

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

In re BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MD 2058 (PKC)

ECF CASE

This Document Relates To:

Consolidated Securities Action

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFFS'
MOTION FOR APPROVAL OF RECOMMENDATIONS REGARDING
POST-DISTRIBUTION ISSUES AND MODIFICATION OF
DISTRIBUTION ORDER TO ALLOW THE ACCEPTANCE OF LATE CLAIMS**

Dated: November 14, 2016

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Lead Plaintiffs, the State Teachers Retirement System of Ohio; the Ohio Public Employees Retirement System; the Teacher Retirement System of Texas; Stichting Pensioenfonds Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V.; and Fjärde AP-Fonden, respectfully submit this memorandum in support of their motion for entry of the proposed Order Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (the “Post-Distribution Issues Order”).

As explained further herein, if entered by the Court, the Post-Distribution Issues Order will, among other things, (i) approve the administrative recommendations of the Court-appointed Claims Administrator, Garden City Group, LLC (“GCG”)¹ with respect to adjustments to be made to calculations of Claims that were covered by the Distribution Order; (ii) approve GCG’s administrative recommendations with respect to “Late Cures” of Claims that were covered by the Distribution Order; (iii) approve GCG’s administrative recommendations with respect to “Alleged Submissions”; (iv) defer the ruling on unresolved “Calculation Disputes” so as not to delay payments or additional payments to Authorized Claimants as set forth in the proposed Order; and (v) provide for the modification of the Distribution Order to allow the acceptance of “Late Claims”, as set forth in the accompanying Declaration of Stephen J. Cirami in Support of Lead Plaintiffs’ Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims (the “Cirami Post-Distribution Issues Declaration” or “Cirami Post-Distribution Issues Decl.”).²

¹ GCG was formerly known as The Garden City Group, Inc.

² Unless otherwise indicated herein, all terms with initial capitalization shall have the meanings ascribed to them in the Cirami Post-Distribution Issues Declaration, the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs’ Motion for Approval of Distribution Plan (“Cirami Declaration” or “Cirami Decl.”) (ECF No. 1001), and the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1).

I. BACKGROUND

By Order entered March 1, 2012 (the “Notice Order”) (ECF No. 531), the Court certified this Action to proceed as a class action. An agreement of settlement was subsequently reached and, on November 30, 2012, Lead Plaintiffs and Defendants entered into the Stipulation (ECF No. 767-1) setting forth the terms of the Settlement which represented a complete resolution of this Action (the “Settlement”). Pursuant to the terms of the Settlement, \$2,425,000,000 was deposited in escrow for the benefit of the Class. By Order entered December 4, 2012 (the “Preliminary Approval Order”) (ECF No. 771), the Court preliminarily approved the proposed Settlement.³

On April 9, 2013, the Court entered the Judgment Approving Class Action Settlement (ECF No. 871), granting final approval to the Settlement. Various appeals followed and on November 5, 2014, the United States Court of Appeals for the Second Circuit (the “Court of Appeals”) affirmed this Court’s approval of the Settlement. Once the Effective Date of the Settlement occurred, Lead Plaintiffs moved for entry of an order approving the proposed Distribution Plan for the distribution of the Net Settlement Fund to Authorized Claimants (ECF Nos. 999-1001). On May 4, 2015, the Distribution Order was entered (ECF No. 1002), and on June 26, 2015, the Initial Distribution occurred in which over \$2,029,715,000 was distributed to Authorized Claimants. (Cirami Post-Distribution Issues Decl. ¶ 4).

³ The Court approved the retention of GCG as the Notice Administrator pursuant to the Notice Order, and, pursuant to the Preliminary Approval Order, the Court also approved the retention of GCG as the Claims Administrator for the Settlement of the Action.

GCG, mailed the Notice of Pendency of Class Action (the “Class Notice”) to over 3.1 million persons and entities who or which had been identified as potential Class Members or to their nominees (Cirami Decl. ¶¶ 2-3) and, GCG mailed the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Settlement Notice”) and the Proof of Claim and Release form (the “Proof of Claim” and, together with the Notice, the “Claim Packet”) to approximately 3.4 million potential Class Members and to brokers and other nominees (Cirami Decl. ¶ 12).

