

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE: VALE S.A. SECURITIES  
LITIGATION

Case No. 15 Civ. 09539 (GHW)

Consolidated with Case No. 16 Civ. 00658  
(GHW)

**MEMORANDUM OF LAW IN SUPPORT OF  
LEAD PLAINTIFFS' MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

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Dated: April 27, 2021

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Lead Plaintiffs, Alameda County Employees' Retirement Association and the Orange County Employees Retirement System ("Lead Plaintiffs"), respectfully move for entry of the proposed Order Approving Distribution Plan (the "Class Distribution Order"), which will approve the proposed plan for the distribution of the net proceeds of the Settlement to eligible Settlement Class Members in the above-captioned action (the "Action"). The Distribution Plan is included in the accompanying Declaration of Luiggy Segura in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Segura Declaration" or "Segura Decl."),<sup>1</sup> submitted on behalf of the Court-approved Claims Administrator, JND Legal Administration ("JND"). Defendants do not oppose this motion.<sup>2</sup>

If entered by the Court, the Class Distribution Order would, among other things, (i) approve JND's administrative recommendations accepting and rejecting Claims submitted in connection with the Settlement reached in the Action; (ii) direct the Initial Distribution of the Net Settlement Fund to Claimants whose Claims are accepted by JND as valid and approved by the Court, while maintaining a Reserve for any tax liability and claims administration-related contingencies that may arise; and (iii) approve JND's fees and expenses incurred and estimated to be incurred in the administration of the Settlement and the Initial Distribution.

There are two (2) Disputed Claims by two (2) Claimants who are Settlement Class Members that require the Court's review. After reviewing the Disputed Claims, Lead Counsel

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<sup>1</sup> Unless otherwise indicated in this memorandum, all terms with initial capitalization shall have the meanings ascribed to them in the Segura Declaration or the Stipulation and Agreement of Settlement dated February 5, 2020 (ECF No. 183-1), as amended February 20, 2020 (ECF No. 188-2) (as amended, the "Stipulation"). The Settlement is contained in the Stipulation.

<sup>2</sup> Under the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 18, 22, 24. *See also* Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (ECF No. 201-3) (the "Notice") ¶¶ 41, 69.

concur with the Claims Administrator's recommendation to reject both Disputed Claims for failure to calculate to a Recognized Loss Amount under the Court-approved Plan of Allocation. Lead Counsel, therefore, recommends that the Court accept the determinations by the Claims Administrator as explained in greater detail in the Segura Declaration. Lead Counsel relies on its written submissions with regard to the Claims Administrator's rejection of these Claims and therefore is not requesting a hearing on these Disputed Claims. Lead Counsel believes the Court can rule on the Disputed Claims without a hearing but remains available to the Court should the Court decide to hold one.

**I. BACKGROUND**

The Court has approved the Stipulation entered into by Lead Plaintiffs, on behalf of themselves and the other members of the Settlement Class, and the Defendants in the Action. The Stipulation sets forth the terms of the settlement (the "Settlement"), which represents a complete resolution of this Action in return for a payment of \$25 million in cash (the "Settlement Amount"), which Defendants have caused to be paid for the benefit of Settlement Class Members.

In accordance with the Court's Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 192) (the "Preliminary Approval Order"), JND mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses (ECF No. 201-3) (the "Notice") and the Proof of Claim and Release (ECF No. 201-3) (the "Claim Form" or "Proof of Claim Form" and, together with the Notice, the "Notice Packet") to potential Settlement Class Members, brokers, and other nominees. Segura Decl. ¶ 2. As stated in the Segura Declaration, JND has disseminated over 236,000 Notice Packets to potential

Settlement Class Members, brokers, and nominees. *Id.* ¶ 4. The Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit a properly executed Claim Form received or postmarked no later than July 14, 2020. *Id.* ¶ 7.

