

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PFIZER INC. SECURITIES LITIGATION

No. 04-cv-9866 (LTS)(HBP)

ECF CASE

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR DISTRIBUTION OF THE NET SETTLEMENT FUND**

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-appointed lead plaintiff Teachers' Retirement System of Louisiana ("Lead Plaintiff" or "TRSL") and additional Court-appointed class representatives Christine Fleckles, Julie Perusse and Alden Chace (collectively with Lead Plaintiff, "Plaintiffs" or "Class Representatives"), respectfully submit this memorandum in support of their motion for entry of an order approving distribution of the Net Settlement Fund in the above-captioned action. The proposed distribution plan is set forth in the accompanying Declaration of Michelle Smith (the "Smith Declaration" or "Smith Decl."), submitted on behalf of the Court-appointed Settlement Administrator, Garden City Group, LLC (now continuing operations as part of Epiq Class Action and Claims Solutions, Inc.) ("GCG").¹ If granted, the motion will permit distribution of the Net Settlement Fund created by the Settlement achieved in the Action to Class Members whose claims are approved for payment.

BACKGROUND

The Court certified a Class consisting of "all persons or entities who purchased and/or otherwise acquired common stock issued by Pfizer, Inc., between and including October 31, 2000 and October 19, 2005 (the "Class Period"), with the exception of: (a) any persons or entities who both purchased and sold all of their shares of Pfizer common stock between and including October 31, 2000 and October 6, 2004; (b) Pfizer and the Individual Defendants; (c) members of the immediate family of each of the Individual Defendants; (d) subsidiaries or affiliates of Pfizer or any of the Individual Defendants; (e) any person or entity who is, or was during the Class Period, a partner, officer, director, employee or controlling person of Pfizer or any of the Individual Defendants; (f) any entity in which any of the Individual Defendants has a controlling interest; (g)

¹ Unless otherwise indicated, all terms with initial capitalization used herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 26, 2016 (ECF No. 700-1) ("Settlement Agreement") and the Smith Declaration.

the legal representatives, heirs, successors or assigns of any of the excluded persons or entities; and (h) the insurance carriers or their affiliates who insure the Defendants.” April 6, 2012 Amended Order Granting Class Certification (ECF No. 362). Also excluded from the Class are persons and entities who requested exclusion from the Class and whose requests were granted by the Court. *See* Exhibit 1 to December 21, 2016 Order Approving Settlement and Final Judgment (ECF No. 728).

During the course of this administration, GCG has mailed over 4,000,000 copies of the notice and claim form (“Claim Packet”) to potential Class Members or their nominees. *See* November 7, 2016 Affidavit of Angela Ferrante ¶12 (ECF No. 713-4, Exhibit D) (“Mailing Aff.”); December 6, 2016 Supplemental Affidavit of Angela Ferrante ¶2 (ECF No. 722). In addition, GCG caused the Summary Notice to be published once in the national edition of *The Wall Street Journal* and *The New York Times* and to be transmitted over the *PR Newswire* and has established and maintained a website containing information concerning the Settlement. Mailing Aff. ¶¶13, 15. GCG has also processed the voluminous amount of claims submitted in connection with the Settlement. *Id.* ¶15.

As set forth in the Smith Declaration, the claims administration process has been completed with respect to all claims filed in connection with the Settlement through June 30, 2018. GCG has spent a substantial amount of time working with Claimants to resolve any curable deficiencies and to attempt to resolve as many disputes with Claimants to limit the number of “Disputed Claims” to be presented for Court review.

Given the status of the claims processing, Plaintiffs have filed this motion for approval of the distribution of the Net Settlement Fund in order to be able to distribute the proceeds of the Settlement to Class Members whose claims are approved for payment. Accordingly, Plaintiffs

respectfully ask the Court to enter the [Proposed] Order Authorizing Distribution of the Net Settlement Fund and Payment of Settlement Administrator's Costs submitted herewith.

CLAIMS ADMINISTRATION

As detailed in the accompanying Smith Declaration, GCG has received 769,417 Proofs of Claim as of June 30, 2018. Smith Decl. ¶9.² Many of the Proofs of Claim initially submitted were incomplete, unsigned, not properly documented, or filed by Claimants who were not Class Members. To the extent that a Proof of Claim was wholly deficient (for example, if the Proof of Claim was missing documentation for the entire Proof of Claim, the Claimant did not sign the Proof of Claim or did not provide enough information to calculate the Recognized Claim, or if the Proof of Claim was determined to have no Recognized Claim under the Court-approved Plan of Allocation), GCG mailed a rejection letter to the Claimant describing the defect(s) with the Proof of Claim and, if the defect was curable, stating what was necessary to complete the Proof of Claim. *Id.* ¶¶27-29. GCG also mailed rejection letters to each Claimant whose Proof of Claim was determined to be partially deficient (for example, if the Claimant was missing documentation for part of the Proof of Claim, or did not supply all transactional information), advising the Claimant of the defect(s) in the Proof of Claim, stating what was necessary to cure such defect(s), and informing the Claimant that, unless the defect(s) were cured, the Proof of Claim would only be eligible to the extent it was complete and calculated to a Recognized Claim. *Id.* All rejection letters also specifically advised the Claimant that he, she or it had the right, to contest the rejection of the claim and request Court review of the disposition of the claim. *Id.* ¶29.