Given the extraordinary nature of this administration, both in terms of the amount to be distributed and the number of Claims received – GCG processed 719,771 Proofs of Claim that were received through November 5, 2014 (Cirami Post-Distribution Issues Decl. ¶ 2)⁴ – the proposed Distribution Plan and Distribution Order provide for a post-distribution process for Authorized Claimants who believed that an error had occurred in the calculation of their Recognized Claim or the amount of the Initial Distribution check, and for Claimants who had submitted a Proof of Claim but had not had any communication from the Claims Administrator (*see* Distribution Order ¶¶ 3(e) and (f)).

The processing of communications received from Authorized Claimants pursuant to the post-distribution process as well as communications from other Class Members and potential Class Members subsequent to the Initial Distribution has now been completed. Lead Plaintiffs respectfully ask the Court to enter the proposed Post-Distribution Issues Order approving GCG's recommendations with respect to the issues raised in response to the Initial Distribution and modifying the Distribution Order to allow the acceptance of Late Claims.⁵

⁴ Co-Lead Counsel instructed GCG to defer processing any Claims received after November 5, 2014, the date on which the Court of Appeals issued its decision affirming this Court's approval of the Settlement, and the Distribution Order provides for the continuing deferral of the processing of those Claims (*see* Distribution Order ¶ 3(j)). The Distribution Order does provide, however, that to the extent funds remain in the Net Settlement Fund after the Second Distribution and after additional payment of settlement administration fees and expenses (*see* Cirami Decl. ¶ 81(c)), Proofs of Claim received after November 5, 2014 up through and including five (5) business days after the date of entry of the Distribution Order that would have been eligible for payment under the Plan of Allocation if timely received, at the discretion of Co-Lead Counsel, may be paid their distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible (*id.* ¶ 81(d)).

⁵ Under the terms of the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 16, 21, and 25.

II. POST-DISTRIBUTION ISSUES

As noted above, in light of the magnitude and complexities of this claims administration process as detailed in the Cirami Declaration, Lead Plaintiffs proposed providing notice to Class Members as to how they may challenge the calculation of their Claims as well as publication of notice advising Class Members that an Initial Distribution had occurred. The Distribution Order adopted Lead Plaintiffs' proposal with respect to Post-Distribution Issues. *See* Distribution Order ¶¶ 3(c), (e) and (f).

On June 26, 2015, GCG conducted the Initial Distribution. Pursuant to the Distribution Order, 380,820 checks were mailed and wire transfers on behalf of 110,819 Authorized Claimants were made. In the Initial Distribution, \$2,029,715,470.97 was distributed. Cirami Post-Distribution Issues Decl. ¶ 4. The Court-approved check stub that accompanied the Initial Distribution checks advised the recipient of their right to dispute the calculation of their Recognized Claim or payment amount. Claimants whose payments were issued by wire were notified by email of their right to dispute the calculation of their Recognized Claim or payment amount. Authorized Claimants whose Distribution Amounts calculated to less than the \$20.00 threshold payment amount established by the Distribution Order, were sent a postcard in the form that had been approved by the Court informing them of the reason why they would not receive any payment from the proceeds of the Settlement and of their right to object to the calculation. *See* Cirami Post-Distribution Issues Decl. ¶ 4 and Exhibits A, B and C thereto, respectively, for samples of the check stubs and the "de minimis" notification postcard. On July 16, 2015, GCG Communications caused the Distribution Notice to be published in the national editions of *The Wall Street Journal* and *The New York Times* and in the *Financial Times*, and to be transmitted over the *PR Newswire*. Cirami Post-Distribution Issues Decl. ¶ 5.

In response to the Initial Distribution and publication of the Distribution Notice, more than 42,000 communications were received.⁶ The Distribution Order contemplated communications limited to the Post-Distribution Issues. While many of the communications did address these issues, many were general communications raising issues that went beyond the scope contemplated by the Distribution Order and many were received after the deadlines established by the Order. Cirami Post-Distribution Issues Decl. ¶ 7. Each communication received a response. *Id.* The responses addressed the issues raised and, where relevant, letters enclosed a calculation chart reflecting how the Claim was calculated to determine the Recognized Claim and the application of the relevant proration factor. The Class Member or potential Class Member was advised that, if they had additional questions or disagreed with the calculations (where relevant), they had twenty-one (21) days from the date of the letter to contact GCG. The name of the designated individual at GCG to receive such communications as well as the toll-free direct dial number for that individual were set forth in the letters. In some instances, communications from Claimants were responded to by telephone calls from GCG and/or Co-Lead Counsel. *Id.*

