

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

_____)	
SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 04 cv 2315 (WHW)
)	
v.)	
)	
LUCENT TECHNOLOGIES, INC.,)	
et al.)	
Defendants.)	
_____)	

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
UNOPPOSED MOTION FOR DISTRIBUTION OF FUNDS IN CRIS ACCOUNT
AND APPLICATION FOR APPOINTMENT OF DISTRIBUTION AGENT**

Plaintiff, United States Securities and Exchange Commission (the "Commission") hereby moves the Court to distribute in the manner set forth below the funds currently in the Court Registry Investment System ("CRIS") interest bearing account established with respect to this action (the "CRIS Account") pursuant to the Final Judgments entered on May 26, 2004.

In particular, the Commission requests that the Court (a) include civil penalties in the funds to be distributed to injured investors (the "Distribution Fund"), pursuant to the Sarbanes Oxley Act, 15 U.S.C. § 308; (b) approve the Commission's plan to distribute the Distribution Fund (the "Distribution Plan"), which adopts and uses the distribution plan previously approved by the United States District Court for the District of New Jersey in In Re Lucent Technologies Inc. Securities Litigation, Case No. 00CV-

621(JAP) (Stipulation and Agreement of Settlement entered, Sept. 22, 2003); (c) appoint the Class Action's claims administrator, The Garden City Group, Inc., as Distribution Agent; and (d) direct the Clerk of Court to transfer the Distribution Fund, minus appropriate expenses, to the Distribution Agent for distribution to injured investors pursuant to the plan outlined below.

This motion is supported by a legal memorandum and exhibits submitted herewith. A proposed order is also being submitted with this motion.

Respectfully submitted,



Mark A. Adler MA8703
Larry P. Ellsworth LE8924
Charles Cain

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0911
Phone (202) 942-4596 (Ellsworth)
Fax (202) 942-9581 (Ellsworth)

Dated: February 3, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 2d day of February, 2005, a copy of the attached Plaintiff's Motion for Distribution of Funds In CRIS Account And Application for Appointment of Distribution Agent, supporting documents, and proposed order were caused to be served on the following parties by first class mail, postage pre-paid, to:

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s/Mark A. Adler
Mark A. Adler

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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SECURITIES AND EXCHANGE COMMISSION,)	
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Plaintiff,)	Civil Action No. 04 cv 2315 (WHW)
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LUCENT TECHNOLOGIES, INC.,)	
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Defendants.)	
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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION
FOR DISTRIBUTION OF FUNDS IN CRIS ACCOUNT
AND APPLICATION FOR APPOINTMENT OF DISTRIBUTION AGENT**

Plaintiff, United States Securities and Exchange Commission (the "Commission") submits this memorandum in support of its motion for distribution of the funds currently in the Court Registry Investment System ("CRIS") interest bearing account established with respect to this action (the "CRIS Account") pursuant to the Final Judgments entered on May 26, 2004. Each of the remaining defendants has consented to the requested order.

In particular, the Commission requests that the Court (a) include civil penalties in the funds to be distributed to injured investors (the "Distribution Fund"), pursuant to the Sarbanes Oxley Act, 15 U.S.C. § 308; (b) approve the Commission's plan to distribute the Distribution Fund (the "Distribution Plan"), which adopts and uses the distribution plan previously approved by the United States District Court for the District

of New Jersey in In Re Lucent Technologies Inc. Securities Litigation, Case No. 00CV-621(JAP) (Stipulation and Agreement of Settlement entered, Sept. 22, 2003); (c) appoint the Class Action's claims administrator, The Garden City Group, Inc., as Distribution Agent; and (d) direct the Clerk of Court to transfer the Distribution Fund, minus appropriate expenses, to the Distribution Agent for distribution to injured investors pursuant to the plan outlined below.

I. FACTUAL BACKGROUND

On May 17, 2004, the Commission filed a complaint in the above captioned action against Lucent Technologies Inc. (Lucent), a publicly traded corporation, nine of its former officers and employees, and one officer of a client company. The Commission alleged that the defendants engaged in a widespread accounting fraud scheme to overstate Lucent's revenues by over a billion dollars in fiscal year 2000. The Commission further alleged that defendants used numerous fraudulent accounting techniques such as prematurely recognizing revenue on contingent sales transactions, falsifying records, and misrepresenting facts to auditors. As a result of the defendants' misconduct, the Commission alleged that Lucent issued materially false and misleading press releases and financial statements for fiscal year 2000.

The Commission has settled all claims against the corporate defendant, Lucent, and three individual defendants, William Plunkett, Deborah Harris, and Vanessa Petrini (collectively, the "Settling Defendants"). The SEC has not reached an agreement with the other seven defendants.¹ The Settling Defendants consented to entry of

¹ In light of its continuing criminal investigation, the U.S. Attorney's office requested, and the Court has granted, a stay of discovery in the Commission's case against the remaining defendants (Aversano, Dorn, Carter, Hayes-Bullock, Bratten, Elliott, and Ackerman) through August 31, 2005.

judgment, and the Court entered Final Judgments against these parties on May 26, 2004 (docket entries 2, 5, 7, and 9) (collectively, the “Final Judgments”). Pursuant to the terms of the Final Judgments, Lucent agreed to pay a total of \$25,000,001, William Plunkett agreed to pay a total of \$110,000, Deborah Harris agreed to pay a total of \$100,000, and Vanessa Petrini agreed to pay a total of \$192,992 for a total of \$25,402,993 (the “Settlement Amount”). All but \$132,992 of the Settlement Amount is civil penalties. The Settling Defendants have paid the Settlement Amount to the Clerk of Court, who has deposited the funds into the CRIS Account pursuant to the directives in the Final Judgments.

II. THE PROPOSED DISTRIBUTION PLAN

The Commission is vested with broad discretion in fashioning distribution plans for disgorgement funds. *See SEC v. Certain Unknown Purchasers*, 817 F.2d 1018 (2d Cir. 1987); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989); *SEC v. Wang*, 944 F.2d 80, 84 (2nd Cir. 1991) (distribution plan will be approved if it is “fair and reasonable”). *See also SEC v. Finacor Anstalt*, 1991 WL 173327, at *3 (S.D.N.Y. 1991) (rejecting challenge to SEC’s proposed distribution plan and holding that the “equities weigh in favor of limiting payment at this time to the claimants suffering the greatest injury”). This discretion “includ[es] the flexibility to decide that certain groups of claimants would receive payments and others would not.” *Levine*, 881 F.2d at 1182.

In distributing the Distribution Fund, which is substantially less than total investor losses, the Commission seeks here to maximize the amount of money that investors injured by the misconduct alleged in the complaint will receive, to distribute

money to injured investors as quickly as possible, and to minimize administrative costs.² The Commission believes that these goals will best be reached by adopting and using the distribution procedures and claims administrator approved by the Court in the related class action lawsuit, In Re Lucent Technologies Inc. Securities Litigation, Case No. 00CV-621 (D.N.J.) (JAP).

Creation Of Distribution Fund – To Include Civil Penalties

The Commission seeks in this motion to establish a Distribution Fund from the funds in the CRIS Account, and to distribute those funds to investors harmed by the fraudulent conduct alleged in the complaint. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7201, et seq.] (“Sarbanes-Oxley”) -- the so-called “Fair Funds” provision of Sarbanes-Oxley -- Congress provided that the Commission may include in a distribution fund the civil penalties paid by settling defendants. Section 308(a) of Sarbanes-Oxley states in relevant part:

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS. If in any judicial or administrative action brought by the Commission under the securities laws ... the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

² Even when combining the Distribution Fund with the larger amount of funds being distributed as part of the class action, the total distribution to injured investors will have to be done on a pro rata basis, since the total distribution amount will be less than is required to make restitution needed to fully compensate injured investors for their losses.

Permitting the civil penalties paid by the Settling Defendants to be aggregated with disgorgement, rather than paid directly to the United States Treasury,³ will permit the Commission to return more money to defrauded investors. This is precisely the result that Congress intended when it passed the Fair Funds provision, and is consistent with the public interest.

For these reasons, the Commission moves the Court for an Order approving the creation of the Distribution Fund, which shall include all amounts held in the CRIS Account, including post-judgment interest earned to the date of the transfer, minus administrative expenses under CRIS.

A. Distribution Of Disgorgement Fund To Injured Investors -- Using The Class Action Settlement Distribution Process

By Order of December 15, 2003, the Court in this District approved the Class Action plaintiffs' proposed notice and distribution procedures. *See In Re Lucent Technologies Inc. Securities Litigation*, Case No. 00CV-621(JAP) (Order of Dec. 15, 2003, approving Plan of Allocation).

The Commission suggests that the most efficient way to fairly distribute the Distribution Fund to injured investors is to use the Class Action's distribution plan and procedures. The Court and Commission will conserve substantial time and money resources by not having to independently hire a claims agent, locate and notify potential injured investors, and process claims from scratch.

In addition, the Class Action class members that submitted valid claims and received settlement funds reasonably will reflect the group of injured investors that are

³ Prior to Sarbanes-Oxley, civil penalties were required to be paid to the United States Treasury under Section 21(d)(3)(C) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)(C)].

entitled to recover from the Distribution Fund. The Class Action complaint raises allegations that are nearly identical to the allegations in the Commission's complaint, arising out of essentially the same time period, fiscal year 2000, the same accounting fraud misconduct.⁴

The scope of the class includes all persons or entities that purchased Lucent common stock during the period beginning October 26, 1999 through and including December 20, 2000.⁵ This class period substantially overlaps with the transactions described in the Commission's complaint, which encompassed the period December 1999 through December 2000.⁶ Counsel for plaintiffs will receive no portion of the distribution from the Commission's action. Additionally, the funds added to the class action distribution will not be considered as increasing the total fund for the purpose of calculating how to compensate plaintiffs' counsel. This approach is similar to that recently employed in SEC v. System Software Associates, Inc., Civ. No. 00 C 4240 (N.

⁴ For example, both the Commission and the Class Action complaints allege that in fiscal year 2000, Lucent, through senior management, engaged in a deliberate scheme to inflate revenue. Both complaints allege that the defendants used various methods of accounting fraud, such as recognizing revenue prematurely and falsifying records. *Compare* Commission Complaint at ¶¶ 2-7 and Class Action Fifth Consolidated Amended Complaint at ¶¶ 9-18.

⁵ Other class actions have been settled with regard to holders of certain debt securities, notes and redeemable convertible preferred stock. For those persons who purchased certain debt securities between December 21, 2000 and March 27, 2001, the action was settled for \$3.75 million. The action relating to those persons who held certain notes and redeemable convertible preferred stock between April 13, 1999 and September 13, 2002 was settled for \$4.6 million. Additionally, an ERISA class action for those who participated in Lucent ERISA plans between December 31, 1999 and March 27, 2003 was settled for \$69 million.

⁶ The time periods covered by the allegations in the complaints in the class action and this SEC enforcement case are nearly, but not exactly, identical. Mainly, the class action period is about two months longer at the beginning than is the period covered by the SEC's complaint. Because of this close similarity in the groups of investors covered by allegations in each complaint, any hypothetical diminution in payments from disgorgement due to this inclusion of another couple of months of victims under the class action complaint is both immaterial and more than offset by the inclusion of civil penalties in addition to disgorgement funds in the SEC's Distribution Fund. Similarly, the extra 10 days at the end of the SEC period, which is not included in the class action period, is immaterial when compared to the extra time and expense of a separate distribution to only those covered by the SEC's complaint. The Commission is posting a litigation release on its web-site attaching these motion papers.

D. IL) (EEB) (Sept. 26, 2003) (dkt. # 55); SEC v. Stephen L. Holden, Civ. No. 01 C 7463 (Oct. 30, 2003, N. D. IL) (JAN) (dkt. # 52); and SEC v. ClearOne Communications, Civ. No. 03-CV-55 (Mar. 12, 2004, D. UT) (DAK) (dkt. # 93).

By distributing the monies obtained in the Commission's action through the class action procedure, defrauded shareholders will not incur any additional administrative costs and will receive immediately monies obtained by the Commission to date. Should the Commission wait until the conclusion of its action against the remaining defendants, which may be years away, a new distribution plan will be needed and the associated administrative costs would result in a lower recovery for the defrauded shareholders.

