

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES LITIGATION)

) No. 2:09-cv-01558-GMN-VCF

This Document Relates To:)

) CLASS ACTION

ALL ACTIONS.)

) SUPPLEMENTAL DECLARATION OF
) MICHAEL JOAQUIN REGARDING NOTICE
) PROCEDURES IN CONNECTION WITH
) SETTLEMENT; AND REPORT ON REQUESTS
) FOR EXCLUSION AND PROOF OF CLAIM
) AND RELEASE FORMS RECEIVED

DATE: March 1, 2016

TIME: 9:00 a.m.

CTRM: The Honorable Gloria M. Navarro

I, Michael Joaquin, declare and state as follows:

1. I am a Senior Vice President of Securities at Gilardi & Co. LLC (“Gilardi”)¹, located at 3301 Kerner Boulevard, San Rafael, California 94901. I previously submitted a declaration in connection with the notice procedures implemented in this case, which was executed on December 2, 2015 (the “Notice Procedures Declaration”). Dkt. No. 375-1. At the request of Lead Counsel, I am providing this supplemental declaration to give the Court and the parties to the above-captioned action updated information about the procedures and methods that were used to provide notice of the proposed settlement to the investors who comprise the class preliminarily certified by the Court for purposes of settlement (“Class”), including subsequent mailings, information regarding the responses to Gilardi’s nominee outreach efforts, and additional information regarding the settlement-specific website. This declaration also reports on the number of requests for exclusion received and the number of claim forms received as of this date. I make this declaration based on personal knowledge, and if called to testify I could and would do so competently.

2. The notice procedures implemented in this matter have been designed to provide extremely effective direct mail notification to every investor who is a member of the Class and who can be identified with reasonable effort. These procedures have, in fact, proven extremely effective at compiling a very comprehensive list of potential class members and providing notice to those potential class members in thousands of securities class action matters administered by Gilardi, as well as other nationally recognized administrators, prior to this case. Further, substantially similar notice procedures have been approved by numerous courts as being the best notice practicable under the circumstances.

¹ At the time of my prior declaration dated December 2, 2015 (Dkt. No. 375-1), I was the Director of Securities at Gilardi. Since that time, my title has changed, but my role and responsibilities remain the same.

MAILING OF THE NOTICE AND PROOF OF CLAIM

3. The Notice Procedures Declaration previously submitted to the Court details the mailing of Claim Packages² as of December 2, 2015. As of December 2, 2015, Gilardi had mailed a total of 190,924 Claim Packages and was in the process of mailing an additional 3,174 Claim Packages to potential Class Members and nominees. Notice Procedures Decl., ¶¶17-18.

4. Since December 2, 2015, Gilardi has mailed the 3,174 Claim Packages that were in the process of being mailed at the time the Notice Procedures Declaration was executed, as described above. Gilardi also has mailed an additional 3,902 Claim Packages at the request of potential Class Members and nominees, and has re-mailed 2,943 Claim Packages (previously returned as undeliverable) to newly identified addresses. Gilardi is also in the process of re-mailing 454 Claim Packages to potential Class Members whose mailing was recently returned as undeliverable. Accordingly, as of February 20, 2016, Gilardi has mailed or is currently in the process of mailing an aggregate of 201,397 Claim Packages to potential Class Members, Nominee Holders (defined below) and other institutions by First-Class mail, bulk mail, or electronically.

GILARDI'S NOMINEE OUTREACH EFFORTS AND NOMINEE RESPONSE

5. As set forth in the Notice Procedures Declaration, Gilardi began its outreach to Nominee Holders (defined below) and other institutions on October 8, 2015, by mailing these entities a copy of the Claim Package in accordance with the Court's September 11, 2015 Order Preliminarily Approving Settlement and Providing for Notice ("Notice Order"). *See* Dkt. No.

² The Claim Package consists of a copy of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing ("Notice") and Proof of Claim and Release form ("Proof of Claim"). The Claim Packages mailed to nominees also contained a cover letter notifying the nominees of, among other things, their obligation to, within ten (10) days of receiving the Notice, either provide the names and addresses of their clients who may be Class Members to Gilardi or request additional copies of the Claim Package to provide directly to their clients. Notice Procedures Decl., ¶5.

352. Specifically, Gilardi mailed a Claim Package and cover letter to 252 banks and other institutions that hold securities for the benefit of their clients (“Nominee Holders”) on this date.³ The Nominee Holders include a group of firms/institutions who have requested notification on every case involving publicly-traded securities and are contained in a database created, maintained and regularly updated by Gilardi. In Gilardi’s experience, the institutions included in this database represent a significant majority of the beneficial holders of the securities in most settlements involving publicly-traded companies. Also on October 8, 2015, Gilardi mailed a Claim Package and cover letter to each of the 4,194 financial institutions registered with the U.S. Securities and Exchange Commission (“SEC”) at the time of the mailing. Gilardi also provided Claim Packages electronically to 456 institutions that monitor securities class actions for their investor clients and regularly act on their behalf in these matters. As an additional measure, Gilardi caused a copy of the Claim Package to be published by the Depository Trust Company (“DTC”) on the DTC Legal Notice System, enabling participating banks and nominees to review the Claim Package and contact Gilardi for additional information.

