

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC  
CORPORATION SECURITIES  
LITIGATION

Master File No. 1:20-cv-12225-ADB

**LEAD PLAINTIFF'S UNOPPOSED MOTION FOR  
APPROVAL OF DISTRIBUTION PLAN**

TO: All Counsel of Record

PLEASE TAKE NOTICE that in accordance with Federal Rule of Civil Procedure 23(e) and this Court's Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 165) and Judgment Approving Class Action Settlement (ECF No. 164), Lead Plaintiff Union Asset Management Holding AG ("Lead Plaintiff" or "Union"), on behalf of itself and the Settlement Class, will and does hereby move this Court for entry of the accompanying [Proposed] Order Approving Distribution Plan ("Class Distribution Order"). In further support of this motion, Lead Plaintiff submits (i) the Declaration of Luiggy Segura in Support of Lead Plaintiff's Unopposed Motion for Approval of Distribution Plan ("Segura Declaration") submitted on behalf of the Court-approved Claims Administrator, JND Legal Administration ("JND"); (ii) the Memorandum of Law in Support of Lead Plaintiff's Unopposed Motion for Approval of Distribution Plan; and (iii) all other papers and proceedings herein.

Among other things, the Class Distribution Order would: (i) approve the administrative determinations of JND accepting and rejecting Claims submitted in connection with the Settlement reached in the above-captioned Action; (ii) direct the distribution of the Net Settlement Fund to Claimants whose Claims are accepted by JND as valid and approved by the Court ("Authorized Claimants"), while maintaining a Reserve for any tax liability or claims

administration-related contingencies that may arise; (iii) direct that distribution checks state that the check must be cashed within ninety (90) days after the issue date; (iv) direct that Authorized Claimants will forfeit all recovery from the Settlement if they fail to cash their distribution checks in a timely manner; (v) approve the recommended plan for any funds remaining after the distribution; (vi) approve JND's fees and expenses incurred and estimated to be incurred in the administration of the Settlement; (vii) release claims related to the administration process; and (viii) authorize the destruction of Claim Forms and supporting documents at an appropriate time.

There are no disputed Claims by any Settlement Class Member requiring Court review. Pursuant to the terms of the Stipulation, Defendants have no interest in the relief sought by the motion. Further, Defendants' Counsel have reviewed the motion and informed us that Defendants take no position on it. Accordingly, Lead Counsel respectfully submits that the motion is ripe for consideration by the Court and may be decided on the papers.

Dated: February 14, 2025

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

/s/ Salvatore J. Graziano

Salvatore J. Graziano (admitted *pro hac vice*)

Michael D. Blatchley (admitted *pro hac vice*)

Aasiya F. Mirza Glover (admitted *pro hac vice*)

Emily A. Tu (admitted *pro hac vice*)

1251 Avenue of the Americas, 44th Floor

New York, NY 10020

Telephone: (212) 554-1400

Facsimile: (212) 554-1444

salvatore@blbglaw.com

michaelb@blbglaw.com

aasiya.glover@blbglaw.com

emily.tu@blbglaw.com

*Lead Counsel for Lead Plaintiff  
and the Settlement Class*

**DONNELLY, CONROY & GELHAAR, LLP**

T. Christopher Donnelly (BBO #129930)

Peter E. Gelhaar (BBO #18830)

Peter K. Levitt (BBO #565761)

260 Franklin Street, Suite 1600

Boston, Massachusetts 02110

Telephone: (617) 720-2880

Facsimile: (617) 720-3554

tcd@dcglaw.com

peg@dcglaw.com

pkl@dcglaw.com

*Liaison Counsel for Lead Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC  
CORPORATION SECURITIES  
LITIGATION

Master File No. 1:20-cv-12225-ADB

**MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S UNOPPOSED  
MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

Dated: February 14, 2025

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES .....	ii
I. BACKGROUND .....	2
II. CLAIMS ADMINISTRATION .....	3
A. No Disputed Claims .....	5
B. Late Claims and Final Cut-Off Date .....	5
III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR .....	6
IV. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND .....	8
A. Initial Distribution of the Net Settlement Fund .....	8
B. Additional Distribution(s) of the Net Settlement Fund .....	10
V. RELEASE OF CLAIMS .....	12
VI. CONCLUSION .....	13

## TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>In re Eletrobras Sec. Litig.</i> , 467 F. Supp. 3d 149 (S.D.N.Y. 2020).....	13
<i>Levy v. Gutierrez, et al.</i> , No. 1:14-cv-00443 (D.N.H. May 25, 2021), ECF No. 271 .....	9, 12
<i>Machado v. Endurance Int’l Group Holdings, Inc.</i> , 2021 WL 283406 (D. Mass. Jan. 27, 2021) .....	13
<i>In re Signet Jewelers Ltd. Sec. Litig.</i> , 2021 WL 5357468 (S.D.N.Y. Nov. 17, 2021).....	11
<i>In re Vale S.A. Sec. Litig.</i> , 2021 WL 3287343 (S.D.N.Y. July 30, 2021) .....	11
<i>Perkins v. Am. Nat’l Ins. Co.</i> , 2012 WL 2839788 (M.D. Ga. July 10, 2012).....	12
<b>OTHER AUTHORITIES</b>	
Memorandum in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan, <i>Levy v. Gutierrez, et al.</i> , No. 1:14-cv-00443 (D.N.H. May 4, 2021), ECF No. 267-2 .....	9, 12

Lead Plaintiff Union Asset Management Holding AG (“Lead Plaintiff” or “Union”), on behalf of itself and the Settlement Class, respectfully moves for entry of the proposed Order Approving Distribution Plan (“Class Distribution Order”) authorizing distribution of the proceeds of the Settlement in the above-captioned securities class action (“Action”). The Distribution Plan is included in the accompanying Declaration of Luiggy Segura (“Segura Declaration” or “Segura Decl.”), submitted on behalf of the Court-approved Claims Administrator, JND Legal Administration (“JND”).<sup>1</sup>

Lead Plaintiff agreed to settle the Action in exchange for a cash payment of \$38.5 million, which has been deposited into an escrow account and is earning interest for the benefit of the Settlement Class. The Settlement was approved by the Court on April 23, 2024 following a rigorous notice program and without objection to any aspect of the Settlement by any class members. Following the Court’s approval, Lead Plaintiff and Lead Counsel have overseen the Court-authorized claims administration process, in which JND carefully reviewed the Claims received and provided any Claimants with deficiencies in their Claims a chance to cure those defects. The number of damaged shares of Boston Scientific stock included in the valid Claims received equaled approximately 100% of the number estimated by the Lead Plaintiff’s damages expert, attesting to the robust participation of the Settlement Class. The Claims Administrator has now completed processing the Claims received for the Settlement and, through this motion, Lead Plaintiff seeks the Court’s approval to distribute the Net Settlement Fund to Settlement Class Members who submitted eligible Claims.

---

<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 as of December 14, 2023 (ECF No. 152-1) (“Stipulation”).

There are no disputed Claims by any Settlement Class Member requiring Court review. Pursuant to the terms of 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 ¶¶ 49, 94. Further, Defendants’ Counsel have reviewed the motion and informed us that defendants take no position on it.

The Class Distribution Order will, upon being entered by the Court, permit JND to make an Initial Distribution of the Settlement proceeds to eligible Claimants. Among other things, the Class Distribution Order will: (i) approve JND’s administrative determinations accepting and rejecting Claims submitted in connection with the Settlement; (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 (“Authorized Claimants”), 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. Granting that relief is entirely appropriate and proper, and will ensure that class members receive the settlement proceeds to which they are entitled.

As set forth below, in light of the fact that the motion is unopposed and there are no disputed claims or other issues requiring Court resolution, Lead Counsel respectfully submits that the motion is ripe for consideration by the Court and may be decided on the papers.

## **I. BACKGROUND**

On April 23, 2024, the Court entered the Judgment Approving Class Action Settlement (ECF No. 164) approving the \$38.5 million all-cash Settlement of this Action and entered an Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 165) approving the Plan of

Allocation for the Net Settlement Fund. The Settlement’s “Effective Date” under paragraph 32 of the Stipulation has now occurred, and accordingly the Net Settlement Fund may now be distributed to Authorized Claimants. In accordance with paragraph 27 of the Stipulation, Lead Plaintiff respectfully requests that the Court enter the Class Distribution Order and approve the Distribution Plan.

In accordance with the Court’s Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 155) (“Preliminary Approval Order”), JND mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Notice”) and the Proof of Claim and Release Form (“Claim Form” and, collectively with the Notice, the “Notice Packet”) to potential Settlement Class Members, and other nominees. Segura Decl. ¶ 2. JND has disseminated 128,819 Notice Packets to potential Settlement Class Members, 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 postmarked no later than May 28, 2024. *Id.* ¶ 7.

## **II. CLAIMS ADMINISTRATION**

As set forth in the Segura Declaration, through February 7, 2025, JND received and processed 105,103 Claims. Segura Decl. ¶ 7. All Claims received through February 7, 2025, 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. Many of the Claims 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, 22.

If JND determined a Claim to be defective or ineligible, JND sent a letter (if the Claimant or filer filed a paper Claim) or an email (if the Claimant or filer filed an electronic Claim) to the Claimant or filer, as applicable, 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 (“Deficiency Notices”). *Id.* ¶¶ 20, 22. The Deficiency Notices 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 Deficiency 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 the Deficiency Notices are attached as Exhibits A, B, and C to the Segura Declaration.

Of the 105,103 Claims that are the subject of this motion, JND has determined that 37,959 Claims are acceptable in whole or in part, and that 67,144 Claims should be rejected because they are ineligible for payment from the Net Settlement Fund. Segura Decl. ¶¶ 39-42. The rejected Claims were invalid for various reasons, including, for example, that the Claim did not result in a Recognized Claim, the Claim was made by or on behalf of a person or entity who was not a Settlement Class Member, or the Claim was a duplicate or withdrawn. *Id.* ¶ 42.<sup>2</sup> The Claims recommended for acceptance include over 96 million damaged shares of Boston Scientific common stock, *see id.* ¶¶ 40-41, which is in line with the total number of damaged shares as estimated by Lead Plaintiff’s damages expert—demonstrating that the notice and claims processing procedures here were highly successful. Lead Plaintiff respectfully requests that the

---

<sup>2</sup> The great majority of the rejected Claims were made by persons or entities that were not Settlement Class Members or who did not possess Recognized Claims under the Plan of Allocation. *See* Segura Decl. ¶ 42. Given the relative ease with which electronic Claims can be made given modern technology, one noticeable recent trend is that many potential Claimants will submit a Claim without carefully checking whether they are a class member or qualify for payment in the Settlement, just to err on the side of caution. This trend likely contributed to the large number of rejected Claims here. *Id.*

Court approve JND's administrative determinations accepting and rejecting Claims as set forth in the Segura Declaration.

**A. No Disputed Claims**

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

With respect to the fully processed Claims, JND received two (2) requests for Court review of its administrative determinations. To resolve these disputes without necessitating the Court's intervention, JND contacted the Claimants requesting Court review and attempted to answer all questions, to explain JND's administrative determination of the Claim's status, and to facilitate the submission of missing information or documentation where applicable. *Id.* ¶ 32. As a result of these efforts, one Claimant resolved the deficiencies in his Claim and his Claim is now recommended for approval. *Id.* The other disputing Claimant withdrew his request for Court review after receiving further explanation of the reasons for JND's determination. *Id.* Therefore, there are no disputed Claims requiring Court review.

