

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LORD ABBETT AFFILIATED FUND, INC.,
et al., Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

NAVIENT CORPORATION, *et al.*,

Defendants.

C.A. No. 1:16-cv-112-MN

Judge Maryellen Noreika

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

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Court appointed Class Representatives and Lead Plaintiffs, Lord Abbett Affiliated Fund, Inc., Lord Abbett Equity Trust–Lord Abbett Calibrated Mid Cap Value Fund, Lord Abbett Bond-Debenture Fund, Inc., and Lord Abbett Investment Trust–Lord Abbett High Yield Fund (collectively, “Lead Plaintiffs”), respectfully move for entry of the proposed Order Approving Distribution Plan (“Class Distribution Order”) for the proceeds of the Settlement in the above-captioned securities class action (the “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”).¹

The Class Distribution Order will, subject to the Court’s approval, permit JND to make an Initial Distribution of the Settlement proceeds to eligible Claimants. In particular, if approved by the Court, the Class Distribution Order will, among other things: (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.

There are no disputed Claims by any Class Member requiring Court review. Further, under the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or

¹ 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 November 16, 2021 (D.I. 339-1) (“Stipulation”). The Settlement is contained in the Stipulation.

the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 17, 21, 23; *see also* Settlement Notice ¶ 52. Nevertheless, Lead Counsel provided Defendants’ Counsel a copy of the motion papers and they informed us that Defendants do not oppose this motion. As such, the motion is ripe for determination and, subject to the Court’s approval, Lead Counsel respectfully submits that a hearing on this motion is not required.

I. BACKGROUND

On March 17, 2022, the Court entered its Judgment Approving Class Action Settlement (D.I. 351) approving the \$35 million all-cash Settlement of this Action and entered an Order Approving Plan of Allocation of Net Settlement Fund (D.I. 352). The Settlement’s “Effective Date” under paragraph 31 of the Stipulation has now occurred, and accordingly the Net Settlement Fund may be distributed to Authorized Claimants. In accordance with paragraph 26 of the Stipulation, Lead Plaintiffs respectfully request that the Court enter the Class Distribution Order and approve the Distribution Plan.

In accordance with the Court’s Order Preliminarily Approving Settlement and Providing for Notice (D.I. 341) (“Preliminary Approval Order”), JND mailed the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Settlement Notice”) and the Proof of Claim and Release Form (“Claim Form” and, collectively with the Settlement Notice, the “Settlement Notice Packet”) to potential Class Members, brokers, and other nominees. Segura Decl. ¶ 2. JND has disseminated 106,516 Settlement Notice Packets to potential Class Members, brokers, and nominees. *Id.* ¶ 4. The Settlement Notice informed 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 April 13, 2022. *Id.* ¶ 7.

II. CLAIMS ADMINISTRATION

As set forth in the Segura Declaration, through February 16, 2023, JND received and processed 82,659 Claims. Segura Decl. ¶ 7. All Claims received through February 16, 2023, have been fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation included in the Settlement 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 made considerable efforts to assist the Claimant to perfect the Claim. For example, JND would send 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. These Deficiency Notices 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 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 82,659 Claims that are the subject of this motion, JND has determined that 33,494 Claims are acceptable in whole or in part, and that 49,165 Claims should be rejected because they are ineligible for payment from the Net Settlement Fund. *Id.* ¶¶ 44-47. The Segura Declaration provides a detailed explanation of the reasons that Claims were rejected. *Id.* ¶¶ 35-38, 47. Lead

Plaintiffs respectfully request that the Court approve JND's administrative determinations accepting and rejecting Claims as stated 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 24(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 & Exhibits A & B.

With respect to the fully processed Claims, JND received one (1) request for Court review of its administrative determinations. To resolve this dispute without necessitating the Court's intervention, JND contacted the Claimant requesting Court review and attempted to answer all questions and explain JND's administrative determination of the Claim's status. *Id.* ¶ 32. As a result of these efforts, the Claimant understood the reasons for JND's determination and agreed to withdraw the request for Court review. *Id.* JND sent a Notice of Withdrawal of Court Review Request to the Claimant confirming the Claimant's withdrawal of the request for Court review. *Id.* and Exhibit D. Accordingly, there are no outstanding requests for Court review by any Claimants. Segura Decl. ¶ 32.

