

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAWRENCE ROUGIER, *et al.*, Individually
and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

APPLIED OPTOELECTRONICS, INC.,
CHIH-HSIANG (THOMPSON) LIN, and
STEFAN J. MURRY,

Defendants.

Case No. 4:17-cv-2399-VDG-CAB

PLAINTIFFS' UNOPPOSED MOTION TO AMEND THE PLAN OF ALLOCATION

Lead Plaintiff Lawrence Rougier and Plaintiffs Richard Hamilton, Kenneth X. Luthy, Roy H. Cetlin, and John Kugel (collectively, "Plaintiffs") respectfully request that the Court enter an order amending the Plan of Allocation.¹ Specifically, Plaintiffs request the Court approve revisions contained in the proposed Amended Notice of Pendency of Class Action, Class Action Settlement, and Motion for Attorneys' Fees and Expenses, filed concurrently herewith.

In support of this motion, Plaintiffs respectfully submit as follows:

1. Lead Counsel for Plaintiffs, Levi & Korsinsky, LLP, have conferred with counsel for Defendants Applied Optoelectronics, Inc. ("AOI"), Chih-Hsiang (Thompson) Lin, and Stefan Murry, and Defendants do not oppose the relief requested in this motion.

2. On August 3, 2020, Plaintiffs filed their Unopposed Motion for an Order Preliminarily Approving Proposed Class Action Settlement and Approval of Notice to the Class.

¹ Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 3, 2020, (ECF No. 143-2) (the "Stipulation").

ECF No. 143. Contained within the Notice was a proposed Plan of Allocation for the settlement proceeds. The Plan of Allocation set forth a detailed scheme for administering a settlement of Plaintiffs' claims—claims which alleged a Class Period of approximately one year and a series of three partially-corrective disclosures contained in press releases disseminated after trading hours on August 3, 2017, October 12, 2017, and February 21, 2018. ECF No. 143-4 at 25-35.

3. The Court granted Plaintiffs' motion for preliminary approval in an order dated August 25, 2020, which was entered on August 26, 2020 (the "Preliminary Approval Order"). ECF No. 144. On September 1, 2020, the Court entered an order scheduling the Settlement hearing for November 24, 2020 at 9:00 a.m. ECF No. 146.

4. According to the Preliminary Approval Order, the deadline for Class Members to object to any part of the Settlement, including the Plan of Allocation, was originally set for November 3, 2020. ECF No. 144 at ¶17 (objection deadline 21 days prior to Settlement Hearing). On October 19, 2020, Plaintiffs motioned the Court to allow Class Members additional time to object to the settlement in light of difficulties in the claims administration process caused by the COVID-19 pandemic (including considerable congestion suffered by the United States Postal Service). ECF No. 147. On October 21, 2020, the Court granted Plaintiffs' motion and extended the objection deadline to November 17, 2020. ECF No. 151.

5. No Class Member ever filed an objection to the Plan of Allocation. Furthermore, no Class Member objected to the Plan of Allocation at the Settlement hearing. Accordingly, the Court entered orders approving the Settlement and the Plan of Allocation on November 24, 2020. ECF Nos. 155 (Order Approving Plan of Allocation of the Net Settlement Fund), 157 (Final Order and Judgment).²

² The Court retained jurisdiction over all matters occurring after entry of judgment that are ancillary to the Settlement. ECF No. 157 at ¶20.

6. On August 5, 2021, Tina M. Chiango of RG2 Claims Administration LLC (“RG2”), the Court-appointed Claims Administrator, emailed Lead Counsel to provide a progress report. *See* Exhibit A to the Declaration of Shannon L. Hopkins in Support of Plaintiffs’ Unopposed Motion to Amend the Plan of Allocation (“Hopkins Decl.”), filed concurrently herewith. Ms. Chiango explained that during the audit process RG2 became aware of certain individuals who made AOI common stock transactions on the dates of alleged partially-corrective disclosures, at transaction prices below the low trading prices publicly reported for those respective dates. *Id.* RG2 determined that these individuals were most likely investors who purchased or sold stock during after-hours trading, subsequent to the dissemination of AOI’s press releases. *Id.*

