

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE MOL GLOBAL, INC. SECURITIES  
LITIGATION

No. 14-Civ-9357 (WHP)

**ECF Case**

**MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S  
MOTION TO AUTHORIZE DISTRIBUTION OF NET SETTLEMENT FUND**

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## I. INTRODUCTION

On October 18, 2016, this Court granted final approval to the settlement of a securities class action brought by Lead Plaintiff Lembaga Tabung Amanah Pekerja (the “TAP Retirement Fund” or “Lead Plaintiff”).<sup>1</sup> The Order, entered by the Court in this case, provides that the Court retains exclusive jurisdiction over, *inter alia*, “all matters relating to this Consolidated Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Final Approval Order and Judgment. . .” *See* Final Approval Order [ECF No. 113] ¶ 17.

Now, pursuant to Federal Rule of Civil Procedure 23(e), Lead Plaintiff, on behalf of the Class, respectfully submit this Memorandum of Law in Support of their Motion for an Order to Authorize Distribution of the Net Settlement Fund (“Distribution Order”) authorizing, *inter alia*: (i) distribution of the Net Settlement Fund established by the Settlement of this action to Authorized Claimants; (ii) the Claims Administrator to deem timely, all otherwise eligible claims that were submitted after the October 4, 2016 claims filing deadline, but received no later than February 9, 2017; (iii) distribution of the Net Settlement Fund to Class Members whose Proofs of Claim have been accepted, as described more fully in the Affidavit of Angela Ferrante in Support of Motion for Distribution of Net Settlement Fund, dated February 10, 2017 (the “Ferrante Aff.”) filed concurrently herewith; (iv) the Claims Administrator to reallocate to Authorized Claimants (including late claimants approved by the Court) any residual funds remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) six (6) months after the initial distribution, and thereafter to permit Lead Counsel to donate, subject to Court approval, any remaining balance to a non-sectarian, not-for-profit,

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<sup>1</sup> Unless otherwise indicated, all capitalized terms herein have the same meaning as is ascribed in the Stipulation of Settlement (the “Stipulation”) filed with the Court on April 12, 2016 [ECF No. 102-1].

501(c)(3) organization serving the public interest; (v) the destruction of claim forms and records in paper form one year after final distribution of the Net Settlement Fund, and claim forms and records in electronic forms three years after final distribution of the Net Settlement Fund; and (vi) finally and forever barring further claims against the Settlement Fund.

Pursuant to the Stipulation, Defendants have no interest in the relief sought by this motion.<sup>2</sup>

## II. BACKGROUND

The Stipulation provided for an all-cash payment of \$8.5 million to compensate members of the Class and to pay attorneys' fees and expenses as awarded by the Court. Stipulation ¶¶ 18, 44. On October 18, 2016, this Court granted final approval of the \$8.5 million cash Settlement between and among Lead Plaintiff, on behalf of the Class, and Defendants under the terms set forth in the Stipulation, and dismissed this action with prejudice. *See* Final Approval Order [ECF No. 113]. The Court also awarded Lead Counsel attorneys' fees of 18.5% of the Settlement Fund plus reimbursement of Lead Counsel's litigation expenses in the amount of \$61,853.52. *Id.* ¶ 14. As of February 10, 2017, the balance of the Settlement Fund, including accrued interest, is \$6,779,612.43. The Net Settlement fund continues to accrue interest daily.

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<sup>2</sup> *See* Stipulation ¶ 51 ("Apart from MOL causing payment of the agreed amounts into the Gross Settlement Fund, as described in Paragraphs 44 and 45, neither Defendants nor Defendants' Counsel shall have any responsibility for the administration of the Settlement, including, but not limited to, the processing of claims, determination of the claimants entitled to participate in the distribution of the Net Settlement Fund, making any payments to the Claims Administrator, or determination as to the amounts to be distributed to Authorized Claimants."); ¶ 49 ("This is not a claims-made settlement and, if all conditions under the Stipulation are satisfied and the final approval of the District Court is given, no consideration will be returned to the parties contributing to the Gross Settlement Fund for any reason, including without limitation, the number of Proofs of Claim filed, the collective amount of Recognized Losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.")