² In anticipation of completing the administration of the Settlement, Lead Counsel, in consultation with GCG, determined a cut-off of June 30, 2018, after which no additional Proofs of Claim would be processed or considered for inclusion in the initial distribution of the Net Settlement Fund. *Id.* ¶3 n. 3.

GCG carefully reviewed Claimants' responses to rejection letters and worked with Claimants to resolve deficiencies where possible. Smith Decl. ¶¶27, 30-34. This process was extremely successful and a very large percentage of Claimants who submitted Proofs of Claim with curable deficiencies are now eligible to participate in the Settlement. *Id.* ¶27. In addition, given the age of the Class Period and the difficulty for some Claimants to obtain and provide supporting documentation, Lead Counsel, in consultation with GCG, determined to waive the documentation requirement for any Claimant who provided sufficient transactional information to calculate a Recognized Claim under the Court-approved Plan of Allocation and whose Recognized Claim calculated to \$1,000 or less. *Id.* ¶25.

As set forth in the Smith Declaration, of the 769,417 Proofs of Claim submitted for the Settlement through June 30, 2018, GCG has determined that 343,163 Proofs of Claim are acceptable in whole or in part, and that 426,254 of the Proofs of Claim submitted for the Settlement through June 30, 2018 should be wholly rejected because they are ineligible for recovery from the Net Settlement Fund. Smith Decl. ¶56.

Of the 769,417 Proofs of Claim submitted for the Settlement through June 30, 2018, a total of 43,105 of these Proofs of Claim were not postmarked within the time period established by the Court of which 18,805 were, but for the late submission, otherwise eligible in whole or in part. Smith Decl. ¶48. When the equities are balanced, it would be unfair to prevent an otherwise valid claim from participating in the Net Settlement Fund solely because it was submitted after the Court-approved claims filing deadline, if it was submitted while other claims were still being

processed. The Court has discretion to accept claims submitted after the filing deadlines under the terms of the Settlement Agreement and Preliminary Approval Order.³

In order to distribute the Net Settlement Fund, however, there must be a final cut-off after which no additional Proofs of Claim may be accepted for processing and inclusion in the initial distribution. Accordingly, Plaintiffs' respectfully request that the Court order that no Proof of Claim received or rejected Proof of Claim adjusted after June 30, 2018 be eligible for inclusion in the initial distribution. Smith Decl. ¶49.

Plaintiffs further request that the Court approve GCG's administrative determinations accepting and rejecting claims as set forth in the Smith Declaration.

DISPUTED CLAIMS

As discussed above and in the Smith Declaration, the letters that GCG sent to Claimants advising them of the complete or partial rejection of their claims advised Claimants that if they did not agree with GCG's administrative determinations, they had the right to request Court review of their claim. Smith Decl. ¶¶29, 32. GCG initially received requests from 148 Claimants contesting GCG's administrative determinations with respect to their Claims. *Id.* ¶32. Through follow-up correspondence with GCG, 95 Claimants either provided GCG with the necessary documentation and/or information to substantiate their claims (and the claims are now recommended for payment)

³ As is customary in securities class actions, potential acceptance of late-filed Claims was anticipated in this Action. *See, e.g.*, Settlement Agreement (ECF No. 700-1) ¶26(b) ("All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, *unless such deadline is extended by Order of the Court*. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Cash Settlement Amount or payment pursuant to this Settlement Agreement (*unless, by Order of the Court, late-filed Claim Forms are accepted*), . . .") (emphasis added); Preliminary Approval Order (ECF No. 703) ¶16(a) ("Lead Counsel may, in its discretion, accept late-submitted Claim Forms for processing by the Settlement Administrator, so long as distribution of the Net Cash Settlement Amount is not materially delayed thereby. Notwithstanding the foregoing, the acceptance of late Claim Forms is subject to Court approval.").

or affirmatively withdrew their requests for judicial review of their claims after GCG further explained the reason(s) for rejection of the claims. *Id.* ¶33. Accordingly, there are now 53 Claimants with outstanding requests for judicial review (the “Disputed Claims”). *Id.* ¶34. The Disputed Claims are discussed in paragraphs 34 to 47 of the Smith Declaration. Exhibits B-1 through B-53 to the Smith Declaration contain documents and correspondence relating to each of the Disputed Claims, including copies of the Proofs of Claim and supporting documentation, the rejection letter(s) sent by GCG with respect to the Disputed Claims and the letters and documentation received by GCG from the Claimants disputing the rejection of their claims.⁴

Lead Counsel have reviewed the Disputed Claims and concur with GCG’s recommendations to reject or partially reject these claims.

