

**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

This Document Relates To:

Consolidated Securities Action

Master File No. 09 MD 2058 (PKC)

ECF CASE

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFFS'
MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

Dated: April 13, 2015

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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, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, respectfully submit this memorandum in support of their motion for entry of the proposed order which would approve the Distribution Plan for the proceeds of the Settlement (the “Distribution Order”) in the above-captioned action (the “Action”), as set forth in the accompanying Declaration of Stephen J. Cirami in Support of Lead Plaintiffs’ Motion for Approval of Distribution Plan (the “Cirami Declaration” or “Cirami Decl.”), submitted on behalf of the Court-appointed Claims Administrator, Garden City Group, LLC (“GCG”).¹

If entered by the Court, the Distribution Order will, among other things, (i) approve GCG’s administrative recommendations accepting and rejecting Proofs of Claim submitted herein; (ii) direct the distribution of the Net Settlement Fund to Class Members whose Proofs of Claim have been accepted as valid and approved by the Court; (iii) provide for notice to Class Members that the Initial Distribution has occurred; (iv) establish a procedure for Authorized Claimants to challenge the calculation of their Recognized Claim and distribution amount; and (v) approve GCG’s fees and expenses incurred and to be incurred in connection with the administration of the Settlement.

I. BACKGROUND

By Order entered March 1, 2012 (the “Notice Order”), the Court certified this Action to proceed as a class action. ECF No. 531. An agreement of settlement was subsequently reached and, on November 30, 2012, Lead Plaintiffs and Defendants entered into the Stipulation setting forth the terms of the Settlement which represented a complete resolution of this Action (the “Settlement”).

¹ Unless otherwise indicated herein, all terms with initial capitalization shall have the meanings ascribed to them in the Cirami Declaration or in the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1) (the “Stipulation”).

ECF No. 767-1. Pursuant to the terms of the Settlement, \$2,425,000,000 was deposited in escrow for the benefit of the Class.

In accordance with the terms of the Notice Order, GCG, which was retained as Notice Administrator pursuant to the terms of that Order, 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. In accordance with the Preliminary Approval Order (ECF No. 771), GCG, which was also retained as Claims Administrator pursuant to the terms of that Order, 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. The Settlement Notice informed Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Proofs of Claim by mail, postmarked no later than April 25, 2013, together with adequate supporting documentation for the transactions and holdings reported therein. *Id.* ¶ 22.

On April 9, 2013, the Court entered the Judgment Approving Class Action Settlement (ECF No. 874), 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. The time for seeking further review of the Court of Appeals’ decision, by way of a petition for certiorari or motion for rehearing, has expired and, accordingly, the Effective Date of the Settlement has occurred and the Net Settlement Fund may now be distributed to Authorized Claimants pursuant to an order of this Court. *See Stipulation*

¶¶ 28, 39. Lead Plaintiffs respectfully ask the Court to enter the proposed Distribution Order approving the proposed Distribution Plan.

II. CLAIMS ADMINISTRATION

This has been an extraordinary claims administration process. Whether measured by settlement value, the number of notices mailed or Claims received, this was one of the largest securities settlement administrations in history. As noted in the accompanying Cirami Declaration, GCG has handled over 500 securities settlement administrations during its 30-plus year history, and with over 719,000 Claims received, this Settlement ranks among the top five in terms of claim volume. Cirami Decl. ¶ 37.

Pursuant to the terms of the Preliminary Approval Order, Class Members were advised that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Proofs of Claim by mail, postmarked no later than April 25, 2013. As detailed in the Cirami Declaration, through November 5, 2014, GCG received 719,771 Proofs of Claim.² Cirami Decl. ¶ 22. GCG has completed processing the Claims received through that date. *Id.* ¶ 21

Many of the Proofs of Claim initially submitted were incomplete, not signed, not properly documented, or were otherwise deficient. Cirami Decl. ¶ 45. To the extent that a Proof of Claim was wholly deficient (for example, if the Proof of Claim was missing documentation for the entire Proof of Claim, if the Claimant did not sign the Proof of Claim or did not provide enough information to calculate the Claim, or if the Proof of Claim was determined to have no Recognized Claim when calculated under the Court-approved Plan of Allocation), GCG sent a rejection letter to the Claimant describing the defect(s) in the Proof of Claim and stating what, if anything, was

² 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, which was more than 18 months after the deadline set for the submission of Claims.

necessary to cure the Proof of Claim. *Id.* ¶ 46. GCG also mailed letters to each Claimant whose Proof of Claim was determined to be partially deficient (for example, if the Proof of Claim was missing documentation for some transactions, or did not supply some transactional information), advising the Claimant of the defect(s) in the Proof of Claim and stating what was necessary to cure such defect(s). *Id.* ¶ 47. Copies of sample rejection letters are attached as Exhibit A to the Cirami Declaration. Cirami Decl. ¶ 48 and Exhibit A thereto.

