

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ISRAEL SANCHEZ, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CENTENE CORP., MICHAEL F.
NEIDORFF, and JEFFREY A.
SCHWANEKE,

Defendants.

Case No. 4:17-cv-00806-AGF

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

Dated: April 19, 2021

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Lead Plaintiff, Louisiana Sheriffs' Pension & Relief Fund, respectfully moves for entry of the proposed Order Approving Distribution Plan (the "Class Distribution Order"), which will approve the proposed plan for the distribution of the net proceeds of the Settlement to eligible Settlement Class Members in the above-captioned action (the "Action"). The Distribution Plan is included in the accompanying Declaration of Luiggy Segura in Support of Lead Plaintiff's Unopposed Motion for Approval of Distribution Plan (the "Segura Declaration" or "Segura Decl."),¹ submitted on behalf of the Court-approved Claims Administrator, JND Legal Administration ("JND").

If entered by the Court, the Class Distribution Order would, among other things, (i) approve JND's administrative recommendations accepting and rejecting Claims submitted in connection with the Settlement reached in the Action; (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, 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.

Defendants do not oppose this motion.² There are no disputed Claims by any Settlement Class Member requiring Court review. As such, the motion is ripe for determination.

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 as of March 5, 2020 (ECF No. 116-1) (the "Stipulation"). The Settlement is contained in the Stipulation.

² 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 the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 18, 22, 24. *See also* Notice ¶¶ 42, 66.

I. **BACKGROUND**

The Court has approved the Stipulation entered into by Lead Plaintiff, on behalf of itself and the other members of the Settlement Class, and the Defendants in the Action. The Stipulation sets forth the terms of the Settlement, which represents a complete resolution of this Action in return for a payment of \$7.5 million in cash (the “Settlement Amount”), which Defendants have caused to be paid for the benefit of Settlement Class Members.

In accordance with the Court’s Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 122) (the “Preliminary Approval Order”), JND mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) and the Proof of Claim and Release (the “Claim Form” or “Proof of Claim Form” and, together with the Notice, the “Notice Packet”) to potential Settlement Class Members, brokers, and other nominees. Segura Decl. ¶ 2. As stated in the accompanying Segura Declaration, JND has disseminated 79,780 Notice Packets to potential Settlement Class Members, brokers, 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 received or postmarked no later than October 13, 2020. *Id.* ¶ 7.

On October 26, 2020, the Court granted final approval in its Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 133) (the “Final Approval Order”) and entered the Judgment Approving Class Action Settlement and Order of Dismissal (ECF No. 134) (the “Judgment”). The Effective Date of the Settlement has occurred.³ Accordingly, the Net Settlement Fund may be distributed to Authorized Claimants. In accordance with paragraph 27

³ See Stipulation ¶ 32.

of the Stipulation, Lead Plaintiff respectfully requests that the Court enter the Class Distribution Order approving the Distribution Plan.⁴

II. CLAIMS ADMINISTRATION

As detailed in the Segura Declaration, through March 10, 2021, JND received and processed 33,910 Claims. Segura Decl. ¶ 7. All Claims received through March 10, 2021, have been fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation included in the Notice (*id.*), and JND has worked with Claimants to help them perfect their Claims. *See id.* ¶¶ 19-32.

As discussed in the Segura Declaration, many of the Claims submitted in the Settlement 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.

When JND determined a Claim to be defective or ineligible, a Deficiency Notice (if the Claimant or filer filed a paper Claim) or a Deficiency Email (if the Claimant or filer filed an electronic Claim) was sent by JND to the Claimant or filer, as applicable, describing the defect(s) or condition(s) of ineligibility in the Claim(s) and the steps necessary to cure any curable defect(s) in the Claim. *Id.* ¶¶ 20, 22. The Deficiency Notice and Deficiency 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 notice or JND would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶

⁴ The Court retained continuing and exclusive jurisdiction over, among other things, implementing the Settlement, including the disposition of the Settlement Fund and any motion to approve the Class Distribution Order. *See* Judgment ¶ 14.

20, 23. Examples of a Deficiency Notice and a Deficiency Email are attached as Exhibits A and B, respectively, to the Segura Declaration.

A. **No Disputed Claims**

JND carefully reviewed Claimants' and filers' responses to the Deficiency Notices and Deficiency Emails and worked with them to resolve deficiencies where possible. Segura Decl. ¶¶ 21, 26. Consistent with paragraph 25(e) of the Stipulation, the Deficiency Notices and Deficiency Emails specifically advised Claimants and filers of their right, within 20 days after the date of the 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 fourteen (14) requests for court review. *Id.* ¶ 32. To resolve these disputes without necessitating the Court's intervention, JND reached out to each Claimant and fully explained JND's administrative determination with respect to each Claim and any additional documentation that had been submitted. *Id.* As a result of these efforts, all 14 Claimants resolved their deficiencies, withdrew their requests for court review, and their Claims are recommended for approval. *Id.* Accordingly, there are no outstanding requests for Court review by any Claimants and the motion is ripe for determination.