See Declaration of Ira M. Press in Support of Lead Plaintiff's Motion to Authorize Distribution of Net Settlement Fund ("Press Decl."), ¶ 4, filed concurrently herewith.

The Stipulation provides for the distribution of the Net Settlement Fund, in accordance with the Court-approved Plan of Allocation, among Authorized Claimants who purchased MOL Global, Inc. ("MOL") American Depositary Shares ("ADS") from October 9, 2014 through and including November 21, 2014 (the "Class Period"), and were damaged thereby. The Court authorized Lead Counsel to retain a Claims Administrator in its Preliminary Approval Order dated May 20, 2016 [ECF No. 104] ¶ 8. On behalf of Lead Plaintiff and the Class, Lead Counsel retained Garden City Group, LLC ("GCG") as the Claims Administrator. GCG has extensive experience in handling the administration of complex settlements of securities class actions.

**A. Notice to the Settlement Class**

Pursuant to this Court's Preliminary Approval Order, on June 20, 2016, Lead Counsel caused the Summary Notice to be published in *Investor's Business Daily* and electronically issued over *PR Newswire*. Ferrante Aff. ¶ 4. GCG also posted downloadable copies of, *inter alia*, the Notice and Proof of Claim at [www.molglobalsecuritieslitigation.com](http://www.molglobalsecuritieslitigation.com). *Id.* ¶ 5. Moreover, GCG disseminated more than 6,200 copies of the Notice and Proofs of Claim to potential Class Members. *Id.* ¶ 3. The Notice provided a background of the Action, described the circumstances leading up to the Settlement, supplied the details of the Settlement and the process leading up to the Settlement, gave notice of the Settlement Hearing, and provided instructions for Class Members regarding submissions of claims, exclusion from the Settlement, objection to the terms of Settlement and/or the application for attorneys' fees and reimbursement

of expenses, and attendance at the Settlement Hearing. *See* Notice.<sup>3</sup>

In response to the Notice efforts, through February 9, 2017, GCG received and processed a total of 3,873 claims from potential Class members in connection with this action. *Id.* ¶ 30.

### **III. CLAIMS ADMINISTRATION**

Pursuant to the Stipulation, the Court's Preliminary Approval Order, and the Notice, all Class Members wishing to be eligible to participate in the Settlement Fund were required to submit Proof of Claim forms, postmarked on or before October 4, 2016.

As explained in detail in the accompanying Ferrante Affidavit, GCG received a total of 3,873 Proof of Claim and Release forms in connection with this action. *Id.* GCG has prepared detailed ledgers of: (i) all valid and timely claims by Authorized Claimants (Ferrante Aff. Ex. B-1); (ii) claims that were submitted after the filing deadline but by February 9, 2017 that are otherwise valid ("Late Claims") (Ferrante Aff. Ex. B-2); and (iii) claims that were rejected or deemed ineligible (Ferrante Aff. Ex. B-3).

GCG made substantial efforts to contact claimants that had submitted deficient claims (such as lacking the required information or documentation to substantiate the Claimant's transactions during the Settlement Class Period) and instruct them on how to cure any such deficiencies. Ferrante Aff. ¶¶ 19-23. GCG mailed approximately 1,865 deficiency letters to Claimants describing the defect(s) with his, her or its claim and stating what, if anything, was necessary to cure the claim. *Id.* ¶ 20; Ferrante Aff. Ex. A (samples of the Notice of Conditional Rejection letters). The deficiency letters also informed the Claimant that failure to cure the

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<sup>3</sup> A copy of the Notice is attached Exhibit A to the Affidavit of Jose C. Fraga Regarding Mailing of the Notice and Proof of Claim and Release; Publication of the Summary Notice; Telephone Helpline; Website; and Requests for Exclusion, dated August 10, 2016 [ECF No. 109-2].

deficiencies may lead to rejection of his, her or its claim. Ferrante Aff. ¶ 21. Claimants who presented deficient claims were allowed several opportunities to perfect those claims. *Id.* ¶ 22.

