COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP
Peter S. Pearlman (ATTNY: 243551970)
Audra DePaolo (ATTNY: 020321995) Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
Tel: (201) 845-9600
Fax: (201) 845-9423

Attorneys for Plaintiffs

ZLATOMIR VERGIEV, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, v. CARLOS E. AGUERO, MICHAEL J. DRURY, CARY M. GROSSMAN, SEAN P. DUFFY, PAUL A. GARRETT, BRET R. MAXWELL, TOTAL MERCHANT LIMITED, and TM MERGER SUB CORP., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION UNION COUNTY DOCKET NO.: L-2276-15
AVI COOPER, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, v. METALICO, INC., CARLOS E. AGUERO, MICHAEL J. DRURY, SEAN P. DUFFY, PAUL A. GARRETT, BRET R. MAXWELL, TOTAL MERCHANT LIMITED, and TM MERGER SUB CORP., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION UNION COUNTY DOCKET NO.: L-2469-15

FINAL ORDER AND JUDGMENT

WHEREAS, (i) plaintiffs Zlatomir Vergiev, Robert Lowinger, Avi Cooper, John Solak, John Detore, Radovan Pinto, Charles Morales, Daniel Malkiel, David Britten, and Muhammad A. Arshad (the "Plaintiff Parties") who are plaintiffs in the Actions (as defined below); (ii) defendants Metalico, Inc. ("Metalico"), Carlos E. Agüero, Michael J. Drury, Sean P. Duffy, Paul A. Garrett, Cary Grossman, and Bret R. Maxwell (the "Director Defendants"); and (iii) defendants Total Merchant Limited ("Total Merchant") and TM Merger Sub Corp. ("Merger Sub") (together the "Total Merchant Defendants," with Metalico, the Director Defendants and the Total Merchant Defendants collectively referred to as the "Defendants" and the Defendants and Plaintiff Parties collectively referred to as the "Parties") have entered into the Stipulation of Settlement and Release, dated January __, 2016 (the "Stipulation") setting forth the Parties' agreement to settle all claims asserted against the Defendants in the above-captioned actions (the "Actions"), with prejudice on the terms and conditions set forth in the Stipulation and subject to the approval of this Court (the "Settlement");[1]

WHEREAS, the Stipulation and the proposed Settlement contemplated thereby having been presented before the Law Division of the Superior Court of New Jersey, County of Union (the "Court") at a hearing on March 11, 2016 at 2:00 (the "Settlement Hearing"), pursuant to the Preliminary Approval and Scheduling Order entered herein on March 4, 2016 (the "Preliminary Approval Order");

WHEREAS, the Court has determined that Notice of the Settlement Hearing was given to the Class in accordance with the Preliminary Approval Order and that said Notice was adequate and sufficient; and

[1] Unless otherwise defined herein, all capitalized words contained herein shall have the same meaning as they have in the Stipulation.

WHEREAS, the Parties have appeared by their attorneys of record, the attorneys for the respective Parties have been heard in support of the Settlement of the Action, an opportunity to be heard has been given to all other persons desiring to be heard as provided in the Notice, and the entire matter of the Settlement have been considered by the Court; and for the reasons contained in the attached Statement of Reasons;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this 6th day of June, 2016, that:

1. The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the members of the Class in connection with the Settlement of the Action.

2. The Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects, and finds that the Settlement is in all respects fair, reasonable, adequate, and in the best interests of the Class. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with the terms and provisions, and the Clerk of the Superior Court of New Jersey – Law Division is directed to enter and docket this Final Order and Judgment in the Action.

DENIED

DENIED

3. The Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing (the "Notice") has been given to the Class (as defined below) pursuant to and in the manner directed by the Preliminary Approval Order, proof of the mailing of the Notice has been filed with the Court, and a full opportunity to be heard has been offered to all parties to the Action, the Class and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of New Jersey law and due process, and it

is further determined that all members of the Class are bound by the Final Order and Judgment herein.