6. Gilardi has also provided as many as four supplemental notification letters to Nominee Holders who did not respond to the initial notice mailing requesting them to provide the names and addresses of potential Class Members to Gilardi. Those supplemental notifications were mailed to these non-responsive Nominee Holders on October 23, November 6, November 23, and December 7, 2015.⁴

³ The cover letter included with these Claim Packages requested nominees to pay particular attention to the section of the Notice entitled “Special Notice to Securities Brokers and Other Nominees” which notified them of their obligation to provide to Gilardi the names and addresses of their clients who may be Class Members or to request additional copies of the Claim Package to provide directly to their clients. Notice Procedures Decl., ¶5; Ex. A.

⁴ Gilardi has been made aware of the objection filed by Mr. Nickolas A. Kacprowski and, in connection therewith, his questions regarding the timing of the Notice he was sent. In response to its nominee outreach efforts, Gilardi received Mr. Kacprowski’s name and address from

7. As of February 20, 2016, Gilardi has received a total of 85 responses from Nominee Holders and other institutions, including 10 Nominee Holders or institutions that indicated in their response that they had no records of potential Class Members to provide to Gilardi. The Nominee Holder response rate in this matter is, in Gilardi's experience, very high. Gilardi would never expect to receive a response from every Nominee Holder notified as part of Gilardi's notice process and additional outreach efforts. As stated above, many of the Nominee Holders are institutions that have requested notification on every case involving publicly-traded securities, but not all of them are financial firms which directly hold securities in their clients' names. Among other things, this list also includes pass-through securities class action notification services, firms that submit claims directly on behalf of their clients, and law firms that wish to receive notification of all cases for various reasons.

POSTCARD MAILING

8. In accordance with the Court's December 7, 2015 Stipulation and Order Continuing December 15, 2015 Settlement Hearing and Extending Certain Deadlines in Connection Therewith ("December Stipulation") (Dkt. No. 376), Gilardi mailed a postcard, substantially in the form approved by the Court, to all Class Members whose names and addresses had been provided to Gilardi as of December 7, 2015. The postcard advised Class Members of the new dates and deadlines in connection with the settlement as approved by the

Scotttrade, Inc. ("Scotttrade") in a data file containing 12,365 records. This data was submitted by Scotttrade – one of the nominees who was mailed Notice by Gilardi on October 8, 2015 – on November 9, 2015 (well after the 10 day response period). Following its receipt of the data from Scotttrade, Gilardi processed the data to identify and remove duplicate and incomplete address records, and to confirm whether any address updates existed in the National Change of Address database maintained by the United States Postal Office. Gilardi printed and mailed a Claim Package to each of the unique address records identified in the Scotttrade data, including Mr. Kacprowski, on November 16, 2015.

Court. In total, 170,360 postcards were mailed – of which 169,176 were mailed on December 9, 2015 and 1,184 were mailed on December 10, 2015.

9. On December 9, 2015, Gilardi caused the envelopes for Claim Packages to be updated so that all Claim Packages mailed after that date would advise Class Members to visit the settlement website for further information regarding the dates and deadlines extended by the Court. A sample copy of the updated envelope is attached hereto as Exhibit A.

WEBSITE

10. As stated in the Notice Procedures Declaration, Gilardi also established on October 8, 2015, and actively maintains, a settlement-specific website (www.mgmmiragesecuritieslitigation.com) where key documents are posted and available for download, including the Stipulation and Agreement of Settlement, the Notice and Proof of Claim, the executed Notice Order, Lead Counsel's November 3, 2015 final approval briefing, and other relevant documents. The website also provides summary information regarding the case and settlement and highlights important dates and deadlines.

11. In accordance with the Court's December Stipulation, on December 7, 2015, Gilardi updated the website's home page to reflect the rescheduled Settlement Hearing and the new deadlines in connection therewith. *See* Dkt. No. 376 at 3. Gilardi also posted a copy of the December Stipulation to the website. On January 22, 2016, Gilardi updated the website's home page to reflect that the Settlement Hearing was continued to March 1, 2016.

12. During the course of this administration, Gilardi has tracked various website statistics on a weekly basis. From October 4, 2015, the week during which the initial Notice mailing took place, through and including February 20, 2016, a total of 3,055 unique visitors have accessed the website. Many of those visitors accessed the website more than once, visited multiple pages, and/or downloaded documents, each of which is tracked as a separate "hit." The

total number of website hits from October 4, 2015 through and including February 20, 2016 is 97,331. From October 4, 2015 through and including December 5, 2015, the reporting week ending just prior to the postcard mailing, the total number of unique visitors was 1,255 and the total number of website hits was 32,992. From December 6, 2015 through and including February 20, 2016, the total number of unique visitors was 1,800 and the total number of website hits was 64,339. In our experience, it is typical for the number of visitors and hits to increase as the claim submission deadline approaches.

