

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

MRV COMMUNICATIONS INC

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SIC: **3674** Semiconductors & related devices

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 8-K

**Current Report
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **January 16, 2013**

MRV COMMUNICATIONS, INC.

(Exact name of Registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

001-11174
(Commission file number)

06-1340090
(I.R.S. employer
identification number)

20415 Nordhoff Street, Chatsworth, CA 91311
(Address of principal executive offices) (zip code)

Registrant's telephone number, including area code: **(818) 773-0900**

Not Applicable

Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 **Entry into a Material Definitive Agreement.**

On January 16, 2013, MRV Communications, Inc. (the “Company”) entered into a Memorandum of Understanding (“Memorandum”) containing the principal terms of a proposed settlement (“Settlement”), with Plaintiffs Warren Rubin IRA, Donald Gautreaux and Jing Ke (collectively, “Plaintiffs”), and Defendants Noam Lotan, Shlomo Margalit, Shay Gonen, Guy Avidan, Guenter Jaensch, Igal Shidlovsky, Daniel Tsui, Harold W. Furchtgott-Roth and Baruch Fischer (collectively, the “Individual Defendants”), of all claims in *In re MRV Communications, Inc. Derivative Litigation* and *Ke v. Margalit, et al.* (together the “Derivative Actions”).

In the Memorandum, the parties agree to negotiate in good faith and execute an appropriate Stipulation of Settlement reflecting the parties’ agreement to settle the Derivative Actions upon the terms outlined in the Memorandum, and any other documentation as may be required to obtain court approval of the Settlement and dismissal of the Derivative Actions with prejudice and release of all claims. Both the federal District Court and the California Superior Court have agreed to stay the litigation proceedings (subject to certain intermediary deadlines being accomplished) through February 3, 2013, at which time the Stipulation of Settlement will be filed with both courts. There can be no assurance that either the federal or state court will accept a Stipulation of Settlement once such Stipulation has been filed.

The Memorandum states that the Stipulation of Settlement will include, among other things, (a) a release of all claims relating to the Derivative Actions for the Company, the Individual Defendants, who are all former officers and directors of the Company, and the Plaintiffs; (b) a provision that \$2.5 million in cash to be paid to the Company by the Company’s insurance carriers; (c) a requirement that the Company pay to plaintiffs’ counsel \$500,000 in cash and 250,000 warrants to purchase the Company’s Common Stock, with a five-year term at a strike price of the lesser of \$11 per share or the closing price of the Company’s Common Stock on the date an order of the federal District Court approving the settlement becomes final; (d) the continued payment by the Company of applicable reasonable attorneys’ fees for the individual defendants; and (e) a requirement that the Company cancel all unexercised, outstanding options currently held by the Individual Defendants that are at issue in this litigation. Within 120 days following the later of the issuance of an order approving the Settlement by the federal District Court, or the end of the period available for appeal, the Company would be required to take certain corporate governance reform actions, many of which have already been implemented. Additional corporate governance initiatives that were agreed upon in the Memorandum include the adoption of a clawback policy and undertaking reasonable efforts to seek re-listing of the Company’s Common Stock on NASDAQ.

The foregoing description of the Memorandum is not complete and is qualified in its entirety by the full text of the document, which is attached hereto as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated by reference herein.

On January 16, 2013, the Company issued a press release announcing that the Memorandum of Understanding had been entered into with the Plaintiffs. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit 10.1	Memorandum of Understanding, dated January 16, 2013, by and among the Plaintiffs, Individual Defendants and the Company
Exhibit 99.1	Company’s press release dated January 16, 2013

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has duly caused this Report to be signed on its behalf by the undersigned, hereunto duly authorized.

Date: January 16, 2013

MRV COMMUNICATIONS, INC.

By: /s/ Jennifer Hanks Painter
Jennifer Hanks Painter
VP, General Counsel and Secretary

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) contains the principal terms of a settlement (“Settlement”) between Plaintiffs Warren Rubin IRA, Donald Gautreaux and Jing Ke (“Plaintiffs”), Defendants Noam Lotan, Shlomo Margalit, Shay Gonen, Guy Avidan, Guenter Jaensch, Igal Shidlovsky, Daniel Tsui, Harold W. Furchtgott-Roth and Baruch Fischer (the “Individual Defendants”), and nominal defendant MRV Communications, Inc. (“MRV,” or the “Company”) of the claims in *In re MRV Communications, Inc. Derivative Litig.*, Master File No.: 1:08-cv-03800-GAF(MANx) (C.D. Cal.) (“Federal Derivative Action”) and *Ke v. Margalit, et al.*, No. BC393856 (Cal. Supr. Los Angeles) (“State Derivative Action,” and together with the Federal Derivative Action, “Derivative Actions”).