Of the 3,873 claims received, GCG determined that 1,708 claims were ineligible to participate in the Settlement because the claims: (1) did not indicate any eligible purchases of MOL ADS during the Class Period; (2) were duplicative claims; (3) had insufficient information and/or documentation to support the claim; or (4) the claim did not result in a Recognized Loss. Ferrante Aff. ¶ 33. These Claimants each received a Notice of Conditional Rejection letter. *Id.*

Claimants were advised that they had the right to disagree with GCG's administrative determination of deficiencies or ineligibility within 20 days and that they could submit the dispute to the Court for summary resolution. Ferrante Aff. ¶ 34; Ferrante Aff. Ex. A. More specifically, claimants were advised in the Notice of Conditional Rejection to provide a statement of reasons indicating the grounds for contesting the rejection, 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. *Id.*; Ferrante Aff. Ex. A.

However, the single claimant who had contested GCG's administrative determinations has since provided information that cured the deficiencies in his Claim. Ferrante Aff. ¶ 35. Accordingly, his claim is being recommended for payment and has been included in Exhibit B-1 and there are no claimants seeking judicial review of the rejection of their claims.

#### **IV. ARGUMENT**

##### **A. The Court Should Authorize Distribution of the Net Settlement Fund to Authorized Claimants**

###### **1. Timely and Valid Claims**

There were 2,146 Authorized Claimants who submitted timely and valid claims postmarked on or before the Court-approved claims filing deadline of October 4, 2016. Ferrante Aff. ¶ 30. The aggregate Recognized Loss of these 2,146 Authorized Claimants is \$27,447,556.76. *Id.* ¶ 32. Lead Plaintiff respectfully requests that the Court approve the 2,146 Authorized Claimants listed in Exhibit B-1 to the Ferrante Affidavit.

###### **2. Untimely But Otherwise Eligible Claims**

GCG received 30 Proofs of Claim (“Late Claims”) after the October 4, 2016 Proof of Claim submission deadline through February 9, 2017. Ferrante Aff. ¶ 30. GCG processed all Late Claims and has determined that the total number of Authorized Claimants submitting valid Late Claims is 19 with an aggregate Recognized Loss of \$651,851.24. *Id.* ¶ 32. These Late Claims (listed in Exhibit B-2 to the Ferrante Affidavit) were received by GCG while the processing of timely claims was ongoing, and due to the amount of time needed to process the 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. Ferrante Aff. ¶ 30. Inclusion of these Late Claims will not materially dilute the amount to be distributed to timely Authorized Claimants. *Id.* The Recognized Loss of the 2,146 timely valid Claims and the 19 Late Claims totals \$28,099,408. *Id.* ¶ 32. The Recognized Loss of the Late Claims represents 2.3% of the combined Recognized Loss of all Authorized Claimants. *Id.* ¶¶ 30, 32. Thus, the amount that every Authorized Claimant will receive will only be marginally reduced from what he or she would have received if the Late Claims were excluded.

Until the Net Settlement Fund is actually distributed, this Court retains broad and inherent equitable powers to include claims that were submitted late. *See Zients v. LaMorte*, 459 F.2d 628, 630-31 (2d Cir. 1972) (“[W]here, as here, all the equities are on the side of the claimants, the fund has not been distributed and the administration of the fund would be insignificantly hampered by allowing these few late claims, appellants should be permitted to participate in the fund.”). Lead Plaintiff believes that, when the equities are balanced, it would be unfair to prevent an otherwise eligible claim from participating in the Net Settlement Fund solely because it was submitted after the cut-off date, when it was submitted while claims were still being processed.<sup>4</sup> Moreover, payment of the late claims will not cost Defendants any additional money nor will payment of these late claims materially prejudice or delay payment to the timely claimants.

