. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is 'within the range of possible approval.' This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." *Armstrong v. Bd. of Sch. Directors of the City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*, *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *In re Northfield Labs., Inc. Sec. Litig.*, No. 06 C 1493, 2012 U.S. Dist. LEXIS 12741, at *15-16 (N.D. Ill. Jan. 31, 2012) (same). To secure preliminary approval, parties need only show something analogous to "probable cause" to proceed with the settlement review process. *Armstrong*, 616 F.2d at 314 n.13. If the district court finds a settlement proposal "within the range of possible approval," it then proceeds to the second step in the review process, the fairness hearing. *Armstrong*, 616 F.2d at 314. Class members are

notified of the proposed settlement and of the fairness hearing at which they and all interested parties have an opportunity to be heard. *Id.*

B. The Settlement Is Within The Range Of Possible Approval

The proposed Settlement here satisfies the standard for preliminary approval. The proposed Settlement provided for the dissemination of the Supplemental Disclosures to Exelis' shareholders prior to the Shareholders' Vote, which were undoubtedly beneficial to the Class. *See, e.g., In re Schering-Plough/Merck Merger Litig.,* 2010 U.S. Dist. LEXIS 29121 at *48-49. Through the Supplemental Disclosures, Exelis' shareholders received additional material information necessary to make a fully-informed decision about whether to approve the Merger.

It is well settled that curative disclosures which provide material information to shareholders faced with a significant decision, such as whether or not to approve a merger, confer a substantial benefit on them. This is because "[a] fully informed shareholder vote in compliance with Section 14(a) of the Securities Exchange Act [ ] is in the best interests of shareholders and the shareholding public generally." *St. Louis Police Ret. Sys. v. Severson*, No. 12-CV-5086, 2012 U.S. Dist. LEXIS 152392, at *17 (N.D. Cal. Oct. 23, 2012); *Allergan, Inc. v. Valeant Pharms. Int'l, Inc*., No. SACV 14-1214 DOC(ANx), 2014 U.S. Dist. LEXIS 156227, at *49-50 (C.D. Cal. Nov. 4, 2014) ("An uninformed shareholder vote is often considered an irreparable harm, particularly because the raison d'etre of many of the securities laws is to ensure that shareholders make informed decisions.").

Indeed, numerous courts have recognized that the most meaningful remedy for a violation of disclosure obligations in connection with a merger is the disclosure of the material information that shareholders have been denied access to before the transaction is consummated, not a subsequent claim for money damages. *Lone Star Steakhouse & Saloon, Inc. v. Adams,* 148 F. Supp. 2d 1141, 1149-50 (D. Kan. 2001) ("[T]he free and intelligent voting rights of plaintiff's

shareholders will be forfeited if such votes are exercised based upon false or misleading information. Monetary damages cannot restore the right of shareholders to effectively exercise their corporate suffrage rights."); *St. Louis Police Ret. Sys.*, 2012 U.S. Dist. LEXIS 152392, at *16-17 ("disclosure deficiencies cannot be remedied effectively by an 'after-the-fact damages' case."); *In re Talley Indus., Inc. S'holders Litig.*, No. 15961, 1998 Del. Ch. LEXIS 53, at *46 (Del. Ch. Apr. 13, 1998) ("[T]he timely disclosure of the information in the supplement was presumably of greater value to the class than any potential award of damages based on the failure to disclose the same information, as such information is of the greatest utility when it is available in a timely manner to inform the stockholders' decision making process.").

Here, the Supplemental Disclosures provided Exelis' shareholders with material information related to the fairness of the Merger Consideration and the reliability of J.P. Morgan's valuation analyses and fairness opinion. The information Co-Lead Plaintiffs obtained for the Class via the Supplemental Disclosures was clearly material to Exelis' shareholders. *See, e.g., Nichting v. DPL Inc.*, No. 3:11-cv-141, 2011 U.S. Dist. LEXIS 76739, at *17 n.16 (S.D. Ohio July 15, 2011) ("it smacks of materiality that a voter be made aware of the Company's cash flow projections in order to make an informed decision."); *Smith v. Robbins & Myers, Inc.*, 969 F. Supp. 2d 850, 874 (S.D. Ohio 2013) (finding omitted line items from financial projections were material because the projections were used by financial advisor in its fairness analyses); *Brown v. Brewer*, No. CV 06-3731-GHK (SHx), 2010 U.S. Dist. LEXIS 60863, at *70 (C.D. Cal. June 17, 2010) ("A reasonable shareholder would have wanted to independently evaluate management's internal financial projections to see if the company was being fairly valued. There is a substantial likelihood that a reasonable shareholder would consider it important in making his decision.") (internal quotation marks omitted); *In re Netsmart Techs., Inc. S'holders Litig.*,