GCG expended considerable time and effort reviewing Claimants' responses to the rejection letters and working with Claimants to resolve deficiencies in their Claims where possible. Cirami Decl. ¶¶ 49-54. After responses to the rejection letters were received and processed, GCG called Claimants with still-deficient Proofs of Claim with potential payments of approximately \$60,000 or more to assist them in curing the deficiencies (*id.* ¶¶ 50-51), and coordinated an automated calling campaign to those Claimants with still-deficient Proofs of Claim, or the institutions that filed on their behalf, who were not included in the live calling campaign (*id.* ¶¶ 50, 52). As a result of these additional outreach efforts by GCG, additional Claimants were able to cure the deficiency(ies) in their Claims and those Claims are now being recommended for acceptance (*id.* ¶ 53).

Consistent with the terms of the Stipulation (¶ 26(e)), all rejection letters specifically advised the Claimant that he, she or it had the right, within twenty (20) days after the mailing of the rejection letter, to contest the rejection of the Claim and request Court review of the disposition of the Claim. Cirami Decl. ¶ 55 and Exhibit A thereto. GCG received letters from 2,352 Claimants contesting the administrative rejection of their Claims in whole or in part. Cirami Decl. ¶ 55. A significant number of those Claimants simultaneously provided GCG with documentation or information that cured the deficiencies in their Proofs of Claim, and those Claims are now being recommended for acceptance.

Id. ¶ 56. A number of other Claimants affirmatively withdrew their requests for Court review after GCG contacted them and explained the basis for its administrative determination. Cirami Decl. ¶ 57.

Only 15 of the 2,352 originally disputed Claims have outstanding requests for this Court's review of GCG's determinations to reject their Claims (each a "Disputed Claim"). Cirami Decl. ¶ 58. These Disputed Claims are being presented to the Court for resolution by this motion. The Disputed Claims are discussed in paragraphs 58 to 65 of the Cirami Declaration. Exhibit B to the Cirami Declaration contains a Disputed Claim Chart which sets forth a summary description of each of the Disputed Claims and the reason for the rejection of the Claim. Exhibit B also includes copies of the Proofs of Claim and supporting documentation as originally submitted as well as additional correspondence related to the Disputed Claims.

Co-Lead Counsel have reviewed the Disputed Claims and concur with GCG's recommendations to reject them. Ten of the Disputed Claims (Disputed Claim Nos. 1-10) should be rejected because they do not calculate to a Recognized Claim under the Court-approved Plan of Allocation. Four of the Disputed Claims (Disputed Claim Nos. 11-14) should be rejected because they have no eligible shareholdings or transactions. One Disputed Claim (Disputed Claim No. 15) should be rejected because the Claimant did not submit any documentation in support of his Claim.

As set forth in the Cirami Declaration, of the 719,771 Claims received through November 5, 2014, GCG has determined that 519,644 are acceptable in whole or in part, and that 200,127 (including the 15 Disputed Claims) should be wholly rejected because they are ineligible for payment from the Net Settlement Fund. Cirami Decl. ¶ 73.

The 719,771 Proofs of Claim received through November 5, 2014 include 43,464 Proofs of Claim that were postmarked or received after the Court-approved Claim filing deadline of April 25, 2013, of which 26,665 are, but for the late submission, otherwise eligible. Cirami Decl. ¶ 66. While

these 26,665 Claims were late, they were received while the processing of timely Claims was ongoing or while appeals from the approval of the Settlement were pending, and the processing of these late Claims did not delay the completion of the claims administration process or the distribution of the Net Settlement Fund. *Id.* The Court has discretion to accept Claims submitted after the filing deadline.³ It is respectfully submitted that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the Net Settlement Fund solely because it was submitted after the Court-approved Claim filing deadline, if it was submitted while timely Claims were still being processed or while the pendency of the appeals prevented the Effective Date of the Settlement from occurring.

Lead Plaintiffs request that the Court approve GCG's administrative determinations accepting and rejecting Claims as set forth in the Cirami Declaration.