Additionally, as discussed below, communications were received from persons who had not submitted Claim Forms and now wished to do so. Those persons were advised that the Distribution Order contemplated that a motion would be made with respect to the Post-Distribution Issues and that, while under the current Distribution Order we could not now accept additional Claims,⁷ if they wished to submit a letter in support of their request to be allowed to submit a late Claim, Co-Lead

⁶ Communications came in the form of letters, emails and telephone calls to GCG and/or Co-Lead Counsel. The large majority of the communications related to administrative inquiries of the type received in connection with all settlement administrations and these were handled by GCG in the same manner as is done with other administrations. Cirami Post-Distribution Issues Decl. ¶ 6. Those administrative communications are not the subject of Lead Plaintiffs' motion and they are not included in the discussion herein.

⁷ The Distribution Order provides that no further Proofs of Claim may be accepted after five (5) business days after entry of the order. Distribution Order ¶ 3(1).

Counsel would present their request to the Court in connection with the Post-Distribution Issues motion. Cirami Post-Distribution Issues Decl. ¶ 8.

As set forth below, GCG and Co-Lead Counsel believe that, for among other reasons, the size of the Reserve created as compared to the amount required to satisfy the adjustments for Post-Distribution Issues and the objective to compensate as many Class Members as possible, all Claims received or cured through August 31, 2016 (“Late Claims”), should be allowed to participate in the Settlement and receive a payment from the Net Settlement Fund to the extent that they are otherwise eligible for payment or additional payment under the Court-approved Plan of Allocation. Cirami Post-Distribution Issues Decl. ¶ 9.

A. Calculation Disputes

GCG and Co-Lead Counsel received more than 300 letters relating to Recognized Claims and/or payment amounts. Cirami Post-Distribution Issues Decl. ¶ 11. The opportunity to dispute the calculation of Recognized Claims and/or payment amounts was intended to address situations in which there had been an error in applying the Court-approved Plan of Allocation or in the application of the proration factor to the Recognized Claim. A large majority of the communications received, however, did not assert any error in the application of the Plan of Allocation or the calculation of Recognized Claims and/or payment amounts. Rather, they reflected a misreading of the terms of the Plan of Allocation. *Id.* Thus, for example, many Claimants did not dispute the calculation of their Recognized Claim and/or payment amount, but asserted that they should have been paid their Recognized Claim amount (as opposed to their actual payment amount) notwithstanding that the check stubs noted that the total of all Recognized Claims exceeded the amount available for distribution (*see* Exhibits A and B to the Cirami Post-Distribution Issues Declaration) and the Plan of Allocation specifically explained that, if the total Recognized Claims

exceeded the Net Settlement Fund, each Authorized Claimant's payment would be prorated accordingly (*see* Settlement Notice ¶ 91). Similarly, other Claimants objected to the fact that a "de minimis" payment threshold had been applied notwithstanding the fact that the threshold payment amount requirement is set forth in the Plan of Allocation. *See* Settlement Notice ¶ 93.

Each communication was responded to by letter and/or telephone call. When a letter was sent, it explained the calculation of the Claim pursuant to the Court-approved Plan of Allocation (including references to relevant paragraphs of the Plan of Allocation and/or Distribution Order where appropriate), and the Claimant was advised that if they had further questions or still disputed the calculation of their Claim, they must contact GCG within twenty-one (21) days of the date of the letter. The letter also informed the Claimant that, if GCG did not hear from them within that time period, GCG would take that as confirmation that the Claimant had no further questions and no longer disputed the calculation of their Claim. *See* Cirami Post-Distribution Issues Decl. ¶ 12 and Exhibit E thereto, which are samples of the letters sent to Claimants disputing the calculation of their Claims.

Before responding to a Claimant, a detailed review of the Claim was undertaken by GCG and, in many cases, by Co-Lead Counsel as well. Of the more than 300 letters received relating to the calculation of Claims, GCG determined that 37 Claims were rejected in error or were underpaid. Exhibit F-1 to the Cirami Post-Distribution Issues Declaration lists the Claims that were determined to have been previously rejected in error and the amount that should have been paid on these Claims. Exhibit F-2 to the declaration lists the Claims that were determined to have been underpaid in the Initial Distribution and the additional amount that should have been paid on these Claims. Cirami Post-Distribution Issues Decl. ¶ 13.