7. Ms. Chiango further explained that under the Plan of Allocation, as currently written, investors who made after-hours transactions on the alleged disclosure dates could potentially be overcompensated or undercompensated, depending on their circumstances. *Id.*

8. For example, the Plan of Allocation states that the Recognized Loss Amount for common stock purchased during the Class Period but sold “before the opening of trading on August 4, 2017” is zero. *See* <https://www.aoisecuritiessettlement.com/pdf/Notice.pdf> (at p. 11). This would unintentionally eliminate the claim of an investor who held their shares until after AOI issued its August 3, 2017 press release, but nevertheless sold on that date after that alleged partially-corrective disclosure had already caused the price of AOI stock to depreciate.

9. Conversely, under the Plan of Allocation’s current language, investors who purchased common stock on the alleged disclosure dates, but after AOI’s press releases were disseminated, would be overcompensated. This is because the Plan of Allocation calculates Recognized Loss Amounts based a series of calculations that refer to tables prepared by Plaintiffs’ consulting damages expert which contain alleged quantities of artificial stock price inflation for

each day of the Class Period. Since the alleged corrective disclosures occurred after market hours, purchases that occurred during normal trading hours on the dates of such disclosures (*e.g.*, August 3, 2017), are considered to be made at prices containing greater quantities of artificial inflation than purchases occurring on the subsequent day (*e.g.*, August 4, 2017). The Plan of Allocation was not intended to treat someone who purchased during trading hours on August 3, 2017 the same as someone who traded after-hours on August 3, 2017, when the market price of AOI's common stock had already fallen in reaction to the alleged partially-corrective disclosure.

10. Lead Counsel consulted with Plaintiffs' consulting damages expert regarding proposed revisions to the Plan of Allocations that would resolve the issues raised in Ms. Chiango's August 5, 2021 correspondence. Hopkins Decl. at ¶6. Plaintiffs now request the Court approve their proposed amendment. *See* Exhibit B (proposed amended Class Notice containing proposed revisions to the Plan of Allocation in markup) and Exhibit C (clean copy of proposed amended Class Notice with all markup accepted) to the Hopkins Decl.

11. Under Plaintiffs' proposed revisions to the Plan of Allocation, any investor who made a purchase or sale on the date of an alleged partially-corrective disclosure that was made at a transaction price below the reported low trading price for that date, shall be deemed to have made their purchase or sale on the subsequent trading day. However, the Claims Administrator shall retain the discretion to treat a trade as having occurred on the date of the alleged corrective disclosure if the claimant provides proof to the Claims Administrator that their transaction occurred prior to the alleged corrective disclosure (*i.e.*, before market open, or during the windows between market close and the dissemination of AOI's press releases).

12. Plaintiffs conferred with the Claims Administrator who confirmed that Plaintiffs' proposed revisions to the Plan of Allocation would alleviate all claims administration issues related

to transactions in AOI securities made after-hours on the dates of alleged partially-corrective disclosures. Hopkins Decl. at ¶7.

Wherefore, Plaintiffs respectfully request the Court grant this motion and approve Plaintiffs' amendment of the Plan of Allocation.

Dated: August 16, 2021

Respectfully submitted,

/s/ Shannon L. Hopkins

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[PROPOSED] ORDER

THIS CAUSE came before the Court on Plaintiffs' Unopposed Motion to Amend the Plan of Allocation (the "Motion") dated August 16, 2021. The Court having reviewed the Motion, and being otherwise fully advised, hereby ORDERS:

1. The Motion is GRANTED; and
2. Plaintiffs' proposed Amended Notice of Pendency of Class Action, Class Action Settlement, and Motion for Attorneys' Fees and Expenses is hereby APPROVED.

DATED this _____ day of _____, 2021

BY THE COURT:

Honorable Vanessa D. Gilmore
UNITED STATES DISTRICT JUDGE