As set forth in the Cirami Declaration, Co-Lead Counsel instructed GCG to defer processing of any Claims received after November 5, 2014, the date the Court of Appeals issued its decision with respect to the appeals that had been taken from the Court's approval of the Settlement and award of fees and expenses. *See* Cirami Decl. ¶ 66 n.10. The proposed Distribution Plan does provide an opportunity for those Claimants to participate in the Settlement. Lead Plaintiffs propose 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

³ *See* Settlement Notice ¶ 64 (“*Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before April 25, 2013 shall be fully and forever barred from receiving payments pursuant to the Settlement . . .*”) (emphasis added); *see also* Preliminary Approval Order ¶ 7 (“*Unless the Court orders otherwise, all Proof of Claim Forms must be postmarked no later than one hundred and twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Co-Lead Counsel may, at their discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class.*”).

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). However, in order to facilitate the efficient distribution of the Net Settlement Fund, there must be a final cut-off after which no other Proofs of Claim may be accepted. Accordingly, Lead Plaintiffs respectfully request that the Court order that no new Proofs of Claim received after five (5) business days after entry of the Distribution Order may be accepted. Cirami Decl. ¶ 81(f).

In light of the magnitude and complexities of this claims administration process as detailed in the Cirami Declaration, Lead Plaintiffs propose to provide notice to Class Members as to how they may challenge the determination of their Claims as well as publication of notice advising Class Members that an Initial Distribution has occurred. Thus, the proposed Distribution Plan provides for the following.

In order to bring to GCG's, Lead Plaintiffs' and, if necessary, the Court's attention as expeditiously as possible any challenges by Claimants to the calculation of their Recognized Claim or distribution amount, Authorized Claimants will be advised as to how and by when they may challenge the determination of their Claims. Thus, any Authorized Claimant whose *pro rata* share of the Net Settlement Fund is below \$20.00 and, therefore, under the terms of the Court-approved Plan of Allocation, will not receive a payment from the proceeds of the Settlement, will be sent a postcard substantially in the form attached as Exhibit 1 to the Distribution Order advising the Claimant of that fact and informing the Claimant that, if he, she or it wishes to challenge the calculation of the Claim, the challenge must be made no later than thirty (30) days after the date of the notice or it will be waived. *See* Cirami Decl. ¶ 81(a)(2). Authorized Claimants who are receiving a distribution from

the Net Settlement Fund will, in connection with the Initial Distribution, be sent a notice (substantially in the forms attached as Exhibits 2 and 3 to the proposed Distribution Order) informing them that should they disagree with the calculation of their Recognized Claim or the amount of their Initial Distribution check they must make any such challenge in writing postmarked no later than thirty (30) days from the date of the notice or it will be waived. *See* Cirami Decl. ¶ 81(a)(7). Co-Lead Counsel believe that such a procedure will result in the efficient resolution of any challenges to Claim determinations prior to the final distribution of the Net Settlement Fund.

Additionally, to encourage any Claimant who or which submitted a valid Claim but did not receive an Initial Distribution check to notify Co-Lead Counsel or the Claims Administrator of that fact before the balance of the Net Settlement Fund is distributed, Co-Lead Counsel recommend that a separate notice, substantially in the form attached as Exhibit 4 to the Distribution Order, advising that the Initial Distribution has been made should be published once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times*, and transmitted over the *PR Newswire* (the same publication notice program utilized in connection with notification of certification of the Class and then the proposed Settlement), within three weeks after the date the Initial Distribution checks are mailed. Cirami Decl. ¶ 81(a)(8).

III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

As set forth above and in the Cirami Declaration, GCG was retained to perform services in connection with two distinct phases of work: Phase I relating to provision of notice to potential Class Members of the certification of the Action to proceed as a class action (*see* Cirami Declaration ¶¶ 2-8); and Phase II relating to dissemination of notice of the proposed Settlement and claims administration (*see* Cirami Decl. ¶¶ 9-19 and 22-72).

The work required and performed by GCG in providing notice to the Class and processing Claims in this Action as well as the costs incurred in the performance of such work was greater than that required in the vast majority of notice and administration programs. As previously noted, whether measured by the value of the Settlement, the number of notices mailed or the volume of Claims received, this was one of the largest securities settlement administrations in history. Cirami Decl. ¶ 37. In each round of mailings (first of the Class Notice and then the Claim Packet), GCG mailed notice to over three million potential Class Members and engaged in substantial outreach to brokers and other nominees in order to assure that as many potential Class Members as possible were reached. *Id.* ¶¶ 2-3, 11.⁴

Additionally, during its work, GCG received over 161,000 calls to the telephone helpline, of which approximately 77,700 were handled by operators (Cirami Decl. ¶¶ 8, 17), and received and responded to over 5,000 emails (*id.* ¶ 18), and GCG received and processed 719,771 Proofs of Claim through November 5, 2014 (*id.* ¶ 22).⁵

As set forth in the Cirami Declaration, GCG's fees and expenses for its work performed through January 31, 2015 total \$18,059,370.22 which includes its estimate of \$1,742,102.31 for

⁴ The costs relating to the provision of notice exceeded \$6.97 million. *See* Cirami Decl. ¶ 78 nn. 12 and 13.