Of the Claimants who were sent letters explaining why their Claims had been properly

calculated, 16 have stated that they wish to maintain their dispute. Additionally, of the Claimants who were contacted by telephone, one wishes to maintain his dispute. Cirami Post-Distribution Issues Decl. 14. The outstanding disputed Claims (“Unresolved Calculation Disputes”) are discussed in Section III below.

B. Late Cures and Alleged Submissions

As noted above, the purpose of the Distribution Notice was to reach Claimants who had submitted Claims but did not hear from the Claims Administrator in order to identify situations where submissions to the Claims Administrator or communications from the Claims Administrator went astray. In response to the Distribution Notice as well as Claimants learning of the receipt of Initial Distribution payments from others when they had not received any, GCG and/or Co-Lead Counsel received communications from persons and entities submitting late cures (“Late Cures”) or stating that they had timely submitted Claims (“Alleged Submissions”) but had never heard from GCG. Cirami Post-Distribution Issues Decl. ¶ 15.

(i) Late Cures

Since the Initial Distribution, GCG and/or Co-Lead Counsel have received 229 communications from Claimants attempting to cure their timely submitted Claims. GCG’s records reflect that Notices of Rejection of Claim had been sent to these Claimants during the Claims processing phase but no response had been received by GCG. Some communications from Claimants were accompanied by letters stating that the Notice of Rejection of Claim had not been received and/or explaining why the Claim had not been timely cured. Other Late Cures were sent without explanation. Cirami Post-Distribution Issues Decl. ¶ 16.

Given that the efforts undertaken throughout the administration process have been to assure that as many Class Members as possible perfect their Claims, GCG and Co-Lead Counsel believe

that: (a) in furtherance of this goal; (b) in light of the practical implications of trying to determine the reason for each of these Late Cures; and (c) in the interest of judicial economy, each of these submissions should be evaluated on the basis of whether the Claim has now been cured as opposed to why it was not cured sooner. GCG and Co-Lead Counsel, therefore, recommend that, to the extent a Claim has been cured, it should be eligible to receive a payment.⁸ Cirami Post-Distribution Issues Decl. ¶ 17.

(ii) Alleged Submissions

GCG and/or Co-Lead Counsel also have received communications from Claimants that assert that they timely submitted Claims but never received any notification regarding their Claims. These communications relate to 57 Alleged Submissions. Cirami Post-Distribution Issues Decl. ¶ 19. GCG has processed each of the Alleged Submissions and together with Co-Lead Counsel have reached out to these Claimants to assist them in perfecting their Claims where necessary. Cirami Post-Distribution Issues Decl. ¶ 20.

Of the 57 Claims in this category, GCG has determined that 50 are acceptable in whole or in part and 7 should be rejected because they are either ineligible or have no Recognized Claim when calculated in accordance with the Court-approved Plan of Allocation. With respect to the Claims that are recommended for rejection, the reason for the rejection was explained to the Claimants and they do not dispute the determination.⁹ Cirami Post-Distribution Issues Decl. ¶ 21.

⁸ Exhibit G-1 to the Cirami Post-Distribution Issues Declaration lists Claims that were previously rejected in their entirety that have been cured since the Initial Distribution and provides the payment amount for each. Exhibit G-2 to the declaration lists Claims that were previously partially rejected that have been cured since the Initial Distribution and are now eligible for an additional payment and provides the additional payment amount payable on the Claim. Exhibit G-3 to the declaration lists Claims for which additional information was submitted following the Initial Distribution, however, the new information does not cure the Claim and the original determination as to the Claim remains unaltered. Cirami Post-Distribution Issues Decl. ¶ 18.