A copy of the Class Action Notice, that includes the court approved Plan of Allocation, using The Garden City Group, Inc. as the distribution agent, is attached as Exhibit A. Attached as Exhibit B is the Declaration of plaintiffs' expert Frank C. Torchio, which outlines the methods used to estimate damages and the development, fairness and reasonableness of the Plan of Allocation that was approved by the court. We note that the Class Distribution Order provides that five percent of the net settlement fund shall be reserved from the amounts distributed to approved claimants so as to be available to pay Disputed Claims and claims still being processed ("Claims In Process") that the Court may ultimately accept, and we propose that five percent of the Distribution Funds from the Commission's action also be reserved until those claims are resolved and used to pay an accountant to prepare tax returns for the interest earned in the account. To the extent these reserved funds are not used to pay Disputed Claims or Claims In Process (e.g., the claims are not ultimately approved), any taxes due, or to pay the accountant for calculating the taxes, they will be distributed to those whose claims have been accepted,

if they have not yet been fully compensated for their losses. Thus, as other courts have found, the use of the class action distribution mechanism presents a fair and reasonable way to distribute funds recovered in a related Commission enforcement action. *See, e.g., SEC v. Crawford*, No. CV 03-0561 (N.D. Ca., 1993) (adopting distribution plan and agent from related *North Face* securities fraud class action).

B. Appointment Of Distribution Agent – The Class Action Claims Administrator

For these same reasons, the Commission requests that the Court appoint The Garden City Group, Inc., as claims administrator for the Distribution Fund. The Garden City Group, Inc. is the claims administrator appointed in the Class Action and it is responsible for processing and allocating the settlement funds to class members in accordance with the detailed Class Action allocation plan. See Exhibit A, at 10. The Garden City Group, Inc. processed the claims and is distributing the settlement funds, in accordance with this class action distribution plan. *Id.* The settlement proceeds obtained in the Class Action, which included cash and securities, were initially valued at approximately \$517 million. Distributions have already been made of some of the cash, and all of the securities, to Class Members who submitted acceptable Proofs of Claim ("Authorized Claimants"). Authorized Claimants whose total expected distributions from the cash and securities would have been \$5.00 or less, were already each paid \$5.00 in cash in the initial distribution and they are not entitled to any further distribution from the Class Action. Lucent has now paid its final settlement installment in cash. Approximately \$178,450,000 is now available to be distributed to approximately 478,000 Authorized Claimants whose total expected distributions were more than \$5.00. The \$178,450,000 balance is ready to be distributed, but in order to avoid the substantial

expense of printing and mailing two separate cash distributions to the same approximately 478,000 people, distribution has been delayed to allow the Distribution Fund to be added to the amount to be distributed.

The Securities and Exchange Commission now requests this Court to authorize the \$25,402,993 Distribution Fund (plus interest, less certain expenses, and less a 5% reserve) (the "Net Distribution Fund") to be distributed to the 478,000 Authorized Claimants as an addition to the amount of the checks to be distributed to Authorized Claimants from the Class Action settlement. We propose to have the Net Distribution Fund allocated on the same basis, paid at the same time, and included in the same check as the Class Action settlement proceeds. To effectuate this distribution, the Distribution Fund shall be deposited into the account maintained by The Garden City Group, Inc. in which the cash proceeds of the Class Action Settlement available for distribution are being maintained. The combined settlement proceeds are referred to as the "Combined Settlement Fund."

The Garden City Group, Inc. has agreed that, without additional charge, it will allocate the Distribution Fund proportionally in accordance with the Class Action plan of allocation to each Authorized Claimant who is entitled to receive in total more than \$5.00 from the distribution of the Class Action Net Settlement Fund. *See* Ex. A, at 8-9.

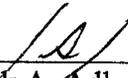
While holding back 5% for payment of appropriate taxes and other claims not yet verified, The Garden City Group, Inc. will allocate the Distribution Fund among the Class Action claimants, and print and mail all checks after receiving the Distribution Fund from the CRIS Account. *Id.* The Garden City Group, Inc. will, without additional charge, provide the Commission with the same status reports as to the number of checks,

issued and outstanding as it provides to Lead Counsel in the Class Action. After all distribution procedures are complete and all costs relating to the Distribution Fund prior to its transfer to the Distribution Agent (including but not limited to the payment of taxes and the costs of preparation of tax returns), as well as any reasonable costs relating to services performed at the specific request of the Commission that are not necessary for the performance of services in connection with the Class Action Settlement have been paid, to the extent there are any funds remaining from the SEC portion of the Combined Settlement Fund, The Garden City Group, Inc. will promptly transfer those unclaimed or unallocated monies to the Commission, which in turn will pay those funds to the U.S. Treasury.⁷

III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant the Commission's motion and enter an Order: (1) approving the Commission's Distribution Plan; (2) creating the Distribution Fund, which will include the civil penalties paid by the Settling Defendants; (3) appointing The Garden City Group, Inc. as Distribution Agent; and (4) directing the Clerk of Court to transfer the Distribution Fund, minus administrative fees, to The Garden City Group, Inc. for administration and distribution according to the Distribution Plan.

Respectfully submitted,



Mark A. Adler MA8703
Larry P. Ellsworth LE4924

⁷ The Class Action attorneys will not receive any money from the Distribution Fund. See Exchange Act § 21(d)(4), 15 U.S.C. § 78u(d)(4).

Charles Cain

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0911
Phone (202) 942-4596 (Ellsworth)
Fax (202) 942-9581 (Ellsworth)

Dated: February 3, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE LUCENT TECHNOLOGIES INC. :
SECURITIES LITIGATION :
_____X

Case No. 00-CV-621 (JAP)

**NOTICE OF PENDENCY OF CLASS ACTION, HEARING ON PROPOSED SETTLEMENT
AND ATTORNEYS' FEE PETITION AND RIGHT TO SHARE IN SETTLEMENT FUND**

TO: ALL PERSONS OR ENTITIES WHO PURCHASED LUCENT TECHNOLOGIES INC. ("LUCENT")
COMMON STOCK DURING THE PERIOD OCTOBER 26, 1999 THROUGH AND INCLUDING
DECEMBER 20, 2000 (THE "CLASS PERIOD") AND WHO WERE DAMAGED THEREBY.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT RELATES TO A PROPOSED
SETTLEMENT OF THIS CLASS ACTION AND, IF YOU ARE A CLASS MEMBER, CONTAINS IMPORTANT
INFORMATION AS TO YOUR RIGHTS.**

I. SUMMARY OF SETTLEMENT

1. **Statement of Plaintiff Recovery:** Lead Plaintiffs, individually and as representatives of the Class, have entered into a proposed settlement (the "Settlement") of this action (the "Action" or the "Lucent Common Stock Class Action") with Defendants, that will resolve all claims of plaintiffs and the Class against Defendants. The Settlement will create a settlement fund consisting of \$113,400,000 in cash; \$246,750,000 worth of additional cash or shares of Lucent common stock; \$24,000,000 worth of shares of Avaya, Inc. ("Avaya") common stock; and Warrants to purchase 200 million shares of Lucent common stock at a price of \$2.75 per share, which, according to Lucent, were worth \$128,000,000 at the end of its second quarter (the "Gross Settlement Fund"). Additionally, Lucent will pay up to \$5 million to cover the costs of providing notice to the Class and administering the Settlement. The Settlement is currently valued at approximately \$517 million. (Please note, the value of the securities issued as part of the settlement consideration will fluctuate depending upon, among other things, the trading prices of Lucent and Avaya common stock.) The average recovery per damaged share will depend on a number of variables, including when and for what price Class Members purchased and/or sold their shares of Lucent common stock, the number of shares of Lucent common stock for which acceptable Proofs of Claim are filed, as well as the value of the securities (common stock and Warrants) being issued and delivered pursuant to the Settlement at the time of their distribution. Plaintiffs' damages expert estimates that approximately 3.352 billion shares of Lucent common stock were traded during the Class Period which may have been damaged as a result of the conduct complained of. Assuming that all affected shares elected to participate in the Settlement, and assuming that the value of the stock and Warrants remains the same as the current estimated value, the average recovery per damaged share of Lucent common stock is estimated by Lead Plaintiffs' damages expert at approximately \$0.15 per share before deduction of any Court-awarded attorneys' fees and expenses. Depending on the number of claims submitted, when during the Class Period a Class Member purchased his/her or its shares of Lucent common stock, and whether those shares were held at the end of the Class Period or sold during the Class Period, and if sold, when and for how much they were sold, an individual Class Member will receive more or less than this average amount, as more fully described in the proposed Plan of Allocation set forth below at paragraphs 25 to 35.

2. **Statement of Potential Outcome of Case:** Lead Plaintiffs and Defendants do not agree on the average amount of damages per share that would be recoverable if plaintiffs were to have prevailed on each claim alleged. Plaintiffs' damages expert contended that if plaintiffs established liability, the damages would be in the tens of billions of dollars, far in excess of the net resources available to Defendants. Defendants deny all liability and dispute the maximum amount of damages recoverable if plaintiffs prevailed on each of their claims.

3. **Statement of Attorneys' Fees and Costs Sought:** Plaintiffs' counsel have not received any payment for their services in conducting this litigation, nor have they been reimbursed for their out-of-pocket

expenditures. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovered, frequently one-third, as their attorneys' fees and for their expenses to be reimbursed from the fund. Plaintiffs' Co-Lead Counsel intend to apply, on behalf of all plaintiffs' counsel, for an award of attorneys' fees in an amount up to 19% of the Gross Settlement Fund, or up to approximately \$0.03 per damaged share. Plaintiffs' counsel will receive any fees awarded in cash, stock and Warrants in the same proportion as they comprise the Gross Settlement Fund. Plaintiffs' Co-Lead Counsel also intend to apply, on behalf of all plaintiffs' counsel, for reimbursement of expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$3,500,000 or approximately 0.1¢ per damaged share. Plaintiffs' Co-Lead Counsel will ask that the amount awarded as reimbursement of expenses be payable entirely in cash.

4. **Reasons for Settlement:** Lead Plaintiffs believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class considering the amount of the Settlement and the immediacy of recovery to the Class. Lead Plaintiffs took into consideration the expense and length of continued proceedings that would be necessary to prosecute the Action through trial and appeals. Lead Plaintiffs have also considered the uncertain outcome and the risk of any further litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in any such litigation. Another consideration that strongly supports the proposed Settlement is the limited financial resources available to Defendants to satisfy any large judgment that otherwise might be obtained if plaintiffs were successful at trial. As discussed more fully below, Lead Plaintiffs recognized that Defendants would never be able to satisfy a judgment in the full amount of damages plaintiffs claimed to have been caused by the allegedly fraudulent conduct. The Settlement was achieved after Court-ordered mediation and was negotiated based on Lucent's ability to pay. Thus, even if plaintiffs prevailed as to liability and established a greater amount of damages, there was no assurance of being able to recover significantly more than achieved in the Settlement. Indeed, with the passage of the considerable amount of time it would take to litigate the Action through trial and the appeal that would surely follow if plaintiffs prevailed, there was a real possibility that Lucent's ability to satisfy a judgment would be further diminished and the ultimate recovery could have been significantly less than the proposed Settlement.

5. **Identification of Attorneys' Representatives:** Any questions regarding the Settlement should be directed to Plaintiffs' Co-Lead Counsel: David J. Bershad, Esq., Milberg Weiss Bershad Hynes & Lerach LLP, One Pennsylvania Plaza, New York, New York 10119-0165, Telephone (212) 594-5300, www.milberg.com; or Daniel L. Berger, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, New York, New York 10019, Telephone (212) 554-1400, www.blbglaw.com.