1. As a result of the prosecution, pendency and settlement of the Derivative Actions, \$2.5 million in cash from the directors’ and officers’ liability insurers shall be paid to MRV. The \$2.5 million cash payment shall be made to MRV within five (5) business days after entry of the Final Judgment in the Federal Derivative Action. Within five (5) business days after receipt of the \$2.5 million payment from the directors’ and officers’ liability insurers, MRV shall provide counsel for Plaintiffs with proof of such payment. If the \$2.5 million cash payment is not paid as set forth in the Stipulation of Settlement, any party may cancel the Stipulation of Settlement.

2. Within 120 days following the later of the issuance of an order approving the Settlement by the United States District Court for the Central District of California or the end of the period available for appeal to the United States Court of Appeals for the Ninth Circuit, the Board of Directors of MRV shall adopt resolutions and amend committee charters for the implementation of the Corporate Governance Reforms set forth in Exhibit A that have not already been implemented during the course of the Derivative Actions.

3. Within 10 days following the later of the issuance of an order approving the Settlement by the United States District Court for the Central District of California or the end of the period available for appeal to the United States Court of Appeals for the Ninth Circuit, the Company shall cancel all unexercised, outstanding options that are currently held by the Individual Defendants and at issue in this litigation, including those options the Federal Derivative Plaintiffs identified as allegedly backdated in their interrogatory responses.

4. The Individual Defendants shall make no financial contribution in connection with this Settlement.

5. MRV and the Special Litigation Committee (“SLC”) acknowledge that the filing, prosecution and settlement of the claims asserted in the Derivative Actions and the litigation efforts of Plaintiffs and their counsel were a material and substantial cause of the monetary recovery and Corporate Governance Reforms agreed to in No. 2 above. MRV and the SLC agree that the Settlement provides substantial benefits to MRV and its shareholders.

6. The parties shall in good faith agree upon and execute the appropriate Stipulation of Settlement embodying the parties’ agreement to settle the Derivative Actions upon the terms outlined in this MOU, such other terms agreed to in writing, and documentation as may be required to obtain court approval of the Settlement and dismissal of the Derivative Actions with prejudice on the terms set forth in this MOU.

7. The final terms of the settlement contemplated herein shall be set forth in the definitive Stipulation of Settlement, including:

(a) For dismissal with prejudice of all Released Claims. "Released Claims" shall mean and include any and all claims for relief (including Unknown Claims), rights, demands, causes of action, liabilities, debts, obligations, matters, issues and suits of any kind whatsoever, whether known or unknown, contingent or absolute, matured or unmatured, discoverable or undiscoverable, whether or not concealed or hidden, that have been asserted, might have been or could have been asserted, by the Releasing Parties ("Releasing Parties" shall mean and include (i) Plaintiffs; (ii) any of the Individual Defendants; (iii) MRV; and (iv) any MRV shareholder derivatively on behalf of MRV) against any Released Persons ("Released Persons" shall mean and include (i) Plaintiffs or their beneficiaries; (ii) any of the Individual Defendants or their beneficiaries; (iii) MRV; and (iv) any MRV shareholder, derivatively on behalf of MRV), that are based upon or related to (i) the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were alleged or could have been alleged in the Derivative Actions; and/or (ii) the settlement of the Actions, including the payments provided for in this MOU, and the reasonable attorneys' fees, costs, and expenses incurred in defense thereof. The Released Persons shall covenant not to sue any Released Person with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting the Released Claims against the Released Persons except to enforce the releases and other terms and conditions contained in the Stipulation and/or the Judgment entered pursuant thereto.

(b) For the release by the Individual Defendants and MRV and its counsel of Plaintiffs and their counsel, by Plaintiffs and MRV and its counsel of the Individual Defendants and their counsel, and by the Individual Defendants and Plaintiffs and their counsel of MRV and its counsel, from all claims arising out of, relating to, or in connection with the institution, prosecution, settlement or resolution of the Derivative Actions or the Released Claims. Notwithstanding the foregoing, the releases shall not in any way relieve MRV of its obligations to the Individual Defendants, including payment of reasonable attorneys' fees incurred in defense of the Derivative Actions.

(c) That neither the Settlement nor any provision in the Stipulation of Settlement shall be construed or deemed an admission by any of the Individual Defendants of liability, which the Individual Defendants expressly deny, or of any issue or fact, with respect to any of the claims raised or that might have been raised in the Derivative Actions.