However, in order to facilitate the efficient distribution of the Net Settlement Fund, there must be a final cut-off after which no other claims may be accepted. Accordingly, it is respectfully requested that the distribution order provide that no claim submitted on or after February 9, 2017, may be accepted for any reason whatsoever, and that no further adjustments to claims may be made for any reason after February 9, 2017. *Ferrante Aff.* ¶ 47.

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<sup>4</sup> Courts have the equitable power to include late-filed claims as part of a settlement distribution even where the parties agreed to a claims deadline pursuant to the terms of a settlement agreement. *See, e.g., Zients*, 459 F.2d at 630 (“[u]ntil the fund created by the settlement is actually distributed, the court retains its traditional equity powers.”); *In re Gilat Satellite Networks, Ltd.*, No. 02 Civ. 1510, 2009 WL 803382, at \*6 (E.D.N.Y. Mar. 25, 2009) (allowing payment of late claims); *In re Agent Orange Prod. Liab. Litig.*, 689 F. Supp. 1250, 1262-63 (E.D.N.Y. 1988) (a “district court overseeing settlement distribution has inherent power to accept late claims” where there is no prejudice to the defendants and no delay of pay-out to timely claimants) (internal citation omitted); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 321, 329 (3d Cir. 2001) (court allowed a late claim where all class members were asserting claims on a “finite pool of assets.”).

Additionally, Lead Plaintiff respectfully requests that the Court approve GCG's administrative recommendations to accept the 19 Late Claims listed in Exhibit B-2 to the Ferrante Affidavit.

**B. The Court Should Accept the Claims Administrator's Administrative Recommendations to Reject the Ineligible Claims**

GCG rejected a total of 1,708 claims. GCG mailed each of the 1,708 claimants a Rejection Letter. Ferrante Aff. ¶ 33. The reasons for rejections included: (1) claims did not fit the definition of the Class; (2) claims were duplicate claims; (3) claims were deficient and were never cured; and (4) claims did not result in a Recognized Loss under the Court-approved Plan of Allocation. *Id.*

Accordingly, Lead Plaintiff respectfully requests that the Court reject these ineligible claims listed in Exhibit B-3 to the Ferrante Affidavit.

**C. The Court Should Authorize Distribution of the Net Settlement Fund**

The Net Settlement Fund is ready to be distributed at this time.<sup>5</sup> Lead Counsel respectfully request that the Court direct GCG to distribute the Net Settlement Fund to the claimants whose claims GCG has administratively determined to be valid (those listed in Exhibits B-1 and B-2 to the Ferrante Affidavit), and who would receive a distribution amount of at least \$10.00 pursuant to the Court-approved Plan of Allocation in the Notice. *See* Notice at 5-7. If these administrative determinations are approved, each of these claimants will receive a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Loss compared to the total Recognized Loss of all Authorized Claimants (the "Distribution"). *Id.* at 5.

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<sup>5</sup> Pursuant to the Stipulation, the Net Settlement Fund will be distributed to Authorized Claimants after, *inter alia*, the outstanding fees and expenses of claims administration and any further tax liabilities are satisfied. *See* Stipulation ¶ 79.

It may be expected that not all of the payments to be distributed to Authorized Claimants (including late filing claimants) will be cashed promptly. In order to encourage Authorized Claimants to promptly cash their Distribution checks, and to avoid or reduce future expenses relating to unpaid Distributions, Lead Plaintiff proposes that all the Distribution checks bear a notation “CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.” Ferrante Aff. ¶ 42. Lead Plaintiff also proposes that Authorized Claimants who do not cash their Distribution checks within the time allotted shall irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks shall be available in the redistribution to other Authorized Claimants.

