

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE SMITH BARNEY TRANSFER
AGENT LITIGATION

No. 05 Civ. 7583 (WHP)

**DECLARATION OF MARK LEVINE IN SUPPORT OF
LEAD PLAINTIFF'S MOTION FOR AN ORDER APPROVING THE FINAL
DISTRIBUTION AND FOR OTHER RELIEF**

MARK LEVINE declares under penalty of perjury under the laws of the United States, as follows:

1. I am a senior attorney of Stull, Stull & Brody (“SS&B”), one of the law firms appointed by the Court as Plaintiffs’ Co-Lead Counsel and Class Counsel in the above-entitled action (the “Action”).

2. I respectfully submit this declaration in support of Lead Plaintiff’s motion for an Order granting (1) final approval of the claims administration process; (2) approval of the Recognized Loss of Class members, as calculated by RG/2 Claims Administration LLC (“RG/2 Claims”), who have filed properly completed claim forms no later than September 16, 2016 and those Class Members for whom RG/2 Claims or Co-Lead Counsel obtained sufficient transactional data to be able to determine a Class Members’ Recognized Loss even if that Class Member did not submit a formal claim form, disapproval of claims that have been rejected by the claims administrator and Plaintiffs’ Co-Lead Counsel, (3) directing final distribution of each Authorized Claimant’s Recognized Loss amount from the Net Settlement Fund and then any remaining funds or unclaimed funds to be distributed to successors of certain Smith Barney Legacy Funds; (4) approval of transfer of the settlement fund from the CRIS account, after payment of any further Court approved award of attorneys’ fees or award to RG/2 Claims, to a

qualified settlement fund at a branch of Huntington National Bank by way of check payable to Smith Barney Transfer Agent Litigation Settlement Fund for purposes of making distribution, (5) allowance of Co-Lead Counsel's request for attorneys' fees incurred since the final fairness hearing conducted May 31, 2016, exclusively in administration and distribution of the Settlement Fund, (6) approval of the claims administrator's final fees and expenses for administering the settlement; and (7) such other relief as the Court may deem appropriate, and

3. By way of background, on July 31, 2013, after engaging in an extensive investigation into the merits, successfully overcoming dispositive motions, successfully certifying the class and engaging in extensive arm's-length settlement negotiations with the help of a highly regarded mediator, Lead Plaintiff David Zagunis and Named Plaintiffs Jeffrey Weber, the DVL 401(k) Plan, Bharat U. Shah, Steven W. Hall, Richard W. Rees, and Renee Miller (collectively "Plaintiffs"), and defendant Lewis Daidone entered into the Stipulation and Agreement of Settlement, which was amended on August 8, 2013 (the "Amended Stipulation"); to settle the above-captioned securities class action (the "Stipulation"), for \$4,950,000 (the "Settlement" or "Gross Settlement Fund"). The money was timely deposited in a CRIS account pursuant to Court Order and has remained in that account subject to withdrawal authorized by the Court.

4. In support of the Settlement, the Court received extensive briefing. There was no objection to settlement.

5. Following the briefing and a hearing on May 31, 2016 (the "Fairness Hearing"), on August 16, 2016, the Court issued an Opinion and Final Judgment, (the "Final Approval Order") (Dkt. No. 366), that, among other things, approved the Settlement pursuant to Fed. R. Civ. P. 23(e). The Final Approval Order approved the terms of the Stipulation and gave final

approval to the Amended Plan of Allocation of the proceeds of the Settlement for the distribution of the Net Settlement Fund to Class Members (the “Amended Plan of Allocation”), as fair, reasonable, and adequate. *See* Final Approval Order, at ¶7.

6. Under the Amended Plan of Allocation, Eligible Class Members (as defined in Paragraph 32 of the Long Form Notice) who have submitted a valid Proof of Claim Form will be allocated their Recognized Loss (as defined in Paragraph 35 of the Long Form Notice) and will be paid that amount (to the extent it is greater than \$10) from the Net Settlement Fund in accordance with the procedure and formulae set forth in the original Plan of Allocation described in paragraphs 31-39 of the Long-Form Notice. In addition, Eligible Class Members, whose transactional information for Smith Barney Mutual Funds was obtained as a result of RG/2 obtaining information from certain brokerages, nominees or other third-party entities and RG/2 was able to calculate Recognized Losses for such Class Members, notwithstanding that such Class Members had not submitted valid claims (“Step Two Eligible Class Members”) will be allocated their Recognized Loss and will be paid that amount (to the extent it is greater than \$10) from the Net Settlement Fund in accordance with the procedure and formulae set forth in the original Plan of Allocation described in paragraphs 31-39 of the Long-Form Notice.