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

The 33,910 Claims received through March 10, 2021, include 146 that were postmarked or received after October 13, 2020, the Court-approved Claim submission deadline, but received before March 10, 2021. *Id.* ¶¶ 33, 41. Those late Claims have been fully processed, and 39 of them are, but for their late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 39 Claims were late, they were received while the processing of timely Claims was ongoing. 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. The Court has discretion to accept Claims received after the Claim submission deadline.⁵ 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 this Court order that any new Claims and any adjustments to previously filed Claims that would result in an increased Recognized Claim amount received after March 10, 2021, be barred, subject to the provisions of paragraph 45(f) of the Segura Declaration.⁶ Paragraph 45(f) applies to any Claims received or modified after March 10, 2021, that would have been eligible for payment or additional payment under the Court-approved Plan of Allocation if timely received. At the time when Lead Counsel, in consultation with JND, determines that a further distribution is not cost-effective as provided in paragraph 45(e) of the Segura Declaration, the post-March 10, 2021 Claimants, after payment of fees and expenses as provided in paragraph 45(f) of the Segura Declaration, at the discretion of Lead Counsel, and to the extent possible, may be paid the distribution amounts or additional distribution amounts on a

⁵ See Preliminary Approval Order ¶ 11 (“*Unless the Court orders otherwise*, all Claim Forms must be postmarked no later than October 13, 2020. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class.”) (emphasis added).

⁶ 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. Segura Decl. ¶ 34.

pro rata basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks.

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

In accordance with JND's agreement with Lead Counsel to act as the 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. As stated in the accompanying Segura Declaration, JND's fees and expenses for its work performed through February 28, 2021, are \$339,055.56. *Id.* ¶ 44. Additionally, brokerage firms and nominees' charges for the mailing of the Notice and Claims Packet totaled \$58,656.70 and the estimated fees and expenses for the Initial Distribution to be performed on behalf of the Settlement Class are \$18,988.30.⁷ *Id.* To date, JND has received payment in the amount of \$373,175.36 for its fees and expenses. *Id.* Accordingly, there is an outstanding balance of \$43,525.20 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**

The Net Settlement Fund is ready to be distributed. Lead Plaintiff respectfully moves the Court for entry of an order approving JND's determinations concerning acceptance and rejection

⁷ 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. Segura Decl. ¶ 44 n.5.

of the Claims that are included in the present motion and approving the proposed Distribution Plan for the Net Settlement Fund as stated in the Segura Declaration.

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

Under the proposed Distribution Plan, JND will distribute 95% of the Net Settlement Fund, 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 (the “Initial Distribution”). 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 calculate a Distribution Amount for each Authorized Claimant, which shall be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.* In accordance with the Court-approved Plan of Allocation, if an Authorized Claimant’s Distribution Amount calculated to less than \$10.00, it will not be included in the calculation. *Id.* ¶ 45(a)(2). These Claimants will not receive any payment from the Net Settlement Fund and will be so notified by JND. *Id.* After eliminating Claimants whose Distribution Amount calculated to less than \$10.00, JND will recalculate the Distribution Amount for Authorized Claimants whose Distribution Amount calculated to \$10.00 or more. *Id.* ¶ 45(a)(3). A recalculated Distribution Amount for each Authorized Claimant whose Distribution Amount calculated to \$10.00 or more shall be the Authorized Claimant’s Recognized Claim divided by the total Recognized Claims of all Authorized Claimants whose Distribution Amount calculated to \$10.00 or more, multiplied by the total amount in the Net Settlement Fund. *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.*

In order 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) footnote 8 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. Segura Decl. ¶ 45(d). In the Second Distribution, any amounts remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting JND’s unpaid fees and expenses incurred in connection with administering the Settlement (including the estimated costs of the Second 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 Initial Distribution 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, after the Second Distribution, any funds remain in the Net Settlement Fund because of uncashed checks or otherwise, then after JND 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 Fund, after deduction of costs and expenses as described above and subject to the same conditions, will take place thereafter. *Id.* When Lead Counsel, in consultation with JND, determines that further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after March 10, 2021, 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 adjustment was received after March 10, 2021, which resulted in an increased Recognized Claim, may be paid in accordance with paragraph 45(f) of the Segura Declaration. *Id.*

Lead Plaintiff proposes that, 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 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 Investor Protection Trust (“IPT”). Segura Decl. ¶ 45(e). IPT is a non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. *See About the Investor Protection Trust*, Investor Protection Trust, <https://www.investorprotection.org/ipt-activities/?fa=financials> (last visited Apr. 8, 2021). Founded in 1993, IPT’s primary mission is to provide independent, objective information needed by consumers to make informed decisions. *See IPT Activities*, Investor

Protection Trust, <https://www.investorprotection.org/ipt-activities/?fa=about> (last visited Apr. 8, 2021). “IPT has undertaken several national investor education and protection programs that also feature strong State and local outreach elements. Programs include events for members of the military, programs for clinicians who work with older patients, online workplace education and many others.” *Investor Education Programs*, Investor Protection Trust, <https://www.investorprotection.org/ipt-activities/?fa=programs> (last visited Apr. 8, 2021) (emphasis omitted).

