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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

In re JDS Uniphase Corporation ERISA  
Litigation

Master File No. C 03-04743 CW

Judge: Hon. Claudia Wilken

This Document Relates To: All Actions

**ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT  
AGREEMENT, PRELIMINARILY CERTIFYING CLASS FOR SETTLEMENT  
PURPOSES ONLY, APPROVING FORM AND MANNER OF CLASS NOTICE, AND  
SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT AND  
AWARD OF ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION  
AWARD**

1 This action involves claims for alleged violations of the Employee Retirement Income  
2 Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (“ERISA”), with respect to the JDS  
3 Uniphase Corporation 401(k) Retirement Plan and the Optical Coating Laboratories Inc. 401(k)  
4 Plan (the “Plans”).

5 The terms of the proposed Settlement of this action are set out in a Settlement Agreement  
6 and Release (“Settlement Agreement”) dated September 15, 2009, executed by counsel on behalf  
7 of the Named Plaintiffs and Defendants. Unless otherwise defined in this Order, the capitalized  
8 terms defined in the Settlement Agreement shall have the same meaning in this Order.

9 The Court held a hearing on November 12, 2009 to determine, among other things,  
10 whether to grant preliminary approval of the proposed Settlement, whether to preliminarily certify  
11 this action for settlement purposes only, and whether to direct issuance of notice to class  
12 members. After full consideration of the record of these proceedings, the representations,  
13 arguments, and recommendations of counsel for the Parties, and the applicable law, the Court  
14 hereby ORDERS as follows:

15 1. Class Findings. Solely for purposes of the Settlement, the Court finds that the  
16 requirements of the Federal Rules of Civil Procedure and any other applicable law have been met  
17 as to the Settlement Class, as certified herein.

18 a. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(a)(1), that  
19 the Settlement Class is ascertainable from records kept with respect to the Plans and from other  
20 objective criteria and that the members of the Settlement Class are so numerous that their joinder  
21 before the Court would be impracticable.

22 b. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(a)(2), that  
23 there are one or more questions of fact and/or law common to the Settlement Class.

24 c. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(a)(3), that  
25 the claims of Named Plaintiffs are typical of the claims of the Settlement Class.

26 d. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(a)(4), that  
27 Named Plaintiffs will fairly and adequately protect the interests of the Settlement Class.

28 Specifically, the Court finds that: (i) the interests of Named Plaintiffs and the nature of their

1 claims are consistent with those of the absent members of the Settlement Class; (ii) there appear  
2 to be no conflicts between Named Plaintiffs and absent members of the Settlement Class; and (iii)  
3 Named Plaintiffs and the absent members of the Settlement Class are represented by qualified,  
4 reputable counsel who are experienced in preparing and prosecuting large, complex ERISA  
5 breach of fiduciary duty class actions.

6 e. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(b)(1), that  
7 the prosecution of separate actions by individual members of the Settlement Class would create a  
8 risk of: (i) inconsistent or varying adjudications as to individual class members that would  
9 establish incompatible standards of conduct for Defendants; or (ii) adjudications as to individual  
10 class members that would, as a practical matter, be dispositive of the interests of the other class  
11 members not parties to the adjudications, or substantially impair or impede the ability of such  
12 persons to protect their interests.

13 f. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(b)(2), that  
14 Named Plaintiffs' claims are based on allegations that Defendants have acted or refused to act on  
15 grounds generally applicable to the members of the Settlement Class, thereby making injunctive  
16 relief or corresponding declaratory relief on behalf of the Settlement Class appropriate.

17 g. The Court preliminarily finds, as required by Fed. R. Civ. P. 23(g), that  
18 Class Counsel are capable of fairly and adequately representing the interests of the Settlement  
19 Class. Class Counsel have done extensive work identifying and investigating potential claims in  
20 this action, Class Counsel are experienced in handling class action and claims of the type asserted  
21 in this action, Class Counsel are knowledgeable of the applicable law, and Class Counsel have  
22 committed the necessary resources to represent the Settlement Class.