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II. **NOTICE OF SETTLEMENT FAIRNESS HEARING**

6. This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Order In Connection With Settlement Proceedings, of the United States District Court for the District of New Jersey (the "Court") dated September 23, 2003 (the "Preliminary Approval Order"). The purpose of this Notice is to inform you of the proposed Settlement that has been reached in the Action and that a hearing (the "Settlement Fairness Hearing") will be held on December 12, 2003 at 9:30 a.m. before the Honorable Joel A. Pisano, at the United States Courthouse and Post Office Building, One Federal Square, Newark, New Jersey 07101, for the purpose of determining: (a) whether the proposed Settlement of the claims in the Action pursuant to a Stipulation and Agreement of Settlement dated as of September 22, 2003 (the "Stipulation") for consideration worth approximately \$517,000,000 should be approved by the Court as fair, reasonable and adequate; (b) whether the Class Securities to be issued pursuant to the Settlement are exempt from registration with the Securities and Exchange Commission pursuant to Section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(10) and may be distributed to Class Members as freely tradeable securities; (c) whether the Action should be dismissed with prejudice as set forth in the Stipulation; (d) whether the proposed Plan of Allocation is fair and reasonable and should be approved; and (e) whether the application by Plaintiffs' Co-Lead Counsel for an award of attorneys' fees and reimbursement of costs and expenses incurred should be approved.

7. Pursuant to the Preliminary Approval Order, the Court certified, for purposes of this Settlement, the following "Class": all persons or entities who purchased Lucent common stock during the period beginning on October 26, 1999 through and including December 20, 2000 (the "Class Period") and who were damaged thereby. Excluded from the Class are: (a) Defendants (i.e., Lucent, Richard A. McGinn, Donald K. Peterson, and Deborah C. Hopkins); (b) members of the immediate family of each individual defendant; (c) any entity in which any Defendant has a controlling interest; (d) any person who was an officer or director of Lucent (or any Lucent subsidiary or affiliate) during the Class Period; and (e) the legal representatives, heirs, successors or assigns of any such excluded party. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in this Notice (see paragraphs 44-45 below).

THE COURT HAS NOT DETERMINED THE MERITS OF PLAINTIFFS' CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IN ANY AMOUNT IF THE ACTION WERE NOT SETTLED.

III. DESCRIPTION OF THE ACTION

8. Beginning on or about January 7, 2000, numerous class action complaints alleging violations of the federal securities laws on behalf of purchasers of Lucent common stock were commenced against Lucent and certain other defendants in the United States District Court for the District of New Jersey. These actions were consolidated pursuant to Orders of the Court. The Court appointed Teamsters Locals 175 & 505 D&P Pension Trust Fund, The Parnassus Fund and The Parnassus Income Trust/Equity Income Fund as Lead Plaintiffs for the consolidated action and the law firms of Milberg Weiss Bershad Hynes & Lerach LLP and Bernstein Litowitz Berger & Grossmann LLP as Co-Lead Counsel for plaintiffs and the Class.

9. Lead Plaintiffs filed the Fifth Consolidated and Amended Class Action Complaint on July 10, 2001 (the "Complaint"). The Complaint asserts claims for relief against Defendants under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The Complaint alleges that, during the Class Period, Defendants made a series of materially false and misleading statements regarding customer demand for Lucent's key optical networking products, Lucent's ability to provide services to its customers, and Lucent's publicly reported financial statements. The Complaint alleges that as a result of Defendants' dissemination of the allegedly false and misleading statements during the Class Period, the market price of Lucent's common stock was artificially inflated, thereby causing damage to Class Members.

10. Defendants deny all wrongdoing as alleged by plaintiffs. The Settlement may not be construed or deemed to be evidence of, or an admission or a concession on the part of any of the Defendants of any fault or liability whatsoever on the part of any of them or infirmity in any defenses they have asserted or intended to assert. Defendants, while affirmatively denying wrongdoing, consider it desirable and in their best interests that this Action be dismissed under the terms of the proposed Settlement in order to avoid further expense, uncertainty and distraction of protracted litigation.

11. Prior to entering into the Stipulation, Plaintiffs' Co-Lead Counsel conducted an investigation relating to the claims and the underlying events alleged in the Complaint. They analyzed the claims and researched the applicable law with respect to the claims asserted and Defendants' potential defenses thereto. Plaintiffs' counsel conducted interviews with more than 100 witnesses and reviewed and analyzed more than three million pages of documents produced by Lucent and more than thirty third parties. Plaintiffs' counsel also consulted with technology, damages and accounting experts. The parties participated in a Court-ordered mediation. At the time the mediation began, plaintiffs' counsel fully understood the strengths and weaknesses of their case.

12. While Plaintiffs' Co-Lead Counsel believe that the claims asserted have merit, they also appreciated the practical reality that it would be impossible for Defendants to satisfy a judgment if plaintiffs prevailed and, therefore, Plaintiffs' Co-Lead Counsel's focus in resolving the Action was based on Defendants' ability to pay.

IV. BACKGROUND TO THE SETTLEMENT

13. Recognizing that Lucent could not survive a plaintiffs' judgment in the Action because Lucent's ability to pay was dwarfed by the damages in the case which, by any plaintiffs' measure, numbered in the tens of billions of dollars, in September 2002, Judge Pisano commenced a mediation proceeding to facilitate a settlement of the Action. Defendants agreed to enter negotiations only if the resulting settlement, in addition to resolving this Action, also resolved all the other related actions then pending against Lucent. Plaintiffs' Co-Lead Counsel secured the agreement of plaintiffs' counsel in each of the other actions to participate in the mediation and to allow Plaintiffs' Co-Lead Counsel to negotiate on their behalf. In the first stage of this mediation, with the assistance of expert consultants, Plaintiffs' Co-Lead Counsel evaluated Lucent's "ability to pay", that is the most that Lucent could realistically pay to settle the litigations pending against it. After several months of arduous negotiations and mediation sessions under the auspices of Judge Pisano, Plaintiffs' Co-Lead Counsel and Defendants' Counsel reached an agreement to settle all the then pending related litigation against Lucent (the "Global Settlement"). Thereafter, with the assistance of the Court, Plaintiffs' Co-Lead Counsel negotiated allocations of the Global Settlement consideration among each of the cases included in the Global Settlement. In conducting the allocation negotiations, Plaintiffs' Co-Lead Counsel evaluated the strength of each case's claims relative to this Action by considering the following factors: (1) the posture of the litigation and the likelihood of success on the merits; (2) the relative damages in the action; (3) the availability of collateral recovery; and (4) the comparative value of the claim relative to the other settling actions.

14. The terms and conditions of the Global Settlement are set forth in the Agreement re: Global Settlement of Lucent Litigations dated as of September 19, 2003 (the "Cover Agreement"), the terms of which are incorporated in and are part of the Stipulation.

15. The other actions being settled as part of the Global Settlement and the amounts allocated to each of those actions from the Global Settlement consideration are as follows:

Other Class Actions:

- "Lucent Debt Securities Class Action," on behalf of persons who, between December 21, 2000 and March 27, 2001, purchased certain debt securities issued by Lucent. This action is being settled for \$3.75 million in cash. For further information contact: Olimpio Lee Squitieri, Esq., Squitieri & Fearon, LLP, 420 Fifth Avenue, 18th Fl., New York, New York 10018, Telephone (212) 575-2092.

- "ERISA Class Actions," on behalf of participants and beneficiaries of the Lucent Savings Plan (the "LSP") and the Lucent Technologies, Inc. Long Term Savings and Security Plan (the "LTSSP") (collectively the "ERISA Plans")¹ at any time between December 31, 1999 through March 27, 2003 who made or maintained investments in the Lucent Stock Fund. This action is being settled for \$69 million, consisting of \$68.25 million worth of Lucent common stock and \$750,000 cash. For further information contact: Todd S. Collins, Esq., Berger & Montague, P.C., 1622 Locust Street, Philadelphia, Pennsylvania 19103, Telephone (215) 875-3000.

- "Winstar Class Action," on behalf of persons and entities who were damaged as a result of purchases between March 10, 2000 and April 2, 2001 of Winstar Communications common stock or certain debt securities issued by Winstar. This action is being partially settled for \$12 million in cash. For further information contact: James P. Bonner, Esq., Shalov Stone & Bonner LLP, 485 Seventh Avenue, Suite 1000, New York, New York 10018, Telephone (212) 239-4340.

- "Lucent Note/Preferred Class Action," on behalf of persons who held certain notes and redeemable convertible preferred stock of Lucent at any time between April 13, 1999 and September 13, 2002. This action is being settled for \$4.6 million in cash. For further information contact: Robert I. Harwood, Esq., Wechsler Harwood LLP, 488 Madison Avenue, New York, New York 10022, Telephone (212) 935-7400.

¹ The Lucent Technologies, Inc. Long Term Savings Plan for Management Employees and the Lucent Technologies, Inc. Retirement Savings and Profit Sharing Plan were merged into the LSP in 2000.

PLEASE NOTE:

(a) If you fall within the definition of any of the classes in these other settled actions, your rights will be affected by the settlement(s) of that (those) action(s). If you believe you may be a member of the class in any of those actions and, if you have not as yet received notice of the proposed settlement(s) of that (those) action(s), you should immediately contact plaintiffs' counsel for that (those) action(s).

(b) Participants and beneficiaries in the ERISA Plans should not include any information regarding their Lucent stock acquired through the Plans in any claim form they may submit in this Action. Claims in this Action relating to the ERISA Plans' acquisition of Lucent common stock may be made by the Plans' trustees. If you are a participant or beneficiary in the ERISA Plans but purchased Lucent common stock during the Class Period OTHER THAN through the ERISA Plans, you may submit a claim in this Action as to those shares, i.e., non-ERISA Plan shares.

Other Actions:

16. The Global Settlement will also resolve a Derivative Action, an action brought in the name of Lucent against certain officers and directors of Lucent, which is being settled for \$14 million in cash. As part of that settlement, Lucent will also implement certain changes to its corporate governance policies. Plaintiffs' counsel in the Derivative Action will be applying for an award of attorneys' fees and expenses in an amount not to exceed \$3.5 million of the settlement amount in that action. Any portion of the \$14 million allocated to the Derivative Action that is not awarded to plaintiffs' counsel in that action for fees and expenses will be added to the Gross Settlement Amount in the Lucent Common Stock Class Action. Settlement of the Derivative Action will impact Lucent's ability to pursue claims against its officers and directors and others. If you are a current stockholder of Lucent and wish additional information about this action, please write to: Richard D. Greenfield, Esq., Greenfield & Goodman, LLC, 24570 Deep Neck Road, Royal Oak, Maryland 21662, or contact him by email at whitehatrdg@earthlink.net. In addition, the notice describing the Derivative Action and the terms of its settlement, as well as other documents relating to that action are available on Lucent's website at www.Lucent.com.

17. Finally, a private action brought against Lucent on behalf of institutional investors who acquired Winstar common stock is being settled for \$10 million in cash.

V. TERMS OF THE PROPOSED SETTLEMENT OF THE LUCENT COMMON STOCK CLASS ACTION

18. As more fully described in the Stipulation, in full and complete settlement of the Action, Defendants shall pay, or cause to be paid, \$113,400,000 in cash; \$246,750,000 worth of Lucent common stock or cash, at Lucent's option; \$24,000,000 worth of Avaya common stock; Warrants, which shall be exercisable for a period of three years, to purchase 200 million shares of Lucent common stock at \$2.75 per share; and up to \$5 million to cover the costs of Notice and administration of the Settlement.

19. The consideration to Defendants for the payment of the Gross Settlement Fund is: (a) the entry by the Court of an Order and Final Judgment which will (i) dismiss the Action against Defendants with prejudice, (ii) bar and permanently enjoin Plaintiffs and each Class Member from prosecuting the Settled Claims, as defined below, and (iii) provide that any Class Member by operation of that order shall have fully, finally and forever released, relinquished and discharged any and all such Settled Claims; and (b) the entry of orders of final dismissal in each of the other actions being settled pursuant to the Global Settlement.

20. As used herein, "Settled Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic), including both known claims and unknown claims, accrued claims and not accrued claims, foreseen claims and unforeseen claims, matured claims and not matured claims, that have been or could have been asserted from the beginning of time to the end of time in any forum by the Class Members or any of them against any of the Released Parties (i.e., any and all of the Defendants, Avaya Inc., Agere Inc., or any of their current or former respective agents, servants, attorneys, auditors, investment

advisors, underwriters, officers, directors and employees, partners, subsidiaries, affiliates, insurers, stockholders, heirs, executors, representatives, successors and assigns) which arise out of or relate in any way to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to in this Action or that could have been asserted relating to the purchase, transfer, or acquisition of shares of the common stock of Lucent during the Class Period, except claims relating to the enforcement of the settlement of the Action. With respect to above, it is the intention of plaintiffs to expressly waive and relinquish, to the fullest extent permitted by law: (a) the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor"; and (b) the provisions, right and benefits of any similar statute or common law of any other jurisdiction that may be, or may be asserted to be, applicable.