PROOF OF CLAIMS RECEIVED TO DATE

13. As of February 20, 2016, Gilardi has received approximately 38,500 Proofs of Claim submitted online, by mail, or in electronic spreadsheet format. The claim submission deadline was February 5, 2016. Gilardi will provide Lead Counsel with updated information regarding the number of Proofs of Claim received prior to the Settlement Hearing.

14. As with every settlement administration, some of the Proofs of Claim will contain deficiencies. Deficiencies will be addressed during the normal course of the administration and claimants with deficient Proofs of Claim will be provided an opportunity to cure these deficiencies prior to distribution of the settlement proceeds.

15. In regards to distribution of the settlement proceeds, Gilardi has been asked to address the objection to the proposed use of a minimum check amount. *See* Dkt. No. 378 at 25-28. In our experience, such minimum check amounts are commonly used in connection with distributions of settlement proceeds in private securities litigation as well as funds resulting from government enforcement actions, such as those brought by the SEC.

16. Moreover, the use of a minimum check amount is intended to address the potentially disproportionate administrative expense to the fund associated with issuing very small checks to investors. Every check that is issued in a case like this represents an expense

that is borne by the settlement fund, and therefore ultimately by class members. Besides the cost to print and mail a check, the administrator must also track and account for each payment as it is negotiated, or, as is frequently the case with very small payments, not negotiated. Gilardi routinely follows up on uncashed checks by mail, email, and telephone, all of which add to the administrative expenses associated with fund distributions. In our experience, smaller checks, such as checks under \$10.00, are often not cashed initially, and in many instances are never cashed. Moreover, because many small checks are not cashed during their initial valid period, these checks often incur the additional administrative expense associated with a request to reissue the check received from the check recipient once the check becomes stale-dated.

REQUESTS FOR EXCLUSION RECEIVED

17. To date, Gilardi has received eight (8) requests for exclusion from the Class, as set forth on Exhibit B hereto.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 22nd day of February, 2016, at San Rafael, California.



MICHAEL JOAQUIN

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List and to those listed below who have also filed objections.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 23, 2016.

s/ Brian O. O'Mara

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Mailing Information for a Case 2:09-cv-01558-GMN-VCF In re MGM Mirage Securities Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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EXHIBIT A

EXHIBIT A

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c/o Gilardi & Co. LLC
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Presorted
First-Class Mail
US Postage
PAID
Gilardi & Co

IMPORTANT LEGAL DOCUMENTS ENCLOSED.

Please note: The Court extended the deadlines for certain Class Members to (i) seek exclusion from the Class, (ii) object to the Settlement, and (iii) submit a Proof of Claim Form. Please go to the case website www.mgmmiragesecuritieslitigation.com for further details.

MGMMRAGE

EXHIBIT B

EXHIBIT B

Exclusions Report					
Exclusion ID	FirstName	LastName	Name1	Received Date	Securities reported
MGMMRAGE-EXCL00001	BARRY T	MILLER		11/2/2015	120000 shares (listed as held at the beginning of the Class Period)
MGMMRAGE-EXCL00002	COREY	POMRANKE		11/9/2015	10 shares common stock
MGMMRAGE-EXCL00003	CHRIS	PAPADOPOULOS		11/23/2015	475 shares common stock (dates listed after Class Period)
MGMMRAGE-EXCL80001	JOSEPH I	SHULMAN	JUDITH SHULMAN	11/27/2015	120 shares common stock
MGMMRAGE-EXCL80002	JAMES	LANCASTER(DECEASED)	ZELA LANCASTER	12/22/2015	440 shares common stock (dates listed after Class Period)
MGMMRAGE-EXCL80003	MAOYA	HU		12/23/2015	no shares provided
MGMMRAGE-EXCL80004	DIANA	GIONET		1/7/2016	no shares provided
MGMMRAGE-EXCL80005	MARTIN W	BERGMAN		1/11/2016	no shares provided

Exclusion ID	FirstName	LastName	Name1	Received Date	Securities reported
MGMMRAGE-EXCL00001	BARRY T	MILLER		11/2/2015	120000 shares (listed as held at the beginning of the Class Period)
MGMMRAGE-EXCL00002	COREY	POMRANKE		11/9/2015	10 shares common stock
MGMMRAGE-EXCL00003	CHRIS	PAPADOPOULOS		11/23/2015	475 shares common stock (dates listed after Class Period)
MGMMRAGE-EXCL80001	JOSEPH I	SHULMAN	JUDITH SHULMAN	11/27/2015	120 shares common stock
MGMMRAGE-EXCL80002	JAMES	LANCASTER(DECEASED)	ZELA LANCASTER	12/22/2015	440 shares common stock (dates listed after Class Period)
MGMMRAGE-EXCL80003	MAOYA	HU		12/23/2015	no shares provided
MGMMRAGE-EXCL80004	DIANA	GIONET		1/7/2016	no shares provided
MGMMRAGE-EXCL80005	MARTIN W	BERGMAN		1/11/2016	no shares provided