B. Late Claims and Final Cut-Off Date

The 82,659 Claims received through February 16, 2023, include 126 Claims that were postmarked or received after April 13, 2022, the Court-approved Claim submission deadline. *Id.* ¶¶ 33, 46. Those late Claims have been fully processed, and 30 of them are, but for their late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 30 Claims were

late, they were received while the processing of timely Claims was still 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 ¶ 8; Settlement Notice ¶ 54. Subject to the Court's approval, Lead Plaintiffs respectfully submit that the 30 late but otherwise valid Claims should be accepted. In Lead Plaintiffs' view, 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 such that no delay or prejudice resulted.

To facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiffs respectfully request that 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 16, 2023, shall be barred (*see also* Segura Decl. ¶ 50(f)) – subject to the proviso that if Lead Counsel later determines that an additional distribution is not cost-effective (*see id.* ¶ 50(e)), then any post-February 16, 2023 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. *Id.* ¶ 50(f). The goal of paying these new (or adjusted) Claims is to ensure that as much of the Net Settlement Fund is distributed to eligible Class Members as possible.

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 Classes, creating and maintaining a website and toll-free helpline, processing Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. Segura Decl. ¶ 2. JND's fees and expenses for its work performed through January 31, 2023, are \$750,412.88, and its estimated fees and expenses for work to be performed in connection with the Initial Distribution are \$43,858.35, which together total \$794,271.23. *Id.* ¶ 49. 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 \$94,505.12 for their work providing names and addresses to potential Class Members and forwarding notices to their clients. *Id.* To date, JND has received payment in the amount of \$763,937.39 for its fees and expenses. *Id.* Accordingly, there is an outstanding balance of \$124,838.96 payable to JND, which amount includes the estimated fees and expenses to be incurred by JND in connection with the Initial Distribution. *Id.* Lead Counsel reviewed JND's invoices and respectfully requests on behalf of Lead Plaintiffs that the Court approve all of JND's fees and expenses.

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. ¶ 50(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.* ¶ 50(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.* ¶ 50(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.* ¶ 50(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.* ¶ 50(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.* ¶ 50(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.*

To encourage Authorized Claimants to cash their checks promptly, Lead Plaintiffs propose that all distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” *Id.*

¶ 50(b). Authorized Claimants who do not cash their checks within the time allotted or on the conditions stated in paragraph 50(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.*

¶ 50(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.* ¶ 50(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 16, 2023, JND will process those Claims. *Id.* ¶ 50(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 16, 2023, may be paid in accordance with paragraph 50(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* Settlement Notice App. A ¶ 31.

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. 27, 2023). 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. 27, 2023). 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. 27, 2023). “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, nclc.org/about-us/ (last visited Feb. 27, 2023). 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. 27, 2023), & *Cy Pres*, National Consumer Law Center, <https://nclc.org/get-involved/ways-to-give/cy->

pres/ (last visited Feb. 27, 2023). Federal courts have approved NCLC as a *cy pres* recipient of residual balances of net settlement funds in other settlements. *See, e.g., In re Signet Jewelers Ltd. Sec. Litig.*, 2021 WL 5357468, at *2 (S.D.N.Y. Nov. 17, 2021); Lead Plaintiff’s Motion for Authorization to Distribution Net Settlement Fund and Supporting Memorandum, *In re Nu Skin Enters., Inc., Sec. Litig.*, No. 14-cv-00033 (D. Utah Aug. 10, 2018), ECF No. 152 & Order Authorizing Distribution of Net Settlement Fund to Authorized Claimants and Related Relief, *In re Nu Skin Enters., Inc., Sec. Litig.*, No. 14-cv-00033 (D. Utah Aug. 30, 2018), ECF No. 154, 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 ¶ 28. Accordingly, Lead Plaintiffs respectfully request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from all claims arising out of that involvement, and bar all Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, from making any

further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund, or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.