924 A.2d 171, 203 (Del. Ch. 2007) (omission of final projections underlying advisor's ultimate discounted cash flow model and fairness opinion was material); *Maric Capital Master Fund, Ltd. v. Plato Learning, Inc.*, 11 A.3d 1175, 1178 (Del. Ch. 2010) (enjoining shareholder vote where "proxy statement selectively disclosed projections"); *Kas v. Fin. Gen. Bankshares, Inc.*, 796 F.2d 508, 513 (D.C. Cir. 1986) (finding information about potential conflicts of interest faced by directors material); *Podesta v. Calumet Indus., Inc.*, No. 78 C 1005, 1978 U.S. Dist. LEXIS 17847, at *22 (N.D. Ill. May 9, 1978) ("Section 14(a) does require that any representations made are true, and that all of the facts underlying a potential conflict of interest or breach of duty are disclosed[.]").

Further, the litigation, had it proceeded, likely would have been complex and expensive. Given the complexities and costs, and the continued risks if the parties were to proceed further, the Settlement represents an excellent result. *See, e.g., In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) ("Instead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery for the Class."); *Koerner v. Copenhaver*, No. 12-1091, 2014 U.S. Dist. LEXIS 155783, at *12-13 (C.D. Ill. Nov. 3, 2014).

Plaintiff's Counsel has significant experience in securities and other complex class action litigation, and has negotiated hundreds of other substantial class action settlements throughout the country. Courts are "entitled to rely heavily on the opinion of competent counsel[.]" *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982) (internal quotation marks omitted). Here, Plaintiff's Counsel is "well informed as to the operative facts" and "considerable risks" of the Action. *See Reade-Alvarez v. Eltman, Eltman, & Cooper, P.C.*, 237 F.R.D. 26, 34 (E.D.N.Y. 2006). It is Plaintiff's Counsel's informed opinion that, given the uncertainty and further

substantial expense of pursuing the Action against the Defendants, and the significant benefit obtained by ensuring that the Supplemental Disclosures were disseminated to Exelis' shareholders prior to the Shareholders' Vote, the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class.

However, at this juncture, the Court need not answer the ultimate question - whether the Settlement is fair, reasonable, and adequate. *Armstrong*, 616 F.2d at 314 ("This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing."). The Court is only being asked to permit notice of the terms of the Settlement to be sent to the Class, and to schedule a hearing, pursuant to Federal Rule of Civil Procedure 23(e), to consider any views expressed by Class members as to the fairness of the Settlement. The Notice will advise Class members of the essential terms of the Settlement, set forth the procedure for objecting to the Settlement, and will provide specifics on the date, time and place of the Settlement Hearing. As set forth below, Plaintiffs' Counsel believes that, because the Notice fairly apprises the Class of their rights with respect to the Settlement, it represents the best notice practicable under the circumstances and should be approved by the Court.

C. The Proposed Plan of Class Notice Is Reasonable and Comports With Due Process Requirements

Rule 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the [Settlement] proposal." Fed. R. Civ. P. 23(e)(1). Here, Co-Lead Plaintiffs and Defendants propose sending Settlement Class members the detailed Notice attached to the Stipulation as Exhibit C. The Notice sets forth the background and procedural history of this litigation, including the claims asserted against the Defendants; a summary of the Settlement terms; an explanation of the persons and claims being released under

the Settlement; a detailed explanation of reasons for the Settlement; a description of the Class; the date, time and place of the hearing for final approval; a statement of the Class members' right to appear and object with or without counsel and the procedures which must be followed to be heard; a statement that Plaintiffs' Counsel intends to petition for an award of attorneys' fees and expenses, and whom to contact if more information about the Settlement is desired. Accordingly, the proposed Notice comports with the requirements of due process and Rule 23 and should be approved by the Court. *Langendorf v. Conseco Senior Health Ins. Co.*, No. 08-CV-3914, 2009 U.S. Dist. LEXIS 131289, at *14-19 (N.D. Ill. Nov. 18, 2009).

D. The Proposed Settlement Class Should Be Certified

Prior to granting preliminary approval of a settlement, the Court should also determine whether the proposed Settlement Class satisfies the requirements of Rule 23(a) – numerosity, commonality, typicality and adequacy of representation – and one subsection of Rule 23(b). *Langendorf*, 2009 U.S. Dist. LEXIS 131289, at *8; *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 340 (N.D. Ill. 2010). Here, the Settlement Class satisfies each requirement.