4. The Court hereby finds, pursuant to New Jersey law, as follows:

(a) that (i) the Class, as defined below, is so numerous that joinder of all members is impracticable, (ii) there are questions of law and fact common to the Class, (iii) Plaintiffs' claims are typical of the claims of the Class, and (iv) Plaintiffs and Plaintiffs' Counsel have fairly and adequately protected the interests of the Class, (v) the prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, and (vi) the predominant injunctive relief sought for the Class is appropriate with respect to the Class as a whole;

(b) that the requirements of New Jersey law with respect to class action claims have been satisfied;

(c) that the requirements of the Superior Court of New Jersey – Law Division and due process have been satisfied in connection with the Notice;

(d) that the Action is hereby finally certified (in connection with the Settlement only) as a non-opt out class action, pursuant to New Jersey Court Rules 4:32-1(a), (b)(1) and (b)(2), on behalf of a settlement class consisting of all record and beneficial holders of Metalico common stock during the period beginning on June 15, 2015 through and including the date of the consummation of the Merger (the "Class"). Members of the Class are referred to as "Class Members." Excluded from the Class are Defendants, the officers, directors, affiliates, and family members of any of the Defendants, and any entity in which any Defendant has or had a controlling interest, and their respective successors-in-interest thereto. The Class shall be

deemed to be a non-opt out class with respect to all claims for injunctive, declaratory and other equitable relief; and

(e) that Plaintiffs are hereby certified as Class representatives, and Plaintiffs' Counsel is hereby certified as Class counsel.

5. The Settlement is found to be fair, reasonable, adequate, and in the best interests of the Class, and it is hereby approved. The Court further finds that the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Class, on the one hand, and the Defendants, on the other hand. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the clerk is directed to enter and docket this Final Order and Judgment in the Action.

6. The terms of the Stipulation and this Final Order and Judgment shall be forever binding on and inure to the benefit of Defendants, Plaintiffs, all other Class members, and their respective heirs, executors, administrators, predecessors, successors, affiliates and assigns.

7. This Final Order and Judgment, along with all papers related thereto and all negotiations, discussions and proceedings in connection therewith, shall not constitute any evidence or admission by any of the Defendants herein that any acts of wrongdoing have been committed by any of the Defendants and should not be deemed to create any inference that there is any liability therefor.

8. Upon the Effective Date, the Action is hereby fully and completely dismissed with prejudice as to the Defendants and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Stipulation and herein, without costs to any Party.

9. Upon the Effective Date,

(a) Plaintiffs and any and all other Class members, on behalf of themselves and any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns, and transferees, immediate and remote, and any person or entity acting on behalf of, or claiming under, any of them, and each of them, together with their predecessors in interest, predecessors, successors-in-interest, successors, and assigns, only in their capacity as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully and completely discharged, dismissed with prejudice, settled and released, and shall be permanently enjoined and barred from prosecuting, any and all Released Claims (as defined below) against any or all of the Released Parties (defined below);

(b) that "Released Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (as defined below), that any Plaintiff or any or all members of the Class ever had, now have, or may have, or otherwise could, can, or might assert, whether direct, derivative, individual, class, representative, legal, equitable (including, without limitation, for any breach of fiduciary duties) or of any other type, or in any other capacity, against any of the Released Parties, whether based on state, local, federal, foreign, statutory, regulatory, common or other law or rule (including but not limited to any claims under federal securities laws or state disclosure law or any claims that

could be asserted derivatively on behalf of Metalico), which, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that were, could have been, or in the future can or might be alleged, asserted, set forth, claimed, embraced, involved, or referred to in, or related to, directly or indirectly, any of the Actions or the subject matter of any of the Actions in any court, tribunal, forum or proceeding, including, without limitation, any and all claims which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, (i) the Merger or the Merger Agreement, (ii) any deliberations or negotiations in connection with the Merger or the Merger Agreement, including the process of deliberation or negotiation by Defendants, and any of their respective officers, directors, principals, partners or advisors, (iii) the consideration to be received by Class members in connection with the Merger, (iv) the Registration Statement or any other disclosures made available or filed relating to the Merger, (v) the statutory or fiduciary obligations of the Released Parties (as defined below) in connection with the Merger, (vi) the fees, expenses, or costs incurred in prosecuting, defending, or settling the Actions, or (vii) any of the allegations in any complaint or amendment(s) thereto filed in any of the Actions;

(c) that "Released Parties" means (i) Metalico, Carlos E. Agüero, Michael J. Drury, Sean P. Duffy, Paul A. Garrett, Cary Grossman, Bret R. Maxwell, Total Merchant Limited and TM Merger Sub Corp., (ii) any person or entity which is, was or will be related to or affiliated with any or all of them or in which any or all of them has, had, or will have a controlling interest, and (iii) the respective past, present or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations,

agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, shareholders, principals, officers, directors, managers, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates, of each and all of the foregoing, provided, however, that Released Claims shall not include the right to enforce the Stipulation, including the provisions concerning the payment of the attorneys' fees and expenses as ordered by the Court;