Courts have repeatedly approved similar releases in connection with the distribution of settlement proceeds. *See, e.g., In re Linerboard Antitrust Litig.*, 2008 WL 4542669, at *1 (E.D. Penn. Oct. 3, 2008) (“The Claims Administrator, class plaintiffs, class plaintiffs’ counsel and all other persons involved in the review, verification, calculation, tabulation or any other aspect of the processing of the proof of claim forms submitted in connection with settlement of claims of the plaintiff classes are released and discharged from any and all claims arising out of such involvement, and all class members, whether or not they received payment from the settlement fund, are barred from making further claims against the Net Settlement Fund or the discharged and released persons[.]”); *Fernandez v. Knight Cap. Grp., Inc.*, 2016 WL 7468089, at *3 (D.N.J. June 16, 2016) (approving substantially similar language in order authorizing distribution of settlement proceeds).

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court grant their Unopposed Motion for Approval of Distribution Plan and enter the [Proposed] Order Approving Distribution Plan.

Dated: February 28, 2023

Respectfully submitted,

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on February 28, 2023, I caused the Memorandum of Law in Support of Lead Plaintiffs' Unopposed Motion for Approval of Distribution Plan to be served upon the following counsel by CM/ECF and e-mail:

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Exhibit 1

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

IN RE NU SKIN ENTERPRISES, INC., SECURITIES LITIGATION	Master File No. 2:14-cv-00033-JNP-BCW Hon. Jill Parrish
This Document Related To: ALL ACTIONS	LEAD PLAINTIFF'S MOTION FOR AUTHORIZATION TO DISTRIBUTE NET SETTLEMENT FUND AND SUPPORTING MEMORANDUM

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff Boston Retirement System (“Boston” or “Lead Plaintiff”),¹ respectfully submits this memorandum in support of its motion for entry of the proposed Order Approving Distribution of Net Settlement Fund (the “Distribution Order”) in the above-captioned class action (the “Action”), consistent with the accompanying Declaration of Adam D. Walter on Behalf of A.B. Data, Ltd. in Support of Lead Plaintiff’s Motion for Authorization to Distribute Net Settlement Fund (the “A.B. Data Declaration” or “A.B. Data Decl.”), dated August 9, 2016, submitted on behalf of the Court-approved Claims Administrator in the Action, A.B. Data, Ltd. (“A.B. Data”).

Pursuant to the Stipulation, Defendants have no interest in the relief sought by this motion. *See* Stipulation ¶ 6.5 (“This is not a claims-made settlement and, if all conditions of the Stipulation are satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to the Defendants or their insurers. The Defendants and their Related Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith.”)

If granted, the motion will permit the distribution of the proceeds of the Settlement to members of the Settlement Class whose Proof of Claim and Release forms (“Claim Forms”) are accepted by the Court. More specifically, the proposed Distribution Order will: (i) approve the administrative determinations of A.B. Data accepting and rejecting the claims submitted; (ii) direct the distribution of the Net Settlement Fund to Settlement Class Members whose claims

¹ Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated as of May 2, 2016 (the “Stipulation”, ECF No. 134-1).

have been accepted as valid and approved by the Court, according to the distribution plan proposed by A.B. Data; (iii) establish a bar date beyond which new claims will not be allowed; (iv) approve payment of A.B. Data's fees and expenses in connection with the estimate to complete the initial distribution of the Net Settlement Fund; and (v) authorize destruction of Claim Forms after the distribution is complete.

I. BACKGROUND

Pursuant to the Stipulation, Defendants agreed to pay, or cause to be paid, \$47,000,000 to settle the claims asserted in the Action (the "Settlement Amount"). The Court granted preliminary approval to the Settlement by an order entered May 24, 2016 (ECF No. 135) and granted final approval by a Judgment dated October 13, 2016 (ECF No. 149).

The Effective Date of the Settlement has occurred and the Claims Administrator has completed the processing of 50,005 Claim Forms. Accordingly, pursuant to the Stipulation, the Net Settlement Fund may be distributed to Authorized Claimants upon entry of an appropriate order by the Court. *See* Stipulation ¶ 6.3.

II. CLAIMS ADMINISTRATION

Under the terms of the Stipulation and the Notice, all Settlement Class Members wishing to participate in the distribution of the Net Settlement Fund were required to submit Claim Forms no later than October 6, 2016. As detailed in Paragraph 4 of the accompanying A.B. Data Declaration, A.B. Data received and processed 50,005 Claim Forms. Claim Forms received through June 22, 2018, a date during the preparation of the A.B. Data Declaration and this motion, have been processed and reviewed. A.B. Decl. ¶ 4.