23 2. Class Certification. The Court certifies the following Settlement Class under Fed.  
24 R. Civ. P. 23(b)(1) and 23(b)(2):

25 All Persons who were participants in or beneficiaries of the JDSU  
26 Plan or the OCLI Plan at any time between February 4, 2000, and  
27 September 30, 2006, inclusive, and whose accounts included  
28 investments in JDSU common stock or a fund created to invest in  
JDSU common stock.

1 The Court appoints Named Plaintiffs as class representatives of the Settlement Class and appoints  
2 Class Counsel as counsel for the Settlement Class.

3 3. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily  
4 finds that: (i) the proposed Settlement resulted from extensive arm's-length negotiations between  
5 the Parties; (ii) the Settlement Agreement was executed only after Class Counsel had conducted  
6 extensive investigation into the facts and merits of their claims, including a thorough review of  
7 documents relevant to the claims asserted in this action; (iii) Class Counsel have diligently  
8 investigated and aggressively litigated this action, including engaging in several rounds of  
9 dispositive motions, and are fully apprised of the strengths and weaknesses of Named Plaintiffs'  
10 claims; and (iv) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant  
11 sending notice of the proposed Settlement to the Settlement Class.

12 4. Fairness Hearing. A Fairness Hearing is scheduled for April 22, 2010, at 2:00 p.m.  
13 to determine, among other things:

- 14 • Whether the proposed Settlement should be finally approved as fair,  
15 reasonable, and adequate;
- 16 • Whether this action should be dismissed with prejudice pursuant to the  
17 terms of the Settlement Agreement;
- 18 • Whether the notice and notice method proposed by the parties: (i)  
19 constitutes the best practicable notice; (ii) constitutes notice reasonably  
20 calculated, under the circumstances, to apprise members of the Settlement  
21 Class of the pendency of the litigation, their right to object to the  
22 Settlement, and their right to appear at the Fairness Hearing; (iii) is  
23 reasonable and constitutes due, adequate, and sufficient notice to all  
24 persons entitled to notice; and (iv) meets all applicable requirements of the  
25 Federal Rules of Civil Procedure and any other applicable law;
- 26 • Whether Class Counsel adequately represented the Settlement Class;
- 27 • Whether the proposed Plan of Allocation described in the Class Notice  
28 should be approved; and



1 www.JDSUniphaseERISAsettlement.com, which will also host copies of all  
2 Settlement-related documents, including the Settlement Agreement.

- 3 • No later than April 15, 2010 [7 days before the Fairness Hearing], file their  
4 motion for final approval of the proposed Settlement (including approval of  
5 the Plan of Allocation), Attorneys' Fees and Reimbursement of Expenses,  
6 and Case Contribution Award to Named Plaintiffs, and respond to any  
7 objections to the Settlement.

8 6. Objections to Proposed Settlement. Any member of the Settlement Class may file  
9 an objection to the fairness, reasonableness or adequacy of the proposed Settlement, to any term  
10 of the Settlement Agreement, to the proposed Plan of Allocation, to the proposed award of  
11 attorneys' fees and expenses, or to the request for compensation for Named Plaintiffs. An  
12 objector must file with the Court a statement of his, her, or its objection(s), specifying the  
13 reason(s), if any, for each objection made and including any legal support and/or evidence that the  
14 objector wishes to bring to the Court's attention or introduce in support of the objection(s). The  
15 objector must also mail copies of the objection(s) and all supporting law and/or evidence to Class  
16 Counsel and to counsel for Defendants. The addresses for filing objections with the Court and  
17 effecting service on counsel are as follows:

18 For Filing with the Court:

19 Clerk of the Court  
20 UNITED STATES DISTRICT COURT  
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
22 OAKLAND DIVISION  
23 1301 Clay Street,  
24 Suite 400 S  
25 Oakland, CA 94612-5212  
26 Re: Master File No. C-03-4743 CW