IPT is an appropriate *cy pres* recipient under Eighth Circuit law because its mission is closely related of the nature of the securities fraud claims asserted in the Action, and, thus, is tailored to the interests of the class and the purposes of the litigation. *See In re BankAmerica Corp. Sec. Litig.*, 775 F.3d 1060, 1064-67 (8th Cir. 2015) (*cy pres* distribution is permissible when it is not feasible to make further distributions to class members, as long as it is “for the next best use . . . for indirect class benefit,” and “for uses consistent with the nature of the underlying action”); *In re Airline Ticket Comm’n Antitrust Litig.*, 307 F.3d 679, 682 (8th Cir. 2002) (“In the class action context, it may be appropriate ... to use *cy pres* principles to distribute unclaimed funds. In such a case, the unclaimed funds should be distributed for a purpose as near as possible to the legitimate objectives underlying the lawsuit, the interests of class members, and the interests of those similarly situated.”). For these reasons, several other courts have approved IPT as a *cy pres* recipient in other securities fraud class actions in recent years.⁸

⁸ *See, e.g., In re Illumina, Inc. Sec. Litig.*, 2021 WL 1017295, at *2, *9 (Mar. 17, 2021) (approving appointment of IPT as *cy pres* recipient in securities class action); *Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *11 (N.D. Cal. Dec. 18, 2018) (“the Investor Protection Trust’s mission of educating investors makes it an appropriate *cy pres* beneficiary”), *aff’d sub nom. Hefler v. Pekoc*, 802 F. App’x 285 (9th Cir. 2020); *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs. & Prods. Liab. Litig.*, 2018 WL 6198311, at *5 (N.D. Cal. Nov. 28, 2018) (finding IPT an appropriate *cy pres* beneficiary because “[a] savvy, educated investor is hopefully more

Moreover, as noted above, payment will only be made to this charity when the residual amount left for re-distribution to Settlement Class Members is so small that a further re-distribution would not be cost effective—for example, in the event the administrative costs of conducting an additional distribution would largely subsume the funds available—and after *pro rata* payment of all additional, otherwise valid, late claims received after March 10, 2021.⁹

V. CONCLUSION

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

likely to identify signs of securities fraud, which furthers the Exchange Act's purpose of maintaining "fair and honest markets").

⁹ In order to allow the full and final distribution of the Net Settlement Fund, the Order also contains customary language necessary to bar any further claims against the Net Settlement Fund 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 Settlement, or who are otherwise 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, e.g., In re The St. Paul Companies, Inc. Sec. Litig.*, 2006 WL 618910, at *2 (D. Minn. Mar. 10, 2006) ("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 the Plan of Allocation and that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Fund, are barred from making any further claim against the Net Settlement Fund or the Released Parties beyond the amount allocated to them pursuant to this Order."); *In re Cobalt Int'l Energy, Inc. Sec. Litig.*, No. 14-cv-3428-NFA, ECF No. 384, at 7 (S.D. Tex. Nov. 17, 2020) (approving substantially similar language in order authorizing distribution of settlement proceeds); *In re Eletrobras Sec. Litig.*, 467 F.Supp.3d 149, 151 (S.D.N.Y. 2020) (same); *Thorpe v. Walter Inv. Mgmt., Corp.*, 2018 WL 3672266, at *2 (S.D. Fla. May 24, 2018), *report and recommendation adopted*, 2018 WL 3672239 (S.D. Fla. June 8, 2018) (same); *Mylan Pharms., Inc. v. Warner Chilcott Pub. Ltd. Co.*, 2015 WL 12839121, at *1 (E.D. Pa. Jan. 21, 2015) (same); *Romero v. US Unwired, Inc.*, 2012 WL 12995289, at *2 (E.D. La. Mar. 8, 2012) (same).

Dated: April 19, 2021

Respectfully submitted,

/s/ Jonathan D. Uslaner

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

Jonathan D. Uslaner (*pro hac vice*)

jonathanu@blbglaw.com

Lauren M. Cruz (*pro hac vice*)

lauren.cruz@blbglaw.com

2121 Avenue of the Stars, Suite 2575

Los Angeles, CA 90067

Tel: (310) 819-3470

*Counsel for Lead Plaintiff Louisiana Sheriffs'
Pension & Relief Fund and Lead Counsel for the
Settlement Class*

CUNEO GILBERT & LADUCA, LLP

Michael J. Flannery

Bar No. 52714 (MO)

mflannery@cuneolaw.com

7733 Forsyth Boulevard, Suite 1675

Clayton, MO 63105

Tel: (314) 226-1015

Fax: (202) 789-1813

*Liaison Counsel for Lead Plaintiff Louisiana
Sheriffs' Pension & Relief Fund and the
Settlement Class*

**KLAUSNER, KAUFMAN, JENSEN &
LEVINSON**

Robert D. Klausner

bob@robertdklausner.com

7080 NW 4th Street

Plantation, Florida 33317

(954) 916-1202

(954) 916-1232 (fax)

*Additional Counsel for Louisiana Sheriffs'
Pension & Relief Fund*