UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LONGTOP FINANCIAL TECHNOLOGIES LIMITED SECURITIES LITIGATION	Civil Action No. 11-cv-3658-SAS

SUPPLEMENTAL SUBMISSION IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND (II) CLASS COUNSEL'S MOTION FOR REIMBURSEMENT OF LITIGATION EXPENSES

Court-appointed Lead Plaintiffs Danske Invest Management A/S and Pension Fund of Local No. One, I.A.T.S.E. (together, the "Lead Plaintiffs") respectfully submit this supplemental submission in further support of: (i) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation (ECF No. 296) and (ii) Class Counsel's Motion for Reimbursement of Litigation Expenses (ECF No. 298).[1]

I. PRELIMINARY STATEMENT

In accordance with the Court's June 23, 2015 Preliminary Approval Order (ECF No. 293), the Court-authorized claims administrator, Garden City Group, LLC, has disseminated more than 86,000 copies of the Notice to potential Class Members and nominees.[2] In addition, the Summary Notice was published in *The Wall Street Journal* and *Investor's Business Daily* and transmitted over *PR Newswire*, and the Notice, along with other settlement-related documents, were made available on the website for this Action, www.longtopclassaction.com. The Notice informed recipients of, *inter alia*, the terms of the Settlement and Plan of Allocation and Class Counsel's intention to apply to the Court for reimbursement of Plaintiffs' Counsel's out-of-pocket expenses up to $500,000 as well as reimbursement of costs and expenses to Lead Plaintiffs up to an aggregate amount of $20,000. The deadline to file objections was September 22, 2015.

The Class's response to the Settlement, Plan of Allocation and request for Litigation Expenses has been overwhelmingly favorable. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005) ("[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our *Grinnell* inquiry."); *City*

[1] Capitalized terms not defined herein shall have those meanings ascribed to them in the Stipulation and Agreement of Settlement dated June 18, 2015. *See* ECF No. 294.

[2] *See* Supplemental Affidavit of Jose C. Fraga, at ¶ 2, attached as Ex. 1 to the Declaration of Kimberly A. Justice ("Justice Declaration") submitted herewith.

of Providence v. Aeropostale, Inc., No. 11 Civ. 7132(CM) 2014 WL 1883494, at *6 (S.D.N.Y. May 9, 2014), *aff'd sub nom, Arbuthnot v. Pierson*, 607 Fed. App'x 73 (2d Cir. 2015) ("That almost no Class Member objected to the Settlement [. . . .] is indeed the strongest indication that the Settlement is fair and reasonable."). Indeed, Class Counsel has received only one objection in connection with the proposed Plan of Allocation ("Plan") which is limited to the Plan's utilization of the last-in-first-out ("LIFO") methodology for matching purchases and sales of Longtop ADS in order to calculate a claimant's "Recognized Claim."[3] For the reasons set forth below, this objection is meritless and should be overruled. Moreover, the fact that of the more than 86,000 Notices mailed, only one narrow objection was received−and notably, not a single objection to the Settlement itself−is compelling evidence that the Settlement, Plan of Allocation and request for reimbursement of Litigation Expenses are fair and reasonable and warrant this Court's approval.

II. ARGUMENT

A. Northview's Objection to the Plan is Meritless and Should be Rejected

Northview objects to the Plan solely based on its use of LIFO for matching a claimant's transactions in Longtop ADS.[4] *See* Northview Objection at 1. According to Northview, the

[3] *See* letter submitted by Martin Lancaster, director of Northview Investment Fund Ltd. ("Northview"), dated September 4, 2015, attached as Ex. 2 to the Justice Declaration (the "Northview Objection"). Class Counsel received this letter on September 10, 2015. Account numbers have been redacted by Class Counsel.