7. The postmark deadline for filing a Claim Form was June 25, 2014. As of September 16, 2016, RG/2 Claims has received a total of 64,563 Claims, submitted by paper, transmitted online, and through transactional data supplied by brokers. Baldwin Decl. at ¶ 5. Of the 65,563 Claims received by RG/2 Claims, 3,747 were submitted timely and 60,816 were postmarked after June 25, 2014. *Id.* The majority of the late-filed claims were the transactional data claims submitted by select brokers. *Id.* RG/2 Claims previously recommended that the Court approve the payment of late claims otherwise eligible for payment and RG/2 Claims

further recommends that otherwise valid claims filed after the June 25, 2014 cut off but on or prior to September 16, 2016 be accepted. Co-lead counsel agree with that recommendation. Because of the difficulty of identifying and reaching class members we believe it would be unfair to disqualify claims solely because they were filed late. Of the 60,816 claims postmarked after June 25, 2014, 2,516 were otherwise valid claims with a total Recognized Loss of \$173,230.74. *Id.*

8. Since the submission of the previous Corrected Declaration of Melissa Baldwin, dated April 21, 2016, RG/2 Claims has continued to correspond with Claimants regarding deficient and rejected claims and processed all responses to deficiency and rejection notices received through November 24, 2016. Baldwin Decl. at ¶ 6. Adjustments have been made to the claims where Claimants have provided the necessary documentation or information needed to cure deficiencies and rectify rejections. *Id.* No Claimant has requested a hearing by the Court regarding the determination of their claim. *Id.*

9. RG/2 Claims recommended the acceptance of 3,190 non-deficient Claims representing a total Recognized Loss amount of \$371,392.13. Baldwin Decl. at ¶ 6. Included in these payable claims, are 2,497 claims, with a total Recognized Loss amount of \$172,752.21, which were non-traditional claims created from transactional data provided by select brokers *Id.* The Recognized Losses for these transactional data claims were calculated in the same manner as traditionally submitted claims. *Id.* Exhibit A to the Baldwin Declaration lists all Authorized Claimants and their Recognized Loss amounts, including the payable transactional data claims, in claim number order (only claim numbers and Recognized Loss amounts are provided for privacy reasons). *Id.* According to the Court-approved Amended Plan of Allocation, each Authorized Claimant shall be allocated a share of the Net Settlement Fund based on his, her or its

Recognized Loss; however, as set forth in the Court-approved Plan of Allocation, if an Authorized Claimant's payment calculates to \$10 or less, he, she, or it has not been included in the calculation and the Claimant will not receive any distribution. *Id.* Upon approval by the Court, RG/2 Claims will prepare and mail checks (or wire transfers where applicable) to all Authorized Claimants for their share of the Net Settlement Fund. The recent amendments to the Plan of Allocation do not affect the way in which the Recognized Loss is calculated as the amendment effects only the disposition of funds that were not eligible to be distributed directly to Class Members except it permits those who did not submit claims but whose Recognized Losses were identified based on data obtained from brokers to be treated the same as those who actually submitted claims. *Id.*

10. Lead Plaintiff also seeks that, after distribution of any further award of funds to any of the Co-Lead Counsel here or to RG/2 that, pursuant to Order of the Court, the remaining funds in the CRIS account be permitted to be transferred by way of a check payable to Smith Barney Transfer Agent Litigation Settlement Fund, to a Qualified Settlement Account to be held at Huntington National Bank from which RG/2 will issue checks to Class Members entitled to payment and following the payments to Class Members, any monies unclaimed by Class Members for failure to cash their checks, and the remainder of the Settlement Fund can be paid, consistent with the Amended Plan of Allocation to the successors to the Legacy Smith Barney Funds on a *pro rata* basis based on the column in Exhibit B of the Order Approving Amended Plan of Allocation which sets forth the shortfall for each relevant fund.

11. It is my understanding that Huntington Bancshares, Inc, the holding company of Huntington National Bank is, as of June 2016, the thirty second largest bank holding company in the United States and has assets of over \$74 billion.

12. RG/2 Claims has received payment for fees and expenses, with the approval of the Court incurred through December 24, 2015. Since then, and through the present, RG/2 Claims has incurred additional fees and expenses for its work regarding the processing of the electronic claims files provided by Fidelity and other nominees; issuing deficiency and rejection notices; processing responses to deficiency and rejection notices; data manipulation; preparation of declarations and other reports; preparing for and attending hearings; and responding to inquiries from Lead Counsel and Class Members, and will incur fees and expenses associated with the distribution and post-distribution of the Settlement Fund to Authorized Claimants. Attached hereto as Exhibit D to the Baldwin Declaration is RG/2 Claims' final invoice, totaling \$27,972.95, associated with these fees and expenses. Plaintiffs had in connection with the Final Settlement hearing disclosed to the Court that "RG/2 estimates an additional \$28,000 in fees and expenses that it will seek at the time when Lead Plaintiff's Counsel seeks permission to distribute the Settlement Fund to the Class." (Dkt.356 at p. 2, fn. 2 and p. 22.) Thus, the present request is within the amount previously disclosed to the Court as the estimated final invoice. I recommend that RG/2 Claims be paid as requested.

13. I was the attorney who primarily worked on this matter following the Final Settlement Hearing on May 31, 2016. I spent approximately 26.5 hours working on administration issues including preparing my declaration, preparing the memorandum, preparing the proposed order and working with Melissa Baldwin regarding her declaration since the May 31, 2016 Final Settlement hearing and my billing rate previously submitted to the Court is of \$925 per hour. Thus \$24,512.50 in lodestar on behalf of Stull, Stull & Brody has been incurred following the final hearing. This does not include the five to ten additional hours I anticipate spending dealing with any distribution issues and coordinating with Legg Mason for distribution

of unclaimed funds into the former Smith Barney Legacy Funds identified in Exhibit B to the Order Approving Amended Plan of Allocation for which I do not plan to seek compensation. This supplemental request for attorneys' fees does not include any of the time that was previously contained in Co-lead counsel's submissions considered in connection with the May 31, 2016 Final Settlement Hearing.

Executed this 10th day of November, 2016



Mark Levine