A.B. Data has prepared detailed reports of: (1) Authorized Claimants who submitted timely and eligible claims (Exhibit E); (2) Authorized Claimants who submitted late, but eligible claims (Exhibit F); and (3) all wholly rejected or ineligible Claim Forms received through June

22, 2018 (Exhibit G). These reports are annexed as Exhibits E through G to the A.B. Data Declaration, respectively. *See* A.B. Data Decl. ¶ 38. Based on these determinations, the Claims Administrator, in consultation with Lead Counsel, recommends that a distribution to the Authorized Claimants listed in Exhibits E and F be authorized.

A. Procedures and Review

With respect to A.B. Data's extensive review process, among the 50,005 Claim Forms received and processed, 5,356 were hardcopy or paper Claim Forms submitted by mail. A.B. Data Decl. ¶ 7. The hardcopy Proofs of Claim were opened and scanned into an electronic database created for this Settlement. *Id.* ¶¶ 7-8. Among the 50,005 Claim Forms received and processed, 44,649 were submitted electronically to an Electronic Claim Filing Team. *Id.* ¶ 11. The data from all the Claim forms was entered into a database created for the Settlement, evaluated, and processed according to a complex coding procedure to identify the types and conditions of the Proofs of Claim. *Id.* ¶¶ 7-10, 11-14.

Many of the Claim Forms initially submitted were incomplete, unsigned, not properly documented, filed by a claimant who was not a Settlement Class Member, or otherwise deficient. *Id.* ¶ 17. A.B. Data sent deficiency and/or ineligibility letters, or Status Letters with Status Spreadsheets in the case of electronic filers, to claimants describing the defect(s) with his, her, or its Claim Form, stating what, if anything, was necessary to cure the Claim Form. *Id.* ¶¶ 17-25. Copies of a sample deficiency letter, Status Letter and Status Spreadsheet are attached as Exhibits A through C to the A.B. Data Declaration.

Consistent with the terms of the Stipulation, all letters advised the claimant of the right, within twenty (20) days after the mailing of the letter, to contest the rejection of the claim and request Court review of the disposition. *Id.* ¶¶ 18, 22.

A.B. Data mailed or emailed more than 3,700 such letters to claimants and electronic filers *Id.* ¶¶ 18, 24. Responses to such letters were scanned or inputted, reviewed, and evaluated. *Id.* ¶¶ 19, 25. A.B. Data carefully reviewed claimants' responses to these letters and worked with claimants to resolve deficiencies where possible. *Id.* The process was designed to cure as many deficient Proofs of Claim as possible and advise claimants of their rights.

The administration was also subject to A.B. Data's rigorous Quality Assurance (QA) review processes. *Id.* ¶¶ 31-33. After all of the claims were processed, and deficiency and/or ineligibility letters were mailed, and claimants' responses to the deficiency and/or ineligibility letters were processed, supervisors and managers in A.B. Data's QA Department performed quality assurance reviews. These reviews ensure the correctness and completeness of all claims processed and all of A.B. Data's final documents in support of distribution of the Net Settlement Fund. QA personnel performed reviews to, among other things, ensure: that Proofs of Claim were processed properly; that deficiency letters were mailed to the appropriate claimants; that deficient or invalid claims were deficient; that high value claims were processed appropriately; and that the Recognized Loss calculation program was accurate. *Id.* ¶ 31.

B. Recommended Disposition of the Claims

1. Lead Counsel Recommends that the Claims Administrator's Eligibility Determinations Be Approved

Among the 50,005 Claim Forms received to date, 24,877 have been determined by A.B. Data to be eligible in whole or in part to receive a payment from the Net Settlement Fund. *Id.* ¶¶ 34-36 and Exs. E and F thereto. A total of 25,128 claims were administratively rejected, after exhaustion of the deficiency process explained above. *Id.* ¶ 37 and Ex. G. The majority of these rejected claims (20,909) did not calculate to a Recognized Claim under the Court-approved Plan of Allocation; 2,262 claims had no purchases of eligible Nu Skin securities during the Class

Period; 1,870 were duplicate claims; four claims were submitted by an excluded party; 80 claims had uncured deficiencies; and three claims were identified as questionable. *Id.* The proportion of rejected claims seen here is typical for securities class actions.