27 To Class Counsel:

28 Joseph Meltzer  
Edward W. Ciolko  
Barroway Topaz Kessler Meltzer & Check, LLP  
280 King of Prussia Road  
Radnor, PA 19087

1 Robert A. Izard  
Izard Nobel LLP  
2 29 South Main Street  
3 West Hartford, CT 06103

4 To Defendants' Counsel:

5 Paul Flum  
Morrison & Foerster LLP  
6 425 Market Street  
7 San Francisco, CA 94105

8 The objector or his, her, or its counsel (if any) must effect service of copies of the  
9 objection (together with any supporting materials) on counsel listed above and file such objection  
10 and supporting materials with the Court no later than April 1, 2010 [21 days before Fairness  
11 Hearing]. If an objector hires an attorney to represent him, her, or it for the purposes of making  
12 such objection pursuant to this paragraph, the attorney must both effect service of a notice of  
13 appearance on counsel listed above and file it with the Court no later than April 1, 2010 [21 days  
14 before Fairness Hearing]. Any member of the Settlement Class or other Person who does not  
15 timely file and serve a written objection complying with the terms of this paragraph shall be  
16 deemed to have waived, and shall be foreclosed from raising, any objection to the proposed  
17 Settlement, and any untimely objection shall be barred.

18 7. Appearance at Fairness Hearing. Any objector who files and serves a timely,  
19 written objection in accordance with Paragraph 6 may also appear at the Fairness Hearing either  
20 in person or through counsel retained at the objector's expense. Objectors or their attorneys who  
21 wish to appear at the Fairness Hearing must effect service of a notice of intention to appear  
22 setting forth, among other things, the name, address, and telephone number of the objector (and,  
23 if applicable, the name, address, and telephone number of the objector's counsel) on Class  
24 Counsel and Defendants' counsel (at the addresses set forth in Paragraph 6) and file such notice  
25 with the Court by April 8, 2010 [14 days before Fairness Hearing]. Any objector who does not  
26 timely file and serve a notice of intention to appear in accordance with this Paragraph shall not be  
27 permitted to appear at the Fairness Hearing, either in person or through counsel, except for good  
28 cause shown.

1           8.     Notice Expenses. The expenses of printing, mailing, and publishing all notices  
2 required by this Order shall be paid from the Settlement Fund, subject to the provisions of  
3 Sections 7.1.2.2 and 8.2 of the Settlement Agreement.

4           9.     Service of Papers. Defendants' counsel and Class Counsel shall promptly provide  
5 each other with copies of any and all objections to the proposed Settlement that come into their  
6 possession.

7           10.    Termination of Settlement. If the proposed Settlement is terminated in  
8 accordance with the Settlement Agreement, this Order shall become null and void and shall be  
9 without prejudice to the rights of the Parties, all of whom shall be restored to their previous  
10 respective positions in accordance with Article 9 of the Settlement Agreement.

11           11.    Use of this Order. This Order shall not be construed or used as an admission,  
12 concession, or declaration by or against Defendants of any finding of fiduciary status, fault,  
13 wrongdoing, breach, or liability. This Order shall not be construed or used as an admission,  
14 concession, or declaration by or against Named Plaintiffs or the Settlement Class that their claims  
15 lack merit or that the relief requested in this action is inappropriate or unavailable, or as a waiver  
16 by any Party of any arguments, defenses, or claims he, she, or it may have, including, but not  
17 limited to, any objections by Defendants to class certification in the event that the Settlement  
18 Agreement is terminated.

19           12.    Jurisdiction. The Court shall retain jurisdiction for purposes of implementing the  
20 proposed Settlement, and reserves the power to enter additional orders to effectuate the fair and  
21 orderly administration and consummation of the Settlement as may from time to time be  
22 appropriate and to resolve any and all disputes arising thereunder.

23           SO ORDERED this 17 day of Nov., 2009.

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25 HON. CLAUDIA WILKEN  
26 UNITED STATES DISTRICT JUDGE  
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