

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES CONTANT, *et al.*,

*Plaintiffs,*

v.

BANK OF AMERICA  
CORPORATION, *et al.*,

*Defendants.*

No. 17-cv-3139-LGS

(related to No. 13-cv-7789-LGS)

**SUPPLEMENTAL DECLARATION OF JUSTIN R. HUGHES IN CONNECTION WITH  
PLAINTIFFS' MOTION FOR DISBURSEMENT OF THE INTEREST INCOME  
EARNED ON THE SETTLEMENT FUNDS**

I, Justin R. Hughes, declare as follows:

1. I am a Senior Director by Kroll Settlement Administration LLC f/k/a Heffler Claims Group ("Kroll"), the court-appointed Claims Administrator in this action.<sup>1</sup> I submit this declaration as a supplement to the *Declaration of Lori L. Castaneda in Support of Plaintiffs' Motion for Disbursement of Settlement Funds* (the "Initial Distribution Declaration"), filed on November 30, 2021. The following statements are based on my personal knowledge and information provided to me by other Kroll employees under my general supervision and, if called to testify, I could and would do so competently.

---

<sup>1</sup> Capitalized terms used herein and not otherwise defined have the meanings assigned to them in the Settlement Agreements entered into in the Action.

**Prior Approval of Settlement Funds Disbursement and Resolution of Appeal**

2. On January 5, 2022, the Court entered its *Order Granting Plaintiffs' Motion for Disbursement of Settlement Funds* ("Order"), which, among other things, provided for the approval of the distribution by Kroll to each authorized Claimant its *pro rata* share of the Net Settlement Funds, as proposed in the Initial Distribution Declaration, pending and subject to the resolution of Claimant AMA Capital Management LLC's appeal in favor of Class Counsel.

3. On April 14, 2023, the Second Circuit Court of Appeals resolved the appeal of Claimant AMA Capital Management in favor of Class Counsel, and mandate was issued on May 8, 2023.

**Final Claim Results**

4. As previously set forth in the Initial Distribution Declaration and approved by the Court, Class Plaintiffs' expert economic consulting firm, applEcon, has confirmed to Kroll that after its review and consolidation of claims for Class Members with more than one account, 9,210 consolidated claims remain, including late claims through August 27, 2021.

5. Kroll has been informed by applEcon that 8,247 timely-filed consolidated unique claims and 963 of the late-filed consolidated proofs of claims submitted are payable claims.

6. Due to the additional interest income accrued since the Initial Distribution Declaration, the total estimated payment amounts of both the timely and late-filed claims represented by payable claims increased to \$15,315,035.11.

7. The average payment to the 9,190 "Option 1" Authorized Claimants will be \$989.05 (with a high of \$626,847.35), and the average payment to the 29 "Option 2" Authorized Claimants will be \$214,678.30 (with a high of \$5,862,923.39). A total of 667 Authorized Claimants will receive the *de minimis* \$10 for trades made after January 1, 2014. For the period

between December 1, 2007 and December 31, 2013, no Authorized Claimant will receive just the \$25 *de minimis* payment. The following is a summary of the awards:

- 667 Authorized Claimants will receive *de minimis* awards;
- 1,146 Authorized Claimants will receive between \$10 and \$25;
- 3,938 Authorized Claimants will receive between \$25 and \$100;
- 2,001 Authorized Claimants will receive between \$100 and \$500;
- 528 Authorized Claimants will receive between \$500 and \$1,000;
- 633 Authorized Claimants will receive between \$1,000 and 5,000;
- 144 Authorized Claimants will receive between \$5,000 and \$10,000; and
- 153 Authorized Claimants will receive over \$10,000.

8. An Excel file containing the updated proposed distribution amounts to individual Authorized Claimants will be posted on the website, [www.fxindirectantitrustsettlement.com](http://www.fxindirectantitrustsettlement.com), so that Class Members can review their potential award. Class Members can identify themselves by their claim identification number provided to them during the registration process and again in the claim process. Class Member names have not been included to protect their identity.