Accordingly, it is respectfully requested that the Court authorize distribution of the Net Settlement Fund to the 24,877 eligible claimants (including those that filed after the claim deadline, as set forth below) identified by A.B. Data, representing a total Recognized Loss amount of \$822,126,942.14 and reject those designated for rejection.

2. Lead Counsel Recommends that the Court Accept Late-Filed But Otherwise Valid Claims

A.B. Data received and processed 2,737 Claim Forms that were postmarked after the Court-established October 6, 2016 claim deadline, but on or before June 22, 2018. *Id.* ¶¶ 28, 36. Among these, 1,248 are, but for their late submission, otherwise valid and calculate to a Recognized Loss amount of \$66,084,784.32.

Although these claims were late, they were received while the processing of claims was ongoing. The processing of these late claims did not delay the claims administration nor will it delay the distribution of the Net Settlement Fund. Lead Counsel believes that it would be more fair to allow payment of an otherwise eligible claim received while claims were still being processed than to reject such a claim, and respectfully requests that these Proofs of Claim be approved as eligible for payment.² *Id.* ¶ 28.

² The Court has discretion to accept Proofs of Claim submitted after the approved filing deadline under the terms of the Settlement. The Stipulation provides that “Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court ...” Stipulation ¶13(a).

However, in order to complete the administration there needs to be a bar date. A.B. Data recommends that all claims received or adjusted after June 22, 2018 be rejected as untimely, subject to paragraph 40(c) of the proposed distribution plan. *Id.* ¶ 29.

C. Claimants Requesting Judicial Review

A.B. Data received requests for judicial review from eleven claimants, however, A.B. Data was able to resolve nine of these requests either because the claim was able to be cured or because the claimant retracted the request. Lead Plaintiff respectfully requests that the Court confirm A.B. Data's rejection of the two disputed claims discussed below and in A.B. Data's declaration. *Id.* ¶¶ 26 - 27, Exhibit D.

Two claimants are disputing the determination that their claims do not calculate to a "Recognized Claim" pursuant to the Plan of Allocation previously approved by the Court.

- Claimant with claim number 36284848 purchased 61 shares of Nu Skin common stock in February 2012. This claim was rejected because claimant sold all 61 shares prior to the opening of trading on August 7, 2012, the date of the first alleged corrective disclosure (17 shares were sold on April 25, 2012 and 44 shares were sold on July 17, 2012). Since these shares were sold prior to the date of the first alleged corrective disclosure, and could not have been damaged by the alleged fraud pursuant to *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) ("a plaintiff [must] prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss"), the recognized loss for these shares pursuant to the Plan of Allocation is zero.
- Claimant with claim number 38967891 purchased 50 shares of Nu Skin common stock on June 15, 2011, and 100 shares on September 5, 2012. This claim was

rejected because claimant sold all 50 shares on August 16, 2011, also prior to the August 7, 2012 first alleged corrective disclosure, and so the recognized loss for these shares pursuant to the Plan of Allocation is zero. The claimant's purchase of 100 shares on September 5, 2012, at a price of \$41.27 per share, also did not generate a recognized loss. This aspect of the claim was rejected because the 100 shares were sold on September 10, 2012 for \$43.9018 per share, resulting in a gain on this transaction. Pursuant to the Plan of Allocation, to the extent a transaction results in a negative number, reflecting a gain on the transaction, the recognized loss is set to zero.

A summary of the two disputed claims is also attached as Exhibit D to the A.B. Data Declaration. Lead Plaintiff respectfully requests that the two disputed claims be rejected consistent with A.B. Data's determinations.

III. FEES AND EXPENSES OF THE CLAIMS ADMINISTRATOR

Pursuant to the Stipulation, and as explained to members of the Settlement Class in the Notice, the Settlement Fund is to be used to pay fees and expenses incurred in connection with the administration and distribution of the Settlement. A.B. Data agreed to be the Claims Administrator and to conduct the notice program and the claims administration process in exchange for payment of its fees and expenses, which have been paid pursuant to the Stipulation.