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

The 105,103 Claims received through February 7, 2025, include 1,203 Claims that were postmarked or received after May 28, 2024, the Court-approved Claim submission deadline. *Id.* ¶¶ 33, 41. Those late Claims have been fully processed, and 386 of them are, but for their late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 386 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.* ¶ 33. The Court has discretion to accept Claims received after the Claim submission deadline. *See* Preliminary Approval Order ¶ 11; Notice ¶ 51. Lead Plaintiff respectfully submits 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 Plaintiff respectfully requests that the Court order that any *new* late Claims (and any requested adjustments to previously-filed Claims that would result in an increased Recognized Claim Amount) received after February 7, 2025, shall be barred (*see also* Segura Decl. ¶ 45(f)) – subject to the proviso that if Lead Counsel later determines that an additional distribution is not cost-effective (*see* Segura Decl. ¶ 45(e)), then any post-February 7, 2025 Claimants may, at the discretion of Lead Counsel (and to the extent possible after paying remaining administrative fees and expenses owed), be paid on their new (or adjusted) Claims on a *pro rata* basis so as to bring them into parity with other Authorized Claimants who have cashed their distribution checks.

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

The Court-approved 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. Segura Decl. ¶ 2. Consistent with the Stipulation, JND provided notice to over 120,000 potential Settlement Class Members and received and processed over 100,000 Claims. The Stipulation and the Preliminary Approval Order entered by the Court expressly contemplated that “all reasonable Notice and Administration Costs actually incurred” including “the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for identifying beneficial owners or forwarding the Notice to beneficial owners, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and administering the Settlement” would be paid from the Settlement Fund. Stipulation ¶ 14; *see also* Stipulation ¶¶ 1(ee), 9; Preliminary Approval Order ¶ 23. JND’s fees and expenses for its work performed through January 31, 2025, are \$664,563.53, and its estimated fees and expenses for work to be performed in connection with the Initial Distribution are \$73,321.99, which together total \$737,885.52. Segura Decl. ¶ 44. Lead Counsel has reviewed JND’s fees and expenses for accuracy and has overseen JND’s work to ensure it was completed in accordance with the Stipulation and Preliminary Approval Order.

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.* The brokerage firms and nominees charged JND another \$106,951.74 for their work providing names and addresses to potential Settlement Class Members and forwarding notices to their clients, an expense which is customarily included in the claims administrator’s reimbursable expenses. *Id.*<sup>3</sup> To date, JND has

---

<sup>3</sup> *See also* Stipulation ¶ 14 (“Notice and Administration Costs” include “reimbursements to nominee owners for identifying beneficial owners or forwarding the Notice to beneficial owners”).

received payment of \$600,000.00 for its fees and expenses. *Id.* Accordingly, there is an outstanding balance of \$244,837.26 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 Plaintiff that the Court approve all of JND's fees and expenses.

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

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

Under the proposed Distribution Plan, JND will distribute 95% of the Net Settlement Fund after deducting: (i) all payments previously allowed, (ii) payments approved by the Court on this motion, and (iii) any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees (i.e., the Initial Distribution). *See Segura Decl.* ¶ 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.* 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.* The use of a reserve in the distribution of class settlement funds in a case like this is common and has been approved by courts in the First Circuit. *See, e.g.,* Memorandum in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan, *Levy v. Gutierrez, et al.*, No. 1:14-cv-00443 (D.N.H. May 4, 2021), ECF No. 267-2 & Order Approving Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan, *Levy v. Gutierrez, et al.*, No. 1:14-cv-00443 (D.N.H. May 25, 2021), ECF No. 271, attached hereto as Exhibit 1 (approving the establishment of a 5% reserve from the Net Settlement Fund for the purposes of addressing tax liability and/or claims administration-related contingencies).

To encourage Authorized Claimants to cash their checks promptly, Lead Plaintiff proposes 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) 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 a 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 amount remaining in the Net Settlement Fund, after deducting any unpaid fees and expenses incurred, will be distributed to all Authorized Claimants (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 any funds remain in the Net Settlement Fund after the Second Distribution, and if cost-effective, subsequent distributions will take place at six-month intervals. *Id.* When Lead Counsel, in consultation with JND, determines that a further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after February 7, 2025, 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 upward adjustment was received after February 7, 2025, 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 Claims and any unpaid fees or expenses, Lead Counsel proposes that such remaining funds (if there are any) be contributed to the National Consumer Law Center (“NCLC”). Lead Counsel proposes that the NCLC be designated as the “non-sectarian, not-for-profit, 501(c)(3) organization to be recommended by Lead Counsel” referenced in the Court-approved Plan of Allocation. *See* Notice ¶ 93.

NCLC is a private, non-sectarian, non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. *Financials*, National Consumer Law Center, <https://nclc.org/about-us/financials/> (last visited Feb. 12, 2025). For over 50 years, NCLC has worked to build and strengthen a legal network to provide legal services addressed to two main goals: improving access to the legal system for all people and enabling advocates to seek remedies for low-income people where needed. *See History*, National Consumer Law Center, <https://nclc.org/about-us/history/> (last visited Feb. 12, 2025). NCLC’s lawyers provide policy analysis, advocacy, litigation, expert-witness services, and training for consumer advocates throughout the United States. *See Mission*, National Consumer Law Center, <https://nclc.org/about-us/mission/> (last visited Feb. 12, 2025). “NCLC uses its unmatched expertise in consumer law to protect consumers from exploitation and expand access to fair credit by advocating for laws, rules, and regulations that benefit real people: those with low incomes, older people, students, people of color, and others who have been abused, deceived, discriminated against, or left behind in our economy.” *About Us*, National Consumer Law Center, <https://nclc.org/about-us/> (last visited Feb. 12, 2025). NCLC has received “the highest ratings from charity watchdogs” and “welcomes *cy pres* designations of unclaimed settlement funds from class action lawsuits, which are used to support our consumer rights work advancing the core interests of underlying class members.” *History*, National Consumer Law Center, <https://nclc.org/about-us/history/> (last visited Feb. 12, 2025), & *Cy Pres*, National Consumer Law Center, <https://nclc.org/get-involved/ways-to-give/cy-pres/> (last visited Feb. 12, 2025). Federal courts have approved NCLC as a *cy pres* recipient of residual balances of net settlement funds in other comparable settlements. *See, e.g., In re Signet Jewelers Ltd. Sec. Litig.*, 2021 WL 5357468, at \*2 (S.D.N.Y. Nov. 16, 2021); *In re Vale S.A. Sec. Litig.*, 2021 WL 3287343, at \*2 (S.D.N.Y. July 30, 2021); Lead Plaintiff’s Unopposed Motion for

Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan, *Levy v. Gutierrez, et al.*, No. 1:14-cv-00443 (D.N.H. May 4, 2021), ECF No. 267-2 & Order Approving Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan, *Levy v. Gutierrez, et al.*, No. 1:14-cv-00443 (D.N.H. May 25, 2021), ECF No. 271, attached hereto as Exhibit 1; *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.”).

## **V. RELEASE OF CLAIMS**

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to (i) bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and (ii) provide that all persons involved in any aspect of Claims processing, or who are 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. *See* Stipulation ¶ 29. Accordingly, Lead Plaintiff respectfully requests 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 Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff 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.

Courts have repeatedly approved similar releases 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 . . . [.]”); *Machado v. Endurance Int’l Group Holdings, Inc.*, 2021 WL 283406, at \*2 (D. Mass. Jan. 27, 2021) (approving substantially similar language in order authorizing distribution of settlement proceeds).

## VI. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant its Motion for Approval of Distribution Plan and enter the [Proposed] Order Approving Distribution Plan.

Dated: February 14, 2025

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

/s/ Salvatore J. Graziano

Salvatore J. Graziano (admitted *pro hac vice*)

Michael D. Blatchley (admitted *pro hac vice*)

Aasiya F. Mirza Glover (admitted *pro hac vice*)

Emily A. Tu (admitted *pro hac vice*)

1251 Avenue of the Americas, 44th Floor

New York, NY 10020

Telephone: (212) 554-1400

Facsimile: (212) 554-1444

salvatore@blbglaw.com

michaelb@blbglaw.com

aasiya.glover@blbglaw.com

emily.tu@blbglaw.com

*Lead Counsel for Lead Plaintiff  
and the Settlement Class*

**DONNELLY, CONROY & GELHAAR, LLP**

T. Christopher Donnelly (BBO #129930)

Peter E. Gelhaar (BBO #18830)

Peter K. Levitt (BBO #565761)

260 Franklin Street, Suite 1600

Boston, Massachusetts 02110

Telephone: (617) 720-2880

Facsimile: (617) 720-3554

tcd@dcglaw.com

peg@dcglaw.com

pkl@dcglaw.com

*Liaison Counsel for Lead Plaintiff*

# EXHIBIT 1

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

ADAM S. LEVY on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

THOMAS GUTIERREZ, RICHARD J. GAYNOR, RAJA  
BAL, J. MICHAL CONAWAY, KATHLEEN A. COTE,  
ERNEST L. GODSHALK, MATTHEW E. MASSENGILL,  
MARY PETROVICH, ROBERT E. SWITZ, NOEL G.  
WATSON, THOMAS WROE, JR., MORGAN STANLEY  
& CO. LLC, GOLDMAN, SACHS & CO., CANACCORD  
GENUITY INC., AND APPLE, INC.

Defendants.

No. 1:14-cv-00443-JL

ECF CASE

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFF'S UNOPPOSED MOTION  
FOR APPROVAL OF SECOND DISTRIBUTION OF EARLIER SETTLEMENTS  
AND APPLE SETTLEMENT DISTRIBUTION PLAN**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. BACKGROUND .....	2
II. CLAIMS ADMINISTRATION FOR EARLIER SETTLEMENTS .....	5
III. CLAIMS ADMINISTRATION FOR THE APPLE SETTLEMENT .....	5
A. No Disputed Claims.....	6
B. Late Claims – and Final Cut-Off Date for the Apple Initial Distribution .....	7
IV. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR .....	8
V. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUNDS .....	9
VI. SUBSEQUENT DISTRIBUTION(S) OF THE NET SETTLEMENT FUNDS .....	13
VII. RELEASE OF CLAIMS.....	15
VIII. CONCLUSION.....	16

Lead Plaintiff and Class Representative Douglas Kurz (“Lead Plaintiff”) respectfully moves for entry of the proposed Order Approving Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan (the “Class Distribution Order”) for the proceeds of the settlements with the Individual Defendants and Underwriter Defendants (the “Earlier Settlements”)<sup>1</sup> and with Defendant Apple (the “Apple Settlement”) in the above-captioned action (the “Action”).<sup>2</sup> The Distribution Plan is included in the accompanying Declaration of Stephanie Amin-Giwner in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan (the “Amin-Giwner Declaration” or “Amin-Giwner Decl.”), submitted on behalf of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. (“Epiq”).<sup>3</sup>

If entered by the Court, the Class Distribution Order would, among other things, (i) approve Epiq’s administrative recommendations accepting, adjusting, and rejecting Claims submitted in the Action; (ii) direct the Earlier Settlements Second Distribution of the Earlier Settlements Net

---

<sup>1</sup> “Earlier Settlements” means the Individual Defendant Settlement and Underwriter Defendant Settlement, which were approved by the Court by judgments entered on July 27, 2018 (ECF Nos. 192, 193) (and together with the Apple Settlement, the “Settlements”).

<sup>2</sup> Unless otherwise indicated in this memorandum, all terms with initial capitalization shall have the meanings ascribed to them in the accompanying Amin-Giwner Declaration or in the Stipulation and Agreement of Settlement with Defendant Apple Inc. dated as of January 10, 2020 (ECF No. 252-1) (the “Apple Stipulation”). The Apple Stipulation sets forth the terms and conditions of Lead Plaintiff’s settlement with Apple for \$3.5 million in cash.