21. If the Settlement is approved by the Court, all Settled Claims will be dismissed on the merits and with prejudice as to all Class Members and all Class Members shall be forever barred from prosecuting any action raising any Settled Claims against any Released Party.

22. The Gross Settlement Fund shall be reduced by such attorneys' fees and expenses as may be awarded by the Court, taxes and tax-related expenses, and administration fees and expenses (to the extent, if any, that such fees and expenses exceed the \$5 million Lucent has agreed to pay). The balance after such deductions (the "Net Settlement Fund"), shall be distributed to Class Members who submit valid, timely Proofs of Claim ("Authorized Claimants") in accordance with the proposed Plan of Allocation set forth below, or such other Plan of Allocation as may be approved by the Court.

23. Distribution of the Net Settlement Fund cannot occur unless and until all the conditions to the Settlement are met, including obtaining approval of this Settlement by the Court, and approval by the relevant Courts and entry of orders of dismissal of each of the other actions being settled under the Global Settlement.

24. Approval of the Settlement is independent from approval of the proposed Plan of Allocation. Any determination with respect to the proposed Plan of Allocation will not affect the Settlement with the Defendants, if approved.

VI. PLAN OF ALLOCATION OF NET SETTLEMENT FUND

25. To receive any distribution from the cash, stock and Warrants in the Net Settlement Fund, all persons or entities must complete a Proof of Claim form and mail it and all required documentation to the Claims Administrator on or before March 31, 2004.

26. **Calculation of Recognized Claims:** The Claims Administrator shall determine each Authorized Claimant's pro rata share of the cash, stock and Warrants in Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim." The Recognized Claim formula is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Claim formula is the basis upon which the Net Settlement Fund will be proportionately allocated to Authorized Claimants. Plaintiffs' damages expert analyzed the market price reaction to the disclosures made by Lucent during and at the end of the Class Period. Recognized Claims are based on the price declines associated with the corrective disclosures of previously allegedly misrepresented information set forth in the Complaint. For certain periods, the Recognized Claim is \$0. No claim amount is recognized when both the purchase and sale occur without intervening public disclosure of adverse information.

27. **Recognized Claim Per Lucent Share Purchased During The Class Period:**

(a) For shares of Lucent common stock that were purchased from October 26, 1999 through and including January 6, 2000, and:

(i) sold on or before January 6, 2000, the Recognized Claim is \$0;

(ii) sold during the period January 7, 2000 through and including July 19, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$19.88 per share;

(iii) sold during the period July 20, 2000 through and including October 10, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$29.72 per share;

(iv) sold during the period October 11, 2000 through and including November 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$37.25 per share;

(v) sold during the period November 21, 2000 through and including December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$39.64 per share;

(vi) retained at the close of trading on December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus \$13.625 per share, or b) \$42.51 per share.

(b) For shares of Lucent common stock that were purchased from January 7, 2000 through and including July 19, 2000, and:

(i) sold on or before July 19, 2000, the Recognized Claim is \$0;

(ii) sold during the period July 20, 2000 through and including October 10, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$9.84 per share;

(iii) sold during the period October 11, 2000 through and including November 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$17.37 per share;

(iv) sold during the period November 21, 2000 through and including December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$19.76 per share;

(v) retained at the close of trading on December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus \$13.625 per share, or b) \$22.63 per share.

(c) For shares of Lucent common stock that were purchased from July 20, 2000 through and including October 10, 2000, and:

(i) sold on or before October 10, 2000, the Recognized Claim is \$0;

(ii) sold during the period October 11, 2000 through and including November 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$7.53 per share;

(iii) sold during the period November 21, 2000 through and including December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$9.92 per share;

(iv) retained at the close of trading on December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus \$13.625 per share, or b) \$12.79 per share.

(d) For shares of Lucent common stock that were purchased from October 11, 2000 through and including November 20, 2000, and:

(i) sold on or before November 20, 2000, the Recognized Claim is \$0;

(ii) sold during the period November 21, 2000 through and including December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus the sales price per share, or b) \$2.39 per share;

(iii) retained at the close of trading on December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus \$13.625 per share, or b) \$5.26 per share.

(e) For shares of Lucent common stock that were purchased from November 21, 2000 through and including December 20, 2000, and:

(i) sold on or before December 20, 2000, the Recognized Claim is \$0;

(ii) retained at the close of trading on December 20, 2000, the Recognized Claim is the lesser of: a) the purchase price per share minus \$13.625 per share, or b) \$2.87 per share.

General Provisions:

28. Each Authorized Claimant shall be allocated a pro rata share of the cash, common stock and Warrants in the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants ("Distribution Amount"). However, Plaintiffs' Co-Lead Counsel shall have the discretion to make adjustments to the composition of a distribution, as set forth below. **PLEASE NOTE: IN ORDER TO RECEIVE ANY OF THE WARRANTS ALLOCATED AS PART OF THE DISTRIBUTION AMOUNT, AUTHORIZED CLAIMANTS MUST PROVIDE A BROKERAGE ACCOUNT NUMBER INTO WHICH THE WARRANTS CAN BE ELECTRONICALLY TRANSFERRED.** If an Authorized Claimant does not have an account and requires assistance in opening one, the Claims Administrator will be able to provide assistance in locating a broker where an account can be opened and maintained free of charge.

29. The minimum Distribution Amount shall be \$5.00. To the extent an Authorized Claimant's calculated Distribution Amount is less than \$5.00, that claimant will receive a distribution of \$5.00 in cash. No fractional shares or fractional Warrants shall be issued. If a Distribution Amount includes a de minimus number of shares or Warrants, Plaintiff's Co-Lead Counsel shall have the discretion to direct that, instead of issuing those shares or Warrants as part of the Distribution Amount, the entire Distribution Amount shall be paid in cash.

30. If a claim is submitted by the trustee of an ERISA Plan on behalf of the Plan, the Distribution Amount on that claim will be reduced dollar for dollar by the amount credited to the Plan with respect to shares purchased during the period beginning on December 31, 1999 up through and including December 20, 2000 pursuant to the settlement in the ERISA Class Actions.

31. Class Members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not either submit a request for exclusion or submit an acceptable Proof of Claim will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this Action.

32. **PLEASE NOTE:** To the extent a Claimant had a gain from his, her or its overall transactions in Lucent common stock during the Class Period, the value of the Recognized Claim will be zero. To the extent that a Claimant suffered an overall loss on his, her or its overall transactions in Lucent common stock during the Class Period, but that loss was less than the Recognized Claim calculated pursuant to the provisions of paragraph 27 above, then the Recognized Claim shall be limited to the amount of the actual loss.

33. For purposes of determining whether a Claimant had a gain from his, her or its overall transactions in Lucent common stock during the Class Period or suffered a loss, the Claims Administrator shall: (i) total the amount paid for all Lucent common stock purchased during the Class Period by the claimant (the "Total Purchase Amount"); (ii) match any sales of Lucent common stock during the Class Period first against the Claimant's opening position in the stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining shares of Lucent common stock sold during the Class Period (the "Sales Proceeds"); (iv) ascribe a holding value equal to the closing price of Lucent common stock on the day following the last day of the Class Period (i.e., \$13.625) times the number of shares of Lucent common stock purchased during the Class Period and still held at the end of the Class Period ("Holding Value"). The difference between (i) the Total Purchase Amount and (ii) the sum of the Sales Proceeds and Holding Value, will be deemed a Claimant's gain or loss on his, her or its overall transactions in Lucent common stock during the Class Period.

34. Shares of Lucent common stock acquired during the Class Period by means of a gift, inheritance or operation of law, do not qualify as purchases on the dates of such acquisitions. If, however, such stock was purchased during the Class Period by the donor, decedent or transferor, then, unless the donor, estate or transferor submits a Proof of Claim with respect to the shares, the recipient's Proof of Claim will be computed by using the price of such stock on the original date of purchase and not the date of transfer.

35. Distribution to Authorized Claimants from the Net Settlement Fund will be made after all claims have been processed and after the Settlement has become Effective. If any funds remain in the Net Settlement Fund by reason of un-cashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any cash balance remaining in the Net Settlement Fund one (1) year after the initial distribution of such funds shall be re-distributed after payment from this balance of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution to Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Plaintiffs' Co-Lead Counsel.

VII. THE RIGHTS OF CLASS MEMBERS

36. The Court has certified this Action to proceed as a class action. If you purchased Lucent common stock during the Class Period, i.e., the period beginning on October 26, 1999 through and including December 20, 2000 and were damaged thereby and you are not excluded by the definition of the Class and do not elect to exclude yourself, then you are a Class Member and you will be bound by the proposed Settlement provided for in the Stipulation, in the event it is approved by the Court, and by any judgment or determination of the Court affecting the Class.

37. If you wish to remain a member of the Class, you may be eligible to share in the proceeds of the Settlement, provided that you submit an acceptable Proof of Claim. As a Class Member you will be represented by Lead Plaintiffs and their counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file an appearance on your behalf and must serve copies of such appearance on the attorneys listed in paragraph 46 below.

38. If you do not wish to remain a member of the Class, you may exclude yourself from the Class by following the instructions in paragraph 44 below. Persons who exclude themselves from the Class will **NOT** be eligible to receive any share of the Settlement proceeds and will not be bound by the Settlement.

39. If you object to the Settlement or any of its terms, the proposed Plan of Allocation, or to plaintiffs' counsel's application for fees and expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in paragraph 46 below.

VIII. SUBMISSION AND PROCESSING OF PROOFS OF CLAIM

40. Only those Class Members who purchased Lucent common stock during the Class Period will be eligible to share in the distribution of the Net Settlement Fund. As a condition to recovering any payment, each Class Member shall be required to submit a Proof of Claim no later than March 31, 2004 to the address set forth in the attached Proof of Claim form. Unless otherwise ordered by the Court, any Class Member who fails to submit a Proof of Claim by March 31, 2004 shall be forever barred from receiving any payments pursuant to the Settlement, but will in all other respects be subject to the provisions of the Stipulation, including the terms of any judgment entered and the releases given.

41. The Proof of Claim must be supported by such documents as specified in the Proof of Claim. The Proof of Claim is enclosed herewith. Extra copies can be obtained from the Claims Administrator at the address shown in paragraph 53 below.

42. The Court has reserved jurisdiction to allow, disallow or adjust the Claim of any Class Member on equitable grounds. The Court also reserves the right to modify the Plan of Allocation without further notice to the Class. Payment pursuant to the Plan of Allocation finally approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiffs' Co-Lead Counsel or the Claims Administrator or any agent designated by Plaintiffs' Co-Lead Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation as finally approved by the Court, or further orders of the Court.

43. Each Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the District of New Jersey with respect to his, her or its Proof of Claim.

IX. REQUESTS FOR EXCLUSION FROM THE CLASS

44. Each Member of the Class shall be bound by all determinations and judgments in this Action concerning the Settlement, whether favorable or unfavorable, unless such person shall mail, by first class mail, a written request for exclusion from the Class, postmarked no later than November 25, 2003, addressed to:

In re Lucent Technologies, Inc. Securities Litigation EXCLUSIONS
c/o The Garden City Group, Inc.
Claims Administrator
P.O. Box 9000 #6142
Merrick, NY 11566-9000

No person may exclude himself from the Class after that date. In order to be valid, each such request for exclusion must set forth the name and address of the person or entity requesting exclusion, must state that such person or entity "requests exclusion from the Class in the In re Lucent Technologies, Inc. Securities Litigation, Case No. 00-CV-621 (JAP)" and must be signed by such person or entity, and should also provide the following information: their telephone number, the date(s), price(s), and number(s) of shares of all purchases and sales of Lucent common stock during the Class Period. Requests for exclusion shall not be effective unless the request includes the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

45. If a member of the Class requests to be excluded, that Class Member will not receive any benefit provided for in the Stipulation.