(d) that "Unknown Claims" means any claim that any releasing party does not know or suspect exists in his, her or its favor at the time of the release of released claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement. With respect to any of the claims to be released pursuant to this paragraph, the Parties stipulate and agree that upon Final Approval of the Settlement, the Parties shall expressly and each member of the Class and each Released Party shall be deemed to have, and by operation of the Judgment by the Court shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE

TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Parties acknowledge, and the members of the Class and the Released Parties by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the released claims, but that it is the intention of Parties, and by operation of law the members of the Class and the Released Parties, to completely, fully, finally and forever extinguish any and all released claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the members of the Class and the Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of "Released Claims" in this paragraph was separately bargained for and was a material element of the Settlement and was relied upon by each and all of the Parties in entering into the Settlement Agreement;

10. ~~Neither this Order nor the Stipulation (whether or not finally approved or consummated), nor their negotiation, or any proceedings taken pursuant to them: (i) shall be offered against the Defendants, other Released Parties, or their respective attorneys as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants or other Released Parties with respect to the truth of any fact alleged by Plaintiffs or the Class, or the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or any liability, negligence, fault, damages, or wrongdoing of any kind by any of the Defendants, other Released Parties, or their respective attorneys; (ii) shall be offered against any~~

of the Plaintiffs, other Class Members, or their respective attorneys (including, without limitation, Plaintiffs' Counsel) as evidence of, or construed as, or deemed to be evidence of, any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind of the Plaintiffs, other Class Members, or their respective attorneys (including, without limitation, Plaintiffs' Counsel); (iii) shall be referred to for any reason against any of the Defendants, other Released Parties, Plaintiffs, other Class Members, or any of their respective attorneys (including, without limitation, Plaintiffs' Counsel) in any other civil, criminal, or administrative action or proceeding; (iv) shall be construed against any of the Defendants, other Released Parties, Plaintiffs, other Class Members, or any of their respective attorneys (including, without limitation, Plaintiffs' Counsel) as an admission, concession, or presumption that the consideration to be given represents an amount which could be or would have been recovered after trial; nor (v) shall be construed against Plaintiffs, other Class Members, or their respective attorneys (including, without limitation, Plaintiffs' Counsel) as an admission, concession, or presumption that any of Plaintiffs' claims are without merit or that any of Defendants had meritorious defenses. Notwithstanding the foregoing, Defendants, other Released Parties, Plaintiffs, other Class Members, and any of their respective attorneys (including, without limitation, Plaintiffs' Counsel) may file or refer to this Order, the Stipulation, and/or the Judgment to effectuate the liability protections granted hereunder or thereunder, including without limitation to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim or to enforce the terms of this Final Order and Judgment and/or the Stipulation.

11. In the event of termination of the Settlement in accordance with the terms of the Stipulation, the Parties shall be deemed to be in the litigation position they were in immediately prior to the execution of the MOU and the statements made in the Stipulation or in the MOU and in connection with the negotiation of the Stipulation, the MOU or the Settlement shall not be deemed to prejudice in any way the positions of the Parties with respect to the Action or any other litigation or judicial proceeding, or to constitute an admission of fact or wrongdoing by any Party, and neither the existence of the Stipulation or the MOU nor their contents, nor any statements made in connection with the negotiation of the Stipulation or the MOU or any settlement communications shall be admissible into evidence, and the Parties shall proceed as if the MOU, the Stipulation, this Order and any other order of the Court relating to the Settlement had not been entered.

12. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of $525,000.00, inclusive of expenses, which amount the Court finds to be fair and reasonable and which shall be paid to Plaintiffs' Counsel in accordance with the terms of the Stipulation. No Plaintiff or counsel representing any Class member shall make any further or additional application for fees or expenses to the Court or any other court in connection with any litigation concerning the Merger.

DENIED DENIED

13. The effectiveness of the provisions of this Final Order and Judgment and the obligations of Plaintiffs and Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Final Order and Judgment that relates solely to the issue of Plaintiffs' Counsel's application for an award of attorneys' fees and expenses.

14. Without further approval from the Court, the Parties: (a) are hereby authorized to agree to and adopt such amendment, modifications, and expansions of the Stipulation and/or any

DENIED

of the exhibits attached thereto to effectuate the Settlement that are not materially inconsistent with this Final Order and Judgment and/or that do not materially limit the rights of Class Members under the Stipulation, and (b) may agree to reasonable extensions of time to carry out the provisions of the Settlement.

DENIED DENIED

15. Without affecting the finality of this Final Order and Judgment in any way, the Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement in accordance with the Stipulation.