[4] As set forth in the Notice: "If a Trial Class member held Longtop ADSs at the beginning of the Trial Class Period or made multiple purchases, acquisitions or sales of Longtop ADSs during or after the Trial Class Period, the starting point for calculating a Claimant's Recognized Claim is to match the Claimant's holdings, purchases and acquisitions to their sales using the LIFO (i.e., last-in-first-out) method. Under the LIFO method, Longtop ADSs sold during the Trial Class Period will be matched first against the most recently purchased/acquired Longtop ADSs. The sale of any remaining Longtop ADSs during the Trial Class Period will then be matched in reverse chronological order against Longtop ADSs purchased/acquired during the Trial Class Period." *See* Ex. 1-A to Declaration of Gregory M. Castaldo (ECF No. 300-1).

Plan's use of LIFO is "not fair to shareholders and does not represent a true picture of what happened in the market" and instead, the Plan "should be based on FIFO methodology." *Id.*[5] As set forth below, the Northview Objection should be rejected.

As an initial matter, a plan for allocating settlement proceeds should be approved if it is fair, reasonable and adequate. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178 (S.D.N.Y. 2012). Plans of allocation need not be tailored to fit each and every class member with "mathematical precision"; rather, broad classifications may be used in order to promote "[e]fficiency, ease of administration and conservation" of the settlement fund. *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 133-35 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Moreover, "[w]hen formulated by competent and experienced class counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557 (CM), 2014 WL 7323417, at *10 (S.D.N.Y. Dec. 19, 2014) (internal citations omitted); *see also In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009) ("A Plan of Allocation has been recommended by plaintiffs' counsel, a group of competent and qualified counsel. As such, I need only review the plan to confirm that it has a reasonable, rational basis."). Here, Class Counsel developed the Plan in consultation with Lead Plaintiffs' damages expert and believes that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among eligible Class Members.

Class Counsel's decision to utilize LIFO, as opposed to FIFO, in calculating claimants' losses is not a basis for finding the Plan unfair or inadequate. Indeed, various courts, including this Court, have approved LIFO as an appropriate methodology for matching purchases and sales

[5] Whereas LIFO matches a claimant's last purchases during the class period with the claimant's first class period sales, FIFO matches a claimant's first purchases during the class period with the claimant's first class period sales.

when calculating damages in securities fraud litigation. *See, e.g., Monk v. Johnson & Johnson,* Civil Action No. 10-4841 (FLW) (DEA) (D.N.J. Nov. 21, 2013) (approving LIFO in plan of allocation); *In re Vivendi Universal, S.A. Sec. Litig.*, 284 F.R.D. 144, 158-60 (S.D.N.Y. 2012) (approving LIFO method in post-verdict claims administration and noting that "[c]ourts prefer the [LIFO] method of accounting and have generally rejected FIFO as an appropriate means of calculating losses in securities fraud cases.") (internal cite omitted); *In re Initial Pub. Offering*, 671 F. Supp. 2d at 476 (approving LIFO in plan of allocation); *SEC v. Bear, Stearns & Co., Inc.,* No. 03 Civ. 2937, 2005 WL 217018, at *7 (S.D.N.Y. Jan. 31, 2005) (same). *See also Cha v. Kinross Gold Corp.*, No. 12 Civ. 1203 (PAE), 2012 WL 2025850, at *4 (S.D.N.Y. May 31, 2012) (noting that LIFO would be the methodology endorsed if issues were litigated at trial).

In addition to finding the use of LIFO to be an appropriate means of calculating losses in securities fraud cases, courts have also found LIFO to be "a more accurate reflection of plaintiff's damages." *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, 756 F. Supp. 2d 928, 937 (N.D. Ill. 2010); *see also In re eSpeed, Inc. Sec. Litig.*, 232 F.R.D. 95, 101 (S.D.N.Y. 2005) ("The main advantage of LIFO is that, unlike FIFO, it takes into account gains that might have accrued to plaintiffs during the class period due to the inflation of the stock price. FIFO, as applied by the Pension Fund and others, ignores sales occurring during the class period and hence may exaggerate losses."). Moreover, "[t]he value of the LIFO analysis is not in comparing gains and losses relative to pre-class period holdings, but rather in accounting for gains made on sales as a result of an allegedly inflated stock price during the class period." *City of Monroe Emps.' Ret. Sys. v. The Hartford Fin. Servs. Grp., Inc.*, 269 F.R.D. 291, 295 (S.D.N.Y. 2010); *see also In re Comdisco Sec. Litig.*, No. 01 C 2110, 2004 WL 905938, at *3 (N.D. Ill. Apr. 26,

2004) (finding LIFO consistent with the proper focus of purchases and sales *during* the class period).