1. The Proposed Settlement Class Satisfies Rule 23(a)

a. The Numerosity Requirement Is Satisfied

The Class is so numerous that joinder of all members is impracticable. As of May 1, 2015, there were more than 188 million shares of Exelis common stock issued and outstanding, undoubtedly held by thousands of shareholders dispersed across the country. Thus, the proposed Settlement Class satisfies the numerosity requirement under Fed. R. Civ. P. 23(a)(1). *Langendorf*, 2009 U.S. Dist. LEXIS 131289, at *8-9 ("classes of more than forty members are generally considered sufficiently numerous to support class treatment.").

b. The Commonality Requirement Is Satisfied

The commonality requirement under Rule 23(a)(2) is met where, as here, "the class members share a common nucleus of operative fact, such that resolution of common questions affect all or substantially all of the class members." *Langendorf*, 2009 U.S. Dist. LEXIS 131289, at *9 (internal quotation marks omitted). Here, issues common to the Settlement Class include, *inter alia*, whether the Defendants violated Sections 14(a) and 20(a) of the Exchange Act and whether the Individual Defendants breached their fiduciary duties in connection with the Merger. Because these claims raise issues of fact and law common to all proposed Settlement Class members, the commonality requirement is satisfied. *See* 1 J. McLaughlin, Class Actions: Law and Practice § 4.8 at 4-46 (3d ed. 2006) ("Courts generally have held that cases alleging violations of the federal securities law based on material misrepresentations or omissions in uniform publicly filed or disseminated documents, such as registration statements and prospectuses, SEC filings, and press releases, reach the low threshold required for commonality."); *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121 at *20 ("A common question of fact concerns whether disclosures, pertaining to the proposed transaction, provided to shareholders for the purpose of voting upon the Schering/Merck merger were adequate.").

c. The Typicality Requirement Is Satisfied

The typicality requirement under Fed. R. Civ. P. 23(a)(3) is satisfied where claims raised by plaintiffs "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members and is based in the same legal theory." *Langendorf*, 2009 U.S. Dist. LEXIS 131289, at *10 (internal quotation marks omitted). Here, the typicality requirement is satisfied because Co-Lead Plaintiffs' claims arise from the same nucleus of operative facts (*i.e.*, the Merger and the sufficiency of the Proxy) and are based on the same legal theories (*i.e.*

violations of the Exchange Act and breach of fiduciary duty). Thus, Co-Lead Plaintiffs' claims are typical of the Settlement Class. *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121 at *22 ("Typicality is present given that the misconduct at issue concerns whether Defendants fulfilled or disregarded obligations and duties to shareholders in consummating the underlying transaction.").

d. The Adequacy Requirement Is Satisfied

Co-Lead Plaintiffs have adequately represented the interests of the proposed Settlement Class and have retained counsel qualified to pursue the litigation. The adequacy requirement is met where, as here, "(1) the representative does not have conflicting or antagonistic interests compared with the class as a whole; (2) the representative is sufficiently interested in the case outcome to ensure vigorous advocacy; and (3) class counsel is experienced, competent, qualified and able to conduct the litigation vigorously." *Id*. at *11 (internal quotation marks omitted).

Co-Lead Plaintiffs and Co-Lead Counsel have fairly and adequately represented and protected the interests of all Settlement Class members, as demonstrated by the record and their ability to ensure that the material Supplemental Disclosures were disseminated to Exelis' shareholders prior to the Shareholders' Vote. Co-Lead Counsel is well qualified to litigate on behalf of the proposed Settlement Class as they have litigated numerous shareholder class actions throughout the country, including in this jurisdiction.[7] There are no conflicts of interest between Co-Lead Plaintiffs, Co-Lead Counsel, and the Settlement Class members because their interests are aligned as former shareholders of Exelis. Thus, Co-Lead Plaintiffs and Co-Lead Counsel satisfy the adequacy requirement. *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121 at *23-24 ("There is an identity of interest with respect to prospective

[7] *See* Exhibits 2 and 3 to the Riley Decl.

class members and any potential absentees, therefore, the first prong of the adequacy requirement is satisfied. The national reputation of the firms involved in the present matter along with this Court's previous favorable recognition of these firms satisfies the second prong of the adequacy requirement.").

2. The Requirements of Rule 23(b) Are Satisfied

In addition to meeting all of the requirements of Rule 23(a), the proposed Settlement Class also satisfies both Rule 23(b)(1) and (b)(2). Rule 23(b)(1) authorizes class certification if "prosecuting separate actions by or against individual members would create the risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests." Fed. R. Civ. P. 23(b)(1). Rule 23(b)(2) authorizes class certification if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

Here, because all Settlement Class members are former shareholders of Exelis who were impacted by the Merger, there is a substantial risk of varying or inconsistent results if the Settlement Class is not certified. For example, while one court may find that Defendants breached their fiduciary duties or violated the Exchange Act in connection with the Merger, another court may reach the opposite conclusion. The possibility of conflicting court orders concerning the claims asserted by Co-Lead Plaintiffs on behalf of the Class shows that certification is warranted under Rule 23(b)(1). *See e.g., In re China Intelligent Lighting & Elecs., Inc. Sec. Litig.*, No. CV 11-2768 PSG (SSx), 2013 U.S. Dist. LEXIS 155091, at *18 (C.D.