Honorable Thomas J. Walsh, J.S.C.

opposed

The parties shall serve a copy of this Order and attached Statement of Reasons on all interested parties within (7) seven days of this order's receipt.

Statement of Reasons
Zlatomir Vergiev, et al. v. Carlos E. Aguero, et al.
UNN-L-2276-15
Avi Cooper, et al. v. Metalico, Inc., et al.
UNN-L-2469-15

I. Procedural Posture

The current matter comes before the Court pursuant to a Notice of Motion for Final Approval of Settlement and Award of Attorney's Fees and Reimbursement of Expenses filed on April 1, 2016 by Plaintiff, Zlatomir Vergiev, Individually and on Behalf of All Other Similarly Situated, represented by Peter S. Pearlman, Esq. of Cohn Lifland Pearlman Hermann & Knopf, LLP.

On April 29, Objector Sean Griffith, represented by James K. Webber, Esq. of Webber McGill, LLC, filed a Notice of Objection.

Also on April 29, 2016, Objectors Charles Morales, Cinda Morales, and Eric Morales, appearing as self-represented litigants, submitted a Notice of Objection and well as a Notice of Motion to Stay Proceedings and Compel.

Plaintiffs submitted a Reply on May 4, 2016.

Defendants Metalico, Inc., Carlos E. Aguero, Michael J. Drury, Cary M. Grossman, Sean P. Duffy, Paul A. Garrett, and Bret R. Maxwell, represented by Anna Maria Loiacono, Esq. of Lowenstein Sandler, LLP, submitted a Reply on May 5, 2016. Defendants submit that their Reply is also being submitted on behalf of Defendants Total Merchant Limited and TM Merger Sub Corp.

The parties and objectors appeared before this Court on May 11, 2016 for oral argument on the instant motion. This opinion follows.

II. Factual Background

By way of background, the current matter arises out of a consolidated class action matter challenging the merger of Metalico, Inc. ("Metalico") with Total Merchant Limited ("Total Merchant"). The Merger Agreement, entered into on June 15, 2015, provided that Total Merchant would acquire all outstanding shares of Metalico for $0.60 per share. Following the announcement of the merger, four putative class action suits were filed in this Court alleging breach of fiduciary duties. Additionally, six putative class action suits were filed in the Delaware Court of Chancery.

On June 29, 2015, Metalico filed a Preliminary Proxy Statement on Schedule 14A with the U.S. Securities and Exchange Commission ("SEC"). On July 7, 2015, Plaintiff filed an Amended Complaint adding allegations that the Preliminary Proxy Statement omitted material information regarding the Merger Agreement, and particularly regarding Metalica's value and financial forecasts. On July 10, 2015, this Court consolidated the four putative class action suits filed in New Jersey. On July 29, 2015, Metalico filed a Definitive Proxy Statement with the SEC. Thereafter, the parties exchanged discovery and engaged in settlement negotiations. During this

period, the parties agreed that Metalico would provide Supplemental Disclosures, which included information that Gordion, Metalico's financial advisor, had relied upon in determining the value of Metalico shares.

On August 27, 2015, the parties executed a Memorandum of Understanding memorializing their agreement as to settlement and dismissal with prejudice of all pending actions. On that same date, Metalico filed a Supplement #1 to the Definitive Proxy with the SEC. On September 8, 2015, the Delaware Court of Chancery dismissed the actions pending in Delaware.

On September 11, 2015, the Metalico stockholders held a special meeting where they voted in favor of the Merger Agreement. Though this Court dismissed the case without prejudice on January 8, 2016 for lack of prosecution, on January 27, 2016, the parties entered into a Stipulation of Settlement and Release. The Stipulation provided that Defendants would not oppose Plaintiffs' application for attorney's fees and expenses up to $525,000. On March 4, 2016, this Court reinstated the action, granted preliminary approval of the Settlement, ordered that notice be provided to the Class, and set a hearing date for final Settlement approval.

The Stipulation of Settlement and Release provides that Defendants agree to provide, and have provided, Supplemental Disclosures in the Definitive Proxy. Plaintiffs agree to Stay the Proceedings subject to final settlement approval. Members of the class sought to be approved are those who owned stock in Metalica from June 15, 2015 until September 11, 2015.