A.B. Data estimates that it will cost \$84,611.08 to conduct the initial distribution of the Net Settlement Fund and Lead Plaintiff respectfully requests approval to pay A.B. Data this amount. *See* A.B. Data Decl. Ex. H. If less than this amount is actually incurred, A.B. Data shall refund the difference to the Net Settlement Fund.

IV. DISTRIBUTION OF THE NET SETTLEMENT FUND

The Claims Administrator, in consultation with Lead Counsel, has developed a distribution plan for the Net Settlement Fund that will allow for the fair and expeditious distribution of the Settlement proceeds, pursuant to the Plan of Allocation and Stipulation, until the fund is exhausted. *See* A.B. Data Decl. ¶ 40.

The key components of the distribution plan provide for: (i) distribution of the Net Settlement Fund to all Authorized Claimants whose Claim Forms are approved for payment by the Court; (ii) supplemental distributions of funds remaining due to uncashed checks to Authorized Claimants who have cashed their initial distribution checks until it is no longer economically feasible to conduct distributions; and (iii) use of remaining funds to pay eligible claims adjusted after June 22, 2018, if any, or to make a *cy pres* donation to the National Consumer Law Center (the “NCLC”).³ *Id.* It is customary in securities class action settlements to have multiple distributions of a net settlement fund in order to exhaust all settlement funds, as funds often remain after a distribution because of uncashed checks or tax refunds.

³ The National Consumer Law Center was founded in 1969 through a federal grant to provide legal services addressed to two main goals: improving the access of poor people to the legal system and enabling advocates to seek justice wherever justice for the poor is needed. Today, NCLC continues to fight for the rights of low-income families and provides many resources to civil legal aid and private attorneys representing low-income consumers. The lawyers of the National Consumer Law Center provide policy analysis, advocacy, litigation, expert witness services, and training for consumer advocates throughout the United States. *See* <https://www.nclc.org/about-us/our-story.html>.

The NCLC has been approved by courts across the country as a recipient of residual balances of settlements. *See, e.g., Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1261 (C.D. Cal. 2016), *appeal dismissed sub nom.*, No. 16-56474, 2016 WL 9778633 (9th Cir. Nov. 7, 2016) (approving settlement providing that residue of un-cashed checks issued to class members will be distributed, subject to the court's approval, to the National Consumer Law Center, as a *cy pres* recipient); *Perkins v. Am. Nat. Ins. Co.*, No. 3:05-CV-100 CDL, 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.”).

In an effort to have as many Authorized Claimants as possible cash their checks, A.B. Data will follow-up with those Authorized Claimants whose checks are initially uncashed, either because they are returned to A.B. Data as undeliverable or because the Authorized Claimant simply did not cash the check after a period of time elapses. For Authorized Claimants whose checks are returned as undeliverable, A.B. Data will also endeavor to locate new addresses. The distribution plan recommends various measures with respect to the handling of checks issued in the distribution. *Id.* ¶ 40(a)(v) n.2.

After at least six months from the initial distribution, any funds remaining in the Net Settlement Fund will be redistributed to Authorized Claimants previously approved by the Court who cashed their distribution checks in an equitable and economic fashion, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks and after payment of any unpaid Taxes and Notice and Administration Expenses incurred in administering the Net Settlement Fund for such redistribution. *See* Stipulation ¶ 6.4; A.B. Data Decl. ¶ 40(b). Redistributions will occur until it is no longer economical to do so. Once the balance remaining in the Net Settlement Fund is below the level that could be economically distributed, then such remaining funds shall be paid to eligible claims adjusted after June 22, 2018, if any. *See id.* ¶ 40(c). If any funds then remain, following payment of unpaid fees or expenses incurred in connection with administering the Settlement and after payment of estimated taxes, they shall be contributed to the NCLC. *Id.* ¶ 40(d).