On June 10, 2020, the Court entered its Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 208) and the Judgment Approving Class Action Settlement (ECF No. 210) (the “Judgment”). The Effective Date of the Settlement has occurred.<sup>3</sup> Accordingly, the Net Settlement Fund may be distributed to Authorized Claimants. In accordance with paragraph 27 of the Stipulation, Lead Plaintiffs respectfully request that the Court enter the Class Distribution Order approving the Distribution Plan.<sup>4</sup>

## **II. CLAIMS ADMINISTRATION**

As detailed in the Segura Declaration, through March 12, 2021, JND received and processed 47,001 Claims. Segura Decl. ¶ 7. All Claims received through March 12, 2021, have been fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation included in the Notice (*see id.*), and JND has worked with Claimants to help them perfect their Claims. *See id.* ¶¶ 19-32.

As discussed in the Segura Declaration, many of the Claims submitted in the Settlement were initially deficient or ineligible for one or more reasons, including being incomplete, not signed, not properly documented, or otherwise deficient, which required substantial follow-up work by JND. *Id.* ¶¶ 19-30.

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<sup>3</sup> *See* Stipulation ¶ 32.

<sup>4</sup> The Court retained continuing and exclusive jurisdiction over, among other things, implementing the Settlement, including the disposition of the Settlement Fund and any motion to approve the Class Distribution Order. *See* Judgment ¶ 14.

If JND determined a Claim to be defective or ineligible, it sent a Deficiency Notice to Claimants who filed a paper Claim or a Deficiency Email to Claimants who filed an electronic Claim describing the defect(s) or condition(s) of ineligibility in the Claim and the steps necessary to cure any curable defect(s) in the Claim. *Id.* ¶¶ 20, 22. The Deficiency Notice or Deficiency Email advised the Claimant or filer that the appropriate information or documentary evidence to complete the Claim had to be sent within twenty (20) days from the date of the notice or JND would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶ 20, 23. Examples of a Deficiency Notice and a Deficiency Email are attached as Exhibits A and B, respectively, to the Segura Declaration.

**A. Disputed Claims**

JND carefully reviewed Claimants' and filers' responses to the Deficiency Notices and Deficiency Emails and worked with them to resolve deficiencies where possible. *Id.* ¶¶ 21, 26. Consistent with paragraph 25(e) of the Stipulation, the Deficiency Notices and Deficiency Emails specifically advised Claimants and filers of their right, within twenty (20) days after the mailing or emailing of the notice, to contest the rejection of the Claim and request Court review of the administrative determination of the Claim. *Id.* ¶¶ 20, 23, and Exhibits A and B.

With respect to the fully processed Claims, JND received fifteen (15) requests for Court review. *Id.* ¶ 32. To resolve these disputes without necessitating the Court's intervention, JND contacted the Claimants requesting Court review and attempted to answer all questions, fully explain JND's administrative determination of the Claim's status, and facilitate the submission of missing information or documentation where applicable. *Id.* As a result of these efforts, six (6) Claimants resolved their deficiencies, and their Claims are now recommended for approval, and seven (7) Claimants withdrew their requests for Court review after hearing JND's explanation of

the reasons for its determination. *Id.* Currently two (2) Claims remain disputed, and these two Disputed Claims are being submitted to the Court for resolution. *Id.*

Exhibit D of the Segura Declaration contains a copy of the two Disputed Claims and their supporting documentation.<sup>5</sup> As set forth in the Segura Declaration, JND recommends the rejection of the Disputed Claims because both Disputing Claimants sold all of the Vale ADRs they purchased during the Class Period before November 5, 2015, the date of the first corrective disclosure of the alleged misstatements, and did not purchase any additional ADRs after that date. *Id.* Under the Plan of Allocation, Claimants who sold their Vale ADRs before the first corrective disclosure impacted the price of the Vale ADRs are not eligible for payment from the Settlement. *See* Notice ¶ 51 (“a Settlement Class Member who . . . purchased or otherwise acquired one of the Vale ADRs prior to the first corrective disclosure on November 5, 2015, must have held his, her, or its Vale ADRs through at least the close of trading on November 5, 2015”); *Id.* ¶ 53(a) (“For Vale Common ADRs purchased during the period from May 8, 2014 through November 5, 2015, inclusive, and . . . sold before the close of trading on November 5, 2015, the Recognized Loss Amount is zero.”). Lead Counsel has reviewed the Disputed Claims and JND’s determinations and concurs that the Disputed Claims should be rejected for the reasons set forth in the Segura Declaration.