⁵ As noted in the Cirami Declaration, many of the Claims submitted were partially or wholly deficient and required additional processing and communications with Claimants. Cirami Decl. ¶ 45. In addition, several other aspects of the case created additional complexity in claims processing including: (i) a Plan of Allocation that included distinct loss calculations under both Section 10(b) and Section 14(a) and the use of an intra-Class Period holding date (*id.* ¶¶ 38-39); (ii) the eligibility for recovery of shares that were held during a portion of the Class Period, regardless of when purchased, led some Claimants to support their holdings with documentation related to their original purchases that had occurred many years earlier and which related to other entities with which Bank of America merged, which required additional review of the documentation or additional research by GCG (*id.* ¶ 39); and (iii) the fact that shares of BOA Common Stock received as a result of the merger between Bank of America and Merrill Lynch were not eligible to be included in the calculation of a Claimant's Recognized Claim but were required to be included on the Proof of Claim so that a Claimant's beginning holdings plus purchases and acquisitions would balance with his, her or its sales plus ending holdings (*id.* ¶ 40).

work to be performed in connection with the Initial Distribution of the Net Settlement Fund which includes the cost of publication notice as discussed above.⁶ Cirami Decl. ¶¶ 78-79. To date, GCG has received payments totaling \$5,000,000.⁷ *Id.* ¶ 79. Accordingly, there is an outstanding balance due to GCG of \$13,059,370.22. *Id.*

As set forth in the Cirami Declaration, this was an extremely large and complicated notice and administration process. Additionally, the amount of the recovery on behalf of the Class, *i.e.*, \$2,425,000,000.00, was also extraordinary. GCG necessarily spent a considerable amount of time to assure that as many potential Class Members as possible were notified of the Settlement and also necessarily spent a considerable amount of time on Claims processing itself, responding to inquiries, and working with Claimants to assist them in completing and curing their Claims. *See* Cirami Declaration. Nevertheless, at Co-Lead Counsel's request, GCG has agreed to defer payment on 30% of the outstanding balance on its invoices (the "Deferred Payment Amount") until after the Second Distribution (as defined in ¶ 81(b) of the Cirami Declaration) and all follow-up activity on that distribution (as set forth in ¶ 81(a)(6) n.15 of the Cirami Declaration) has been completed. At that time, to the extent of availability of funds in the Net Settlement Fund, the Distribution Plan provides that GCG will be paid, prior to any further distributions to Claimants, the Deferred Payment Amount.

⁶ Should the estimate to conduct the Initial Distribution exceed the actual cost to conduct the distribution, the excess shall be returned to the Settlement Fund and will be available for subsequent distribution to Authorized Claimants. Conversely, if the estimate to conduct the Initial Distribution is less than the actual cost, GCG shall seek to recoup the overage prior to the Second Distribution contemplated in the Distribution Plan.

⁷ Under the terms of the Stipulation, Co-Lead Counsel were authorized to pay the costs and expenses incurred in identifying and notifying Class Members and administering the Settlement of up to \$5,000,000 without further order of the Court. *See* Stipulation ¶ 17; *see also* Preliminary Approval Order ¶ 18 ("All reasonable costs incurred in notifying Class Members of the Settlement as well as in administering the Settlement shall be paid as set forth in the Stipulation.").

Lead Plaintiffs respectfully request that the Court approve all of GCG's fees and expenses with payments to be made as set forth in the Distribution Plan.

IV. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND

As set forth in detail in the Cirami Declaration, GCG has completed the processing of all Proofs of Claim received through November 5, 2014. Lead Plaintiffs, on notice to Defendants' Counsel, now respectfully move the Court for an order approving GCG's determinations concerning the acceptance and rejection of the Claims that are included in this motion and approving the proposed plan for distribution of the Net Settlement Fund as set forth in the Cirami Declaration (the "Distribution Plan").⁸

Initial Distribution of Net Settlement Fund

Pursuant to the proposed Distribution Plan, GCG will conduct an initial distribution (the "Initial Distribution") of the Net Settlement Fund, after deducting the payments previously allowed and the amounts approved by the Court on this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees. GCG will first determine each Authorized Claimant's *pro rata* share of the total Net Settlement Fund based on the Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *See* Cirami Decl. ¶ 81(a)(1). Pursuant to the Court-approved Plan of Allocation, GCG will eliminate from the distribution any Authorized Claimant whose Distribution Amount calculates to less than \$20.00 (such Claimants shall not receive any payment from the Net Settlement Fund and will be so notified by GCG), and will then calculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who are entitled to receive \$20.00 or more (the "Distribution Amount").