Lead Counsel submits that the administration of the Settlement and the proposed distribution plan for the Net Settlement Fund comply with the terms of the Stipulation and the

Plan of Allocation approved by the Court. Accordingly, Lead Plaintiff respectfully requests that the Court enter the proposed Distribution Order, *inter alia*:

(1) adopting the administrative recommendations to accept the Claim Forms set forth in Exhibits E and F to the A.B. Data Declaration;

(2) adopting the administrative recommendations to reject the Claim Forms set forth in Exhibit G to the A.B. Data Declaration;

(3) adopting the administration recommendations to reject the two claims seeking judicial review;

(4) approving the distribution plan set forth in paragraph 40 of the A.B. Data Declaration and directing that the Net Settlement Fund be distributed in accordance with the terms of the distribution plan;

(5) authorizing payment of A.B. Data's fees and expenses in connection with the initial distribution from the Net Settlement Fund, as reflected on the estimate to complete attached hereto as Exhibit H, prior to the initial distribution; and

(6) authorizing that one year after the initial distribution of the Net Settlement Fund, A.B. Data may destroy the paper copies of the Proofs of Claim and all supporting documentation, and one year after all funds have been distributed, A.B. Data may destroy electronic copies of the same.

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that this motion be granted in its entirety and that the Court enter the proposed Distribution Order submitted herewith.

Dated: August 10, 2018

Respectfully submitted,

/s/ Jonathan Gardner

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*Counsel for Lead Plaintiff Boston Retirement
System and the Proposed Class*

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF.

/s/ Jonathan Gardner
Jonathan Gardner

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>IN RE NU SKIN ENTERPRISES, INC., SECURITIES LITIGATION</p>	<p>Master File No. 2:14-cv-00033-JNP-BCW</p> <p>Hon. Jill Parrish</p>
<p>This Document Related To: ALL ACTIONS</p>	<p>ORDER AUTHORIZING DISTRIBUTION OF NET SETTLEMENT FUND TO AUTHORIZED CLAIMANTS AND RELATED RELIEF</p>

THIS MATTER having come before the Court on the motion of Lead Plaintiff Boston Retirement System for authorization to distribute the Net Settlement Fund; the Settlement having reached its Effective Date; and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated as of May 2, 2016 (the “Stipulation,” ECF No. 134-1).
2. The administrative recommendations of A.B. Data, Ltd. (“A.B. Data” or “Claims Administrator”), the Court-appointed Claims Administrator, to accept the Proof of Claim and Release forms (“Claim Forms”), including the late but otherwise eligible Claim Forms, listed in Exhibits E and F to the Declaration of Adam D. Walter on Behalf of A.B. Data, Ltd. in Support of Lead Plaintiff’s Motion for Authorization to Distribute Net Settlement Fund, dated August 9, 2018 (“A.B. Data Declaration” or “A.B. Data Decl.”), are hereby APPROVED.

3. As determined by the Claims Administrator, wholly rejected or otherwise ineligible Proofs of Claim are hereby REJECTED, including disputed Claim Nos. 36284848 and 38967891.

4. The distribution of the Net Settlement Fund to Authorized Claimants is hereby AUTHORIZED and shall be conducted in accordance with the Settlement Agreement, the Court-approved Plan of Allocation, and the distribution plan for payment of the Net Settlement Fund set forth in paragraph 40 of the A.B. Data Declaration, which is hereby APPROVED.

5. No Claim Forms received or adjusted after June 22, 2018 will be eligible for payment for any reason, subject only to the provision of paragraph 40(c) of the Distribution Plan.

6. A payment in the amount of \$84,611.08 from the Settlement Fund for A.B. Data's estimate of its fees and expenses to be incurred in connection with the initial distribution of the Net Settlement Fund is hereby AUTHORIZED. If the incurred fees and expenses for the initial distribution are lower than the estimate, the Claims Administrator shall promptly reimburse the Net Settlement Fund.

7. The administration of the Settlement and the proposed distribution of the Net Settlement Fund comply with the terms of the Settlement Agreement and the Plan of Allocation.

8. The Claims Administrator is authorized to destroy paper copies of the Proofs of Claim and all supporting documents one year after the initial distribution of the Net Settlement Fund, and to destroy electronic copies of the same one year after all funds have been distributed.

9. The Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

DATED August 30, 2018

BY THE COURT:



Honorable Jill Parrish

UNITED STATES DISTRICT JUDGE