

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY K. JONES, Individually and on Behalf	:	Civil Action No. 1:10-cv-03864-AKH
of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
	:	
Plaintiff	:	
	:	MEMORANDUM OF POINTS AND
vs.	:	AUTHORITIES IN SUPPORT OF
	:	PLAINTIFFS' UNOPPOSED MOTION TO
PFIZER INC., et al.,	:	AMEND JUDGMENT
	:	
Defendants.	:	
	:	
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Lead Plaintiff Stichting Philips Pensioenfonds and Class Representative Mary K. Jones (collectively, “Plaintiffs”) respectfully submit this memorandum of law in support of their unopposed motion to amend the Judgment entered by this Court on July 30, 2015, to add four additional Persons who have validly and timely requested that their individual claims be excluded from the Class. Defendants have been notified of the motion and have indicated that they do not oppose the motion.

I. BACKGROUND

This is a securities class action. On February 17, 2015, the parties filed a Stipulation of Settlement with the Court and Plaintiffs sought preliminary approval of the Settlement of this action. Dkt. Nos. 466-468. On March 16, 2015, the Court issued an Order preliminary approving the Settlement, and directed that notice of the Settlement be issued to the Class and that all claims for exclusion be postmarked no later than May 21, 2015. Dkt No. 479, ¶12. The Court’s preliminary approval Order also specifies that “[a]ll Persons who submit valid and timely Requests for Exclusion . . . shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by Stipulation or any final judgment.” *Id.*

Millions of potential class members were notified of the Settlement, including their right to seek exclusion, and as of August 14, 2015, 3,194,535 million Claim Packages have been mailed. *See* Declaration of Michael Joaquin Regarding Exclusion Requests Received to Date (“Joaquin Decl.”), ¶2. On July 23, 2015, the Plaintiffs filed with the Court the second supplemental declaration of Carole K. Sylvester¹ that included 1,720 requests for exclusion received to date.

¹ The full title of the declaration is Second Supplemental Declaration of Carole K. Sylvester Regarding (A) Further Mailing of the Notice of Proposed Settlement of Class Action and the Proof of Claim and Release Form, (B) Requests for Exclusion Received, and (C) Proof of Claim and Release Forms Received to Date (Dkt. No. 498), referred to herein as the “Second Supplemental Sylvester Declaration.”

Second Supplemental Sylvester Declaration, ¶4. The following week, July 30, 2015, the Court held a hearing on Plaintiffs' motion for final approval of the proposed class action Settlement, approved the Settlement and entered Judgment – the Judgment included the 1,720 requests for exclusion as Exhibit 1. *See* Dkt. No. 500.

Four additional requests for exclusion were timely postmarked but not included in the Judgment. The Persons requesting exclusion and who timely postmarked their requests for exclusion are: (1) Judith Allanson; (2) Bettie Harrison; (3) Hakan Josefsson; and (4) Bert Glassberg. Joaquin Decl., ¶4. Given the unusual volume of mail received by the Claims Administrator, these Persons were not included in the Second Supplemental Sylvester Declaration submitted to the Court on July 23, 2015 and thus, not included in Exhibit 1 to the Judgment signed by the Court on July 30, 2015. *See* Joaquin Decl., ¶¶3-5 (explaining that it has received 628,654 Proofs of Claims and the unusual volume of mail).

To ensure that no other Persons timely sought exclusion from the class by postmarking their requests by the Court ordered deadline, the Claims Administrator has processed all of the mail received regarding Pfizer's claims as of June 23, 2015 and reviewed each piece of mail received for any request for exclusion. *Id.*, ¶5.

II. THE JUDGMENT SHOULD BE AMENDED TO INCLUDE FOUR ADDITIONAL PERSONS WHO TIMELY SOUGHT EXCLUSION

Pursuant to Fed. R. Civ. P. 52(b) “[o]n a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings – or make additional findings – and may amend the judgment accordingly.” A motion for Rule 52(b) shall be granted where there was a manifest error of law or fact, or newly discovered evidence. *Northeast Utils. Serv. Co. v. St. Paul Fire & Marine Ins. Co.*, No. 3:08-CV-01673 (CSH), 2012 U.S. Dist. LEXIS 178608, at *5 (D. Conn. Dec. 18, 2012). It would be contrary to the Court's preliminary approval order, the notice issued to

potential class members and unjust to not permit amendment of the Judgment to add these four additional Persons to the 17,200 excluded Persons included in the Judgment. Absent class members have a due process right under the Fourteenth Amendment to have notice and an opportunity to opt out in a class action for money damages such as this one. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (describing procedural due process rights that need to be afforded to absent class members); *Hecht v. United Collection Bureau, Inc.*, 691 F.3d 218, 222 (2d Cir. 2012) (reversing dismissal of a claim where notice was not sufficient). These Persons have timely executed their right to seek exclusion from the Class and were inadvertently excluded from the proposed judgment submitted to this Court. Accordingly, an amendment is appropriate pursuant to Fed. R. Civ. P. 52(b). To rectify the issue, Plaintiffs submit concurrently an amended Judgment that includes a corrected Exhibit 1, which includes the four new, but timely, requests for exclusion.

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that Judgment in this case be amended to include the additional four Persons who timely sought exclusion from this case pursuant to this Court's preliminary approval order and the subsequent notice issued to the Class.

DATED: August 26, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 26, 2015.

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