⁸ 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.

Id. ¶¶ 81(a)(2) and (a)(3). Authorized Claimants whose Distribution Amount is less than \$200.00 will receive their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”) and will receive no additional funds in subsequent distributions. *Id.* ¶ 81(a)(4). Authorized Claimants whose Distribution Amount is \$200.00 or more shall be paid 90% of their Distribution Amount in the Initial Distribution, with the remaining 10% held in reserve (the “Reserve”) to address any contingencies that may arise, including pursuant to any challenges that may be made in accordance with the procedures provided for under the plan. *Id.* ¶ 81(a)(5).

In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to uncashed checks, Lead Plaintiffs propose that the Initial Distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE].” In an effort to have as many Authorized Claimants as possible cash their checks, GCG will perform extensive follow up with Authorized Claimants who initially fail to cash their checks. Cirami Decl. ¶ 81(a)(6) n.15. Authorized Claimants who do not cash their checks within the time allotted or on the conditions set forth in paragraph 81(a)(6) footnote 15 of the Cirami Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in the “Second Distribution” described below. *Id.* ¶ 81(a)(9).

In addition, as discussed above, each Authorized Claimant who receives a distribution from the Net Settlement Fund in connection with the Initial Distribution will also be sent a notice informing the Authorized Claimant that should he, she or it disagree with the calculation of his, her or its Recognized Claim or the amount of the Initial Distribution check, such disagreement must be made in writing, detailing the disagreement, and sent to GCG, postmarked no later than 30 days from

the date of such notice. Cirami Decl. ¶ 81(a)(7). The notice will inform the Claimant that if an objection is not made in this manner and by the deadline set forth in the notice, the Claimant shall have waived all objections to the calculation of his, her or its Claim or the amount of his, her or its distribution. *Id.* Also, as noted above, Co-Lead Counsel will cause notice of the Initial Distribution to be published once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times*, and to be transmitted over the *PR Newswire*, within three weeks after the date the Initial Distribution checks are mailed. Cirami Decl. ¶ 81(a)(8).

Second/Additional Distribution(s) of Net Settlement Fund

After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks and after the resolution of any disputes that may be brought to GCG's attention pursuant to the notices to be provided in connection with the Initial Distribution, but no earlier than one year after the Initial Distribution, GCG will conduct a second distribution (the "Second Distribution") of the Net Settlement Fund, pursuant to which any amounts remaining in the Net Settlement Fund after the Initial Distribution (including the Reserve and the funds for all void stale-dated checks), after deducting GCG's estimated costs of such Second Distribution, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants who (1) were not Claims Paid in Full; (2) cashed their Initial Distribution check; and (3) would receive at least \$20.00 from such distribution. Cirami Decl. ¶ 81(b).

After the Second Distribution and after the follow-up efforts described in footnote 15 of the Cirami Declaration have been completed, but not less than six (6) months after the Second Distribution is conducted, to the extent funds remain in the Net Settlement Fund, GCG shall be paid any unpaid costs incurred in conducting the Second Distribution as well as the Deferred Payment

Amount. *Id.* ¶ 81(c). To the extent funds remain in the Net Settlement Fund after the payments referred to in the preceding sentence are made, Claimants who or which submitted 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).

If cost effective, subsequent distributions of the funds remaining in the Net Settlement Fund will take place in six-month intervals thereafter. *Id.* ¶ 81(e)(1). At such time as Co-Lead Counsel, in consultation with GCG, determine that further redistribution is not cost-effective, the balance of the Net Settlement Fund shall be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s) recommended by Co-Lead Counsel and approved by the Court. *Id.* ¶ 81(e)(2).

V. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement. Accordingly, Lead Plaintiffs respectfully request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from any and all claims arising out of such involvement,

and bar all Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Plaintiffs' Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiffs or Co-Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to them pursuant to the terms of the Distribution Order.

VI. CONCLUSION

For the foregoing reasons, it is respectfully submitted that Lead Plaintiffs' Motion for Approval of Distribution Plan should be approved, and the proposed Order Approving Distribution Plan should be entered.

Dated: April 13, 2015

Respectfully submitted,

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