DISTRIBUTION OF THE NET SETTLEMENT FUND

Plaintiffs respectfully request that the Court adopt the Distribution Plan set forth in the Smith Declaration, which would, among other things: (a) authorize an Initial Distribution of the Net Settlement Fund to the Claimants listed in Exhibits C-1 and C-2 to the Smith Declaration; and (b) provide for a Second Distribution (and, if necessary, subsequent distributions) of any funds remaining after the Initial Distribution.

In the Initial Distribution, GCG will determine a Distribution Amount for each Authorized Claimant based on the sum of the Authorized Claimant’s *pro rata* share of the Fund. As provided for in the Court-approved Plan of Allocation, Authorized Claimants whose Distribution Amount is less than \$10.00 will receive no payment. *See* Smith Decl. ¶61(a)(1)-(3); Plan of Allocation (ECF No. 700-1, Exhibit A-1) p. 22, ¶13. Authorized Claimants whose Distribution Amount

⁴ For privacy reasons, these documents have been redacted to remove personal information such as street addresses, email addresses, telephone numbers, account numbers, social security/taxpayer identification numbers, and all transactional information unrelated to the Claimant’s transactions in Pfizer common stock during the Class Period.

calculates to less than \$200.00 will receive 100% of their Distribution Amount in the Initial Distribution (“Claims Paid in Full”). *See* Smith Decl. ¶61(a)(4). Authorized Claimants whose Distribution Amount calculates to \$200.00 or more will receive 90% of their Distribution Amount in the Initial Distribution, with the remaining 10% retained in escrow to create a reserve for any contingencies that may arise (“Reserve”).

DISPOSITION OF THE RESERVE AND ANY UNCLAIMED/UNCASHED BALANCES

In order to encourage Authorized Claimants to cash their distribution checks promptly and to avoid or reduce future expenses relating to uncashed checks, Plaintiffs propose that the distribution checks bear a notation “CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” In an effort to have as many Authorized Claimants as possible cash their checks, GCG will follow up with Authorized Claimants who initially fail to cash their distribution checks. *See* Smith Decl. ¶61(a)(6), n. 15.

Consistent with the Court-approved Plan of Allocation, if any funds remain in the Net Settlement Fund nine (9) months after the Initial Distribution, GCG will conduct a Second Distribution pursuant to which any balance remaining in the Net Settlement Fund (including the Reserve and the funds for all void stale-dated checks), after deducting GCG’s unpaid costs and expenses incurred in connection with administering the Net Settlement Fund (including the estimated costs of the Second Distribution), and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, any escrow fees, and any other contingencies, and after the payment of any Proofs of Claim received by June 30, 2018 but for which an adjustment was received after June 30, 2018 which resulted in a Recognized Claim or an increased Recognized Claim, shall be re-distributed to Authorized Claimants who (1) were not Claims Paid in Full;

(2) cashed their Initial Distribution payment, and (3) are entitled to at least \$10.00 in the Second Distribution. Smith Decl. ¶61(b).

If cost effective, subsequent re-distributions of funds remaining in the Net Settlement Fund will take place in accordance with the Smith Declaration. *Id.* ¶61(c). At such time as GCG and Lead Counsel determine that further re-distribution is not cost-effective, if sufficient funds remain to warrant the processing of Proofs of Claim received after June 30, 2018, such Proofs of Claim will be processed and paid, at the discretion of Lead Counsel, on a *pro rata* basis that would, to the extent possible, bring them into parity with other Authorized Claimants who have cashed all of their prior distributions. *Id.* ¶61(d). Thereafter, the balance of the Net Settlement Fund, after payment of any unpaid costs or fees and taxes, shall be donated to an appropriate non-profit organization to be agreed upon by Plaintiffs and Defendants (as set forth in paragraph 31 of the Settlement Agreement (Dkt. 700-1)). *Id.* ¶61(e).

FEES AND EXPENSES OF SETTLEMENT ADMINISTRATOR

In accordance with GCG's agreement with Lead Counsel to act as the Settlement Administrator, GCG was responsible for, among other things, mailing and publishing notice to the Class, processing the claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. As set forth in the Smith Declaration, GCG's fees and expenses for its work performed on behalf of the Class (and estimated to be performed in connection with the Initial Distribution) total \$14,046,025.69. Smith Decl. ¶60. To date, GCG has received payments totaling \$11,449,230.70. *Id.* Accordingly, there is a balance due to GCG of \$2,596,794.99, which amount includes GCG's anticipated fees and expenses for the Initial Distribution. *Id.* Plaintiffs respectfully request that the Court approve payment of GCG's fees and expenses from the Settlement Fund.

CONCLUSION

For the reasons set forth above and in the accompanying Smith Declaration, Plaintiffs respectfully request that the Court enter the proposed order lodged concurrently herewith.

Dated: October 24, 2018

Respectfully submitted,

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