**B. Late Claims and Final Cut-Off Date**

The 47,001 Claims received through March 12, 2021, include 9,865 Claims that were postmarked or received after July 14, 2020, the Court-approved Claim submission deadline, but

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<sup>5</sup> For privacy reasons, the documents included in Exhibit D have been redacted to remove personal information such as Claimants’ names, addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security or Social Insurance Numbers, and all financial and transaction information not related to the Claimants’ transactions in Vale common or preferred ADRs.



received before March 12, 2021. Segura Decl. ¶¶ 33, 41. Those late Claims have been fully processed, and 303 of them are, but for their late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 303 Claims were late, they were received while the processing of timely Claims was ongoing. *Id.* Due to the amount of time needed to process the timely Claims received, the processing of these late Claims did not delay the completion of the Claims administration process or the distribution of the Net Settlement Fund. *Id.* The Court has discretion to accept Claims received after the Claim submission deadline.<sup>6</sup> Lead Plaintiffs respectfully submit that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the distribution of the Net Settlement Fund solely because it was received after the Court-approved Claim submission deadline if it were submitted while timely Claims were still being processed.

To facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiffs respectfully request that this Court order that any new Claims and any adjustments to previously filed Claims that would result in an increased Recognized Claim received after March 12, 2021, be barred, subject to the provisions of paragraph 45(f) of the Segura Declaration.<sup>7</sup> Paragraph 45(f) applies to any Claims received or modified after March 12, 2021, that would have been eligible for payment or additional payment under the Court-approved Plan of Allocation if timely received. At the time when Lead Counsel, in consultation with JND, determines that a further

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<sup>6</sup> See Preliminary Approval Order ¶ 11 (“*Unless the Court orders otherwise*, all Claim Forms must be postmarked no later than one hundred twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class.”) (emphasis added).

<sup>7</sup> Should an adjustment be received that results in a lower Recognized Claim, that adjustment will be made, and the Recognized Claim will be reduced accordingly prior to a distribution to that Claimant. Segura Decl. ¶ 34.

distribution is not cost-effective as provided in paragraph 45(e) of the Segura Declaration, the post-March 12, 2021 Claimants, after payment of fees and expenses as provided in paragraph 45(f) of the Segura Declaration, at the discretion of Lead Counsel, and to the extent possible, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks.

### **III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR**

In accordance with JND's agreement with Lead Counsel to act as the Claims Administrator for the Settlement, JND was responsible for, among other things, disseminating notice of the Settlement to the Settlement Class, creating and maintaining a website and toll-free telephone helpline, processing Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. *Id.* ¶ 2. As stated in the Segura Declaration, JND's fees and expenses for its work performed through February 28, 2021, are \$739,382.88. *Id.* ¶ 44. Additionally, brokerage firms and nominees' charges for the Mailing of the Notice and Claims Packet totaled \$140,653.51 and the estimated fees and expenses for the Initial Distribution to be performed on behalf of the Settlement Class are \$29,672.64.<sup>8</sup> *Id.* To date, JND has received payment in the amount of \$775,911.61 for its fees and expenses. *Id.* Accordingly, there is an outstanding balance of \$133,797.42 payable to JND, which amount includes the estimated fees and expenses to be incurred by JND in connection with the Initial Distribution. *Id.* Lead Counsel reviewed JND's invoices and respectfully requests on behalf of Lead Plaintiffs that the Court approve all of JND's fees and expenses.

