UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CITIGROUP INC. SECURITIES LITIGATION	No. 07 Civ. 9901 (SHS) **ECF Case**

PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION TO AUTHORIZE DISTRIBUTION OF THE NET SETTLEMENT FUND

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I. INTRODUCTION

On August 1, 2013, this Court granted final approval to the settlement of this securities class action.[1] On April 25, 2014, Plaintiffs filed their motion to authorize distribution of the net settlement fund ("Distribution Motion") (*see* Dkt. Nos. 313-316), which also sought rejection of fifteen (15) disputed claims ("Disputing Claimants") that the Court-appointed Claims Administrator determined to be ineligible for participation in this Settlement. The Claims Administrator has received over 670,000 claims and only fifteen are still in dispute. Copies of the Distribution Motion were served on all fifteen Disputing Claimants, along with a cover letter informing them that they had to serve any response or opposition by May 12, 2014.[2] To date, Plaintiffs have received seven (7) responses from Disputing Claimants objecting to the Distribution Motion: Disputing Claimant Nos. 4 (Ilse Lang), 5 (Eugene P. Beard), 7 (Jerry L. Malesovas), 10 (Paul R. Gupta), 13 (Francisco Fuentez), 14 and 15.[3]

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[1] The Final Judgment and Order, entered by the Court in this case, provides that the Court retains continuing jurisdiction over, *inter alia*, "implementation of this Settlement and any award or distribution of the Settlement Fund." *See* Dkt. No. 276 at ¶ 23. Unless otherwise indicated, all capitalized terms herein shall have the same meaning as set forth in the Stipulation and Agreement of Settlement, dated August 28, 2012, as amended (the "Stipulation"), and filed with the Court on August 29, 2012 [Dkt. No. 155-1], and as modified by the Court's September 28, 2012 order further amending the preliminary approval order [Dkt. No. 159], and in the Memorandum of Law In Support of Plaintiffs' Motion to Authorize Distribution of the Net Settlement Fund filed with the Court on April 25, 2014 [Dkt. No. 314] ("Distribution Br.").

[2] A sample copy of this cover letter is filed herewith in the accompanying Declaration of Peter S. Linden ("Linden Reply Decl.") as Exhibit 2. Linden Reply Decl. Ex. 2 was a response received from a Disputing Claimant that was written on the letter mailed to the Disputing Claimaints on April 25, 2014. The other letters to the Disputing Claimants were substantially identical. For confidentiality reasons, any personal contact and account information on the Disputing Claimants' responses that have not yet been docketed have been redacted.

[3] Plaintiffs' April 25 Distribution Motion papers did not identify the disputing claimants by name. However, several of the claimants' responding letters have been docketed with the claimant identities visible. Those claimants are identified by name in this brief.

For the reasons set forth below and those previously set forth in Plaintiffs' Distribution Brief, Plaintiffs continue to recommend that the claims of all fifteen Disputing Claimants be rejected by the Court.

II. ARGUMENT

1. The Theory Behind the Plan of Allocation

In its opinion granting final approval for the settlement, the Court explained:

> The plan of allocation in this action (the "Plan") derives from the alleged corrective disclosures and the market's reaction to those disclosures. Plaintiffs' expert estimated the portion of the drop in price following each corrective disclosure that is attributable to revelation of the information that the misstatements concealed pursuant to the law governing loss causation. The Plan then treats that portion of the price drop as the estimated inflation in the price of Citigroup stock for the period between the prior corrective disclosure (or the start of the class period) and that corrective disclosure. The resulting schedule of estimated share-price inflation is the foundation for the Plan:

Transaction Date	Per Share Price Inflation
2/26/07 – 11/4/07	$4.94
11/5/07	$3.38
11/6/07 – 11/18/07	$1.72
11/19/07 – 1/14/08	$1.15
1/15/08	$0.71
1/16/08 – 4/18/08	$0.10

> The inflation at the time of each class member's purchase is the per share harm she initially sustained due to the alleged fraud. If, however, the class member sold before the final corrective disclosure, the Plan then subtracts from the harm at the time of purchase the inflation in the price she received at the time of sale. The result – the total harm at purchase minus gain at sale – is each class member's "Recognized Loss."

See In re Citigroup Inc. Sec. Litig., 965 F. Supp. 2d 369, 386 (S.D.N.Y. 2013) (SHS); *see also* "Proposed Plan of Allocation," Notice at 7 ¶ 44. The Plan is consistent with controlling law,

which limits recoverable damages in securities fraud actions to declines in plaintiffs' stock holdings that were caused by corrective disclosures of the alleged fraud.[4]

The dates in the table above (and Table A of the Notice) are corrective disclosure dates, and reflect the artificial inflation figures which are the stock price reactions to the disclosures (after removal of market and industry effects).