X. SETTLEMENT FAIRNESS HEARING

46. As set forth in paragraph 6 above, the Court will hold a Settlement Fairness Hearing on December 12, 2003 at 9:30 a.m., to consider the proposed Settlement, the proposed Plan of Allocation and the application for an award of attorneys' fees and reimbursement of expenses. Any Class Member who does not request exclusion by November 25, 2003, may appear at the Settlement Fairness Hearing and be heard on any of the matters to be considered at the hearing; provided, however, that no such person shall be heard,

unless his, her or its objection or opposition is made in writing and is filed, together with copies of all other papers and briefs to be submitted to the Court at the Settlement Fairness Hearing, by him, her or it (including proof of all purchases of Lucent common stock during the Class Period) with the Court in the Clerk's Office at the address set forth in paragraph 52 below no later than November 25, 2003, and is served by hand or by overnight delivery upon the following:

Plaintiffs' Co-Lead Counsel:

David J. Bershad, Esq.
MILBERG WEISS BERSHAD
HYNES & LERACH LLP
One Pennsylvania Plaza
New York, New York 10119-0165
(212) 594-5300

Daniel L. Berger, Esq.
BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 554-1400

and upon Defendants' Counsel:

Paul C. Saunders, Esq.
CRAVATH, SWAINE & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
(212) 474-1000

John H. Schmidt, Jr., Esq.
LINDABURY, McCORMICK
& ESTABROOK, P.A.
53 Cardinal Drive
P.O. Box 2369
Westfield, New Jersey 07091
(908) 233-6800

47. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the proposed Plan of Allocation, and/or the request for attorneys' fees are required to indicate in their written objections their intention to appear at the hearing. Persons who intend to object to the Settlement, the proposed Plan of Allocation, and/or counsel's application for an award of attorneys' fees and expenses and desire to present evidence at the Settlement Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Unless otherwise ordered by the Court, any Class Member who does not make his, her or its objection or opposition in the manner provided shall be deemed to have waived all objections to the foregoing matters. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

48. The Settlement Fairness Hearing may be adjourned from time to time by the Court without further written notice to the Class. If you intend to attend the Settlement Fairness Hearing, you should confirm the date and time with Plaintiffs' Co-Lead Counsel.

XI. ATTORNEYS' FEES, COSTS AND EXPENSES OF PLAINTIFFS' ATTORNEYS

49. At the Settlement Fairness Hearing, or at such other time as the Court may direct, Plaintiffs' Co-Lead Counsel intend to apply to the Court for a collective award of attorneys' fees of up to 19% of the Gross Settlement Fund and for reimbursement of their expenses in an amount not to exceed \$3,500,000, which were incurred in connection with the litigation. Plaintiffs' counsel will receive any fees awarded in cash, stock and Warrants in the same proportion as they comprise the Gross Settlement Fund; however, they will ask that reimbursement of expenses advanced be entirely in cash. Plaintiffs' counsel, without further notice to the Class, may subsequently apply to the Court for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to members of the Class and any proceedings subsequent to the Settlement Fairness Hearing.

50. To date, plaintiffs' counsel have not received any payment for their services in conducting this Action on behalf of plaintiffs and the Class, nor have they been reimbursed for their out-of-pocket expenses. The fee requested by Plaintiffs' Co-Lead Counsel would compensate plaintiffs' counsel for their efforts in

achieving the Gross Settlement Fund for the benefit of the Class, and for their risk in undertaking this representation on a contingency basis.

XII. SPECIAL NOTICE TO BROKERS AND OTHER NOMINEES

51. If you purchased Lucent common stock during the period beginning on October 26, 1999 through and including December 20, 2000 for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased such stock during such time period or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) days of receipt mail the Notice and Proof of Claim form directly to the beneficial owners of the securities referred to herein. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Gross Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator at the address shown in paragraph 53 below.

XIII. EXAMINATION OF PAPERS AND INQUIRIES

52. This Notice contains only a summary of the terms of the proposed Settlement. For a more detailed statement of the matters involved in this Action, reference is made to the: pleadings; Stipulation; the Cover Agreement; Orders entered by the Court, and to the other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court for the District of New Jersey, United States Courthouse, Martin Luther King, Jr. Federal Building & Courthouse, 50 Walnut Street, Newark, New Jersey 07101, during regular business hours. Copies of the Stipulation and the Cover Agreement may also be viewed at www.lucentsecuritieslitigation.com.

53. All inquiries concerning this notice or the proof of claim form by Class Members should be addressed as follows:

**In re Lucent Technologies, Inc. Securities Litigation
c/o The Garden City Group, Inc.
Claims Administrator
P.O. Box 9000 #6142
Merrick, NY 11566-9000
1 (866) 345-0365
www.lucentsecuritieslitigation.com**

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

Dated: Newark, New Jersey
September 23, 2003

**By Order of the Court
CLERK OF THE COURT**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE LUCENT TECHNOLOGIES INC.
SECURITIES LITIGATION

CASE NO.
00-CV-621 (JAP)

DECLARATION OF FRANK C. TORCHIO

I, Frank C. Torchio declare as follows:

1. I have been retained by Bernstein Litowitz Berger & Grossmann LLP and Milberg Weiss Bershad Hynes & Lerach LLP on behalf of Lead Plaintiffs, to opine on financial and economic issues in this Action. I have been also asked to comment on the development, fairness and reasonableness of the Plan of Allocation of the Net Settlement Fund (the "Plan of Allocation") contained in the Notice of Pendency of Class Action, Hearing on Proposed Settlement and Attorneys' Fee Petition and Right to Share in Settlement Fund (the "Notice") for the proposed settlement of the securities litigation by Lucent Technologies, Inc. ("Lucent" or the "Company") common stockholders.

2. In addition, I have been asked to describe the methods I used in estimating potential damages to shares purchased during the period October 26, 1999 through December 20, 2000 (the "Class Period") by investors in Lucent (the "Class"), as well as estimating the price reactions to certain disclosures made by Lucent that were alleged to partially correct and then disclose previously misrepresented and omitted information as set forth in the Fifth Consolidated and Amended Class Action Complaint (the "Complaint").

I. QUALIFICATIONS AND COMPENSATION

3. I am the President of Forensic Economics, Inc., located in Rochester, New York. I founded Forensic Economics, Inc. (formerly Dorkey & Associates) in 1989. I have consulted on issues pertaining to financial valuations, regulatory economics, transfer pricing, and financial economic analysis, and analyzing the response of stock prices to public information in securities fraud lawsuits for over thirteen years. Forensic Economics is retained by both plaintiffs and defendants in such securities cases.

4. I have testified on damages in securities fraud lawsuits and I have co-authored an article about the trading models used for estimating damages in securities lawsuits. The article is published in Duke University School of Law's *Law and Contemporary Problems* (Vol. 64, Spring-Summer 2001).

5. I hold an MBA in Finance and Economics (1982) from the University of Rochester's William E. Simon Graduate School of Business Administration. I was the 1991 Rosenthal Fellow at the University of Rochester for innovative developments in applying financial economic theory. I have served on the adjunct faculties at the William E. Simon Graduate School of Business Administration at the University of Rochester (1997 to 1999) and at the Graduate School of Business at Rochester Institut e of Technology (1994 to 1996). I have passed the Level III examination of the Chartered Financial Analyst ("CFA[®]") program of the Association for Investment Management & Research and I have been awarded the CFA[®] charter. My resume is attached to this Declaration as Exhibit 1.

6. My compensation is based on the number of hours worked, as well as out-of-pocket expenses. My hourly rate is \$300. For litigation support, I used Forensic Economics, Inc., whose employees work under my supervision and direction for their work in this assignment. Forensic Economics' hourly rates range from \$125 to \$300. Exhibit 2 contains a table of the current amount billed for work on this litigation as of the date of this Declaration.

II. MATERIALS REVIEWED

7. In the course of my work in connection with this litigation, I and my associates (acting under my supervision and direction) have reviewed numerous case documents, including the Complaint, SEC filings, market prices and volume, news stories, press releases, analyst reports, and institutional holdings of Lucent's publicly traded common stock. I have attempted to cite in the text of this Declaration specific documents and information on which I have relied in reaching my opinions.

III. MEASUREMENT OF PRICE REACTIONS

8. I calculated the price reaction to disclosures that the Complaint alleges to have corrected previously misrepresented and omitted information. In order to calculate the price reactions, I used "event study" methodology. Event study methodology, which is described in more detail below, is a widely accepted tool to measure the effect on market prices from new information relevant to a company's equity valuation. When used to calculate damages in a securities fraud case, an event study is generally used to

assess materiality and loss causation, and as the basis for the amount of artificial inflation present in the market price of the common stock during the class period.¹

A. Event Study Methodology

9. As a general proposition, modern finance theory holds that the market price of a stock reflects the expected discounted value of future cash flows to equity holders. Thus, new information that causes the market to significantly alter its expectation of future cash flows will cause a prompt repricing of the stock to reflect the new expectations.²

10. Since the publication in 1969 of a classic paper by Fama, Fisher, Jensen, and Roll,³ financial economists have used event study methodology as a tool to measure the effect on market prices of new information relevant to a company's equity valuation. New information may include earnings reports, dividend changes, stock-splits, regulatory rulings, acquisition bids, asset sales, tax legislation, or any other information that is relevant to investors' assessments of future cash flows. Event study methodology also

¹ See M. Mitchell and J. Netter, "The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *The Business Lawyer* 49, 545-590 (February 1994); and D. Tobak and F. Dunbar, "Materiality and Magnitude: Event Studies in the Courtroom," *NERA Working Paper* (April 1999).

² See E. Fama, "Efficient Capital Markets: II," *Journal of Finance* 46, 1575-1617 (December 1991); R. Jennings, and L. Starks, "Information Content and the Speed of Stock Price Adjustments," *Journal of Accounting Research* 23, 336-350 (Spring 1985); J. Patell and M. Wolfson, "The Intraday Speed of Adjustment of Stock Prices to Earnings and Dividend Announcements," *Journal of Financial Economics* 13, 243-252 (June 1984); and C. Woodruff and J. Senchack, Jr., "Intradaily Price-Volume Adjustments of NYSE Stocks to Unexpected Earnings," *Journal of Finance* 43, 467-491 (June 1988).

³ See E. Fama, L. Fisher, M. Jensen and R. Roll, "The Adjustment of Stock Prices to New Information," *International Economic Review* 10, 1-21 (February 1969).

has been widely used to assess the effect on market prices from disclosures of false and misleading information in fraud-on-the-market cases.⁴

11. An event study is an empirical technique that measures the effect of new information on the market prices of a company's publicly traded securities. This is done by comparing the day-to-day percentage change in the market price of a company's common stock (known as a "return") to the return predicted by a market model that uses a market index, such as the S&P 500 Index or the Nasdaq Composite Index, and possibly an industry index.⁵ The market model describes the normal relation between the return on the company's common stock and the return on the market and industry indexes. When significant new information about the company (*i.e.*, corrective disclosures, earnings reports, dividend changes, stock-splits, regulatory rulings, acquisition bids, asset sales, or tax legislation) is disclosed to the market, the market model is used to determine the component of the stock return that would be expected based on the return of the overall market and industry. The remaining component of the stock return (that cannot be explained by the return on the market and industry) is attributed to the new company-specific information or volatility.⁶ If the disclosure of the new information is accompanied by a stock return that is outside of the stock's normal volatility range (as

⁴ See M. Mitchell and J. Netter, "The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *The Business Lawyer* 49, 545-590 (February 1994); and D. Tobak and F. Dunbar, "Materiality and Magnitude: Event Studies in the Courtroom," *NERA Working Paper* (April 1999).

⁵ See J. Campbell, A. Low, & A. Craig MacKinlay, *The Econometrics of Financial Markets*, Princeton University Press (1997), p. 156.

⁶ See E. Fama, L. Fisher, M. Jensen and R. Roll, "The Adjustment of Stock Prices to New Information," *International Economic Review* 10, 1-21 (February 1969).

measured by the market model), then the return is said to be "statistically significant."⁷ Because event study methodology measures the market's response to new information, it has been widely used to assess materiality, loss causation and artificial inflation in fraud-on-the-market cases.⁸

12. The stock-price change caused by a corrective disclosure generally is the best estimate of the change in the amount of artificial inflation on the date of the disclosure because the corrective disclosure removes artificial inflation from the market price of the stock. Event studies also assess the probability that a stock-price movement was due to news disclosed about a particular event, and not due to chance. Thus, the event study can objectively quantify the market price movements associated with the disclosure of new information to assess the materiality of that information to investors.