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<sup>8</sup> Should the estimate of fees and expenses to conduct the Initial Distribution of the Net Settlement Fund exceed the actual cost, the excess will be returned to the Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants. *Id.* ¶ 44 n.5.

**IV. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

The Net Settlement Fund is ready to be distributed. Lead Plaintiffs respectfully move the Court for entry of an order approving JND's determinations concerning acceptance and rejection of the Claims that are included in the present motion and approving the proposed Distribution Plan for the Net Settlement Fund as stated in the Segura Declaration.

**A. Distribution of the Net Settlement Fund**

Under the proposed Distribution Plan, JND will distribute 95% of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by the Court on this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees (the "Initial Distribution"). *See id.* ¶ 45(a). In the Initial Distribution, JND will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. *Id.* ¶ 45(a)(1). JND will first determine each Authorized Claimant's *pro rata* share of the total Net Settlement Fund based on the Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *Id.* In accordance with the Court-approved Plan of Allocation, JND will eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00, as these Claimants will not receive any payment from the Net Settlement Fund and will be so notified by JND. *Id.* ¶ 45(a)(2). JND will then recalculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants who would have received \$10.00 or more. *Id.* ¶ 45(a)(3). This *pro rata* share is the Authorized Claimant's Distribution Amount. *Id.* Authorized Claimants whose Distribution Amount calculates to less than \$200.00 will be paid their full

Distribution Amount in the Initial Distribution (“Claims Paid in Full”). *Id.* ¶ 45(a)(4). These Authorized Claimants will receive no additional funds in subsequent distributions. *Id.* After deducting the payments to the Claims Paid in Full, 95% of the remaining balance of the Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$200.00 or more. *Id.* ¶ 45(a)(5). The remaining 5% of the Net Settlement Fund will be held in reserve (the “Reserve”) to address any tax liability and claims administration-related contingencies that may arise. *Id.* To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution.” *Id.*

In order to encourage Authorized Claimants to cash their checks promptly, Lead Plaintiffs propose that all distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” *Id.* ¶ 45(b). Authorized Claimants who do not cash their checks within the time allotted or on the conditions stated in paragraph 45(b) footnote 9 of the Segura Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to these stale-dated checks will be available to be redistributed to other Authorized Claimants in any subsequent distribution, as described below. *Id.* ¶ 45(c).

**B. Additional Distribution(s) of the Net Settlement Fund**

After JND has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, but not earlier than seven (7) months after the Initial Distribution, JND will, after consulting with Lead Counsel, conduct the Second Distribution of the Net Settlement Fund. *Id.* ¶ 45(d). In the Second Distribution, any amounts remaining in the Net Settlement Fund after the Initial Distribution, including from the Reserve and the funds for all void stale-dated checks, after deducting JND’s unpaid fees and expenses incurred in

connection with administering the Settlement, including the estimated costs of the Second Distribution, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants in the Initial Distribution (other than Claims Paid in Full) who cashed their Initial Distribution checks and would receive at least \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds. *Id.* If, after the Second Distribution, any funds remain in the Net Settlement Fund because of uncashed checks or otherwise, then after JND has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, and if cost-effective, subsequent distributions of the funds remaining in the Net Settlement Fund, after deduction of costs and expenses as described above and subject to the same conditions, will take place at six-month intervals thereafter. *Id.* When Lead Counsel, in consultation with JND, determines that further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after March 12, 2021, JND will process those Claims. *Id.* ¶ 45(e). Any of these Claims that are otherwise valid, as well as any earlier received Claims for which an adjustment was received after March 12, 2021, which resulted in an increased Recognized Claim, may be paid in accordance with paragraph 45(f) of the Segura Declaration. *Id.* If any funds remain in the Net Settlement Fund after payment of these late or late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the National Consumer Law Center (“NCLC”).<sup>9</sup> *Id.*

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<sup>9</sup> See Notice ¶ 68.