II. Legal Analysis

a. Plaintiffs' Notice of Motion for Approval of Final Settlement

Plaintiffs ask that this Court approve the proposed Final Settlement as set forth in the Stipulation of Settlement and Release because it is fair, reasonable and adequate. Plaintiffs set forth an analysis of various factors that they assert weigh in favor of settlement approval. First, Plaintiffs contend that further litigation would be complex, expensive, lengthy and possibly difficult for Plaintiffs. Second, Plaintiffs state that the Supplemental Disclosures were reasonable considering the strength of the case. In addition, Plaintiffs submit that the parties in this matter were able to conduct relevant discovery sufficient to weigh the relative strengths and weaknesses in their positions, and thus, were able to make an informed decision in this matter. Further, though Plaintiffs state they have yet to receive objections to the settlement, this has clearly changed as this Court has received two objections. Plaintiffs also assert that all parties involved were represented by competent counsel experienced in similar matters.

Furthermore, Plaintiffs allege that the notice provided to potential class members in this matter comports with due process. Plaintiffs also posit that this Court should permanently certify the class under R. 4:23-1(a) because there is numerosity, commonality, typicality, and adequacy. Plaintiff contends that there is sufficient numerosity as evidenced by the fact that there were 73 million outstanding shares of Metalica as of the date of the Definitive Proxy. Plaintiffs contend that the commonality requirement is satisfied because class members are all plagued by the questions of whether Defendants breached their fiduciary duties and/or omitted material facts regarding the merger. In addition, Plaintiffs allege that the representatives' claims are typical of those of class members as they were all similarly harmed by Defendants' actions. Finally,

Plaintiffs assert that the representatives and counsel involved have adequately represented the class members without conflict or adverse interests.

In addition, Plaintiffs state that the actions satisfy R. 4:32-1(b)(1) and (2). Under R. 4:32-1(b)(1), according to Plaintiffs, individual actions would be inconsistent and dispositive of all other class members. Similarly, Plaintiffs allege that because Defendants have acted or refused to act on grounds applicable to all class members and injunctive relief is appropriate in this matter, R. 4:32-1(b)(2) is also satisfied.

In regards to their request for attorney's fees and expenses, Plaintiffs contend that the agreed upon amount of $525,000 should be approved by this Court as reasonable and fair.

b. Objector Griffith's Notice of Objection

Objector Griffith objects to the proposed settlement as a "strike suit" that provides valueless compensation to the class members. Objector Griffith first asserts that this Court should apply New Jersey procedural law and Delaware substantive law in deciding this matter. Further, Objector submits that under Delaware law, disclosure-only settlements are disfavored unless the supplemental disclosures provide information regarding a plainly material misrepresentation or omission.

Objector contends then, that the value of the settlement to Plaintiffs is unfair considering what they obtain in the settlement, which are supplemental disclosures, compared to what they have given up, which is a purportedly boundless release of virtually all claims regarding the merger. Particularly, Plaintiffs allege that the Supplemental Disclosures received were immaterial and thus provided them with no benefit. Essentially, Objector maintains that although Plaintiffs allege that the Supplemental Disclosures provided material information to allow shareholders to decide whether or not to approve the merger, the information contained in the Supplemental Disclosures was mostly detail that provided no value in the shareholders' decision-making process.

Finally, Objector asserts that this Court should not award the requested attorney's fees and expenses in this matter because the settlement has provided no benefit to class members.

c. Objectors Morales' Notice of Objection

Objectors contend that they have sought to obtain documentation regarding the settlement in this matter, including the documents and all other information that led to the settlement, but have been refused, alleging because of confidentiality issues. Objectors ask that this Court compel all requested documentation from the parties in this matter. Further, the Morales' object based on their contention that they cannot determine whether the settlement is fair and adequate without the requested materials.

d. Plaintiffs' Reply

Plaintiffs assert first that Objector Griffith is a "professional objector" who has consistently made baseless objections to class action settlements and subsequently sought compensation for his objections. Plaintiffs also point out that although over 9,000 notices were sent to class members, this Court has only received two objections. Thus, according to Plaintiffs, disclosure

only settlements such as the one presented are legitimate and thereby deserving of an attorney's fee award.

Plaintiffs further contend that Objector Griffith is incorrect when he asserts that this Court must apply Delaware law in determining whether to approve this class action settlement as New Jersey courts have routinely relied on Girsh v. Jepson, 521 F.2d 153 (3d Cir. 1975) for such a determination. Moreover, Plaintiffs submit that the Supplemental Disclosures provided shareholders with material information justifying approval of this settlement. However, Plaintiff alleges, that this Court need not decide the materiality of the Supplemental Disclosures, so long as this Court concludes that, overall, the settlement provides value to the Class considering the hurdles that the Class would face in further litigation.