<sup>3</sup> The Court approved Garden City Group, LLC (“GCG”), as Claims Administrator. GCG was acquired by Epiq on June 15, 2018, and now is continuing operations as part of Epiq. “Epiq [ ] is the successor to Garden City Group, LLC, which the Court previously authorized Class Counsel to retain to supervise and administer the notice procedure in connection with the Earlier Settlements and any other settlement or recovery achieved in this Action and to process Claims received in the action.” Order Preliminary Approving Settlement with Defendant Apple Inc. and Providing for Notice (ECF No. 254) ¶ 5.

Settlement Funds to Claimants whose Claims are accepted by Epiq as valid and approved by the Court, including the Late Adjusted Claims; (iii) direct the Apple Initial Distribution of the Apple Net Settlement Fund to Claimants whose Claims are accepted by Epiq as valid and approved by the Court, while maintaining a Reserve for any tax liability and claims administration-related contingencies that may arise; (iv) approve Epiq's fees and expenses incurred and estimated to be incurred in the administration of the Settlements; (v) release claims related to the administration process; and (vi) authorize the destruction of Proofs of Claim and supporting documents at an appropriate time.

Defendants do not oppose this motion.<sup>4</sup> There are no disputed Claims by any Class Member requiring Court review. As such, the motion is ripe for determination.

## **I. BACKGROUND**

By the Order Approving Distribution Plan entered January 13, 2020 (ECF No. 253) (the "Distribution Order"), the Court directed Epiq to conduct the initial distribution of the Earlier Settlements Net Settlement Funds to Authorized Claimants (the "Earlier Settlements Initial Distribution"). *See* Distribution Order ¶ 3(c). Pursuant to the Distribution Order, checks and wire transfers from the Earlier Settlements Net Settlement Funds were issued to Authorized Claimants beginning on February 20, 2020, and the Earlier Settlements Initial Distribution was completed on February 27, 2020. *See* Amin-Giwner Decl. ¶ 2. The Court ordered that any Claims received or adjusted after November 6, 2019, be processed and presented to the Court in connection with Lead

---

<sup>4</sup> Defendants have no role in or responsibility for the administration of the Settlement Funds or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Funds. *See* Apple Stipulation ¶¶ 22, 28, Stipulation and Agreement of Settlement

Counsel's motion for a second distribution of the Earlier Settlements. *See* Distribution Order ¶ 3(g). Epiq has completed processing all Claims received through January 22, 2021, in accordance with the terms of the Court-approved Plan of Allocation,<sup>5</sup> and hereby submits its administrative determinations accepting, adjusting, and rejecting the Claims received or adjusted after November 6, 2019, in preparation for the Earlier Settlements Second Distribution to Authorized Claimants. *See* Amin-Giwner Decl. ¶ 2.

The Court has approved the Apple Stipulation entered into by Lead Plaintiff, on behalf of himself and the other members of the Apple Class, and the settling Defendant Apple in the Action. *See* Order Preliminarily Approving Settlement with Defendant Apple Inc. and Providing for Notice (ECF No. 254) (the "Preliminary Approval Order"). The Apple Stipulation sets forth the terms of the Apple Settlement, which represents a complete resolution of the claims against Apple in this Action in return for a payment of \$3.5 million in cash, which Apple will pay or cause to be paid for the benefit of Apple Class Members. *See* Apple Stipulation ¶¶ 1(ddd), 8.

In accordance with the Preliminary Approval Order entered by the Court, Epiq has mailed the Notice of (I) Certification of Class; (II) Proposed Settlement with Apple Inc.; (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (IV) Settlement Fairness Hearing (the "Apple Settlement Notice") and the Proof of Claim and Release Form (the "Claim Form", and together with the Apple Settlement Notice, the "Notice Packet") to potential Apple Class Members, brokers, and other nominees. *See* Amin-Giwner Decl. ¶ 3. As stated in the Amin-Giwner

---

with Individual Defendants (ECF No. 178-1) ¶¶ 23, 28, Stipulation and Agreement of Settlement with Settling Underwriter Defendants and the Supplement thereto (ECF No. 178-2) ¶¶ 21, 27.

Declaration, Epiq has disseminated 212,864 Notice Packets to potential Apple Class Members and nominees. *See id.* ¶ 9. The Notice informed Apple Class Members that if they wished to be eligible to participate in the distribution of the Apple Net Settlement Fund, they were required to submit a properly executed Claim Form so that it would be received or postmarked no later than June 29, 2020. *See id.* ¶ 12.

On August 27, 2020, the Court issued its Memorandum Order Granting Final Approval of Apple Settlement and Class Counsel’s Motion for Attorneys’ Fees (ECF No. 266) (the “Final Approval Order”), which approved the Apple Settlement (consisting of the terms and conditions of the Apple Stipulation) and the Plan of Allocation.<sup>6</sup> The Effective Date of the Apple Settlement has occurred. *See* Apple Stipulation ¶ 37. Accordingly, the Apple Net Settlement Fund may be distributed to Authorized Claimants. In accordance with paragraph 31 of the Apple Stipulation, Lead Plaintiff respectfully asks the Court to enter the Class Distribution Order approving the Distribution Plan.<sup>7</sup>

---

<sup>5</sup> *See* Appendix A to the Notice, Proposed Plan of Allocation (ECF No. 188-6), as approved in the Court’s Order Approving Plan of Allocation of Net Settlement Funds dated July 27, 2018 (ECF No. 191).

<sup>6</sup> *See* Final Approval Order at 17 (“Claims of the Apple Class will be calculated in the same manner as under the allocation plan approved by the court for members of the Individual Defendant Settlement Class.”); *see also* Apple Stipulation ¶ 1(tt) (“‘Plan of Allocation’ means the Plan of Allocation approved by the Court by Order dated July 27, 2018 (ECF No. 191), which has been utilized for determining the allocation of the net proceeds of the Earlier Settlements and will also be utilized for determining the allocation of the Net Apple Settlement Fund.”).

<sup>7</sup> “The court shall retain exclusive jurisdiction over the Settling Parties and the ‘Class Members,’ as defined in the Apple Settlement, for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Apple Settlement and this Order.” Final Approval Order at 32.

## **II. CLAIMS ADMINISTRATION FOR EARLIER SETTLEMENTS**

The Court directed Epiq to conduct the Earlier Settlements Initial Distribution of the Earlier Settlements Net Settlement Funds to Authorized Claimants. *See* Distribution Order ¶ 3(c). Pursuant to the Distribution Order, checks and wire transfers from the Earlier Settlements Net Settlement Funds were issued to Authorized Claimants beginning on February 20, 2020, in an amount totaling \$27,042,316.94. *See* Amin-Giwner Decl. ¶ 6. As of April 1, 2021, \$26,969,843.71 has been negotiated by recipients, and \$298,974.67 remains in the account ready for distribution. *See id.* ¶ 8.

## **III. CLAIMS ADMINISTRATION FOR THE APPLE SETTLEMENT**

As detailed in the accompanying Amin-Giwner Declaration, from November 6, 2019, through January 22, 2021, Epiq received and processed 2,399 Claims to the Apple Settlement (“Apple Claims”). *See id.* ¶ 12. All Claims received through January 22, 2021, have been fully processed in accordance with the Apple Stipulation and the Court-approved Plan of Allocation included in the Notice (*see id.*), and Epiq has worked with Claimants to help them perfect their Claims (*see id.* ¶¶ 24-31).<sup>8</sup>

As discussed in the Amin-Giwner Declaration, many of the Apple Claims 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 Epiq. *See id.* ¶¶ 24, 30. If Epiq determined a Claim to be defective or ineligible, a letter (if the Claimant filed a paper Claim) (the “Deficiency Notice”) or an email (if the Claimant filed an electronic Claim) (the “Status Email” and “Status Spreadsheet”) was sent by Epiq to the Claimant or filer, as applicable,

describing the defect(s) or condition(s) of ineligibility in the Claim and what was necessary to cure any curable defect(s) in the Claim. *See id.* ¶¶ 25, 27-30. The Deficiency Notice or Status Email advised the Claimant or filer that the appropriate information or documentary evidence to complete the Claim had to be sent within 20 days from the date of the Deficiency Notice or Status Email or Epiq would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *See id.* ¶¶ 25, 28. An example of the Deficiency Notice is attached as Exhibit A to the Amin-Giwner Declaration and examples of the Status Email and Status Spreadsheet are attached thereto as Exhibits B and C, respectively.

As shown in the Amin-Giwner Declaration, of the 2,399 Apple Claims that are the subject of this motion, Epiq has determined that 1,033 (including the 45 Late But Otherwise Eligible Claims discussed below) are acceptable in whole or in part, and that 1,366 should be wholly rejected because they are ineligible for payment from the Apple Net Settlement Fund. *See id.* ¶¶ 40-41, 43. Lead Plaintiff respectfully requests that the Court approve Epiq's administrative determinations accepting and rejecting the Apple Claims as stated in the Amin-Giwner Declaration.

#### **A. No Disputed Claims**

Epiq carefully reviewed Claimants' and filers' responses to the Deficiency Notices and Status Emails and worked with them to resolve deficiencies where possible. *See id.* ¶¶ 24, 26-27, 31. As noted above and consistent with paragraph 29(e) of the Apple Stipulation, the Deficiency Notices and Status Emails specifically advised the Claimants or filers of the right, within 20 days after the

---

<sup>8</sup> In order to allow a proportional allocation of the Apple Net Settlement Fund, and so that a distribution to eligible Claimants would not be delayed, Claims received after January 22, 2021, have not been processed. *See* Amin-Giwner Decl. ¶ 36.

mailing or emailing of the notice, to contest the rejection of the Claim and request Court review of the administrative determination of the Claim. *See id.* ¶¶ 25, 28, 32, and Exhibits A and B.

With respect to the fully processed Apple Claims, Epiq received five (5) requests for a review by the Court of its administrative determinations. *See id.* ¶ 33. To resolve the disputes without necessitating the Court's intervention, Epiq contacted all persons requesting Court review, and with respect to those Claimants who were reached, Epiq answered all their questions, fully explained Epiq's determination of the Claim's status, and facilitated the submission of missing information or documentation where applicable. *See id.* As a result of these efforts, all Claims for which Court review had been requested have either been cured or the Claimant withdrew the request for Court review. *See id.* There are no disputed Claims to the Apple Settlement requiring Court review.

**B. Late Claims – and Final Cut-Off Date for the Apple Initial Distribution**

The 2,399 Apple Claims received through January 22, 2021, include 171 that were postmarked or received after the Court-approved Claim-filing deadline of June 29, 2020, but that were received before January 22, 2021. *See id.* ¶¶ 34, 41. Those late Claims have been fully processed, and 45 of them are, but for the late submission, otherwise eligible. *See id.* Although these 45 Claims were late, they were received while the processing of timely Claims was ongoing. *See id.* ¶ 34. 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 Apple Net Settlement Fund. *See id.* The Court has discretion to accept Claims

received after the filing deadline.<sup>9</sup> Lead Plaintiff respectfully submits that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the Apple Net Settlement Fund solely because it was received after the Court-approved Claim-filing deadline if it was submitted while timely Claims were still being processed.