2. Disputed Claim No. 4, Ilse Lang (Claim No. 1137128), Sold All of Her Shares Prior to Any Alleged Corrective Disclosure

This Court previously ordered a response from Ilse Lang by May 5, 2014 [Dkt. 310]. However, Ms. Lang submitted a late response, dated May 8, 2014 and postmarked May 9, 2014, which essentially repeats her previous protests. *See* Linden Reply Decl. Ex. 1; Dkt Nos. 299, 300, 309, 310, 317. Ms. Lang purchased 1,000 shares in the first inflation period – between the start of the Class Period, on February 26, 2007 and November 4, 2007 (the date of the first alleged corrective disclosure) – and sold all 1,000 shares in the same inflation period.[5] Affidavit of Stephen J. Cirami in support of the Distribution Motion [Dkt. No. 316] ("Cirami Aff.") at ¶ 73(b)(i) and Ex. D. None of the shares were held at the time of any alleged corrective disclosure.

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[4] *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) (finding that to recover damages, plaintiff must prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss); *id.* at 342 (explaining that "if the purchaser sells the shares quickly before the relevant truth begins to leak out, the misrepresentation will not have led to any loss"); *accord Acticon AG v. China N. E. Petroleum Holdings Ltd.*, 692 F.3d 34, 40 (2d Cir. 2012) (recognizing *Dura*). *See also In re Cornerstone Propane Partners, L.P. Sec. Litig.*, No. C 03-2522, 2006 WL 1180267, at *8 (N.D. Cal. May 3, 2006) ("Here, since corrective disclosure is alleged to have occurred only from July 2001 onwards, under *Dura* there can be no loss causation for plaintiffs who purchased and sold stock at the inflated share price prior to that disclosure, and thus these plaintiffs may not recover at all."); *In re Compuware Sec. Litig.*, 386 F. Supp. 2d 913, 920 (E.D. Mich. 2005) (holding that a plaintiff who sold all securities prior to disclosure of fraud could not establish damages under *Dura*).

[5] This Court's Opinion and Order on the Motion to Dismiss provides the basis for November 4, 2007 being the first disclosure date. *See In re Citigroup Inc. Sec. Litig.*, 753 F. Supp. 2d 206, 217-23, 236 (S.D.N.Y. 2010).

Thus, the dollar amount of inflation per share on the date of acquisition was the same as the dollar amount of inflation per share on the date of sale. The out-of-pocket losses of $8,635 sustained by Ms. Lang were the result of factors other than disclosure of the alleged fraud.

Although Ms. Lang further asserts that the "artificial schedule set forth in table A is pure fiction if not legal chicanery", the table is not arbitrary. Any "Recognized Loss" here is based on share-price inflation, or harm sustained due to the alleged fraud. Ms. Lang does not even argue that there were any alleged corrective disclosures of any of the alleged fraud at issue in this action prior to her sale of Citigroup shares that caused any of her alleged loss. Accordingly, Ms. Lang's claim should be rejected.

3. Disputed Claim No. 5, Eugene P. Beard (Claim No. 1146185), Sold All of His Shares Prior to Any Corrective Disclosure

Similar to Ms. Lang's claim discussed above, Eugene P. Beard's claim involves purchases of 20,000 shares in the first inflation period between February 26, 2007 and November 4, 2007, and sales of all 20,000 shares in the same inflation period. Cirami Aff. at ¶ 73(b)(ii) and Ex. D. Thus, the dollar amount of inflation per share on the date of acquisition was the same as the dollar amount of inflation per share on the date of sale. Any out-of-pocket losses sustained by Mr. Beard were the result of factors other than disclosure of the alleged fraud.

Contrary to Mr. Beard's assertion that this action has "unique settlement terms not so seen in past suits," the plan of allocation here follows hornbook securities law regarding corrective disclosures. Accordingly, Mr. Beard's claim should be rejected.