13. The event study methodology used to calculate damages in securities fraud cases relies on two well-accepted principles. First, the price of an actively traded security reflects all publicly available information and responds quickly to new information. Second, the price of an efficiently traded stock is equal to the present discounted value of the expected future stream of free cash flows.⁹ Consequently, the

⁷ The determination of a statistically significant return must account for the individual stock's normal volatility. Accordingly, event studies start by computing "excess returns" (the percentage change in the company's stock price including dividends, net of market-wide and industry-wide influences) and the volatility of these excess returns.

⁸ See M. Mitchell and J. Netter, "The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission," *The Business Lawyer* 49, 545-590 (February 1994); and D. Tobak and F. Dunbar, "Materiality and Magnitude: Event Studies in the Courtroom," *NERA Working Paper* (April 1999).

⁹ R. Brealey & S. Myers, *Principles of Corporate Finance, 5th Edition*, McGraw Hill (1996), 71 & Ch. 4.

change in the stock price will reveal the effects of an event on expected future cash flows where, as in this action: (i) the event is a well-defined news item; (ii) the time that the news item reaches the market is known; (iii) there is no reason to believe that the market anticipated the news item; and (iv) it is possible to isolate the effect of the news item from market, industry and other issuer-specific factors simultaneously affecting the issuer's stock price.

Event study methodology involves the following "well-defined steps":

- (a) A market model is estimated to permit the removal of market-wide and industry-wide effects from the actual day-to-day stock returns;
- (b) The market model is used to calculate predicted returns for the issuer's common stock assuming that there was no fraud and, therefore, no corrective disclosures;
- (c) The predicted returns are then subtracted from the issuer's actual returns to calculate excess returns, which are the price movements in the issuer's common stock net of market-wide and industry-wide effects;
- (d) Significant new information disclosed to the market is then compared to the excess returns on the day or days on which the disclosures are made in order to quantify the effect on the market price of the common stock caused by those disclosures or events.

These steps are discussed in detail in the paragraphs below.

(i) Estimating a Market Model for Lucent

14. In order to determine whether the changes in the market price of a particular issuer's common stock are caused by a specific event or announcement, the actual returns for the issuer's common stock are compared to the returns predicted by a market model that controls for market-wide and industry-wide effects on the stock return. Thus, the first step in the event study methodology is to estimate an appropriate market

model. This is done by first selecting a proxy for the market, customarily the S&P 500 Index, the Nasdaq Composite Index, or another broad-based market index, and a proxy for the industry. Then, to quantify the correlation of the returns on the selected market and industry indexes with the returns on a particular common stock, a statistical technique known as regression analysis is used.

15. If industry and other indexes help “explain” more of the issuer’s daily returns, the indexes are generally included in the model.

16. The regression analysis produces a constant term and one or more slope coefficients called “betas”. The slope coefficients or betas quantify the sensitivity of a stock’s return to the return on the market and the industry indexes, if used.¹⁰ A stock with a market beta of 1.0 is expected to increase by one percent for each one percent increase in the market index. Similarly, a stock with a market beta of 2.0 is expected to increase by two percent for each one percent increase in the market index.

17. Here, I selected the Nasdaq Composite Index as the proxy for the market. The model yielded a market beta of 1.19. I also included an industry index consisting of an equally-weighted portfolio of peer companies.¹¹ The beta on the industry return, net of market, is 0.46. I estimated the betas over the period October 1, 1998 through September 29, 1999, one year ending the month before the start of the Class Period.

¹⁰ The return on the industry index is generally measured “net of market” to minimize the effects of a statistical phenomenon called multicollinearity.

¹¹ The index consists of companies listed in the S&P 500 Telecommunications Equipment Index at any time from 1998 - 2001, excluding Avaya, Inc. and Cisco Systems, where data is available. The companies are: ADC Telecommunications, Inc.; Andrew Corp.; Ciena Corp.; Comverse Technology, Inc.; Corning, Inc.; Harris Corp.; JDS Uniphase Corp.; Motorola, Inc.; Nortel Networks Corp.; Qualcomm, Inc.; Scientific Atlanta, Inc.; Tellabs, Inc.; General Instrument Corp.; and DSC Communications Corp.

(ii) Calculating the Predicted and Excess Returns

18. After estimating the market model, the next step is to use it to calculate the predicted daily returns for Lucent on the relevant dates. The predicted returns are equal to the intercept plus the market beta times the return on the market index (here the Nasdaq Composite Index) plus the industry beta times the net of market return on the industry index. I then calculated excess returns by subtracting the predicted returns from Lucent's actual returns. As described in more detail below, I used the excess returns to quantify the impact on the value of Lucent's common stock of the disclosures alleged in the Complaint to have corrected the previously misrepresented and omitted information.

19. The actual returns generally deviate from the predicted returns even when no observable event has occurred. Accordingly, the event study methodology requires a determination of whether an excess return is likely attributable to chance. This is done by testing the excess return for statistical significance. The statistical significance of the daily excess returns is indicated by the "t-statistic."¹² A t-statistic greater than 1.96 in absolute value (either positive or negative) means that the excess return is significant at the 95% confidence level; a t-statistic greater than 2.58 in absolute value means that the excess return is significant at the 99% confidence level.

B. Measurement of Price Reactions

20. Once the market model is estimated, I am able to use event study methodology to measure the price reaction of Lucent stock to the disclosures alleged in

¹² I computed the t-statistic as the excess return divided by the standard error of the regression of Lucent's market model.

the Complaint to have corrected the previously misrepresented and omitted information. These corrective disclosures include Lucent disclosures during the Class Period of earnings warnings or earnings announcements that fell short of market expectations.

21. I explained in paragraph 9 the basic financial axiom underlying the inference that negative changes in stock price reflect a loss in value from future cash flows or earnings. When a company misses its earnings expectations, as was the case for the Lucent disclosures analyzed here, it signals to the market that the future cash flows will be lower than previously expected. That is why the stock price decline generally exceeds the per share earnings shortfall by a substantial multiple. Therefore, disclosures of earnings shortfalls cause the market to revise its expectation of future earnings and cash flows, which Plaintiffs contend would have been the result from a hypothetical disclosure that corrected the alleged misrepresentations and omissions.

22. In the following paragraphs, I detail the price reactions to the following disclosures: January 6, 2000; July 20, 2000; October 10, 2000; November 21, 2000; and December 21, 2000.

(i) January 6, 2000

23. On January 6, 2000, after the market closed, Lucent warned that their results for the first quarter of 2000 would miss analyst expectations. Lucent stock closed at \$69 on NYSE-exchange trading.¹³ On January 7, 2000, Lucent closed at \$53.9375.

¹³ I use Tradeline prices as of the close of the NYSE. I note that Lucent declined in trading after the NYSE closed.

24. The excess stock price return on January 7, 2000 is statistically significant. Net of the effects of market and industry movements, I measured the price decline associated with the January 6, 2000 disclosure to be \$19.88.

(ii) July 20, 2000.

25. On July 20, 2000, prior to the market open, Lucent announced results for its third quarter that were in line with analyst expectations. In addition, Lucent warned that its earnings for the next two quarters would be less than expected by analysts. Lucent stock price declined over 16%, closing at \$54 down from its previous close of \$64.50 on July 19. The excess return is statistically significant. On July 19, 2000, Lucent's stock price increased as "whisper" numbers indicated that it might top 3Q expectations. The excess stock return on July 19 is statistically significant.

26. To measure the effect of the July 20, 2000 disclosure, I net out the increase on July 19, 2000 from the July 20, 2000 decline. Part of the decline is likely to be simply a reversal of the previous day's runup on expectations of a better than expected 3Q. When Lucent announced its originally anticipated results, the stock price would reflect a reversal of the previous day's run-up. The remaining decline is then attributable to the other negative information disclosed on July 20, 2000. Net of the effects of market and industry movements, I measured the price decline associated with the July 20, 2000 announcement to be \$9.84.

(iii) October 10, 2000

27. On October 10, 2000, after the close of the market, Lucent announced that it would fall short of its already reduced estimates for its fourth quarter earnings.

Lucent's stock price declined over 32%, closing at \$21.25, down from its previous close of \$31.375 on October 10. The excess return on October 11, 2000 is statistically significant. In addition, Lucent's stock price increased on October 12, 2000. The excess return on October 12 is also statistically significant. I did not find any new information released on October 12, 2000 to explain the significant price increase. Therefore, to measure the decline associated with the October 10 announcement, I combined the stock price decline on October 11 with the stock price increase on October 12.

28. Net of the effects of market and industry movements, I measured the price decline associated with the October 10, 2000 disclosure to be \$7.53.

(iv) November 21, 2000

29. On November 21, 2000, prior to the open of the market, Lucent announced that it would restate its fourth quarter results, originally announced October 23, 2000. Lucent's stock price declined over 16%, closing at \$20.9375, down from its previous close of \$17.5625 on November 20. The excess return on November 21, 2000 is statistically significant. In addition, Lucent's stock price increased on November 22, 2000. The excess return on November 22 is also statistically significant. I did not find any new information released on November 22, 2000 to explain the significant price increase. Therefore, to measure the decline associated with the November 21 announcement, I combined the stock price decline on November 21 with the stock price increase on November 22.

30. Net of the effects of market and industry movements, I measured the price decline associated with the November 21, 2000 disclosure to be \$2.39.

(v) December 21, 2000

31. On December 21, 2000, prior to the opening of the market, Lucent announced that it was reducing its forecasts for its first quarter results. In addition, Lucent was lowering its fourth quarter revenue results due to its review began in November. Lucent's stock price declined over 8%, closing at \$14.1875, down from its previous close of \$15.50 on December 20. The excess return on December 21, 2000 is statistically significant. In addition, Lucent's stock price declined on December 22, 2000, closing at \$13.625. The excess return on December 22 is also statistically significant. I did not find any new information released on December 22, 2000 to explain the significant price increase. Therefore, to measure the decline associated with the December 21 announcement, I combined the stock price decline on December 21 with the decline on December 22.

32. Net of the effects of market and industry movements, I measured the price decline associated with the December 21, 2000 disclosure to be \$2.87.

IV. ESTIMATION OF POTENTIAL DAMAGES

33. In order to estimate potential damages, it is necessary to first calculate the true value of the security in question throughout the class period. Based on the above disclosures alleged in the Complaint to have corrected the misrepresentations and omissions, I computed the true value of Lucent stock during the Class Period. I used an

approach to compute true value that was discussed in an article in the *UCLA Law Review*, which I refer to as the Cornell Morgan approach, named after the authors.¹⁴

34. Cornell Morgan provide a methodology for computing the true value (and thus artificial inflation) in securities fraud cases that is closely associated with the event study analysis used to estimate the stock price declines associated with corrective disclosures that I discussed above.¹⁵ In fact, Cornell Morgan refer to their methodology as the “Event Study Approach” to computing a security’s value. The Cornell Morgan Approach makes use of the same event windows that were used to identify and isolate the stock price response to the corrective disclosures. What Cornell Morgan posit is that value can be estimated backward in time: “The event study approach assumes that the price and the value of the security move in tandem except on days when fraud-related information is disclosed.”¹⁶ Cornell Morgan describe how the event study approach proceeds:

1. Collect the data and estimate the market model.
2. Construct a time series of daily returns. If no fraud-related information is disclosed, then set the return for that day equal to the actual return on the security; if fraud-related information is disclosed, or there is evidence that such information is leaking into the market, set the return for that day equal to the return on the security predicted by the market model.

¹⁴ B. Cornell and R.G. Morgan, “Using Finance Theory to Measure Damages in Fraud on the Market Cases,” *UCLA Law Review* 37, 883-923 (June 1990).

¹⁵ B. Cornell and R.G. Morgan, “Using Finance Theory to Measure Damages in Fraud on the Market Cases,” *UCLA Law Review* 37, 883-923 (June 1990).

¹⁶ B. Cornell and R.G. Morgan, “Using Finance Theory to Measure Damages in Fraud on the Market Cases,” *UCLA Law Review* 37, (June 1990) 899.