(d) The releases shall not in any way impair or restrict the rights of the parties to enforce the terms of the Settlement.

(e) With respect to Released Claims, the Stipulation of Settlement shall contain a waiver of the provisions of California Civil Code § 1542 and any similar provision of law.

8. Notice of the proposed Settlement shall be made by (i) the filing of a Form 8-K with the SEC, attaching a copy of the Stipulation of Settlement; (ii) posting of the Stipulation of Settlement on MRV's website; and (iii) a one-time publication of the Notice of Settlement in the nationally distributed business journal, Investors' Business Daily. MRV or its insurers shall be solely responsible for the cost of notice as set forth herein and/or any other notice as may be required by the Federal Court.

9. Within thirty (30) days after the Settlement becomes final as defined in the Stipulation of Settlement filed in the United States District Court for the Central District of California, plaintiff in the State Derivative Action shall voluntarily dismiss that action with prejudice.

10. After negotiating the principal terms of the Settlement, counsel for Plaintiffs and MRV, acting by and through the SLC, separately negotiated at arm's length the amount of attorneys' fees to be paid to Plaintiffs' counsel. The negotiated amount of fees that the parties have agreed upon is \$500,000 in cash and 250,000 freely tradable warrants for MRV's common stock, with a strike price equal to the closing price of MRV's common stock on the date on which an order of the federal court finally approving the settlement becomes final. The warrants shall be of a five (5) year duration, exercisable only by means of a cashless exercise, and shall be registered or exempt from registration provided by section 3(a)(10) of the Securities Act of 1933. Shares issued under the warrants

shall be fully-paid, freely tradable, and non-assessable. Furthermore, the warrants shall be pursuant to a form of agreement to be entered on the Effective Date of the Stipulation of Settlement, which shall provide for the above terms as well as proportionate adjustment of the warrants in the event of a stock split or other reorganization. MRV shall take all necessary and appropriate actions to perfect the exemption of the warrants from registration under the Federal Securities laws by reason of section 3(a)(10) of the Securities Act of 1933. The delivery date of the warrants shall be within three business days after the date on which an order of the federal court finally approving the settlement becomes final and the period to appeal the order of the federal court has expired (assuming no appeal is taken), provided that plaintiffs' counsel delivers instructions to MRV for receipt of the warrants. Terms in this paragraph with respect to the pricing, delivery, exercise, and perfection of the warrants, as well as the tradable nature of shares issued under the warrants (*e.g.*, whether or not it is necessary to register shares issued under the warrants) are without prejudice to Plaintiffs and MRV agreeing to modify those terms, by no later than the date of the Stipulation of Settlement.

11. The SLC, in its business judgment, has approved the Settlement and each of its terms, as being in the best interest of MRV and its shareholders, and its members will submit declarations attesting to the benefits of the settlement's terms and in support of preliminary and final approval of the settlement.

12. Except as otherwise provided herein, this MOU shall be binding upon and shall inure to the benefit of the parties and their respective agents, successors, executors, heirs and assigns. The Stipulation of Settlement and agreed form of Final Judgment shall not have terms inconsistent with the terms of this MOU unless the parties agree in writing to those terms.

13. This MOU will be executed by counsel for the parties, each of who represents and warrants that they have the authority from their client(s) to enter into this MOU and bind their clients thereto. This MOU may be executed in counterparts by any of the signatories hereto, including by telecopier and/or e-signature, and as so executed shall constitute one agreement.

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14. This MOU may be modified or amended only by a writing signed by all of the signatories hereto.

15. The parties shall use their best efforts to execute the Stipulation of Settlement and related settlement documents, and file with the United States District Court for the Central District of California all papers in support of preliminary approval of the settlement, in accordance with the terms and deadlines set forth in the Federal Court's January 3, 2013 Order (Dkt. No. 277, Federal Derivative Action).

16. The parties agree to take all reasonable and necessary steps to expeditiously implement the terms of this MOU and to complete the Settlement. The parties intend that the settlement reflected in the definitive Stipulation of Settlement be a complete and final resolution of all disputes between them with respect to the Actions and Released Claims.

17. This MOU shall be governed by the laws of the State of California, without regard to California's conflict of law rules.