Cal. Oct. 25, 2013) ("It would be inefficient to have individual members of the Class—who are likely geographically dispersed, given that CIL was a publicly-traded company—bring separate claims in scattered courts across the country. Such fragmentation would . . . create a risk of inconsistent judgments."); *see also In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121 at *25-26 ("The Court agrees that individual suits will likely result in disparate treatment where uniformity is otherwise required and practicable. Therefore, this Court concludes that the provision set forth in Fed. R. Civ. P. 23(b)(1)(A) is satisfied.").

The Court may also certify a class under Rule 23(b)(2) if "the defendants have 'acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief . . . with respect to the class as a whole..'" *Langendorf v. Conseco Senior Health Ins. Co.*, No. 08-CV-3914, 2009 U.S. Dist. LEXIS 131291, at *5 (N.D. Ill. Aug. 6, 2009). Here, Defendants have acted on grounds generally applicable to the proposed Settlement Class members, as the Proxy was disseminated to the entire Settlement Class prior to the Merger and the Merger has affected all Exelis shareholders in the same way. Further, the relief obtained—dissemination of the Supplemental Disclosures—benefitted all members of the Settlement Class equally. As a result of the Settlement, Defendants agreed to disseminate the material Supplemental Disclosures to Exelis' shareholders prior to the Shareholders' Vote, and thus all Exelis' shareholders were able to make an informed decision whether to vote for or against the Merger. Accordingly, a mandatory non opt-out class should be certified under Rules 23(b)(1) and (b)(2). *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121 at *27 (certifying settlement class under 23(b)(1) and (b)(2) where "the underlying factual circumstances revolve around Defendants' conduct towards prospective class members,

specifically with respect to disclosures advanced and the circumstances surrounding the consummation of the Merger.").

E. Proposed Schedule of Events

In connection with the preliminary approval of Settlement, the parties request that the Court establish dates by which Notice of the Settlement will be sent to Settlement Class members and by which Settlement Class members may object to the Settlement, and set the final approval hearing date.[8] The following is a proposed schedule of events leading up to the final approval hearing:

EVENT	**DATE**
Final Settlement Hearing and Hearing on Co-Lead Plaintiffs' application for attorneys' fees	At the convenience of the Court, at least ninety (90) days from the entry of the Preliminary Order
Deadline for Defendants to serve notice of proposed Settlement upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711 *et seq*. ("CAFA")	Ten (10) days after the filing of the proposed Settlement in Court
Deadline for mailing the Notice to the Settlement Class	Sixty (60) days prior to the final Settlement Hearing
Deadline for filing of Co-Lead Plaintiffs' motion for final approval of the Settlement and application for an award of attorneys' fees and expenses ("Motion for Final Approval")	Twenty-eight (28) days prior to the final Settlement Hearing

[8] Additionally, in connection with the Settlement, Exelis (or its successor(s) in interest and/or insurer(s)) has agreed to pay Plaintiffs' Counsel attorneys' fees and expenses, as awarded by the Court, in an amount not to exceed $410,000 (the "Fee Award"). The Fee Award was negotiated after all substantive terms of the Settlement were agreed to by the parties. Co-Lead Plaintiffs will submit further briefing in support of approval of the Fee Award to the Court prior to the final Settlement Hearing.

EVENT	DATE
Deadline for Class members to file objections to the Settlement, the Order and Final Judgment to be entered in the Action, and/or the joint application by Co-Lead Plaintiffs and Co-Lead Counsel for attorneys' fees and expenses	Ten (10) days prior to the final Settlement Hearing
Deadline for Defendants to file proof of mailing of the Notice and service of the CAFA Notice with the Court	Ten (10) days prior to the final Settlement Hearing

This schedule is similar to those used in numerous class action settlements negotiated by Plaintiffs' Counsel and provides due process to the Settlement Class with respect to their rights concerning the Settlement.

V. CONCLUSION

Co-Lead Plaintiffs respectfully request that the Court enter the accompanying Preliminary Order, thereby preliminarily approving the Settlement, conditionally certifying the Settlement Class for settlement purposes, directing that Notice of the proposed Settlement be provided to the proposed Settlement Class, and setting a date for the final Settlement Hearing (and other applicable deadlines).

DATED: October 23, 2015

Respectfully submitted,

By: */s/ William N. Riley*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by CM/ECF or electronic mail this 23rd day of October, 2015 to the following, which includes all counsel of record:

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