3. Use the series of returns constructed in step two to calculate the value line backwards in time according to the formula:

$$\text{Value (t-1)} = \text{Value (t)} / (1 + \text{Constructed Return (t)})$$

35. I used the market model described in the previous section for my analysis. I attribute the stock price reactions that resulted from the key disclosures on January 6, July 20, October 10, November 21 and December 21, 2000 to the market's reaction to the revelation of the alleged fraud.

36. Applying the Cornell Morgan approach to the Class Period, the price of \$13.63 (rounded) on December 22, 2000, the last day of the measurement of the price reaction to the last disclosure, is the starting point. Because the \$13.63 per share is the market price immediately after the wrongdoing is fully disclosed, it is a value that has zero artificial inflation. Working backward, the constructed value of December 21 is determined by dividing the \$13.63 price by the quantity [1 + the predicted return on December 22], which yields a true value of \$12.56. The predicted return is used because December 22 is a date in which information about the fraud was disclosed. The constructed value on December 20 is determined by dividing the \$12.56 true value on December 21 by the quantity [1 + the predicted return on December 21], which yields a true value of \$12.73. The artificial inflation of \$2.77 on December 20 is calculated by subtracting the true value of \$12.73 from the closing price of \$15.50 on that day. The constructed value line is computed backward in time for each of the previous days by dividing the true value on the next day by the quantity [1 + the constructed return on the next day], where the constructed return is equal to the predicted return on date with fraud-related disclosures and the actual return, otherwise.

37. My calculation of artificial inflation is consistent with the recoverable losses stipulated in the Plan of Allocation and allows me to compute potential damaged shares and to estimate damages.

38. Based on the true value line, I utilized a multi-trader model to estimate the timing of purchases and sales of shares during the Class Period.¹⁷ The model allows me to estimate whether shares that were purchased during the Class Period were either held through the end of the Class Period (“retained shares”) or sold prior to the end of the Class Period (“in and out shares”). Generally, damages under Section 10(b) of the Securities Exchange Act of 1934 for retained shares are equal to the artificial inflation present in the stock on the date of purchase.¹⁸ In general, in and out shares are only considered to be damaged if they are held over a partial corrective disclosure.

39. Based on the assumed corrective disclosure dates listed in the previous section, I estimated that approximately 3.352 billion shares were potentially damaged using a multi-trader model. My estimate of damages is well in the tens of billions of dollars.¹⁹

¹⁷ The multi-trader model allows for different classes of investors who have different trading propensities.

¹⁸ The Private Securities Litigation Reform Act of 1995 (“PSLRA”) places an upper limit on the maximum amount of recoverable damages, which is the difference between the purchase price paid and the mean trading price of the stock for the 90 day period following the day on which the information correcting the misstatements or omissions that are the basis for the action is disseminated to the market. I adjust my estimate for potential damaged shares to account for this “look-back” provision of the PSLRA.

¹⁹ I limit the true value to the excess price declines on the disclosure dates.

V. FAIRNESS AND REASONABLENESS OF THE PLAN OF ALLOCATION

40. In my view, the Plan of Allocation is a fair and reasonable method of distributing the settlement to Lucent shareholders. Assuming the disclosures stipulated in the Complaint accurately capture all the corrective disclosures of the alleged misrepresentations and omissions, the use of the actual decline that I measured as resulting from these disclosures is a reasonable and fair measure of an investor's loss. It comports with the level of artificial inflation that I used in estimating potential damaged shares as required by the PSLRA.

41. The Plan of Allocation only allows recovery for losses that are measurable directly from corrections of the alleged wrongdoing, and not for losses due to general market or industry movements or other company-specific reasons that are assumed to be unrelated to the alleged wrongdoing. In my opinion, this is fair and reasonable.

I declare under penalty of perjury, that the foregoing is true and correct. Executed on November 14, 2003.


Frank C. Torchio

FRANK C. TORCHIO, CFA
(formerly known as Frank C. Dorkey)

<u>Business Address:</u>	<u>Home Address:</u>
Forensic Economics, Inc. 95 Allens Creek Road Building 2, Suite 303 Rochester, New York 14618 (585) 385-7440 FAX (585) 385-7441	9 St. Ebba's Drive Penfield, New York 14526 (585) 249-9455

Employment and Education

- 8/89-present **Forensic Economics, Inc.** (incorporated in 1993), Rochester, NY.
President. Consulting in financial valuations and financial-economic analysis in securities litigation and business disputes.
- 6/82-8/89 **Rochester Gas and Electric Corporation**, Rochester, NY.
- 6/88-8/89 Vice President for Utilicom, an RG&E venture subsidiary.
- 4/87-6/88 Economist - Strategic Planning Department.
- 6/82-3/87 Financial Analyst - Treasury Department.
- 9/80-12/81 **M.B.A., Economics and Finance**, William E. Simon Graduate School of Business Administration, University of Rochester, Rochester, NY.
- 9/78-8/80 **Insurance Services Office**, New York, NY.
Statistician - Commercial Lines.
- 9/74-5/78 **B.A., Mathematics**, Niagara University, Niagara Falls, NY.

Publications

- "A Comparison of Trading Models Used for Calculating Aggregate Damages in Securities Litigation," with Michael Barclay, *Law and Contemporary Problems: Complex Litigation at the Millennium*, Vol. 64, Nos. 2 & 3, Spring/Summer 2001.
- "University of Rochester's Endowment Fund Review," with Gregg A. Jarrell, University of Rochester Simon School Working Paper, 11/93.
- "The Longer-Term Relation Between Accounting Performance and Stock Returns," with Gregg A. Jarrell, Working Paper - Bradley Policy Research Center, 8/92.
- "Proper Transfer Pricing Aids Success," with Gregg A. Jarrell, *Rochester Business Journal*, 7/30/90.
- "Calculating Proper Transfer Prices," with Gregg A. Jarrell, *Public Utilities Fortnightly*, 1/1/91.

Awards

- Awarded the Chartered Financial Analyst (CFA)[®] designation by the Association for Investment Management and Research (2002).
- The Richard L. Rosenthal Fellowship at the University of Rochester (1991).
- William E. Simon Graduate School of Business Administration Alumni Service Award (1992).

Activities

- Chairperson and speaker on Transfer Pricing Economics at the International Institute of Manufacturing.
- Former Adjunct Professor of Economics and Finance at Rochester Institute of Technology Graduate School of Business.
- Former Adjunct Professor at the Simon School at the U of R.
- Guest Lecturer in the mergers and acquisitions course at the Simon School at the U of R.
- Member of the National Association of Forensic Economics.
- Volunteer for entertaining at nursing homes and senior citizen communities to raise funds for the American Cancer Society.

Reports and Testimonial Experience

Declaration of Frank C. Torchio in Cendant Corporation Litigation in the United States District Court For The District Of New Jersey, Master File No. 98-1664 (WHW) (October 15, 2003).

Affidavit of Frank C. Torchio in Worldcom, Inc. Securities Litigation in the United States District Court Southern District of New York, Master File No. 02 Civ. 3288 (DLC) (September 25, 2003).

Affidavit of Frank C. Torchio in Chalk & Vermillion, LLC and Chalk & Vermillion Fine Arts, Inc., v. Thomas F. McKnight, LLC, as Successor in interest to Thomas F. McKnight, Inc., Thomas F. McKnight, Inc., Thomas McKnight and Renate McKnight in the Supreme Court of the State of New York County of New York, Index No. 01/602909 (September 15, 2003).

Affidavit of Frank C. Torchio in Chronimed Inc. Securities Litigation in the United States District Court for the District of Minnesota, Master File No. 00-CV-1092 (DWF/AJB) (August 18, 2003).

Affidavit of Frank C. Torchio in Independent Energy Holdings PLC Securities Litigation in the United States District Court Southern District of New York, Master File No. 00 Civ. 6689 (SAS) (August 8, 2003).

Supplemental Declaration of Frank C. Torchio in Jason Stanley, et al. v. Safeskin Corporation, et al. in the United States District Court Southern District of California, Lead Case No. 99cv0454-BTM (LSP) (June 2, 2003).

Expert Report of Frank C. Torchio in AMF Bowling Securities Litigation in the United States District Court Southern District of New York, Civil Action No. 99 Civ. 3023 (HB) (March 10, 2003).

Declaration of Frank C. Torchio in Jason Stanley, et al. v. Safeskin Corporation, et al. in the United States District Court Southern District of California, Lead Case No. 99cv0454-BTM (LSP) (February 28, 2003).

Rebuttal Expert Report of Frank C. Torchio in Independent Energy Holdings PLC Securities Litigation in the United States District Court Southern District of New York, Master File No. 00 Civ. 6689 (SAS) (December 9, 2002).

Expert Report of Frank C. Torchio in Independent Energy Holdings PLC Securities Litigation in the United States District Court Southern District of New York, Master File No. 00 Civ. 6689 (SAS) (October 11, 2002).

Rule 26(e)(1) Expert Report of Frank C. Torchio in SmarTalk Securities Litigation in the United States District Court Southern District of California, Lead Case No. 99cv0454-BTM (LSP) (August 30, 2002).

Report of Frank C. Torchio in Hamilton Bancorp, Inc. Securities Litigation in the United States District Court Southern District of Florida, Miami Division, Case No. 01-CIV-0156 GOLD/SIMONTON (August 12, 2002).

Report of Frank C. Torchio in Sykes Enterprises, Inc. Securities Litigation in the United States District Court, Middle District of Florida, Tampa Division, Case No.:8:00-CV212-T-26F (July 31, 2002).

Affidavit of Frank C. Torchio in Conseco Inc. Securities Litigation in the United States District Court, Southern District of Indiana, Indianapolis Division, IP00-0585-C Y/S (July 16, 2002).

Declaration of Frank C. Torchio in Bristol-Myers Squibb Company Securities Litigation in the United States District Court, Southern District of New York (July 2, 2002).

Deposition of Frank C. Torchio in Jason Stanley, et al. v. Safeskin Corporation, et al. in the United States District Court Southern District of California, Lead Case No. 99cv0454-BTM (LSP) (June 25, 2002).

Supplemental Expert Report of Frank C. Torchio in SmarTalk Securities Litigation in the United States District Court Southern District of Ohio Eastern Division, Master File No. C2: 98-948 also in the Superior Court of the State of California County of Los Angeles, Case No. BC194788 (June 15, 2002).

Supplemental Report of Frank C. Torchio in Jason Stanley, et al. v. Safeskin Corporation, et al. in the United States District Court Southern District of California, Lead Case No. 99cv0454-BTM (LSP) (June 5, 2002).

Report of Frank C. Torchio in Jason Stanley, et al. v. Safeskin Corporation, et al. in the United States District Court Southern District of California, Lead Case No. 99cv0454-BTM (LSP) (May 14, 2002).

Affidavit of Frank C. Torchio in Emil Rossdeutscher and Dennis Kelly v. Viacom, Inc. in the Superior Court of the State of Delaware in and for New Castle County, C.A. No. 98C-03-091 (JEB) (April 23, 2002).

Arbitration in Philip Michael Thomas et al. v. New Lauderdale, LLC et al in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (February 26, 2002).

Declaration of Frank C. Torchio in Assisted Living Concepts, Inc. Securities Litigation (February 14, 2002).

Report of Frank C. Torchio in SmarTalk Securities Litigation in the United States District Court Southern District of Ohio Eastern Division, Master File No. C2: 98-948 also in the Superior Court of the State of California County of Los Angeles, Case No. BC194788 (February 13, 2002).

Declaration of Frank C. Torchio in Janet Kay Adam, et al. v. Critical Path, Inc., et al. in the United States District Court Northern District of California, Case No. C-01-3756-WHA (January 30, 2002).

Deposition of Frank C. Torchio in Assisted Living Concepts, Inc. Securities Litigation (December 18, 2001).

Report of Frank C. Torchio in Assisted Living Concepts, Inc. Securities Litigation (November 16, 2001).

Deposition of Frank C. Torchio in Emil Rossdeutscher and Dennis Kelly v. Viacom Inc., in the Superior Court of the State of Delaware in and for New Castle County, C.A. No. 98C-03-091 (JEB) (November 15, 2001).

Affidavit of Frank C. Torchio in Accelr8 Technology Corp. Securities Litigation, in the United States District Court for the District of Colorado, Civil Action No. 00-K-938 (November 8, 2001).