To facilitate an efficient Apple Initial Distribution, however, there must be a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiff respectfully requests that this Court order that any new Claims received after January 22, 2021, and any adjustments to previously filed Claims made after May 4, 2021, that would result in an increased Recognized Claim amount, be barred from payment in the Apple Initial Distribution, while permitting Claims received after January 22, 2021, or adjusted after May 4, 2021, to be eligible to participate in subsequent distributions subject to the provisions of paragraphs 47(e) of the Amin-Giwner Declaration.<sup>10</sup>

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

In accordance with Epiq's agreement with Lead Counsel to act as the Claims Administrator for the Settlements, Epiq was responsible for, among other things, disseminating notice of the Apple Settlement to the Apple Class, creating and maintaining a website and toll-free telephone helpline, processing Claims, and allocating and distributing the Apple Net Settlement Fund to Authorized Claimants. *See* Amin-Giwner Decl. ¶ 3. As stated in the accompanying Amin-Giwner Declaration,

---

<sup>9</sup> *See* Preliminary Approval Order ¶ 9(b)(iv) (“*Unless the Court orders otherwise*, all Claim Forms submitted in connection with the Apple Settlement must be postmarked no later than ninety (90) calendar days after the Notice Date. Notwithstanding the foregoing, Class Counsel may, at their discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Apple Net Settlement Fund to Authorized Claimants.”) (emphasis added).

<sup>10</sup> Should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made, and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant. Amin-Giwner Decl. ¶ 36.

Epiq's fees and expenses for its work performed on behalf of the Apple Class as well as additional work in connection to the Earlier Settlements and its estimate to complete the Apple Initial Distribution and Earlier Settlements Second Distribution are \$630,048.23.<sup>11</sup> *See id.* ¶ 45. To date, Epiq has received payment in the amount of \$94,421.17 for these fees and expenses. *See id.* Accordingly, there is an outstanding balance of \$535,627.06 payable to Epiq, which includes the estimated fees and expenses to be incurred by Epiq in connection with the Apple Initial Distribution and Earlier Settlements Second Distribution. *See id.* Lead Counsel reviewed Epiq's invoices and respectfully request on behalf of Lead Plaintiff that the Court approve all of Epiq's fees and expenses.

#### **V. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUNDS**

The Earlier Settlements Net Settlement Funds are ready to be distributed in a second distribution. Pursuant to the Distribution Order, after Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks from the Earlier Settlements Initial Distribution, but not earlier than nine (9) months after the Earlier Settlements Initial Distribution, Lead Counsel shall seek Court approval to conduct the Earlier Settlements Second Distribution in which any amount remaining in the Earlier Settlements Net Settlement Funds after the Earlier Settlements Initial Distribution, including from the reserve and the funds from all void stale-dated checks, after deducting Epiq's fees and expenses incurred in administering the Settlements for which it has not yet been paid, including Epiq's estimated costs of the Earlier Settlements Second

---

<sup>11</sup> Should the estimate of fees and expenses to conduct the Apple Initial Distribution exceed the actual cost to conduct the distribution, the excess will be returned to the Apple Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants. Amin-Giwner Decl. ¶ 45 n.9.

Distribution, and after deducting the 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 Earlier Settlements Initial Distribution who cashed their distribution check. *See* Distribution Order ¶ 3(f); *see also* Plan of Allocation ¶ 53. In addition, the Apple Net Settlement Fund is ready to be distributed in an initial distribution. Lead Plaintiff respectfully moves the Court for entry of an order approving Epiq’s determinations concerning acceptance, adjustment, and rejection of the Claims that are included in the present motion, including the Late Adjusted Claims to the Earlier Settlements Net Settlement Funds and the Late But Otherwise Eligible Claims to the Apple Net Settlement Fund, and approving the proposed plan for the distribution of the Net Settlement Funds as stated in the Amin-Giwner Declaration (the “Distribution Plan”).

Under the proposed Distribution Plan, Epiq will conduct the Earlier Settlements Second Distribution and the Apple Initial Distribution (together, the “Settlements Distribution”) in which 100% of the Earlier Settlements Net Settlement Funds and approximately 95% of the Apple Net Settlement Fund will be distributed to Authorized Claimants, 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. *See* Amin-Giwner Decl. ¶ 47(a). For the purposes of executing the Distribution Plan for both the Earlier Settlements Net Settlement Funds and the Apple Net Settlement Fund, Epiq has developed a proprietary “calculation module” that would calculate an Exchange Act Recognized Claim or a Securities Act Recognized Claim (when combined referred to as the Claimant’s Recognized Claims)

pursuant to the Court-approved Plan of Allocation for both the Earlier Settlements Net Settlement Funds and the Apple Net Settlement Fund, as stated in the Apple Notice.<sup>12</sup> *See id.* ¶ 13.

To conduct the Settlements Distribution, Epiq will first determine each Authorized Claimant's *pro rata* share of the total Net Settlement Funds based upon the Claimant's Recognized Claims, calculating award amounts for all Authorized Claimants as if the entire Net Settlement Funds were to be distributed now.<sup>13</sup> *Id.* ¶ 47(a)(1). In accordance with the Court-approved Plan of Allocation, Epiq will calculate each Authorized Claimant's: (a) *pro rata* share of the Individual Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants; (b) *pro rata* share of the Underwriter Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Securities Act Recognized Claim in comparison to the total Securities Act Recognized Claims of all Authorized Claimants; and (c) *pro rata* share of the Apple Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants.<sup>14</sup> *Id.*

---

<sup>12</sup> “Under the terms of the Apple Settlement, eligible members of the Apple Class that previously submitted or now submit claims approved for payment will receive a *pro rata* share of the Apple Settlement based on their transactions in GTAT Securities during the Class Period. Claims of the Apple Class will be calculated in the same manner as under the allocation plan approved by the court for members of the Individual Defendant Settlement Class.” Final Approval Order at 17.

<sup>13</sup> *See* Plan of Allocation ¶¶ 37-38, “*Calculation of Claimant's 'Exchange Act Recognized Claim':* A Claimant's ‘Exchange Act Recognized Claim’ will be the sum of his, her or its Exchange Act Recognized Loss Amounts as calculated above with respect to all GTAT Securities” and “*Calculation of Claimant's 'Securities Act Recognized Claim':* A Claimant's ‘Securities Act Recognized Claim’ will be the sum of his, her or its Securities Act Recognized Loss Amounts as calculated above with respect to all GTAT Common Stock Offering Shares and GTAT Senior Notes.”

<sup>14</sup> *See id.* ¶¶ 50-51, *Allocation of the Individual Defendant Net Settlement Fund* and *Allocation of the Underwriter Defendant Net Settlement Fund*.

In accordance with the Court-approved Plan of Allocation and given the costs of making payments, Epiq will eliminate from the Settlements Distribution any Authorized Claimant whose combined *pro rata* shares of the Individual Defendant Net Settlement Fund, Underwriter Defendant Net Settlement Fund, and Apple Net Settlement Fund calculate to less than \$10.00,<sup>15</sup> as these Claimants will not receive any payment from the Net Settlement Funds and will be so notified by Epiq. *Id.* ¶ 47(a)(2). After eliminating Claimants who would have received less than \$10.00 from the Net Settlement Funds, Epiq will recalculate the *pro rata* shares of the Individual Defendant Net Settlement Fund, the Underwriter Defendant Net Settlement Fund, and the Apple Net Settlement Fund for all Authorized Claimants who would have received \$10.00 or more based on the amount of the Authorized Claimant's Recognized Claim to each Net Settlement Fund in comparison to the total Recognized Claims for all Authorized Claimants to each Net Settlement Fund who would have received \$10.00 or more in the previous calculations. *Id.* ¶ 47(a)(3). The sum of these *pro rata* shares is the Authorized Claimant's "Distribution Amount."<sup>16</sup> *Id.* Authorized Claimants whose Distribution Amount calculates to less than \$100.00 will be paid their full Distribution Amount ("Claims Paid in Full"). *Id.* ¶ 47(a)(4). These Authorized Claimants will receive no additional funds from the Net Settlement Funds in subsequent distributions. *Id.* After deducting the payments to the Claims Paid in Full, 95% of the remaining balance of the Apple Net Settlement Fund and 100% of the remaining balance of each Earlier Settlements Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$100.00 or more. *Id.* ¶ 47(a)(5). The remaining 5% of the Apple Net Settlement Fund will be held in reserve (the "Reserve") to address any tax

---

<sup>15</sup> See *id.* ¶ 52, *Distribution Amount*.

<sup>16</sup> See *id.*

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 Settlements Distribution described in subparagraph 47(d) of the Amin-Giwner Declaration. *Id.*

In order to encourage Authorized Claimants to cash their checks promptly, the distribution checks will bear the notation: “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” *Id.* ¶ 47(b). Authorized Claimants who do not cash their checks within the time allotted or on the conditions stated in paragraph 47(b) footnote 13 of the Amin-Giwner Declaration will irrevocably forfeit all recovery from the Settlements, 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. *See id.* ¶ 47(c).

## **VI. SUBSEQUENT DISTRIBUTION(S) OF THE NET SETTLEMENT FUNDS**

After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, but not earlier than nine (9) months after the Settlements Distribution, Epiq will, after consulting with Lead Counsel, conduct the Second Settlements Distribution. *See* Amin-Giwner Decl. ¶ 47(d). In the Second Settlements Distribution, any amounts remaining in the Net Settlement Funds, including from the Reserve and the funds from all void stale-dated checks, after deducting Epiq’s fees and expenses incurred in connection with administering the Settlements for which it has not yet been paid, including the estimated costs of the Second Settlements 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 Settlements Distribution who cashed their distribution checks and who would receive at least \$10.00 from such distribution based upon their *pro rata* share of the remaining funds. *See id.*

If any funds remain in the Net Settlement Funds after the Second Settlements Distribution, because of uncashed checks or otherwise, then after Epiq 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 Funds, after deduction of costs and expenses as described above and subject to the same conditions, will take place at six-month intervals thereafter. *See id.* ¶ 48. When Lead Counsel, in consultation with Epiq, determine that further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after January 22, 2021, Epiq will process those Claims. *See id.* ¶ 47(e). Any of these Claims that are otherwise valid, as well as any Claims received before January 22, 2021, for which an adjustment was received after May 4, 2021, and which resulted in an increased Recognized Claim, may be paid in accordance with paragraph 47(e) of the Amin-Giwner Declaration. *See id.* If any funds remain in the Net Settlement Funds after payment of these late or late-adjusted Claims, the remaining balance of the Net Settlement Funds, after payment of any unpaid fees or expenses incurred in administering the Net Settlement Funds and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s) to be recommended by Lead Counsel and approved by the Court. *See id.* ¶ 49.

Lead Counsel requests that the Court approve the National Consumer Law Center (“NCLC”) to be the recipient of the remaining settlement funds. 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](https://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>17</sup>

## VII. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Apple Net Settlement Fund and Earlier Settlements Net Settlement Funds, it is necessary to bar any further claims against the Net Settlement Funds beyond the amounts allocated to 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 Settlements, or who are otherwise

---

<sup>17</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.”).

involved in the administration or taxation of the Settlements, be released and discharged from all claims arising out of that involvement. Accordingly, Lead Plaintiff respectfully requests that the Court enter the Class Distribution Order, which will release and discharge all such claims.

### **VIII. CONCLUSION**

For the foregoing reasons, Lead Plaintiff respectfully submits that Lead Plaintiff's Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan should be granted, and the [Proposed] Order Approving Distribution Plan should be entered.

Dated: May 4, 2021

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

/s/ John C. Browne

John C. Browne (admitted *pro hac vice*)  
Lauren Ormsbee (admitted *pro hac vice*)  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444

*Lead Counsel for Plaintiffs*

**ORR & RENO, P.A.**

/s/ Jennifer A. Eber

Jennifer A. Eber N.H. Bar No. 8775  
Jeffrey C. Spear N.H. Bar No. 14938  
45 S. Main Street, PO Box 3550  
Concord, NH 03302-3550  
Tel: (603) 224-2381  
Fax: (603) 224-2318  
jeber@orr-reno.com jspear@orr-reno.com

*Liaison Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of May 2021, the above Memorandum in Support of Lead Plaintiff's Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan was electronically served through ECF on all registered attorneys in the case under Civil Action No. 14-cv-00443-JL.