Plaintiffs assert that Objector Griffith's criticism of the expedited discovery period is unwarranted as that period allowed the Class to obtain the necessary relief and vet their claims, essentially, before it was too late. Finally, Plaintiffs submit that the release, which Objector Griffith argues is infinitely broad and thus unfair, is standard and tailored to the Class and the claims asserted in this litigation.

e. Defendants' Reply

Defendants first assert that Objectors Morales' objection fails because they have not shown that they did not authorize their counsel to enter into a settlement. Moreover, Defendants contend that the Morales' objection rests on failing to have received copies of the discovery in this matter, which they have now been provided with.

Further, Defendants allege that Objector Griffith's objection should be disregarded as he applies inapplicable law to support his contentions. Defendants urge this Court to ignore Delaware procedural law that Objector Griffith believes controls in this matter. Moreover, Defendants contend that even if Delaware law is applied, the settlement is reasonable based on the state of the law at the time that the parties entered into the Memorandum of Understanding. Finally, Defendants point out that Objector Griffith's objection was motivated by his personal policy objectives, rather than any concern for the class members.

- ***Enforce Settlement***

In New Jersey, public policy favors the settlement of litigation. Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div. 1983). In the class action context, under R. 4:32-2(e)(1)(C) "[t]he court may approve a settlement, . . . that would bind class members only after a hearing and on finding that the settlement, . . . is fair, reasonable, and adequate." Chattin v. Cape May Greene, Inc., 216 N.J. Super. 618, 627 (App. Div. 1987). Further, a court may approve a class action settlement even where individual class members object. Ibid. "[I]n cases such as this, where settlement negotiations precede class certification, and approval for settlement and certification are sought simultaneously, we require district courts to be even 'more scrupulous than usual' when examining the fairness of the proposed settlement." In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 534 (3d Cir. 2004). Because R. 4:32 is similar to Fed. R. Civ. P. 23, New Jersey courts typically look to federal case law in determining whether or not to approve a class action settlement. Saldana v. City of Camden, 252 N.J. Super. 188, 194 n.1 (App. Div. 1991).

- ***Class Certification***

This Court will first address certification of the class for purposes of settlement. R. 4:32-1(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (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.

To satisfy the numerosity requirement of R. 4:32-1(a)(1), the parties need not be able to ascertain the exact number of class numbers, nor does joinder of all members need be impossible. Zinberg v. Washington Bancorp, Inc., 138 F.R.D. 397, 405 (D.N.J. 1990). In the present matter, this Court finds that there is sufficient numerosity to certify this action as a class action. Plaintiffs submit that there were 73 million outstanding shares of Metalico common stock at the time of the Definitive Proxy and over 9,000 notices were sent to potential class members. Further, with so many class members, joinder would be highly impracticable.

Second, to satisfy R. 4:32-1(a)(2), New Jersey courts have stated that "'a single common question is sufficient'" to satisfy the requirement. Delgozzo v. Kenny, 266 N.J. Super. 169, 185 (App. Div. 1993) (internal citations omitted). This Court finds that there are common questions among all shareholders, specifically whether Defendants breached their duties in connection with the merger by misrepresenting or omitting material facts.

Third, "[t]he typicality inquiry 'assesses whether the named plaintiffs have incentives that align with those of absent class members so that the absentees' interest will be fairly represented." Rossi, 2013 U.S. Dist. LEXIS 143180, at *5. The typicality requirement is generally satisfied when the representatives and class member's claims arise out of the same course of conduct or are based on the same legal theory. Cannon v. Cherry Hill Toyota, Inc., 184 F.R.D. 540, 544 (D.N.J. 1999). "When the same unlawful conduct was directed at or affected both the named plaintiffs and the members of the putative class, the typicality requirement is usually met . . ." Ibid. Here, the typicality requirement is clearly satisfied as all class members share the same grievance against Defendants as they all purportedly suffered identical injury.

Finally, adequacy of representation analyzes both the competence of both the class representatives and the class counsel. Rebish v. Great Gorge, 224 N.J. Super. 619, 239-40 (App. Div. 1988). In the present matter, there is no question that Plaintiffs' counsel are sophisticated attorneys experienced in these types of matters. Moreover, there is no suggestion that Plaintiffs' counsel has not adequately pursued this litigation up until this point. In addition, there has been no submission that the class representatives have not adequately represented the class, nor can this Court discern any inadequacy. Thus, this Court finds that the adequacy of representation prong is met.