Consistent with the terms of the Stipulation and the Court-approved Plan of Allocation in the Notice, Lead Plaintiff respectfully requests that, if any funds remain in the Net Settlement Fund by reason of uncashed distributions or otherwise, then after the Claims Administrator has made reasonable and diligent efforts to have Settlement Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund six (6) months after the initial Distribution shall be re-distributed to Settlement Class Members who have cashed their initial Distributions and who would receive at least \$10.00 from such redistribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such redistribution. Thereafter, the Claims Administrator, following consultation with Lead Counsel, shall donate, pursuant to the doctrine of *cy pres*, any remaining funds in the Net Settlement Fund, if any, to a non-sectarian, not-for-profit 501(c)(3) organization serving the public interest, to be designated by Lead Counsel and approved by the Court. *See* Stipulation ¶ 66; Notice at 6.

At a future date, Lead Plaintiff will submit a supplemental filing describing an appropriate organization for the Court to approve as a beneficiary of residual funds under the *cy pres* doctrine.

**D. The Release of Claims**

In order to allow the full and final distribution of the Net Settlement Fund, it is respectfully requested that the Court bar any further claims against the Net Settlement Fund beyond the amount 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 Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement, provided, however, that the Court's distribution order shall not release any claim by Lead Plaintiff against the Claims Administrator with respect to distributions, if any, if later discovered to have been made not substantially in accordance with the Stipulation, the Plan of Allocation or any order of the Court.<sup>6</sup>

**E. GCG's Fees and Expenses for Claims Administration**

The Stipulation and Preliminary Approval Order authorized payment from the Settlement Fund of the fees and costs incurred in connection with the Notice to the Class and the claims administration. Stipulation ¶¶ 24, 73; Preliminary Approval Order ¶ 23. Such reasonable and customary fees and costs include GCG performing claims administration services in connection

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<sup>6</sup> "Lead Plaintiff, Defendants, and their respective counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the settlement funds, the Net Settlement Fund, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith." Notice at 6; Stipulation ¶ 68 (same).

with the Settlement Fund Distribution, as well as additional fees and expenses required to complete the administration and initial distribution of the Net Settlement Fund, including, but not limited to, calculating distribution amounts, printing and mailing checks, monitoring uncashed and undeliverable checks, making telephone calls to Authorized Claimants with uncashed checks and searching for current addresses if undeliverable.

GCG's invoices for fees and expenses incurred on behalf of the Class through January 31, 2017 and estimated fees and expenses to be incurred through the end of the initial distribution are attached as Exhibit C to the Ferrante Affidavit. As set forth in the Ferrante Affidavit, to date, GCG has billed a total amount of \$131,524.11, including the estimated fees and expenses for the initial distribution. Ferrante Aff. ¶ 48. This amount is in line with the projected costs disclosed in the Notice and Stipulation.<sup>7</sup> Pursuant to the Stipulation and Preliminary Approval Order, Lead Counsel will continue to monitor the claims administration process and approve payment of reasonable out-of-pocket costs paid or incurred in connection with the administration and distribution of the Settlement. Stipulation ¶¶ 24, 73; Preliminary Approval Order ¶ 23.

**F. Retention of Proof of Claim Forms and Other Documents**

Lead Plaintiff respectfully requests that the Court authorize GCG to destroy claim forms and records in paper form one year after final distribution of the Net Settlement Fund, and claim forms and records in electronic form three years after final distribution of the Net Settlement Fund.

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<sup>7</sup> The Notice disclosed the following: "Lead Counsel are authorized by the Stipulation to pay the Claims Administrator's fees and expenses incurred in connection with giving notice, administering the Settlement, and distributing the Net Settlement Fund to Settlement Class Members." Notice at 8. The Stipulation authorized Lead Counsel to transfer "up to \$250,000 [. . .] from the Escrow Account to an account to be used for the payment of reasonable out-of-pocket costs paid or incurred in connection with the notice and administration of the Settlement. . ." Stipulation ¶ 73.

**V. CONCLUSION**

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court issue the accompanying proposed Order Authorizing Distribution of the Net Settlement Fund granting the relief sought herein.

DATED: New York, New York  
February 13, 2017

Respectfully Submitted,

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