/s/ Jennifer A. Eber

Jennifer A. Eber N.H. Bar No. 8775

**ORR & RENO, P.A.**

45 S. Main Street, PO Box 3550

Concord, NH 03302-3550

Tel: (603) 224-2381

Fax: (603) 224-2318

jeber@orr-reno.com

jspear@orr-reno.com

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

ADAM S. LEVY on behalf of himself and all others  
similarly situated,

Plaintiff,

v.

THOMAS GUTIERREZ, RICHARD J. GAYNOR,  
RAJA BAL, J. MICHAL CONAWAY, KATHLEEN A.  
COTE, ERNEST L. GODSHALK, MATTHEW E.  
MASSENGILL, MARY PETROVICH, ROBERT E.  
SWITZ, NOEL G. WATSON, THOMAS WROE, JR.,  
MORGAN STANLEY & CO. LLC, GOLDMAN,  
SACHS & CO., AND CANACCORD GENUITY INC.,  
AND APPLE, INC.

Defendants.

No. 1:14-cv-00443-JL

ECF CASE

**ORDER APPROVING SECOND DISTRIBUTION OF EARLIER  
SETTLEMENTS AND APPLE SETTLEMENT DISTRIBUTION PLAN**

Lead Plaintiff moved this Court for an order approving a distribution plan for the Net Settlement Funds in the above-captioned class action (the “Action”). Having reviewed and considered all the materials and arguments submitted in support of the motion, including the Memorandum in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan and the Declaration of Stephanie Amin-Giwner in Support of Lead Plaintiff’s Unopposed Motion for Approval of Second Distribution of Earlier Settlements and Apple Settlement Distribution Plan (the “Amin-Giwner Declaration”),

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement with Defendant Apple Inc. dated as of January 10, 2020 ([ECF No. 252-1](#)) (the “Apple

Stipulation”), and the Amin-Giwner Declaration, and all terms used in this Order shall have the same meanings as defined in the Apple Stipulation or in the Amin-Giwner Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Apple Class Members and Settlement Class Members of the Earlier Settlements.

3. Lead Plaintiff’s plan for distribution of the Net Settlement Funds to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. (“Epiq”), to accept the Timely Eligible Claims to the Apple Settlement, as stated in Exhibit D to the Amin-Giwner Declaration, the Late But Otherwise Eligible Claims to the Apple Settlement, as stated in Exhibit E to the Amin-Giwner Declaration, and the Late Adjusted Claims submitted in connection with the Earlier Settlements, as stated in Exhibit F to the Amin-Giwner Declaration, are adopted;

(b) The Claims Administrator’s administrative recommendations for the Rejected Claims as wholly ineligible Claims to the Apple Settlement, as stated in Exhibit G to the Amin-Giwner Declaration, are adopted;

(c) Epiq is directed to conduct the Settlements Distribution, which shall consist of the Earlier Settlements Second Distribution together with the Apple Initial Distribution, after deducting all payments previously allowed and the payments approved by this Order, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Apple Net Settlement Fund to address any tax liability and claims administration-related contingencies that may

arise in the Apple Initial Distribution. Specifically, as stated in paragraph 47(a) of the Amin-Giwner Declaration: (1) Epiq will calculate each Authorized Claimant's: (a) *pro rata* share of the Individual Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants; (b) *pro rata* share of the Underwriter Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Securities Act Recognized Claim in comparison to the total Securities Act Recognized Claims of all Authorized Claimants; and (c) *pro rata* share of the Apple Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants; (2) Epiq will eliminate from the Settlements Distribution any Authorized Claimant whose combined *pro rata* shares of the Individual Defendant Net Settlement Fund, Underwriter Defendant Net Settlement Fund, and Apple Net Settlement Fund calculate to less than \$10.00, as these Claimants will not receive any payment from the Net Settlement Funds and will be so notified by Epiq; (3) After eliminating Claimants who would have received less than \$10.00 from the Net Settlement Funds, Epiq will recalculate the *pro rata* shares of the Individual Defendant Net Settlement Fund, the Underwriter Defendant Net Settlement Fund, and the Apple Net Settlement Fund for all Authorized Claimants who would have received \$10.00 or more based on the amount of the Authorized Claimant's Recognized Claim to each Net Settlement Fund in comparison to the total Recognized Claims for all Authorized Claimants to each Net Settlement Fund who would have received \$10.00 or more in the previous calculations. The sum of these *pro rata* shares is the Authorized Claimant's "Distribution Amount"; (4) Authorized Claimants whose Distribution Amount calculates to less than \$100.00 will be

paid their full Distribution Amount (“Claims Paid in Full”). These Authorized Claimants will receive no additional funds from the Net Settlement Fund in subsequent distributions; (5) After deducting the payments to the Claims Paid in Full, 95% of the remaining balance of the Apple Net Settlement Fund and 100% of the remaining balance of each Earlier Settlements Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$100.00 or more. The remaining 5% of the Apple Net Settlement Fund will be held in reserve (the “Reserve”) to address any tax liability and claims administration-related contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the Second Settlements Distribution described in subparagraph (h) below;

(d) In order to encourage Authorized Claimants to cash their checks promptly, all distribution checks will bear the following notation: “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” Lead Counsel and Epiq are authorized to take appropriate action to locate and contact any Authorized Claimant who has not cashed his, her, or its distribution check within said time as detailed in paragraph 47(b) footnote 13 of the Amin-Giwner Declaration;

(e) Authorized Claimants who do not cash their distribution checks within the time allotted or on the conditions stated in paragraph 47(b) footnote 13 of the Amin-Giwner Declaration will irrevocably forfeit all recovery from the Settlements, and the funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in a subsequent distribution;

(f) After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, as provided in paragraph 47(b) footnote 13 of the

Amin-Giwner Declaration, but not earlier than nine (9) months after the Settlements Distribution, Epiq will, after consulting with Lead Counsel, conduct an additional distribution of the Net Settlement Funds (the “Second Settlements Distribution”). Any amounts remaining in the Net Settlement Funds after the Settlements Distribution, including from the Reserve and the funds from all void stale-dated checks, after deducting Epiq’s fees and expenses incurred in connection with administering the Settlements for which it has not yet been paid, including Epiq’s estimated costs of the Second Settlements Distribution, and after deducting the 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 Settlements Distribution who cashed their distribution check and who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds;

(g) No new Claims may be accepted after January 22, 2021, and no further adjustments to Claims received on or before January 22, 2021, that would result in an increased Recognized Claim amount may be made for any reason after May 4, 2021, subject to the following exception: At such time as Lead Counsel, in consultation with Epiq, determines that further distribution of the funds remaining in the Net Settlement Funds is not cost-effective, and after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Funds and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, if sufficient funds remain to warrant the processing of Claims received after January 22, 2021, such Claims will be processed, and any such Claims that are otherwise valid as well as any earlier received Claims for which an adjustment was received after May 4, 2021, and which resulted in an increased Recognized Claim, at the discretion of Lead Counsel, may be paid the 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 to the extent possible;

(h) If Lead Counsel, in consultation with Epiq, determines that a further distribution of the Net Settlement Funds is cost-effective, Epiq will conduct a “Third Settlements Distribution” of remaining funds in the Net Settlement Funds. Additional re-distributions from the Net Settlement Funds to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 from such additional re-distributions may occur thereafter in six-month intervals if Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlements, including for such re-distributions, would be cost-effective;

(i) When Lead Counsel, in consultation with the Claims Administrator, determines that additional re-distributions are not cost-effective, if any funds remain in the Net Settlement Funds after payment of the late or late-adjusted Claims, the remaining balance of the Net Settlement Funds, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Funds 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”);

(j) The Court finds that the administration of the Settlements and the proposed distributions of the Net Settlement Funds comply with the terms of the Stipulations and the Plan of Allocation approved by this Court and that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims

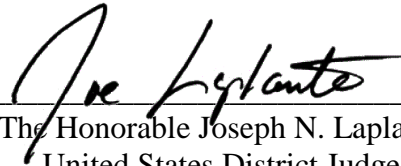
submitted, or who are otherwise involved in the administration or taxation of the Settlements, are hereby released and discharged from any and all claims arising out of that involvement, and all Apple Class Members, Settlement Class Members of the Earlier Settlements, and other Claimants, whether or not they receive payment from the Net Settlement Funds, are hereby barred from making any further claims against the Net Settlement Funds, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration or taxation of the Settlement Funds or the Net Settlement Funds, or any other person released under the Settlements beyond the amounts allocated to Authorized Claimants;

(k) All of Epiq's fees and expenses incurred in the administration of the Settlements and estimated to be incurred in connection with the Settlements Distribution as stated in the invoices attached as Exhibit H to the Amin-Giwner Declaration are approved, and Lead Counsel is directed to pay the outstanding balance of \$535,627.06 out of the Settlement Funds to Epiq; and

(l) Unless otherwise ordered by the Court, Epiq may destroy the paper copies of the Claims submitted for the Apple Settlement and all supporting documentation one year after the Settlements Distribution and may destroy electronic copies of the same one year after all funds have been distributed.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlements, and any other and further relief that this Court deems appropriate.

SO ORDERED this 25 day of May 2021.

A handwritten signature in black ink, reading "Joe Laplante". The signature is written in a cursive style with a large, sweeping "J" and a long horizontal line extending from the end of the name.

---

The Honorable Joseph N. Laplante  
United States District Judge

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re BOSTON SCIENTIFIC  
CORPORATION SECURITIES  
LITIGATION

Master File No. 1:20-cv-12225-ADB

**DECLARATION OF LUIGGY SEGURA IN SUPPORT OF LEAD PLAINTIFF'S  
UNOPPOSED MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

I, LUIGGY SEGURA, hereby declare under penalty of perjury as follows:

1. I am the Vice President of Securities Operations at JND Legal Administration (“JND”). I am over 21 years of age and am not a party to the above-captioned action (“Action”).<sup>1</sup> I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. Pursuant to the Court’s December 27, 2023 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 155) (the “Preliminary Approval Order”), JND was retained by Lead Counsel to serve as the Claims Administrator in connection with the Settlement of the Action. As Claims Administrator, JND has, among other things: (i) mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Notice”) and the Proof of Claim and Release Form (“Claim Form” and together with the Notice the “Notice Packet”) to potential Settlement Class Members and nominees; (ii) created and

---

<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated as of December 14, 2023 (ECF No. 152-1) (“Stipulation”).

continues to maintain a toll-free telephone helpline for inquiries during the course of the administration; (iii) created and continues to maintain a website for the Settlement (“Settlement Website”) and posted case-specific documents on it; (iv) caused the Summary Notice to be published; (v) provided, upon request, additional copies of the Notice Packet to potential Settlement Class Members and nominees; and (vi) received and processed each Claim Form received by the Claims Administrator (a “Claim”).

3. On April 23, 2024, the Court granted final approval of the Settlement in its Judgment Approving Class Action Settlement (ECF No. 164) and entered the Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 165). JND has completed processing all Claims received through February 7, 2025, in accordance with the terms of the Stipulation and the Court-approved Plan of Allocation set forth in the Notice, and hereby submits its administrative determinations accepting and rejecting the Claims in preparation for a distribution of the Net Settlement Fund to Authorized Claimants. JND also presents this declaration in support of Lead Plaintiff’s Unopposed Motion for Approval of Distribution Plan.