Further, R. 4:32-1(b) provides that:

An action may be maintained as a class action if the prerequisites of paragraph (a) are satisfied, and in addition:
(1) the prosecution of separate actions by or against individual members of the class would create a risk either of :
(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or
(B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

In the present matter, this Court finds that this case falls within the purview of R. 4:32-1(b)(1). Were the class members required to bring individual claims, it is highly likely that the disposition of those cases would result in inconsistent adjudications. Similarly, inconsistent adjudications would likely be dispositive of the interests of other class members in this type of class, where the relief sought is injunctive.

- ***Class Settlement Approval***

It is undisputed that this Court should apply New Jersey procedural law and Delaware substantive law in determining whether to approve the class action settlement. The relevant parties debate, however, exactly which law comprises the substantive law that should be applied. Plaintiffs and Defendants assert that this Court should decide whether to approve the class settlement following the factors outlined in Girsch v. Jepson, 521 F.2d 153 (3d Cir. 1975) to determine whether a class action settlement is fair and reasonable. On the other hand, Objector Griffith points this Court to the recent Delaware Court of Chancery decision in In re Trulia, Inc., 129 A.3d 884 (Del. Ch. 2015). This Court finds that it is the decision in In re Trulia that comprises the substantive law of the State of Delaware.

The facts in In re Trulia are strikingly similar to those currently presented. In In re Trulia, Defendant Zillow, Inc., a Washington corporation, and Defendant Trulia, Inc., a Delaware corporation, announced on July 28, 2014 that they had entered into a merger agreement. Id. at 888. The merger agreement provided that Zillow would acquire Trulia for $3.5 billion in stock. Ibid. Following the merger announcement, four class actions suits were filed alleging a breach of fiduciary duty in connection with the merger, which were later consolidated. Ibid. On September 11, 2014 the parties filed a preliminary joint proxy statement with the SEC. Ibid. Thereafter, the parties agreed to expedite the proceedings, which included a review of "less than 3,000 pages of documents" and the completion of three depositions, one being a "confirmatory" deposition taken after the settlement was reached. Id. at 888-89, 893. On November 17, 2014, the parties filed a definitive joint proxy statement, and two days later, entered into a Memorandum of Understanding. Id. at 889. On June 10, 2015, the parties entered into a Stipulation and Agreement of Compromise, Settlement, and Release, which contained a

broad release and provided that plaintiffs' counsel was permitted to seek an award of attorney's fees of not more than $375,000. Id. at 889-90.

The Trulia court went on to discuss disclosure settlements more generally. The court noted that there has been a proliferation of class action lawsuits filed after the announcement of a corporate acquisition, which has led to an increase in the number of disclosure settlements. Id. at 891. The court stated:

> . . .far too often such litigation serves no useful purpose for stockholders. Instead, it served only to generate fees for certain lawyers who are regular players in the enterprise of routinely filing hastily drafted complaints on behalf of stockholders on the heels of the public announcement of a deal and settling quickly on terms that yield no monetary compensation to the stockholders they represent. [Id. at 891-92.]

While defendants often obtain a broad release as a form of "deal insurance," it is relatively easy for them to provide stockholders with additional information that "may be of only minor value to the stockholders." Id. at 892-93. The Trulia court counseled that courts examining disclosure-only settlements will be "increasingly vigilant in applying [their] independent judgment to [their] case-by-case assessment of the reasonableness of the 'give' and the 'get' of such settlements." Id. at 898. Further, disclosure-only settlements, according to the Trulia court:

> . . . are likely to be met with continued disfavor in the future unless the supplemental disclosures address a plainly material misrepresentation or omission, and the subject matter of the proposed release is narrowly circumscribed to encompass nothing more than disclosure claims and fiduciary claims concerning the sale process, if the record shows that such claims have been investigated sufficiently. [Ibid.]

The court defined "plainly material" as those cases where it is "not [] a close call that the supplemental information is material . . . ." Ibid. Under Delaware law, information is material "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." Rosenblatt v. Getty Oil Co., 493 A.2d 929, 944 (Del. 1985).

Applying the principles enounced in the Trulia case to the present matter, this Court finds that it would be inappropriate for this Court to approve the disclosure settlement. The Definitive Proxy provided by Defendants contained a number of, what the parties claim to be, material disclosures. As outlined by Objector Griffith, three disclosures concerned financial information provided by Gordion. Four other disclosures contained background information regarding the merger.