In its letter, Northview sets forth its calculation of its Recognized Claims under the Plan using the FIFO method. *See* Northview Objection at 1-2. While using FIFO may result in larger losses under the Plan for Northview, this may not necessarily be the case for all claimants. *See generally, In re AOL Time Warner, Inc. Sec. and "ERISA" Litig.*, No. MDL 1500, 02 Civ. 5575(SWK), 2006 WL 903236, at *17 (S.D.N.Y. Apr. 6, 2016) ("Depending on the trajectory of a stock's percentage of artificial inflation and the sale of shares during the class period, use of FIFO may result in damages where LIFO would not, and vice versa.").[6]

For the foregoing reasons, Northview has failed to demonstrate that the Plan's use of LIFO is unreasonable or that the Plan lacks a "reasonable, rational basis." Therefore, the Northview Objection should be rejected.

B. The Settlement, Plan of Allocation and Request for Litigation Expenses are Fair and Reasonable and Warrant this Court's Approval

As fully set forth in Lead Plaintiffs' filing with the Court on September 8, 2015 (ECF Nos. 296−300) (the "Opening Papers"), the $2.3 million Settlement reached with Defendant Derek Palaschuk−representing approximately 37% of Lead Plaintiffs' estimated maximum damage recovery for the Trial Class against Palaschuk−is a substantial result for the Class and avoids the risks that a smaller recovery would be achieved following a protracted and likely contested post-verdict claims administration process or that the Class's claims would be

[6] Northview's assertion that FIFO should be applied because "[t]he valuation of the Fund and its financial statements have consistently applied a FIFO basis throughout the period of ownership" (*see* Northview Objection at 1), is also not a basis for finding the utilization of LIFO to be unreasonable. *See Kinross Gold Corp.*, 2012 WL 2025850, at *4 (rejecting argument that FIFO should be used because it is used for certain federal taxation purposes, noting that "the IRS utilizes FIFO not because it is more precise than LIFO, but because it maximizes taxable income and forces taxpayers to recognize gains that they would prefer to defer or avoid").

extinguished on appeal. Likewise, for the reasons set forth in Lead Plaintiffs' Opening Papers and reiterated above in response to the Northview Objection, the proposed Plan of Allocation—developed by Class Counsel in consultation with Lead Plaintiff's damages expert—is fair and reasonable and provides an equitable basis to distribute the net settlement proceeds among eligible Class Members. Finally, for the tremendous efforts expended on behalf of the Class in this Action, Class Counsel's request for reimbursement of $500,000 in Litigation Expenses, as well as its request for reimbursement in the total amount of $11,673.20 to Lead Plaintiffs in accordance with 15 U.S.C. § 78u-4(a)(4), are fully justified.

III. CONCLUSION

Accordingly, for the reasons set forth above and in the Opening Papers, Lead Plaintiffs respectfully request that the Court: (i) approve the Settlement and Plan of Allocation; and (ii) grant Class Counsel's request for reimbursement of Litigation Expenses.

Dated: November 2, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 2 2015, I electronically filed the foregoing Lead Plaintiffs' Supplemental Submission In Further Support Of (I) Lead Plaintiffs' Motion For Final Approval Of Class Action Settlement And Approval Of Plan Of Allocation And (II) Class Counsel's Motion For Reimbursement Of Litigation Expenses And Declaration Of Kimberly A. Justice In Support Of Lead Plaintiffs' Motion For Final Approval Of Class Action Settlement And Approval Of Plan Of Allocation And (II) Class Counsel's Motion For Reimbursement Of Litigation Expenses, with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record who have consented to electronic notification.

/s/*Kimberly A. Justice*
KIMBERLY A. JUSTICE