#### **DISSEMINATION OF NOTICE**

4. As more fully described in the Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (ECF No. 160-4) (“Mailing Decl.”) and the Supplemental Declaration of Luiggy Segura Regarding: (A) Mailing of the Notice and Claim Form and (B) Report on Requests for Exclusion and Claim Forms Received (ECF No. 161-1) (“Supp. Mailing Decl.”), as of April 15, 2024, JND had mailed 128,813 Notice Packets to potential Settlement Class Members and nominees. Supp. Mailing Decl. ¶ 2. Since that date, six (6)

additional Notice Packets have been disseminated. In total, JND has disseminated 128,819 Notice Packets to potential Settlement Class Members and nominees.

5. JND established and continues to maintain the Settlement Website ([www.BostonScientificSecuritiesLitigation.com](http://www.BostonScientificSecuritiesLitigation.com)) and a toll-free telephone helpline (877-595-0084) to assist potential Settlement Class Members. The Settlement Website, which provides access to important documents relevant to the Settlement, and the telephone helpline enable Settlement Class Members to obtain information about the Settlement. In connection with establishing and maintaining the Settlement Website and toll-free telephone helpline, JND, among other things, formulated a system to ensure that proper responses were provided to all telephone and electronic inquiries. That work included training telephone agents to respond to inquiries specific to the Settlement; developing a series of common questions and the answers thereto known as Frequently Asked Questions or “FAQs”; loading key documents onto the Settlement Website; and programming the Settlement Website to permit the viewing and downloading of those documents.

6. In accordance with paragraph 7(d) of the Preliminary Approval Order, on February 6, 2024, JND caused the Summary Notice to be published in *The Wall Street Journal* and released via *PR Newswire*. Mailing Decl. ¶ 10.

#### **PROCEDURES FOLLOWED IN PROCESSING CLAIMS**

7. Under the terms of the Preliminary Approval Order and as set forth in the Notice, each Settlement Class Member who wished to be eligible to receive a distribution from the Net Settlement Fund was required to complete and submit to JND a properly executed Claim Form postmarked (if mailed) or online no later than May 28, 2024, together with adequate supporting

documentation for the transactions and holdings reported in the Claim Form. Through February 7, 2025, JND has received and fully processed 105,103 Claims (“Presented Claims”).

8. In preparation for receiving and processing Claims, JND: (i) conferred with Lead Counsel to define the guidelines for processing Claims; (ii) created a unique database to store Claim details, images of Claims, and supporting documentation (“Settlement Database”); (iii) trained staff in the specifics of the Settlement so that Claims would be properly processed; (iv) formulated a system so that telephone and email inquiries would be properly responded to; (v) developed various computer programs and screens for entry of Settlement Class Members’ identifying information and their transactional information; and (vi) developed a proprietary “calculation module” that would calculate Recognized Claims pursuant to the Court-approved Plan of Allocation for the Net Settlement Fund set forth in the Notice.

9. Settlement Class Members seeking to share in the Net Settlement Fund were directed in the Notice to submit their Claims to a post office box address specifically designated for the Settlement or to submit their Claims online through the Settlement Website. Notice Packets returned by the United States Postal Service as undeliverable were reviewed for updated addresses and, where available, updated addresses were entered into the database and Notice Packets were mailed to the updated addresses. Any correspondence received at the post office box was reviewed and, when necessary, appropriate responses were provided to the senders.

### **PROCESSING CLAIMS**

#### **A. Paper Claims and Claim Forms Submitted Via the Settlement Website**

10. Of the 105,103 Presented Claims, 1,901 are Claims that were submitted on paper (1,235) or via the online filing component of the Settlement Website provided for individual investors (666). Once received, paper Claims were opened and prepared for scanning. This process included unfolding documents, removing staples, copying nonconforming-sized documents, and

sorting documents. This manual task of preparing the paper Claims is very laborious and time-intensive. Once prepared, paper Claims were scanned into the Settlement Database together with all submitted documentation. Subsequently, each Claim was assigned a unique Claim number. Once scanned, the information from each Claim Form, including the Claimant's name, address, and account number/information from the supporting documentation, and the Claimant's purchase/acquisition transactions, sale transactions, and holdings listed on the Claim Form, was entered into the Settlement Database. Once entered into the Settlement Database, each Claim was reviewed to verify that all required information had been provided. The documentation provided by the Claimant in support of the Claim was reviewed for authenticity and compared to the information provided in the Claim to verify the Claimant's identity and the purchase/acquisition transactions, sale transactions, and holdings listed on the Claim Form.

11. To process the transactions detailed in the Claims, JND utilized internal messages to identify and classify deficiency or ineligibility conditions existing within those Claims. Appropriate messages were assigned to the Claims as they were processed. For example, where a Claim was submitted by a Claimant who did not have any eligible transactions in Boston Scientific common stock during the Class Period (e.g., the Claimant purchased Boston Scientific common stock only before or after the Class Period), that Claim would receive a "Claim-level" message that denoted ineligibility. Similar Claim-level ineligible messages were used to denote other ineligible conditions, such as duplicate Claims. These messages would indicate to JND that the Claimant was not eligible to receive any payment from the Net Settlement Fund with respect to that Claim unless the deficiency was cured in its entirety. Examples of Claim-level messages are as follows:

- Inadequate Documentation Submitted for Entire Claim
- No Supporting Documentation Submitted for Entire Claim

- No Purchase Transaction in the Class Period

12. Because a Claim may be deficient only in part, but otherwise acceptable, JND utilized messages that were applied only to specific transactions within a Claim. For example, if a Claimant submitted a Claim with supporting documentation for all but one purchase transaction, that one transaction would receive a “transaction-level” message. The message indicated that although the transaction was deficient, the Claim was otherwise eligible for payment if other transactions in the Claim calculated to a Recognized Claim pursuant to the Court-approved Plan of Allocation. Thus, even if the transaction-level deficiency were never cured, the Claim could still be partially accepted. Examples of transaction-level messages are as follows:

- No Supporting Documentation for Specific Transaction/Position
- Inadequate Documentation for Specific Transaction/Position
- Illegible Documentation for Specific Transaction/Position

#### **B. Electronic Claims**

13. Of the 105,103 Presented Claims, 103,202 were submitted electronically (“Electronic Claims”). Electronic Claims are typically submitted by institutional investors who may have hundreds or thousands of transactions during the Class Period or by filers submitting Claims on behalf of multiple beneficial owners (“Electronic Claim Filers” or “E-Claim Filers”). Rather than provide reams of paper requiring data entry, the E-Claim Filers either mail a computer disc or electronically submit a file to JND so that JND can upload all transactions to the Settlement Database.

14. JND maintains an electronic filing operations team (“Electronic Filing Team”) to coordinate and supervise the receipt and handling of all Electronic Claims. In this case, the Electronic Filing Team reviewed and analyzed each electronic file to ensure that it was formatted in accordance with JND’s required format and to identify any potential data issues or

inconsistencies within the file. If any issues or inconsistencies arose, JND notified the filer. If the electronic file was deemed to be in an acceptable format, it was then loaded into the Settlement Database.

15. Once each electronic file was loaded, the Electronic Claims were coded with messages to denote any deficient or ineligible conditions that existed within them. These messages are similar to those applied to paper Claims. In lieu of manually applying messages, the Electronic Filing Team performed programmatic reviews on Electronic Claims to identify deficient and ineligible conditions (such as, but not limited to, price out-of-range issues, out-of-balance conditions, transactions outside the Class Period, etc.). The output was thoroughly verified and confirmed as accurate.

16. The review process also included message coding any Electronic Claims that were not accompanied by a signed Claim Form, which serves as a “Master Proof of Claim Form” for all Claims referenced on the electronic file submitted. This process was reviewed by JND’s Electronic Filing Team and, when appropriate, JND contacted the E-Claim Filers whose submissions were missing information. This ensured that only fully completed Claims, submitted by properly authorized representatives of the Claimants, were considered eligible to participate in the Settlement.

17. Finally, at the end of the process, JND performed various targeted reviews of Electronic Claims. Specifically, JND used criteria such as the calculated Recognized Claims and other identified criteria to message code and reach out to a selection of E-Claim Filers and request that various sample purchases, sales, and holdings selected by JND be documented by providing confirmation slips or other transaction-specific supporting documentation. These targeted reviews help to ensure that electronic data supplied by Claimants does not contain inaccurate information.

### **EXCLUDED PERSONS**

18. JND also reviewed all Claims to ensure that they were not submitted by or on behalf of “Excluded Persons” to the extent that the identities of such persons or entities were known to JND through the list of Defendants and other excluded persons and entities set forth in the Stipulation and the Notice, and from the Claimants’ certifications on the Claim Forms.

### **THE DEFICIENCY PROCESS**

#### **A. Paper Claims and Online Claims**

19. Approximately 47.6% of the paper and online Claims, i.e., 905 of the 1,901 Claim Forms submitted either as paper Claims or via the Settlement Website, were incomplete or had one or more defects or conditions of ineligibility, such as the Claim not being signed, not being properly documented, or indicating no eligible transactions in Boston Scientific common stock during the Class Period. The “Deficiency Process,” which primarily involved mailing letters to Claimants and responding to communications from Claimants by email and/or telephone, was intended to assist Claimants in properly completing their otherwise deficient submissions so that they could be eligible to participate in the Settlement.

20. If paper and online Claims were determined to be defective, a Notice of Deficient/Ineligible Claim Submission (“Deficiency Letter”) was sent to the Claimants describing the defect(s) in the Claims and what steps, if any, were necessary to cure the defect(s) in these Claims. The Deficiency Letter advised Claimants that submission of appropriate information and/or documentary evidence to complete the Claim had to be sent within twenty (20) days from the date of the Deficiency Letter or the Claim would be recommended for rejection to the extent that the deficiency or condition of ineligibility was not cured. The Deficiency Letter also advised Claimants of their right to contest these administrative determinations, and that Claimants were required to submit written statements to JND requesting Court review of their Claims and setting

forth the basis for such requests. JND sent a total of 1,025 Deficiency Letters to Claimants who submitted paper or online Claims that JND determined to be defective. It is possible for a Claimant to be sent more than one Deficiency Letter for a Claim and thus the number of Deficiency Letters sent would exceed the number of deficient Claims discussed above in paragraph 19. Attached hereto as Exhibit A is an example of a Deficiency Letter.

21. Claimants' responses to Deficiency Letters were scanned into the Settlement Database and associated with the corresponding Claims. The responses were then carefully reviewed and evaluated by JND's team of processors. If a Claimant's response corrected the defect(s) in a Claim, JND manually updated the Settlement Database to reflect the changes in the status of the Claim.

**B. Electronic Claims**

22. For Electronic Claims, JND used the following process to contact the banks, nominees, and other E-Claim Filers to confirm receipt of their submissions and to notify the Electronic Claim Filers of any deficiencies or Electronic Claims that were ineligible. Each E-Claim Filer was sent an email to the email address included with the Claim Form(s) ("Deficiency Email") with an attached report containing detailed information associated with the Claim(s) and indicating which Claim(s) within the filing were deficient and/or rejected ("Deficiency Spreadsheet").

23. The Deficiency Email sent to the email address of record provided with the Claim Form:

- (a) Notified the filer that any Claims with deficiencies not corrected within twenty (20) days from the date of the Deficiency Email may be rejected;
- (b) Advised the filer of the right to contest the rejection of the Claim(s) and request this Court's review of JND's administrative determination within twenty (20) days from the date of the Deficiency Email; and

(c) Provided the filer with instructions for how to submit corrections.

24. The Deficiency Spreadsheet attached to the Deficiency Email identified each of the individual Claims that were found to be deficient or ineligible and the basis for that deficiency or condition of ineligibility.

25. JND emailed a Deficiency Email and Deficiency Spreadsheet to 51 E-Claim Filers. Examples of a Deficiency Email and Deficiency Spreadsheet are attached hereto as Exhibits B and C, respectively.