Under Delaware law, "stockholders are entitled to a fair summary of the substantive work performed by [a financial advisor] upon whose advice the recommendations of their board as to how to vote on a merger or tender rely." In re Pure Resources, Inc., S'holder Litig., 808 A.2d 421, 449 (Del. 2002). However, the "fair summary" does not extend to "minutia" or "specific details," nor must it be sufficient to allow stockholders to complete their own valuations. In re

Cogent, Inc., S'holder Litig., 7 A.3d 487, 511 (Del. Ch. 2010); In re Micromet, Inc., S'holder Litig., 2012 Del Ch. LEXIS 41, *35 (Feb. 29, 2012); Globis P'rs, L.P. v. Plumtree Software, Inc., 2007 WL 4292024, *12-13 (Del. Ch. Nov 30, 2007).

The first of the three financial disclosures concerned the Discounted Cash Flow Analysis ("DCF"). The parties suggest that the inclusion of its net operating loss carryforward ("NOL") in its Supplemental Disclosures was material. However, as explained by Objector Griffith, this figure was immaterial because Gordion predicted it to lose its value after the merger, and in addition, the carryforwards equaled less than $5 million. Further, the Supplemental Disclosure included additional information regarding the weighted average cost of capital ("WACC"). Upon comparison of the original information provided to that provided in the Supplemental Disclosures, defendants merely provided specific details regarding their calculations, rather than material misrepresentations or omissions.

The second of the three financial disclosures addressed the Peer Group Analysis. Similar to the DCF figures, the additional information provided regarding the Peer Group Analysis provides only minor details to shareholders that are of no practical value. Specifically, the Supplemental Disclosure added the mean and median figure to a chart regarding LTM Operating Metrics. The Definitive Proxy states that the figures were provided to show that "Metalico has generally lower gross margins and EBITDA margins . . . ." However, it appears that the same conclusion could have been reached without the shareholders having been made aware of the mean and median data.

The final financial disclosure discussed the Implied Per Share Value Based on Peer Group Companies and DCF Analysis. The first disclosure regarding this subject essentially informed the shareholders that the parties had reached a merger agreement. The second disclosure added that net debt was calculated without consideration of premiums or prepayment penalties on Series B Convertible Notes. This disclosure was immaterial because it did not change the implied per share value. Further, any issues regarding Series B Convertible Notes and their impact on the implied per share value were already disclosed.

The Supplemental Disclosure also contained information regarding the relationship between both Metalico and Total Merchant's directors and/or executives during negotiations. Both disclosures made it clear that there had been no material contact or communication between the directors or executives of either company prior to the transaction. This information cannot be deemed material as it is admittedly immaterial. Moreover, Delaware courts have stated that "[o]mitting a statement that the board *did not* do something is not material, because 'requiring disclosure of every material event that occurred *and* every decision not to pursue another option would make proxy statements so voluminous that they would be practically useless.'" In re Sauer-Danfoss Inc. S'holder Litig., 65 A.3d 1116, 1132 (Del. 2011). In addition, while this Court sees how such information could be informative in regards to the case more generally, it does not see how this information helps a shareholder in deciding whether to vote for a merger or against it.

The Supplemental Disclosure also included information regarding Metalico's relationship with Adam Weitsman, a competitor and shareholder that allegedly entered into negotiations to

buy the company, but later withdrew his proposal. Similarly, while the fact of Mr. Weitzman's initial offer to purchase the company may be important for a breach of fiduciary duty claim, this Court fails to recognize its importance for a merger vote. Further, much of the information included was extraneous detail that was irrelevant to shareholders, particularly regarding Mr. Weitzman's business dealings and informal communications with executives of Metalico.

Lastly, the Supplemental Disclosures contained a list of conditions required for the merger. Likewise, this Court fails to see the materiality in such a list as it fails to describe any nonobvious requirements for a merger generally.

After a review of the Supplemental Disclosures, this Court ultimately finds that none of the disclosures made were material. Further, the release negotiated in this matter is the type of broad release that the Trulia court cautioned against. Thus, considering the immateriality of the additional disclosures provided compared to the broad release of all claims obtained in exchange, this Court finds that it would be inappropriate to grant approval of the proposed settlement. This decision is in line with the policy considerations surrounding the proliferation of disclosure settlements that have burgeoned in this country, which in many instances provide more to attorneys in the way of fees than they provide to shareholders.

Finally, this Court declines to reach the issue of whether the attorney's fees provided for by the settlement agreement are appropriate having found that it will not approve the proposed settlement. Thus, while this Court will certify the class, Plaintiff's motion for final settlement approval shall be otherwise **DENIED**.