9. The distribution calculations in that Excel file reflect both the Court's prior approval of Kroll's and Class Counsel's recommendations as set forth in the Order, and supplemental requests for Court approval made herein. More specifically, the distribution calculations reflect:

- (a) the Order's honoring the 963 late Claimants;
- (b) the Order's rejecting the 156 ineligible Claimants;
- (c) payment of \$41,600 to Kroll for claims administration duties and management of the distribution process including printing of checks, postage, the reissuance of checks,

as needed, along with Class Member communications and any other duties deemed necessary to complete the distribution;

- (d) payment of \$22,136.54 to Class Counsel for costs and expenses incurred in connection with the determination, litigation and appeal of AMA's claim, including payments to subject matter experts;
- (e) a reserve of \$51,000 for (i) future tax payments estimated to be \$45,000 and (ii) professional fees for tax preparation of \$6,000;
- (f) payment of \$600 to applEcon for fees to assist with the claims process and recalculating payments to authorized Claimants; and
- (g) Withholding of \$10,000 to address any unanticipated disputes arising from the claims process and the distribution of the Net Settlement Funds and the Additional Net Settlement Funds and for the payment of any future incurred administrative costs.

### **Fees and Disbursements**

10. As noted above, the Court approved Kroll as the Claims Administrator for this matter. Kroll's duties included ensuring the Settlement Agreements were implemented as approved by the Court along with noticing Class Members of the Settlements, noticing the Class Members of the claims process, handling Class Member questions and communications, reviewing and coordinating the claim form process, publishing the summary notice, and distributing the Net Settlement Funds to Authorized Claimants, among other duties.

11. Through March 2023, Kroll's fees and expenses total \$381,671.97, which has been paid. That amount includes an additional \$44,407.40 in fees and expenses incurred by Kroll in the 16 months from October 2021 to March 2023, which were not reflected in the Initial Distribution Declaration, but have been paid out of the previously Court-approved reserve for future claims and

tax administration expenses. The previously Court-approved reserve for administrative fees and expenses was based on an estimate of approximately six (6) months of administrative costs, including printing and postage of checks, check reissues, and related tasks. While some of these costs have not yet been incurred, Kroll incurred costs totaling \$44,407.40 over the course of these 16 months, largely in connection with, among other things, preparation and finalization of the Initial Distribution Declaration and related reports, preparation for the distribution, keeping the website updated and answering claimant inquiries. As we now prepare for the initial distribution again, Kroll anticipates that an additional \$41,600.00 should be held in reserve for the management of the distribution process including printing of checks, postage, the reissuance of checks, as needed, along with Class Member communications and any other duties deemed necessary to complete the distribution. In addition, applEcon has incurred fees of \$254,348.02 (which have been paid) to assist with the claims process and calculating payments to Authorized Claimants. That amount includes an additional \$2,170.83 in fees paid by Class Counsel since the Initial Distribution Declaration, reflecting the additional work needed to recalculate payments. As a result of the recalculation, it is requested that the Court approve payment of \$600 to applEcon for the final recalculations.

12. Additionally, the Qualified Settlement Fund set up for distribution will need to file tax returns and potentially pay taxes. The funds accrued a total of approximately \$636,668.56 in interest from December 1, 2021 through May 15, 2023. In April 2023, the funds paid \$14,956.00 for taxes owed. Kroll anticipates that \$51,000.00 should be held in reserve to pay anticipated taxes of \$45,000 and future tax administrative fees of \$6,000 and reserve \$10,000 to address any disputes arising from the claim process and unanticipated claims administrative expenses.

**Process for Distributing the Net Settlement Funds**

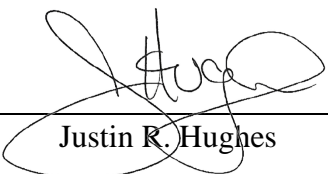
13. Kroll will distribute the payment amounts calculated by applEcon to each Authorized Claimant. In order to encourage Authorized Claimants to cash their initial distribution checks promptly and to avoid or reduce future expenses relating to uncashed checks, the initial distribution checks will bear the notation: “CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 90 DAYS OF ISSUE DATE.”

14. For Authorized Claimants whose checks are returned as undeliverable, Kroll will attempt to locate new addresses by contacting the Authorized Claimants either by phone or by utilizing an address update service, one time, to update the addresses. If a new address is located, Kroll will update the database accordingly and re-issue the distribution check to the Authorized Claimant at the new address.

15. In the event an Authorized Claimant does not receive, misplaces or damages the distribution check or otherwise requires a new check, Kroll will issue replacements upon receiving written instructions from the Authorized Claimant, provided that the Authorized Claimant returns the first check (if possible) and a “void” or “stop payment” is issued through the bank.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed in Oakland, California on May 18, 2023.

  
Justin R. Hughes