26. The E-Claim Filers' responses were reviewed by the Electronic Filing Team, scanned and/or loaded into the Settlement Database, and associated with the corresponding Electronic Claims. If a response corrected the defect(s) or affected an Electronic Claim's status, JND manually and/or programmatically updated the database to reflect such change in status of the Electronic Claim.

**C. Calling Campaign to Claimants Who Did Not Cure Deficiencies**

27. After responses to the Deficiency Letters and Deficiency Emails were received and evaluated, and the Claims updated, JND called Claimants with still-deficient Claims to provide them with a final opportunity to cure the deficiencies in their Claims.

28. During this calling campaign, JND's agents explained to contacted Claimants that their Claims remained deficient, advised Claimants of the steps required to cure the deficiencies, and provided assistance to Claimants where possible, depending on the nature of the deficiency. For example, if a Claimant needed additional supporting documentation, JND explained the types of documentation that would render the Claim eligible and how the Claimant could obtain the necessary documentation. JND also provided some Claimants with direct phone numbers and email addresses so that Claimants could receive continued personalized attention and assistance.

29. If JND could not reach a Claimant to speak one-on-one, JND left a voice message, when possible, requesting a return call. JND explained in the voice message that it was calling to assist the Claimant in remedying outstanding deficiencies in the Claim. JND also reached out to Claimants via email if a valid email address was provided in their Claim submission.

30. If, in response to a telephone call or email, a Claimant cured the deficiency in a Claim by providing the appropriate information and/or supporting documentation, JND updated the Settlement Database to reflect the change in the status of the Claim.

### **NO DISPUTED CLAIMS**

31. As noted above, Claimants were advised that they had the right to contest JND's administrative determination of deficiencies or ineligibility within twenty (20) days from the date of notification and that they could request that the dispute be submitted to the Court for review. More specifically, Claimants were advised in the Deficiency Letter or Deficiency Email that, if they disputed JND's determination, they had to provide a statement of reasons indicating the grounds for contesting the determination, along with supporting documentation, and if the dispute concerning the Claim could not otherwise be resolved, Lead Counsel would thereafter present the request for review to the Court for a final determination.

32. JND received two (2) requests for Court review. To resolve these disputes without necessitating the Court's intervention, JND reached out to each Claimant 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. As a result of these efforts, one (1) Claimant resolved his deficiency and his Claim is recommended for approval, and one (1) Claimant withdrew his request for Court review after receiving further explanation of the reasons for JND's determination. There are, therefore, no disputed Claims requiring Court review.

**LATE BUT OTHERWISE ELIGIBLE CLAIMS**

33. Of the 105,103 Presented Claims, 1,203 Claims were received or postmarked after May 28, 2024, the Claim submission deadline established by the Court. JND processed all late Claims received through February 7, 2025, and 386 late Claims have been found to be otherwise eligible in whole or in part (“Late But Otherwise Eligible Claims”). JND has not rejected any Claim received through February 7, 2025, solely based on its late submission, and JND believes no delay has resulted from the provisional acceptance of these Late But Otherwise Eligible Claims. To the extent they are eligible but for the fact that they were late, they are recommended for payment.

34. However, there must be a final cut-off date after which no more Claims will be accepted so that there may be a proportional allocation of the Net Settlement Fund and the distribution may be accomplished. Acceptance of additional Claims or responses received during the finalization of the administration and the preparation of this declaration would necessarily require a delay in the distribution. Accordingly, JND also respectfully requests that this Court order that no Claim received after February 7, 2025, or Claim cured or adjusted after February 7, 2025, be eligible for payment for any reason whatsoever subject only to the provision of paragraph 45(f) of the proposed distribution plan discussed below. If the Court adopts the proposed distribution plan, then, after Lead Counsel has determined that further distributions are not cost-effective and before any contribution of the residual funds to charity, if sufficient funds remain to warrant the processing of Claims received after February 7, 2025, these Claims will be processed and, if any would have been eligible if timely received, these Claimants may be paid their distribution amounts, to the extent permitted by the amount of remaining funds, on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks. *See* ¶ 45(f) below. With respect to previously submitted Claims that are cured or adjusted

after February 7, 2025, such Claims will be reevaluated upon receipt of the adjustment and, to the extent that they are found eligible for a distribution or additional distribution, they will be treated in the same manner as Claims received after February 7, 2025. However, should an adjustment result in a lower Recognized Claim amount, the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.

### **QUALITY ASSURANCE**

35. An integral part of the claims administration process is the Quality Assurance review. Throughout the administration process, JND's Quality Assurance personnel worked to verify that Claims were processed properly by ensuring that information was entered correctly into the database, deficiency and/or rejection message codes were assigned accurately, and deficiency and/or rejection notifications were sent appropriately. After all Claims were processed, deficiency and/or rejection notifications were sent, and Claimants' responses to the deficiency and/or rejection notifications were reviewed and processed, JND's Quality Assurance personnel performed additional Quality Assurance reviews. These final Quality Assurance reviews further ensured the correctness and completeness of all Claims processed prior to preparing this declaration and all JND's final documents in support of distribution of the Net Settlement Fund. As part of the Quality Assurance reviews, JND:

- (a) Verified that all Claim Forms had signatures of authorized individuals;
- (b) Verified that true duplicate Claims were identified, verified, and rejected;
- (c) Verified that persons and entities excluded from the Settlement Class did not file Claims or their Claims were rejected upon review;
- (d) Performed a final Quality Assurance audit of Claims and all supporting documentation to ensure completeness of Claims;

- (e) Determined that Claimants requiring deficiency and/or rejection notifications were sent such notification;
- (f) Performed an audit of deficient Claims;
- (g) Performed additional review of Claims with high Recognized Claim amounts;
- (h) Audited Claims that were designated invalid;
- (i) Audited Claims with a Recognized Claim amount equal to zero;
- (j) Performed other auditing based on Claims completion requirements and the approved calculation specifications based on the Court-approved Plan of Allocation; and
- (k) Re-tested the accuracy of the Recognized Claim amount calculation program.

36. In support of the work described above, JND's computer staff designed and implemented, and the project team tested, the following programs for this administration: (i) data entry screens that store Claim information, including all transactional data included on each Claim, and attach messages and, where necessary, text to denote conditions existing within the Claim; (ii) programs to load and analyze transactional data submitted electronically for all Electronic Claims; (iii) a program to compare the claimed transaction prices against the reported market prices to confirm that the claimed transactions were within an acceptable range of the reported market prices; (iv) a calculation program to analyze the transactional data for all Claims, and calculate each Claimant's Recognized Claim based on the Court-approved Plan of Allocation; and (v) programs to generate various reports throughout and at the conclusion of the administration, including lists of all eligible and ineligible Claims.

37. JND also used a variety of fraud protection controls throughout the administration process to identify potential fraudulent Claims. Duplicate Claim searches, high-value reviews, spot reviews, and other standard audit reports that examined the information in a variety of ways were used during the Claim review process.

38. As part of its due diligence in processing the Claims, JND reviewed and compared the entire Settlement Database against the “watch list” of known questionable filers that JND has developed throughout its years of experience as a claims administrator. JND has worked closely with law enforcement to update that watch list with the latest information available. JND performs searches based on names, aliases, addresses, and city/zip codes. In addition, JND’s claim processors are trained to identify any potentially inauthentic documentation when processing claims, including claims submitted by Claimants not previously captured in the “watch list.” Processors are instructed to apply internal message codes to any claim that matches to a record on the “watch list” and escalate them to management for review. JND’s Fraud Protection procedures identified ten (10) potentially fraudulent Claims that were identified as having been submitted by someone on the “watch list.” These Claims were then reviewed by management to consider the documentation submitted with each Claim in conjunction with other factors, including a review of the Claimant’s website registration, address, and registration with the SEC or asset management organizations, and determined to be potentially fraudulent. JND sent these Claimants Deficiency Letters and/or Deficiency Emails notifying the Claimants that additional documentation was required for the Claims to be eligible to participate in the Settlement. No additional documentation has been received supporting these potentially fraudulent Claims and all ten (10) potentially fraudulent Claims are recommended for rejection for failure to cure their conditions of ineligibility.

**RECOMMENDATIONS FOR APPROVAL AND REJECTION**

39. As noted above, the number of Presented Claims in this motion is 105,103.

**A. Timely Submitted and Valid Claims**

40. A total of 103,900 Claims were received or postmarked on or before May 28, 2024, the Court-approved Claim submission deadline, of which 37,573 Claims were determined by JND to be eligible to participate in the Settlement and are recommended for approval (“Timely Eligible Claims”). The 37,573 Timely Eligible Claims include a total of 93,478,203.23 damaged shares (that is, shares of Boston Scientific common stock that were purchased or acquired during the Class Period and damaged under the Court-approved Plan of Allocation). The total Recognized Claim amount for these Timely Eligible Claims is \$208,356,206.19.

**B. Late But Otherwise Eligible Claims**

41. A total of 1,203 Claims were received or postmarked after May 28, 2024, the Court-approved Claim submission deadline, but received on or before February 7, 2025. Of those 1,203 late Claims, 386 were determined by JND to be otherwise eligible and are recommended for approval (“Late But Otherwise Eligible Claims”). The 386 Late But Otherwise Eligible Claims include a total of 2,687,627 damaged shares. The total Recognized Claim amount for these Late But Otherwise Eligible Claims is \$5,991,614.91.

**C. Rejected Claims**

42. After the responses to Deficiency Letters and Deficiency Emails were processed, a total of 67,144 Claims remain recommended for rejection by the Court (“Rejected Claims”) for the following reasons:

- (a) 53,534 Claims Did Not Fit Definition of the Settlement Class (for example, they had no purchases or acquisitions of Boston Scientific common stock during the Class Period);

- (b) 8,607 Claims Did Not Result in a Recognized Claim;
- (c) 4,911 Deficient Claims Never Cured;
- (d) 45 Duplicate Claims; and
- (e) 47 Claims Withdrawn.

The great majority of the Rejected Claims were made by persons and entities who either (i) were not members of the Settlement Class (80%); or (ii) did not have a Recognized Claim under the Plan of Allocation (13%). Given the relative ease with which electronic Claims can be made given modern technology, one noticeable recent trend is that many potential Claimants will submit a Claim without carefully checking whether they are a class member or qualify for payment in the Settlement, just to err on the side of caution. This trend likely contributed to the large number of Rejected Claims here.

#### **D. Lists of All Presented Claims**

43. Attached hereto as Exhibits D through F are listings of all the Presented Claims:
- (a) Exhibit D lists the Timely Eligible Claims and shows each Claimant's Recognized Claim;
  - (b) Exhibit E lists the Late But Otherwise Eligible Claims and shows each Claimant's Recognized Claim; and
  - (c) Exhibit F lists the Rejected Claims and the reasons for rejection.

#### **FEES AND DISBURSEMENTS**

44. JND agreed to be the Claims Administrator in exchange for payment of its fees and out-of-pocket expenses. Lead Counsel received reports on and invoices for the work JND performed with respect to the provision of notice and administration of the Settlement. Lead Counsel supervised JND during the claims administration process and reviewed JND's fees and expenses for accuracy to ensure JND's work was completed in accordance with the Stipulation

and Preliminary Approval Order. Attached hereto as Exhibit G are copies of JND's invoices for its work performed on behalf of the Settlement Class as well as an estimate for the work that will be performed and the costs that will be incurred in connection with the initial distribution of the Net Settlement Fund. 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. As set forth in these invoices, JND's total fees and expenses for this matter through January 31, 2025, are \$664,563.53. The brokerage firms and nominees charged JND another \$106,951.74 for their work providing names and addresses of potential Settlement Class Members and forwarding notices to their clients, an expense in which JND is customarily reimbursed. JND anticipates that its fees and expenses for the work performed in conjunction with the initial distribution of the Net Settlement Fund will be \$73,321.99. To date JND has received a payment of \$600,000.00 for its fees and expenses. Accordingly, there is an outstanding balance of \$244,837.26 payable to JND from the Settlement Fund, which includes the estimate for completing the initial distribution.