4. Disputed Claim No. 7, Jerry L. Malesovas (Claim No. 1946902), Paid Less Than the PSLRA "Look Back" Price

Of the 5,000 shares listed on Jerry L. Malesovas' claim form, only 2,000 shares were purchased during the Class Period. *See* Cirami Aff. Ex. D.[6] The 2,000 shares purchased during the Class Period do not have any recoverable loss, by reason of the 90-day "look back" provision in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). *See* 15 U.S.C. § 78u-4(e)(1). Specifically, the PSLRA provides that a plaintiff's recoverable damages "shall not exceed the difference between the purchase … price paid … by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." *Id.* $21.07 was the mean closing price of Citigroup common stock during the 90-day period beginning on April 19, 2008 (the first day following the end of the Class Period) (the "Holding Value"). *See* Notice at 7 n.2; 15 U.S.C. § 78u-4(e)(1).

During the Class Period, Mr. Malesovas purchased 1,000 shares on March 20, 2008 at a price of $18.70 per share and 1,000 shares on April 2, 2008 at a price of $21.55 per share for a total cost of $40,250 for the 2,000 shares. Given that the amount paid of $40,250 is below the Holding Value of $42,140 (2,000 shares times $21.07), there are no Recognized Losses under the Plan of Allocation, and Mr. Malesovas' claim should be rejected.[7]

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[6] The other 3,000 shares were purchased after the end of the Class Period, on June 2, 2008, June 17, 2008 and June 20, 2008.

[7] As set forth in the Notice, "[t]o the extent an Authorized Claimant had an aggregate gain from his, her or its transactions in Citigroup common stock during the Class Period, the value of his, her or its total Recognized Loss will be zero." Notice at 7. "Total Purchase Amount," "Sales Proceeds," and "Holding Value," which are all defined terms in the Notice, are used to determine whether a claimant had a gain or suffered a loss in their overall transactions during the Class Period. *Id.* at 8.

Although Mr. Malesovas requests that the Court use the actual "value of his shares on the date of settlement to determine loss," that is not a valid legal theory that has any bearing with respect to recoverable damages in PSLRA cases. *See* Claimant Malesovas' Opposition Response dated May 5, 2014 [Dkt. No. 323]. Further, that is expressly precluded by the 90-day look back provision in the PLSRA. *See* 15 U.S.C. § 78u-4(e)(1).

5. Disputed Claim No. 10, Paul Gupta (Claim No. 2203183), Paid Less Than the PSLRA "Look Back" Price For His Shares

Mr. Gupta purchased 1,000 shares on March 10, 2008 at a price of $19.84 per share. Cirami Aff. at ¶ 73(b)(vii) and Ex. D. The total amount paid ($19,840) is below the Holding Value of $21,070 (1,000 shares times $21.07).

6. Disputed Claim No. 13, Francisco Fuentez (Claim No. 2763543), Did Not Hold Through Any Corrective Disclosure

Mr. Fuentez purchased 374,750 shares in the final inflation period between January 16, 2008 through April 18, 2008, and sold all 374,750 shares in the same inflation period. Cirami Aff. at ¶ 73(b)(x) and Ex. D. None of the shares were held through any corrective disclosure. Accordingly, the dollar amount of inflation per share on the date of acquisition was the same as the dollar amount of inflation per share on the date of sale. Mr. Fuentez's out-of-pocket losses in the amount $4,956 were the result of factors other than disclosures of the alleged fraud.

7. Disputed Claim No. 14 (Claim No. 2021077) and Disputed Claim No. 15 (Claim No. 2795505) Should Be Rejected as Deficient Claims Never Cured

These claims were submitted by claimants who include the same individual, in one instance claiming together with his wife (Disputed Claim No. 14) and in the other instance, claiming together with his mother (Disputed Claim No. 15). Neither claim provided the required documentation to complete the Proof of Claim. Despite repeated attempts by Lead Counsel (as well as the Claims Administrator) to request the appropriate documentation, the claimants have

not yet provided adequate documentation. *See* Linden Reply Decl. ¶¶ 5-12 and Exs. 2-6. The backup data that the claimant provided (after repeated communications with Lead Counsel and the Claims Administrator) is incomplete and also is inconsistent with the information that the claimant provided on the claim form. For example, no sales were listed on either claim form yet the incomplete statement that the claimant belatedly provided listed several Citigroup sales transactions. Also, none of the trade dates on the incomplete statement correspond with the trades listed in either claim form.[8] Without the proper documentation, both of these claims are deficient and it is not possible to accurately and properly calculate any Recognized Loss.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reject all fifteen (15) Disputed Claims, including those who had provided a response (Disputed Claim Nos. 4, 5, 7, 10, 13, 14 and 15), and enter the proposed Order Authorizing Distribution of Net Settlement Fund.

Dated: May 16, 2014

Respectfully Submitted,

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[8] These inconsistencies highlight the reason why securities class action settlements require backup data rather than merely taking the information on the claim forms at face value.