⁹ Exhibit H-1 to the Cirami Post-Distribution Issues Declaration lists the Alleged Submissions that are recommended for payment and the payment amount for each and Exhibit H-2 to the declaration lists the

III. UNRESOLVED CALCULATION DISPUTES

As noted above, 17 Claimants have stated that they wish to maintain their calculation disputes and have them put before the Court (“Unresolved Calculation Disputes”). These disputes relate to 22 Claims. As previously stated, a large majority of the communications received subsequent to the Initial Distribution reflected a misreading of the terms of the Plan of Allocation or a general desire to obtain a larger recovery, as opposed to a dispute with the application of the Plan of Allocation and/or the Distribution Order to the Claims. Of the 17 Claimants who wish to maintain their disputes, only one framed his dispute as a challenge to the application of the Plan of Allocation and the Distribution Order and, for the reasons stated in the Cirami Post-Distribution Issues Declaration and Exhibit I thereto, that dispute is misplaced.¹⁰ Co-Lead Counsel have reviewed the Unresolved Calculation Disputes and concur with GCG’s recommendations that the disputes are without merit.

Eight of the Unresolved Calculation Disputes (Disputes Nos. 1-8) should be rejected because the Claimants are seeking their full Recognized Claim as opposed to their proportional share of the Net Settlement Fund.¹¹ The Court-approved Plan of Allocation provides that where, as occurred here, the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized

Alleged Submissions that are recommended for rejection and the reason for the rejection. Cirami Post-Distribution Issues Decl. ¶ 21.

¹⁰ The disputes are discussed in ¶¶ 22-30 of the Cirami Post-Distribution Issues Declaration. Exhibit I to the declaration contains an Unresolved Dispute Chart which sets forth a summary description of each of the disputed Claims. Exhibit I also includes copies of the communication(s) from Claimants, the response sent, the Proof of Claim and supporting documentation as well as additional correspondence related to the Claims.

¹¹ Unresolved Calculation Dispute No. 7 is framed as a misapplication of the Plan of Allocation and Distribution Order. However, as set forth in the Cirami Post-Distribution Issues Declaration and Exhibit I thereto, the dispute is misplaced because the Claimant has not appreciated the difference in the meanings of two distinct defined terms (*i.e.*, Recognized Claim and Distribution Amount).

Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. *See* Settlement Notice ¶ 91.

Three of the Unresolved Calculation Disputes (Disputes Nos. 9-11) should be rejected because the Claimants are seeking their “out-of-pocket” loss amounts. As explained to Class Members in the Settlement Notice, the recovery allowed in this Action is limited to the damages suffered as a proximate loss of the alleged wrongdoing. Losses attributable to other unrelated factors such as market or industry forces are not recoverable. *See* Settlement Notice ¶¶ 70-74.

One of the Unresolved Calculation Disputes (Dispute No. 12) should be rejected because, while the Claimant challenges the application of the proration factor to his Claim, as reflected in the documentation related to the Claim, the proration factor was properly applied in accordance with the provisions of the Distribution Order. *See* Cirami Post-Distribution Issues Decl. ¶ 28 and Exhibit I thereto.

Four of the Unresolved Calculation Disputes (Disputes Nos. 13-16) should be rejected because the Claimants are objecting to the “de minimis” provision contained in the Court-approved Plan of Allocation. This provision is set forth in ¶ 93 of the Settlement Notice and Class Members had the opportunity to voice their opinions on it prior to its approval by the Court.¹²

One of the Unresolved Calculation Disputes (Dispute No. 17) should be rejected because the only shares supporting this individual’s Claim were acquired through an ERISA Plan. The Court-approved Plan of Allocation provides that participants and beneficiaries in a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3) should NOT include any information relating to their transactions in BoA common stock held through the ERISA Plans in any Claim Form that they may

¹² The Settlement Notice advised Class Members of their right to object to the then-proposed Settlement, Plan of Allocation or the request for attorneys’ fees and reimbursement of Litigation Expenses prior to the Court’s ruling on the respective motions for approval. *See* Settlement Notice p. 3 and ¶¶ 112-120.

submit; Claims based on any ERISA Plan[s]' purchases of eligible BoA securities during the Class Period may be made by the Plan[s]' trustees.¹³ Settlement Notice ¶ 66.

The Claimants with Unresolved Calculation Disputes are being sent copies of these motion papers and that portion of the supporting documentation for Exhibit I that relates to their respective Claims. These Claimants are being afforded the opportunity to make a further submission to the Court should they so desire and Co-Lead Counsel will respond if they deem necessary.¹⁴ In order not to unnecessarily delay payment to other Claimants who are the subject of this motion, the proposed Post-Distribution Issues Order provides for the submission of a separate order to address the Unresolved Calculation Disputes after the time for the additional submissions has expired.

