

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE BIOVAIL CORPORATION SECURITIES :  
LITIGATION :  
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**ORDER APPROVING CLASS  
DISTRIBUTION AND  
OVERRULING OBJECTION**

03 Civ. 8917 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Having obtained judicial approval of their class-action settlement, Plaintiffs Ontario Teachers' Pension Plan Board and Local 282 Welfare Trust Fund ("Lead Plaintiffs") move for an order granting distribution of settlement funds to eligible members of the class. Lead Plaintiffs' proposed terms, which consider the form and method of individual payments and payment to the claims administrator, are provided in the attached exhibit. Disputed Claimants, four trusts who have been excluded from the settling class, object to Lead Plaintiffs' motion. I have reviewed the extensive briefing and exhibits submitted, and find the Disputed Claimants were properly excluded from the class. I therefore overrule their objections. Further, I have reviewed the terms of the class distribution order; I find them fair, reasonable, and adequate, and I approve them.

This case arose as a securities-fraud litigation under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 and Securities Exchange Commission Rule 10(b)-5. Lead Plaintiffs alleged, among other things, that individual Defendant Eugene Melnyk, a director and principal shareholder of Biovail Corporation, engaged in fraudulent activities that had the effect of causing members of the class to purchase Biovail stock at inflated prices. Melnyk settled the four trusts at issue and caused them to be funded—exclusively, it appears—with Biovail stock he had previously owned outright. Both Melnyk and his family enjoyed beneficiary status of the

trusts at various times, and Melnyk further enjoyed control over the trusts due to his close relationships with the trustees.

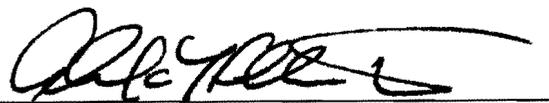
Given their function as entities benefitting Melnyk and his family, Disputed Claimants essentially have asserted a plaintiff's interest on Melnyk's behalf in the same suit that named him as a defendant. This is an astonishing display of chutzpah, a "legal term of art" described as "that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan." Motorola Credit Corp. v. Uzan, 561 F.3d 123, 128 n.5 (2d Cir. 2009) (quoting Leo Rosten, *The Joys of Yiddish* 92 (1968)). To accept Disputed Claimants' claim would effectively allow a defendant, Melnyk, to recover damages for harm he caused. Compensation in this settlement is for the plaintiffs who were injured, not the defendants who injured them.

Moreover, the settlement agreement precludes the assertion. It excludes from the class, "Eugene Melnyk [and other individual co-defendants]; members of their immediate families; any entity in which any defendant has a controlling interest; any person who was an officer or director of Biovail during the Class Period; and the legal representatives, heirs, successors, or assigns of any of the foregoing excluded persons or entities." For reasons already described, the substance of the Trusts was to benefit Melnyk and his immediate family.

The Clerk shall terminate the motion (Doc No. 282) and close the case. The argument scheduled for January 20, 2011, is cancelled.

SO ORDERED.

Dated: January 13, 2011  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE BIOVAIL CORPORATION  
SECURITIES LITIGATION

Master File No. 1:03-CV-8917 (AKH)

~~Proposed~~ **CLASS DISTRIBUTION ORDER**

**WHEREAS**, on August 8, 2008, the Court entered an Order and Final Judgment approving the terms of the Stipulation and Agreement of Settlement dated April 4, 2008 (the “Stipulation”) and the Plan of Allocation; and

**WHEREAS**, the Court has directed the parties to consummate the terms of the Stipulation and the Plan of Allocation; and

**WHEREAS**, the Court has retained jurisdiction of the above-captioned action (the “Action”) for the purpose of considering any further application or matter which may arise in connection with the administration and execution of the Settlement and the processing of Proof of Claim and Release forms (“Proofs of Claim”) and the distribution of the Net Settlement Fund to the Authorized Claimants.