Affidavit of Frank C. Torchio in Sykes Enterprises, Inc. Securities Litigation, in the United States District Court Middle District of Florida Tampa Division, Case No. 8:00-CV-212-T-26F (November 1, 2001).

Deposition of Frank C. Torchio in Camden Asset Management, LP; Frolely Revy Investment Company, Inc.; JMG Convertible Investments L.P.; Hamilton Partners, LTD.; and all others similarly situated v. Sunbeam Corporation; Albert J. Dunlap; Russell A. Kersh; Robert C. Gluck; and Arthur Andersen LLP, in the United States District Court Southern District of Florida Miami Division, 99-8275-Civ-Middlebrooks MDL No. 1297 (October 26, 2001).

Affidavit of Frank C. Torchio in Emil Rossdeutscher and Dennis Kelly v. Viacom, Inc., in the Superior Court for the State of Delaware in and for New Castle County, C.A. No. 98C-03-091 (JEB) (October 5, 2001).

Deposition of Frank C. Torchio in Shelter General Insurance Co., et al. V. Shell Oil Company, et al., in the United States District Court for the District of Arizona, Civil Action No. 16809 (August 9, 2001).

Report and Rebuttal Report of Frank C. Torchio in Camden Asset Management, LP; Frolely Revy Investment Company, Inc.; JMG Convertible Investments L.P.; Hamilton Partners, LTD.; and all others similarly situated v. Sunbeam Corporation; Albert J. Dunlap; Russell A. Kersh; Robert C. Gluck; and Arthur Andersen LLP, in the United States District Court Southern District of Florida Miami Division, 99-8275-Civ-Middlebrooks MDL No. 1297 (June 23, 2001 and October 1, 2001).

Affidavit of Frank C. Torchio in Shelter General Insurance Co., et al. V. Shell Oil Company, et al., in the United States District Court for the District of Arizona, Civil Action No. 16809 (June 21, 2001).

Affidavit of Frank C. Torchio in re Zila, Inc. Securities Litigation in the United States District Court for the Southern District of Arizona, No. Civ. 99-0155-PHX-EHC (OMP) (May 2001).

Deposition of Frank C. Torchio in Research International, LTD. v. Numico Investment Corp. and Koninklijke N.V., in the United States District Court for the Western District of Pennsylvania, Civil Action No. 99-1264 (December 2000).

Report of Frank C. Torchio in Research International, LTD. v. Numico Investment Corp. and Koninklijke N.V., in the United States District Court for the Western District of Pennsylvania, Civil Action No. 99-1264 (November 2000).

Deposition of Frank C. Dorkey in Kayne, et al., v. MTC, et al., in the U.S. District Court for the Eastern District of New York, CV-95-2459 (JG) (May and September 2000).

Deposition of Frank C. Dorkey in re Cendant Corporation Litigation in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (June, 2000).

Affidavit of Frank C. Dorkey in re Cendant Corporation Litigation in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (June, 2000).

Affidavit of Frank C. Dorkey in re Cendant Corporation Litigation in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (May, 2000).

Affidavit of Frank C. Dorkey in re Physician Computer Network, Inc. Securities Litigation in the United States District Court for the District of New Jersey, Civil Action No. 98-981 (MTB) (March, 2000).

Expert Report of Frank C. Dorkey in Lucian B. Cox, III, City of Philadelphia, Philip Andrew Garner, Dan Babor and Joseph J. Szlavik, Jr. v. Software AG Systems, Inc., Daniel F. Gillis, Carl J. Rickersten, Dr. Philip S. Dauber, Dr. Erwin Koenig, Harry K. McCreery, Derek Brigden, Dr. Paul G. Stern and Thayer Equity Investors III, L.P. in the United States District Court for the Eastern District of Virginia, Civil Action No. 99-496-A (January, 2000).

Affidavit of Frank C. Dorkey in Lucian B. Cox, III, City of Philadelphia, Philip Andrew Garner, Dan Babor and Joseph J. Szlavik, Jr. v. Software AG Systems, Inc., Daniel F. Gillis, Carl J. Rickersten, Dr. Philip S. Dauber, Dr. Erwin Koenig, Harry K. McCreery, Derek Brigden, Dr. Paul G. Stern and Thayer Equity Investors III, L.P. in the United States District Court for the Eastern District of Virginia, Civil Action No. 99-496-A (January, 2000).

Affidavit of Frank C. Dorkey in re Interneuron Pharmaceuticals Litigation, in the United States District Court District of Massachusetts, C.A. No. 1:97-12254-REK and all related cases (April, 1999).

Report of Frank C. Dorkey in Miller Brick Litigation (May, 1998).

Report in re: The Boeing Company vs. United States of America, in the United States District Court Western District of Washington at Seattle, Civil Action No. C96-1990C (March, 1998).

Report in Kayne, et. al., v. MTC, et., al., in the U.S. District Court for the Eastern District of New York, CV-95-2459 (JG) (1998).

Report and Affidavit in Steve Georgallas v. Martin Color-FI, Inc., in the U.S. District Court for the District of South Carolina (August, 1997).

Report in John J. Stevens v. Chase Manhattan Bank, N.A. (1997).

Report in Robert J. Douglas v. Chase Manhattan Bank, N.A. (1997).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 04 cv 2315 (WHW)
)	
v.)	
)	
LUCENT TECHNOLOGIES, INC.,)	
et al.)	
Defendants.)	
)	
)	

**ORDER GRANTING PLAINTIFF'S
MOTION FOR DISTRIBUTION OF FUNDS IN CRIS ACCOUNT
AND APPOINTMENT OF DISTRIBUTION AGENT**

Having considered Plaintiff's Motion For Distribution of Funds in CRIS Account and Appointment of Distribution Agent (the "Motion"), it is hereby:

ORDERED that the Motion is granted, and the Commission's settlement distribution plan as outlined therein (the "Distribution Plan"), is approved.

ORDERED that a "Distribution Fund" is hereby created that shall be distributed to injured investors pursuant to the Distribution Plan. The Distribution Fund shall be comprised of and include the entire amount contained in the CRIS Account established by the Clerk of Court in this matter, minus appropriate expenses incurred in establishing and maintaining the CRIS Account. Specifically, the Distribution Fund includes:

- a. the disgorgement, pre-judgment interest and civil penalties totaling \$25,402,993 deposited in the CRIS Account (the "Settlement Amount"), paid by the settling defendants, Lucent Technologies, Inc., William Plunkett, Deborah Harris, and Vanessa Petrini, pursuant to the Final Judgments entered on May 26, 2004;

b. plus post-judgment interest earned by the Settlement Amount in the CRIS Account; and

c. minus appropriate administrative expenses that the Clerk of Court shall withhold prior to delivery of the Distribution Fund to the Distribution Agent.

ORDERED that The Garden City Group, Inc., 105 Maxess Road, Melville, New York 11747, is appointed distribution agent ("Distribution Agent") over the Distribution Fund with the following powers and duties:

a. The Distribution Fund shall be deposited in the account maintained by The Garden City Group, Inc. in which the cash proceeds of the Class Action Settlement available for distribution are being maintained. The combined settlement proceeds are referred to as the "Combined Settlement Fund."

b. The Distribution Agent shall allocate 95 percent of the Distribution Fund to each settlement class member in In Re Lucent Technologies Inc. Securities Litigation, Case No. 00CV-621(JAP) (the "Class Action"), who (a) submitted a valid claim for Class Action settlement funds, as provided in the Stipulation of Settlement in the Class Action, and the September 23, 2003 Notice of Pendency of Proposed Class Action Settlement, which was approved for payment pursuant to the terms of the Order Re: Distribution of Class Settlement Fund Dated November 8, 2004 in the Class Action; and (b) is entitled to receive in total more than \$5.00 from the Class Action Net Settlement Fund.

c. The Distribution Agent shall print and mail checks to those Class Action settlement class members entitled to receive a distribution under paragraph b within 60

days after receiving the Distribution Fund from the Clerk of Court. All checks shall be valid for a period of 180 days from the date of issuance. Each check shall include on the check stub advice to the Class Member that the amount of the distribution includes a proportionate share of the Securities and Exchange Commission settlement proceeds which is being distributed jointly with the proceeds from the Class Action settlement pursuant to this Order.

d. Within 14 days after mailing the checks described in paragraph c, the Distribution Agent shall provide the Commission with the same periodic report it provides to class action counsel, transmitting the report to Richard Grime, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0800. Moreover, the Distribution Agent shall retain paper or hard copies of the Proof of Claim forms and supporting documents for not less than one year after the final distribution of the Distribution Fund to the Authorized Claimants and electronic or magnetic media data for not less than three years after the final distribution of the Net Settlement Fund to the Authorized Claimants.

e. Within 14 days after all checks issued pursuant to paragraph c have expired, the Distribution Agent shall provide a second statement to the Commission showing the remaining monies in the Distribution Fund.

f. The remaining five percent of the Distribution Fund that is not initially distributed to valid claimants shall be reserved so as to be available to pay Disputed Claimants and Claims in Process that the Court may ultimately accept and to pay all tax related expenses for the interest earned in the Distribution Fund.

g. The Distribution Agent shall calculate and pay from the remaining 5 percent of the Distribution Fund all applicable federal, state and local taxes owed by the Distribution Fund to the date of transfer, and prepare and file all appropriate tax forms, schedules, and applications. The Distribution Agent may retain tax professionals to assist in this effort, subject to review by the Court. Other than reasonable payment for the services of The Garden City Group, Inc. or other tax preparer, payment of applicable taxes, and the payment of fees to the Clerk of the Court as provided for CRIS funds, no funds from the Distribution Fund shall be used to pay any fees or expenses.

h. Within 14 days of filing the tax returns for the Distribution Fund referred to in paragraph g, the Distribution Agent, or such other person retained to prepare the tax returns, shall provide a copy of each such tax return to Richard Grime, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0800.

i. After all distribution procedures are complete and all costs relating to the Distribution Fund prior to its transfer to the Distribution Agent (including but not limited to the payment of taxes and the costs of preparation of tax returns), as well as any reasonable costs relating to services performed at the specific request of the Commission that are not necessary for the performance of services in connection with the Class Action Settlement have been paid, to the extent there are any funds remaining from the SEC portion of the Combined Settlement Fund, The Garden City Group, Inc. will promptly transfer those unclaimed or unallocated monies to the Commission, which in turn will pay those funds to the U.S. Treasury.

ORDERED that, the Distribution Agent shall not be entitled to any fees from the SEC portion of the Combined Settlement Fund for performing the allocation and distribution to Class Members of the SEC portion of the Combined Settlement Fund, since these services are ancillary to the services for which it is being paid reasonable fees in the Class Action. To the extent that the Distribution Agent performs any services at the specific request of the Commission relating to the SEC portion of the Combined Settlement Fund that are not necessary for the performance of its services in connection with the Class Action settlement, specifically including preparation of tax returns on the interest accumulated on the Distribution Fund while in the CRIS account, the Distribution Agent shall be paid its reasonable fees and costs from the SEC portion of the Combined Settlement Fund. All such fees must be reported to the Court and the Commission (at least ten days before submission to the Court) before expenditure and are subject to review by the Court, upon motion by the Commission or *sua sponte*.

ORDERED that when the Distribution Agent deems necessary, the Distribution Agent may, after consulting with and receiving the written consent of the Commission, and subject to review by the Court, modify this procedure to effectuate the general purposes of this Order.

ORDERED that the Distribution Agent and the Distribution Agent's designees, agents and assistants are excused from any requirement to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of misfeasance, gross negligence or reckless disregard of duty.

ORDERED the Clerk of the Court shall as promptly as the work of his office allows within ten (10) days of the date from this Order, transfer all monies in the Distribution Fund, less expenses incurred with respect to the CRIS Account, to the Distribution Agent. The transfer shall be made by wire, check or money order made payable to The Garden City Group, Inc., and delivered to The Garden City Group, Inc., 105 Maxess Road, Melville, New York 11747, to the attention of Neil Zola.

ORDERED that, after the Distribution Agent completes its duties specified herein, the Commission shall file with the Court a report describing the Distribution Agent's activities and the distribution made under this Order.

Dated: February __, 2005

Hon. William H. Walls
United States District Judge