DATED: January 16, 2013

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DATED: January 16, 2013

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DATED: January 15, 2013

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MRV Announces Preliminary Settlement of Stock Option Derivative Litigation

CHATSWORTH, Calif., Jan. 16, 2013 – MRV Communications, Inc. (OTCQB: MRVC) (“MRV” or the “Company”), a leading provider of optical communications network infrastructure equipment and integration and managed services, today announced that it has signed a memorandum of understanding (“MOU”) with plaintiffs and all defendants in the derivative class action lawsuits that were filed in 2008 related to the Company’s past stock option granting practices. The MOU sets forth the agreement in principal among the parties including terms upon which a Stipulation of Settlement would be filed with the federal court in which the case has been pending within the next month to dismiss with prejudice the litigation and release all claims between the plaintiffs, MRV, and the individual defendants named in the litigation. The proposed settlement is preliminary and is subject to agreement in good faith upon a Stipulation of Settlement setting forth the terms described in the MOU. The settlement must then be approved by the federal court in which the federal derivative lawsuit is pending.

The MOU states that the Stipulation of Settlement will include, among other things, (a) a release of all claims relating to the derivative actions for the Company, the individual defendants, who are all former officers and directors of the Company, and the plaintiffs; (b) \$2.5 million in cash to be paid to the Company by the Company’s insurance carriers; (c) a requirement that the Company pay to plaintiffs’ counsel \$500,000 in cash and 250,000 warrants to purchase the Company’s Common Stock; (d) the Company continues to pay applicable reasonable attorney’s fees for the individual defendants; (e) the Company cancel certain outstanding options held by the individual defendants; and (f) a requirement that the Company take certain corporate governance reform actions (many of which have already been taken by the Company) including implementing a clawback policy and undertaking reasonable efforts to seek re-listing of the Company’s Common Stock on NASDAQ.

“We are pleased to have reached an agreement to settle this long-standing litigation and will be seeking prompt court approval to bring it to final conclusion,” said Kenneth Traub, Chairman of MRV’s Board of Directors. “MRV is now a stronger, more disciplined and focused Company that is well positioned to capitalize on the growing need for optical networking equipment and services.”

For further information regarding the memorandum and settlement terms, please refer to our Form 8-K to be filed with the Securities and Exchange Commission. The information contained in this news release does not constitute an offer of any securities for sale.

About MRV Communications, Inc.

MRV Communications, Inc. is a leading global provider of carrier Ethernet, wavelength division multiplexing optical transport, infrastructure management equipment and solutions, as well as network integration and managed services. MRV’s solutions enable the delivery and provisioning of next-generation optical transport and carrier Ethernet services over any fiber infrastructure. MRV provides equipment and services worldwide to telecommunications service providers, enterprises and governments, enabling network evolution and increasing efficiency, while reducing complexity and costs. Through its subsidiaries, MRV operates development centers in North America and Europe, along with support centers and sales offices around the world. For more information about MRV, visit <http://www.mrv.com>.

Forward Looking Statements

This press release may contain statements regarding future financial and operating results of MRV, management’s assessment of business trends, and other statements about management’s future expectations, beliefs, goals, plans or prospects and those of the market segments in which MRV is engaged that are based on management’s current expectations, estimates, forecasts and projections about

MRV and its consolidated businesses and the respective market segments in which MRV's businesses operate, in addition to management's assumptions. Statements in this press release regarding MRV's future financial and operating results, which are not statements of historical facts, constitute forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Words such as "expects," "anticipates," "envisions," "estimates," "targets," "intends," "plans," "believes," "seeks," "should," "could," "forecasts," "projects," variations of such words and similar expressions, are intended to identify such forward-looking statements which are not statements of historical facts. These forward-looking statements are not guarantees of future performance nor guarantees that the events anticipated will occur or expected conditions will remain the same or improve. These statements involve certain risks, uncertainties and assumptions, the likelihood of which are difficult to assess and may not occur, including risks that each of its business segments may not make the expected progress in its respective market, or that management's long-term strategy may not achieve the expected results. Therefore, actual outcomes, performance and results may differ from what is expressed or forecast in such forward-looking statements, and such differences may vary materially from current expectations.

For further information regarding risks and uncertainties associated with MRV's businesses, please refer to the "Management's Discussion and Analysis of Results of Operations and Financial Condition" and "Risk Factors" sections of MRV's SEC filings, including, but not limited to, its annual report on Form 10-K for the year ended December 31, 2011, and its quarterly report on Form 10-Q for the quarter ended September 30, 2012, copies of which may be obtained by contacting MRV's investor relations department or by visiting MRV's website at <http://www.mrv.com> or the SEC's EDGAR website at <http://www.sec.gov>.

All information in this release is as of January 16, 2013 unless otherwise stated. MRV undertakes no duty to update any forward-looking statement to conform the statement to actual results or changes in MRV's expectations.

Contact:

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