**NOW, THEREFORE**, upon consideration of the Affidavit of Peter M. Craig of Rust Consulting, Inc. (“Rust”) (as successor to Complete Claim Solutions, LLC), the Claims Administrator, and the memorandum of law, and upon all prior proceedings herein and after due deliberation, it is hereby

**ORDERED**, that the administrative determinations of the Claims Administrator accepting the claims as indicated on the computer printout of accepted claims submitted with and described in the Affidavit of Peter M. Craig, including otherwise valid claims submitted after September 8, 2008 through and including July 31, 2010, be and the same hereby are approved, and said claims are hereby accepted; and it is further

**ORDERED**, that the administrative determinations of the Claims Administrator rejecting the claims as indicated on the computer printout of rejected claims submitted with and described in the Affidavit of Peter M. Craig, including the rejection of the four disputed claims identified at paragraph 8 of the Affidavit, be and the same hereby are approved, and said claims are hereby rejected; and it is further

**ORDERED**, that Rust be paid the sum of \$530,581.80 from the Settlement Fund for its fees and expenses incurred and to be incurred in connection with the services performed and to be performed in giving notice to the Class, processing the Proofs of Claim, and administering and distributing the Settlement Fund; and it is further

**ORDERED**, that the balance of the Settlement Fund after deducting the payments previously allowed and set forth herein, and after payment of any estimated taxes and the costs of preparing appropriate final tax returns and any escrow fees (the "Net Settlement Fund") shall be distributed to the eligible claimants listed on parts 1 and 2 of the computer printout submitted with the Affidavit of Peter M. Craig in proportion to the Recognized Claim allocable to each such eligible claimant as shown on such printout whose *pro rata* share of the Net Settlement Fund would be at least \$10; and it is further

**ORDERED**, that the payments to be distributed to the Authorized Claimants shall bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 180 DAYS FROM DATE OF ISSUE]." Plaintiffs' Co-Lead Counsel and the Claims Administrator are authorized to take appropriate action to locate and or contact any eligible claimant who has not cashed his, her or its distribution within said time; and it is further

**ORDERED**, that the costs of such services to locate and reissue payments to such Authorized Claimants shall be payable from the unclaimed/un-cashed monies remaining in the Net Settlement Fund; and it is further

**ORDERED**, that, as provided in the Plan of Allocation previously approved by the Court, after one year after the initial distribution of the Net Settlement Fund to eligible claimants and after reasonable and diligent efforts have been made to have the eligible claimants cash their distributions, Plaintiffs' Co-Lead Counsel are authorized to cause the Claims Administrator to distribute any funds remaining in the Net Settlement Fund by reason of returned or unpaid distributions or otherwise, to eligible claimants who have cashed their distributions, provided that they would receive at least \$10.00 on such re-distribution based on their Recognized Claims, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution. If after six months after such re-distribution any funds shall remain in the Net Settlement Fund, then such balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Plaintiffs' Co-Lead Counsel, after notice to the Court and subject to direction, if any, by the Court; and it is further

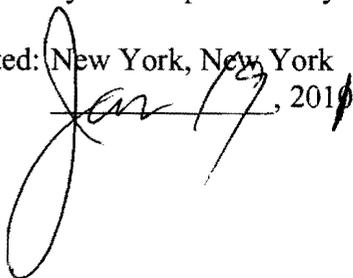
**ORDERED**, that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund are released and discharged from any and all claims arising out of such involvement, and all 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 persons beyond the amount allocated to them pursuant to this Order, and it is further

**ORDERED**, that the Claims Administrator is hereby authorized to discard paper or hard copies of the Proofs of Claim and supporting documents not less than one year after the initial distribution of the Net Settlement Fund to the eligible claimants and electronic or magnetic media data not less than three years after the initial distribution of the Net Settlement Fund to the eligible claimants; and it is further

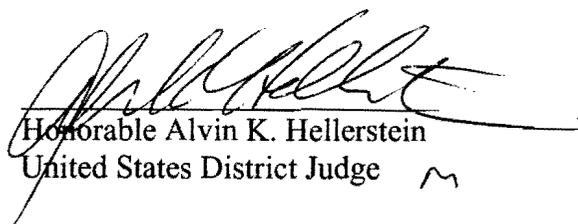
**ORDERED**, that this Court retain jurisdiction over any further application or matter which may arise in connection with this Action; and it is further

**ORDERED**, that no claim submitted, and no deficient claim corrected, after July 31, 2010 may be accepted for any reason whatsoever.

Dated: New York, New York  
*Jan 17*, 2011



**BY THE COURT:**



Honorable Alvin K. Hellerstein  
United States District Judge