NCLC is a private, non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. *See About Us*, National Consumer Law Center, [nclc.org/about-us/about-us.html](http://nclc.org/about-us/about-us.html) (last visited Mar. 29, 2021). NCLC was founded in 1969 through a federal grant to provide legal services addressed to two main goals: improving the access of low-income people to the legal system and enabling advocates to seek remedies where needed. *See Our Story*, National Consumer Law Center, [nclc.org/about-us/our-story.html](http://nclc.org/about-us/our-story.html) (last visited Mar. 29, 2021). Today, NCLC continues to advocate for low-income consumers and provides many resources to civil legal aid and private attorneys representing low-income consumers. *See id.* NCLC’s lawyers provide policy analysis, advocacy, litigation, expert-witness services, and training for consumer advocates throughout the United States. *See id.* “NCLC works to ensure a fair marketplace and access to justice for all consumers, including low-income people, older Americans, students, military service members and veterans,” and its “work covers a broad range of consumer issues, including consumer protection, fair credit, debt collection, student loans, mortgages and foreclosures, financial services, bankruptcy, [and] unfair and deceptive acts and practices. . . .” *See Cy Pres Awards*, National Consumer Law Center, [nclc.org/about-us/cy-pres-awards.html](http://nclc.org/about-us/cy-pres-awards.html) (last visited Mar. 29, 2021). Federal courts have approved NCLC as a *cy pres* recipient of residual balances of net settlement funds in other settlements.<sup>10</sup>

## V. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amounts allocated to

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<sup>10</sup> *See, e.g., In re Nu Skin Enters., Inc., Sec. Litig.*, No. 14-cv-00033-JNP-BCW, ECF Nos. 152-154 (D. Utah Aug. 30, 2018); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1261 (C.D. Cal. 2016), *appeal dismissed*, 2016 WL 9778633 (9th Cir. Nov. 7, 2016); *Perkins v. Am. Nat’l Ins. Co.*, 2012 WL 2839788, at \*5 (M.D. Ga. July 10, 2012) (“The Court is also satisfied that The National Consumer Law Center’s mission, reputation and established track record will ensure that it will be a good steward of the grant award made to it.”).

Authorized Claimants, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from all claims arising out of that involvement.<sup>11</sup> Accordingly, Lead Plaintiffs respectfully request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from all claims arising out of that involvement, and bar all Settlement Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.<sup>12</sup>

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<sup>11</sup> See Stipulation ¶ 29.

<sup>12</sup> Similar language has been routinely approved by courts in connection with the distribution of settlement proceeds. *See, e.g., In re Eletrobras Sec. Litig.*, 467 F. Supp. 3d 149, 151 (S.D.N.Y. 2020) (“All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and all members of the Settlement Class, whether or not they receive payment from the Net Settlement Fund, are hereby barred from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amount allocated to them as Authorized Claimants”); *In re Cnova N.V. Sec. Litig.*, 2021 WL 100548, at \*2 (S.D.N.Y. Jan 12, 2021) (approving substantially similar language in order authorizing distribution of settlement proceeds); *In re Cobalt Int’l Energy, Inc. Sec. Litig.*, No. 14-cv-3428-NFA, ECF No. 384, at 7

**VI. CONCLUSION**

For the foregoing reasons, Lead Plaintiffs respectfully submit that Lead Plaintiffs' Motion for Approval of Distribution Plan should be granted, and the [Proposed] Order Approving Distribution Plan should be entered.

Dated: April 27, 2021

Respectfully submitted,

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(S.D. Tex. Nov. 17, 2020) (same); *Thorpe v. Walter Inv. Mgmt., Corp.*, 2018 WL 3672266, at \*2 (S.D. Fla. May 24, 2018), *report and recommendation adopted*, 2018 WL 3672239 (S.D. Fla. June 8, 2018) (same); *Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, 2015 WL 12839121, at \*1 (E.D. Pa. Jan. 21, 2015) (same).