#### **DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

45. Should the Court concur with JND's determinations concerning the provisionally accepted and rejected Claims, including the Late But Otherwise Eligible Claims, JND recommends the following distribution plan ("Distribution Plan"):

- (a) JND will conduct an initial distribution ("Initial Distribution") of the Net Settlement Fund, after deducting all payments approved by the Court, and after payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve to address any tax liability and claims administration-related contingencies that may arise, as follows:

- (1) JND will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. In accordance with the Court-approved Plan of Allocation, JND will calculate each Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *See* Notice ¶ 90.
- (2) JND will, pursuant to the terms of the Plan of Allocation, eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00. *See id.* ¶ 92. These Claimants will not receive any payment from the Net Settlement Fund and will be so notified by JND.
- (3) After eliminating Claimants who would have received less than \$10.00, JND will recalculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more. A "Distribution Amount" will be calculated for each of these Authorized Claimants, which shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants who would have received \$10.00 or more, multiplied by the total amount in the Net Settlement Fund. *See id.* ¶¶ 90-92.
- (4) 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”). These Authorized Claimants will receive no additional funds in subsequent distributions.

- (5) 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. 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 following the Initial Distribution. To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution” described in subparagraph (d) below.

- (b) To encourage Authorized Claimants to deposit their payments promptly, all distribution checks will bear a notation: “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” For Authorized Claimants whose checks are returned as undeliverable, JND will endeavor to locate new addresses through reasonable methods. Where a new address is located, JND will update the Settlement Database accordingly and reissue a distribution check to the Authorized Claimant at the new address. In the event a distribution check is lost or damaged or otherwise requires reissuance, JND will issue replacements. Distribution reissues will be undertaken only upon written instructions from the Authorized Claimant, provided that the Authorized Claimant returns the previous check where appropriate. For all checks, JND

will void the initial payment prior to reissuing a payment. In order not to delay further distributions to Authorized Claimants who have timely cashed their checks, JND's outreach program shall end thirty (30) days after the initial void date. Authorized Claimants will be informed that, if they do not cash their Initial Distribution checks within ninety (90) days of the mail date, or they do not cash check reissues within thirty (30) days of the mailing of such reissued check, their check will lapse, their entitlement to recovery will be irrevocably forfeited, and the funds will be reallocated to other Authorized Claimants. Reissue requests for lost or damaged checks will be granted after the void date on the checks as long as the request for the reissue is received no later than forty-five (45) days prior to the next planned distribution. Requests for reissued checks in connection with any subsequent distributions (should such distributions occur) will be handled in the same manner.

- (c) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth above will irrevocably forfeit all recovery from the Settlement. The funds allocated to all such stale-dated checks will be available for distribution to other Authorized Claimants in the Second Distribution. Similarly, Authorized Claimants who do not cash their second or subsequent distribution checks, should such distributions occur, within the time allotted or on the conditions set forth above will irrevocably forfeit any further recovery from the Net Settlement Fund.

- (d) Consistent with the Court-approved Plan of Allocation, after JND has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, which efforts shall consist of the follow-up efforts described above, but not earlier than seven (7) months after the Initial Distribution, JND will, after consulting with Lead Counsel, conduct a second distribution of the Net Settlement Fund (“Second Distribution”). *See id.* ¶ 93. Any amounts remaining in the Net Settlement Fund after the Initial Distribution, including from the Reserve and the funds allocated for all void stale-dated checks, after deducting JND’s unpaid fees and expenses incurred in connection with administering the Settlement, including JND’s estimated costs of the Second Distribution, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, any escrow fees, and appropriate reserves, will be distributed to all Authorized Claimants in the Initial Distribution (other than Claims Paid in Full) who cashed their distribution checks and who would receive at least \$10.00 in the Second Distribution based on their *pro rata* share of the remaining funds. *See id.* Additional distributions, after deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter at six-month intervals until Lead Counsel, in consultation with JND, determines that further distribution is not cost-effective. *See id.*
- (e) At such time as Lead Counsel, in consultation with JND, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, if sufficient funds remain to warrant the processing of Claims

received after February 7, 2025, those Claims will be processed, and any otherwise valid Claims received after February 7, 2025, as well as any earlier-received Claims for which an adjustment was received after February 7, 2025, that resulted in an increased Recognized Claim, will be paid in accordance with subparagraph (f) below. 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 connection with 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”), a non-sectarian, not-for-profit 501(c)(3) organization. *See id.*

- (f) No new Claims may be accepted after February 7, 2025, and no further adjustments to Claims received on or before February 7, 2025, that would result in an increased Recognized Claim may be made for any reason after February 7, 2025, subject to the following exception. If Claims are received or modified after February 7, 2025, that would have been eligible for payment or additional payment under the Plan of Allocation if timely received, then at the time that Lead Counsel, in consultation with JND, determines that an additional distribution is not cost-effective as provided in subparagraph (e) above, and after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after deducting the payment of any estimated taxes, the costs of preparing

appropriate tax returns, and any escrow fees, such Claimants, at the discretion of Lead Counsel and to the extent possible, may be paid the 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.

- (g) Unless otherwise ordered by the Court, JND may destroy the paper copies of the Claims and all supporting documentation one (1) year after the Initial Distribution, and one (1) year after all funds have been distributed may destroy the electronic copies of the same.

### **CONCLUSION**

46. JND respectfully requests that the Court enter the Class Distribution Order approving its administrative determinations accepting and rejecting the Claims submitted herein and approving the proposed Distribution Plan. JND further respectfully submits that its unpaid fees and expenses and its fees and expenses expected to be incurred in connection with the Initial Distribution, as reflected on the invoices attached hereto as Exhibit G, should be approved for payment from the Settlement Fund.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on February 14, 2025

  
LUIGGY SEGURA

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In re BOSTON SCIENTIFIC  
CORPORATION SECURITIES  
LITIGATION

Master File No. 1:20-cv-12225-ADB

**[PROPOSED] ORDER APPROVING DISTRIBUTION PLAN**

Lead Plaintiff moved this Court for an order approving a distribution plan for the Net Settlement Fund in the above-captioned securities class action (“Action”). Having reviewed and considered all the materials and arguments submitted in support of the motion, including the Memorandum of Law in Support of Lead Plaintiff’s Unopposed Motion for Approval of Distribution Plan and the Declaration of Luigy Segura in Support of Lead Plaintiff’s Unopposed Motion for Approval of Distribution Plan (“Segura Declaration”),

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated as of December 14, 2023 (ECF No. 152-1) (“Stipulation”), and the Segura Declaration, and all terms used in this Order shall have the same meanings as defined in the Stipulation and the Segura Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Lead Plaintiff’s plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative determinations of the Court-approved Claims Administrator, JND Legal Administration (“JND”), to accept the Timely Eligible Claims

set forth in Exhibit D to the Segura Declaration and the Late But Otherwise Eligible Claims set forth in Exhibit E to the Segura Declaration are adopted.

(b) The Claims Administrator's administrative determinations to reject the Rejected Claims, as set forth in Exhibit F to the Segura Declaration, are adopted.

(c) JND is directed to conduct the Initial Distribution of the Net Settlement Fund after deducting all payments previously allowed, payments approved by this Order, and any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Net Settlement Fund to address any tax liability or claims administration-related contingencies that may arise.

Specifically, as set forth in paragraph 45(a) of the Segura Declaration:

(1) JND will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. JND will calculate each Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants; (2) JND will then eliminate from the Initial Distribution any Authorized Claimant whose total *pro rata* share of the Net Settlement Fund is less than \$10.00. These Claimants will not receive any payment from the Net Settlement Fund and will be so notified by JND; (3) After eliminating Claimants who would have received less than \$10.00, JND will recalculate the *pro rata* shares 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. This *pro rata*

share is the Authorized Claimant's "Distribution Amount"; (4) 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"). These Authorized Claimants will receive no additional funds in subsequent distributions; and (5) 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. The remaining 5% of the Net Settlement Fund will be held in the Reserve to address any tax liability or claims administration-related contingencies that may arise following the Initial Distribution. To the extent the Reserve is not depleted, the remainder will be distributed in the Second Distribution described in subparagraph (f) below.

(d) To encourage Authorized Claimants to cash their checks promptly, all distribution checks will bear the following notation: "CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE]." Lead Counsel and JND are authorized to take appropriate action to locate and contact Authorized Claimants who have not cashed their checks within said time as detailed in paragraph 45(b) of the Segura Declaration.

(e) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in paragraph 45(b) 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 distributed to other Authorized Claimants in the Second Distribution. Similarly, Authorized Claimants who do not cash their distribution checks in the Second Distribution or subsequent distributions, should

such distributions occur, within the time allotted or on the conditions set forth in paragraph 45(b) of the Segura Declaration will irrevocably forfeit any further recovery from the Net Settlement Fund.

(f) After JND has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (as provided in paragraph 45(b) of the Segura Declaration), but not earlier than seven (7) months after the Initial Distribution, JND will, after consulting with Lead Counsel, conduct the Second Distribution, in which any amount remaining in the Net Settlement Fund, after deducting any unpaid fees and expenses incurred, will be distributed to all Authorized Claimants (other than Claims Paid in Full) who cashed their Initial Distribution check and are entitled to receive at least \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds. If any funds remain in the Net Settlement Fund after the Second Distribution, and if cost-effective, subsequent distributions will take place at six-month intervals.

(g) When Lead Counsel, in consultation with JND, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after February 7, 2025, those Claims will be processed, and any otherwise valid Claims received after February 7, 2025 as well as any earlier-received Claims for which an upward adjustment was received after February 7, 2025 will be paid in accordance with subparagraph (h) below. If any funds remain in the Net Settlement Fund after payment of these Claims and unpaid fees or expenses, the remaining funds will be contributed to the National Consumer Law Center (“NCLC”).

(h) No new Claims may be accepted after February 7, 2025 and no further adjustments to Claims received on or before February 7, 2025 that would result in an increased Recognized Claim amount may be made for any reason after February 7, 2025 subject to the following exception. If Claims are received or modified after February 7, 2025 that would have been eligible for payment or additional payment pursuant to the Court-approved Plan of Allocation if timely received, then, at the time that Lead Counsel, in consultation with JND, determines a distribution is not cost-effective as provided in subparagraph (g) above, and after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, these Claimants, 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.

4. The Court finds that the administration of the Settlement and the proposed distribution of the Net Settlement Fund comply with the terms of the Stipulation and Plan of Allocation approved by this Court and that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted, or who are 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 that involvement, and all Settlement Class Members and other Claimants, 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 Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent or

any other agent retained by Lead Plaintiff 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.

5. All of JND's fees and expenses incurred in the administration of the Settlement and estimated to be incurred in connection with the Initial Distribution of the Net Settlement Fund as set forth in the invoices attached as Exhibit H to the Segura Declaration are approved, and Lead Counsel is directed to pay the outstanding balance of \$244,837.26 out of the Settlement Fund to JND.

6. Unless otherwise ordered by the Court, JND may destroy the paper copies of the Claims and all supporting documentation one year after the Initial Distribution, and one year after all funds have been distributed may destroy the electronic copies of the same.

7. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and any other and further relief that this Court deems appropriate.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ 2025.

---

The Honorable Allison D. Burroughs  
United States District Judge