IV. LATE CLAIMS

As noted above, subsequent to the Initial Distribution, GCG and Co-Lead Counsel received requests from or on behalf of persons and entities that wished to submit late Claims. Additionally, many late Claims were submitted without prior communication or an explanation for the failure to timely submit. Cirami Post-Distribution Issues Decl. ¶ 31.

In response to requests from persons and entities that offered reasons for the failure to submit a timely Claim, it was explained that, under the terms of the current Distribution Order, additional Claims could not be accepted for processing. It was further explained that, if the person or entity wished, Co-Lead Counsel would address their request to submit a late Claim when the motion to

¹³ Claims were filed by the trustees for each of the following plans: the Bank of America 401(k) Plan, the Bank of America 401(k) Plan for Legacy Companies, the Merrill Lynch & Co., Inc. 401(k) Savings & Investment Plan, and the Merrill Lynch & Co., Inc. Retirement Accumulation Plan. Cirami Post-Distribution Issues Decl. ¶ 30, n. 18. As neither Co-Lead Counsel nor GCG had any involvement with how the payments on the plans Claims were allocated to participants, the Claimant was provided with contact information for the plans. *See* Exhibit I-17 to the Cirami Post-Distribution Issues Declaration, letter to Claimant from GCG dated April 8, 2016.

¹⁴ A cover letter accompanying the motion papers advises the Claimants that they have twenty-one (21) days from the date of the letter in which to make a submission.

address the Post-Distribution Issues was made. They were also advised that they would be afforded the opportunity to make a further submission in support of their request in response to Co-Lead Counsel's submission. Given that the current Distribution Order bars the acceptance of additional Claims, based on consultations with Co-Lead Counsel, GCG has not processed these Claims nor asked that all necessary documentation in support of a Claim be provided. Cirami Post-Distribution Issues Decl. ¶ 32.

Since November 5, 2014 through August 31, 2016, 13,524 late Claims or requests to submit late Claims have been received, of which 12,375 were received after the Initial Distribution. Cirami Post-Distribution Issues Decl. ¶ 33.

As the Late Claims have not yet been processed, there is no way of knowing how many of these Claims will actually be eligible for payment. However, based on GCG's and Co-Lead Counsel's analysis of the Post-Distribution Issues that are the subject of this motion and the amount of the Reserve that will be needed to resolve them, it is estimated, based on a preliminary review of the Late Claims, that it is likely that sufficient funds will remain so as to be able to make payments on the eligible Late Claims as to put them in near, if not complete, parity with Authorized Claimants who were paid in the Initial Distribution. Cirami Post-Distribution Issues Decl. ¶ 34.

GCG and Co-Lead Counsel believe that the interest of compensating as many Class Members as possible, as well as the interests of judicial efficiency, would best be served by permitting the acceptance of all Late Claims received through August 31, 2016, a cut-off date selected so that finalization of this motion could occur, to the extent these Claims are otherwise eligible to receive payment under the Court-approved Plan of Allocation.¹⁵ Should the Court not grant the request for

¹⁵ As noted in the Cirami Post-Distribution Issues Declaration (*see* ¶ 35, fn. 22), one individual has requested permission to opt back into the Class and to be permitted to submit a Late Claim. Based on the explanation provided in his request (*see* Exhibit J to the Cirami Post-Distribution Issues Declaration) and the fact that, in this Action, persons and entities who or which had excluded themselves from the Class were afforded the

modification of the Distribution Order to allow for the acceptance of Late Claims, the individual requests of Claimants would have to be put before the Court and the merits of each such request would have to be parsed and ruled upon. Cirami Post-Distribution Issues Decl. ¶ 35.

V. CONCLUSION

For the foregoing reasons, it is respectfully submitted that Lead Plaintiffs' Motion for Approval of Recommendations Regarding Post-Distribution Issues and Modification of Distribution Order to Allow the Acceptance of Late Claims should be approved, and the proposed Order approving the motion should be entered.

Dated: November 14, 2016

Respectfully submitted,

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opportunity to opt back into the Class (*see* Settlement Notice ¶¶ 107-11), Co-Lead Counsel believe that the request to opt back into the Class should be granted. If the Court allows the acceptance of Late Claims at this time, this person's Claim should be evaluated along with the other Late Claims.

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