

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)

**DECLARATION OF MICHAEL DELL'ANGELO IN SUPPORT OF PLAINTIFFS'
MOTION FOR DISBURSEMENT OF SETTLEMENT FUNDS**

I, Michael Dell'Angelo, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge, information and belief:

1. I am an Executive Shareholder in the law firm of Berger Montague PC. My firm serves as attorneys of record for Plaintiffs in this matter and is designated as Lead Class Counsel with respect to the Settlements. *See* ECF Nos. 297, 441 (the "Preliminary Approval Orders").

2. I have been actively involved in prosecuting this action and overseeing the administration of the Settlement Funds, am familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as a witness, I could competently testify thereto.

3. I submit this declaration in support of Plaintiffs' Motion for Disbursement of Settlement Funds.

4. Court-appointed Claims Administrator Heffler Claims Group (the “Claims Administrator”)¹ and Class Counsel recommend that the Court approve 9,210 Claimants be authorized to receive payments from the Settlement Funds in the amounts calculated by Plaintiffs’ expert economic consulting firm, applEcon, LLC (“applEcon”). *See* Declaration of Lori L. Castaneda in Support of Plaintiffs’ Motion for Disbursement of Settlement Funds (“Castaneda Decl.”) ¶¶ 31-34.

5. The claims filing deadline was March 19, 2021. Upon receipt of submitted Claims, the Claims Administrator processed, reviewed and audited the submitted Claims. When Claimants submitted Claim Forms that lacked a signature or other required information, such as transaction records to support claims under Option 2, the Claims Administrator contacted these Claimants via telephone, mail and/or email to tell them the information or steps necessary to correct their Claim Form and perfect their claims.

6. Auditing and validating claims was a time-consuming process. As this process was taking place, 963 Claimants registered or returned necessary paperwork late. Castaneda Decl. ¶ 17. Class Counsel consulted with the Claims Administrator applEcon, regarding the late-filed claims. To ensure that all valid claims are compensated and to compensate as many members of the Settlement Classes as possible, Class Counsel respectfully recommends and requests that the Court authorize the Claims Administrator to accept the late claims.

7. For Claimants who failed to select Option 1 or Option 2 for their claim, or selected Option 2 but never submitted the required transaction records, and who did not respond to the Claims Administrator’s follow-up attempts, those Claims were defaulted to Option 1 if the

¹ The Court-appointed Claims Administrator changed its name to Kroll Settlement Administration in April 2021. The personnel responsible for administering the Settlements remain the same.

Claimant appeared in the data obtained from the four largest retail foreign exchange dealers (“RFEDs”) that operated during the Settlement Class Period of December 1, 2007, to July 19, 2019.

8. Class Counsel and the Claims Administrator worked extensively with several Claimants that submitted deficient Claims to assist them in collecting the information required to validate their Claims.

9. AMA Capital, LLC (“AMA”) submitted a late claim using the Option Two Claim Spreadsheet on May 20, 2021, without any supporting detailed transactional records. AMA was promptly informed that its claim was invalid because it lacked any supporting detailed transactional records. Thereafter, AMA revised its claim several times and provided some detailed transactional records through July 16, 2021. After receiving its claim assessment letter denying certain claims while approving other claims, AMA contested many of the denied claims requiring the Court to resolve the dispute. Following Court-ordered letter briefing, the Court Ordered: “that AMA’s claims already accepted for payment shall be accepted by Class Counsel and the Claims Administrator for calculating AMA’s pro rata award” (ECF 516) and “all of the claims denied by Class Counsel are denied because they all lack detailed transactional records as required by the settlement.” (ECF 531). AMA has filed a motion for reconsideration of the Court’s determination (ECF 535) and a motion to intervene, in which it indicated that it intends to appeal (ECF 537).

10. The review and auditing process engaged in by the Claims Administrator and Class Counsel was done to ensure that all submitted claims were valid and perfected prior to calculating the amount each claimant’s payment from the Net Settlement Funds. This was necessary to treat all potential valid Claimants equitably. Specifically, 963 Claimants registered

or returned necessary paperwork late but still in time to process the claims for payment prior to the filing of this Motion. Castaneda Decl. ¶ 17. The Claims Administrator and Class Counsel recommend that these claims be treated as timely. *Id.* ¶ 18.²

11. After accounting for these late claims and consolidating duplicative registrations, there are 9,210 Claimants that will, if this Motion is approved by the Court, participate in the Settlements. *Id.* ¶¶ 31-34.

12. 156 deficient Claims have either been unable to cure their deficiency or not responded to requests to cure a deficiency. *Id.* ¶ 27. The Claims Administrator and Class Counsel recommend that these claims be rejected. *Id.* ¶ 28.

13. In the Court's Preliminary Approval Orders (ECF No. 441 ¶ 22), the Court authorized Class Counsel to pay up to \$800,000 from the Settlement Fund for notice and claims administration costs. As of November 30, 2021, 2021, \$337,264.57 of this amount has been used to compensate the Claims Administrator for professional fees and expenses related to settlement administration, and \$340,052.19 of this amount has been used to compensate Plaintiffs' expert consulting firms for fees and expenses related to settlement administration. After deducting the \$677,316.76 in total for fees and expenses related to settlement administration, there remains \$122,683.24 of the Court-approved \$800,000 for notice and claims administration expenses. This amount has been included in the Net Settlement Funds to be distributed to Claimants.

14. The settlement funds were deposited in an escrow account at the Court-approved Escrow Agent Huntington Bank. As of November 30, 2021, the Settlement Funds had accrued

² See generally *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 CPS/SMG, 2009 WL 803382, at *6 (E.D.N.Y. Mar. 25, 2009) ("there is an implicit recognition that late claims should ordinarily be considered in the administration of a settlement" unless untimely claims "cause[] significant delay to the distribution of the net settlement fund or otherwise prejudiced any claimant") (internal citations and quotation marks omitted).

\$70,514.66 in interest. After payment of Court-approved attorneys' fees and expenses and settlement administration costs, and inclusive of interest earned to date, less the \$50,000 reserve, and payment of future anticipated settlement distribution costs, the account has a balance of \$14,967,744.24.

15. I have been co-lead counsel in class action antitrust and securities cases that have resulted in monetary settlements. In my experience, after the settlement funds are distributed it is often the case that unanticipated disputes and discrepancies arise concerning the amount of the payment or the appropriate payee. In order to be able to resolve such discrepancies (such as, *e.g.*, a claimant getting too little by accident), it is typically helpful to withhold a small sum from distribution. In this case, \$50,000 should suffice to address any unanticipated disputes or discrepancies, as well as taxes owed, if any. Should those funds not be needed at the end of the distribution process, Class Counsel will approach the Court with a proposal for those funds. Class Counsel anticipate that any monies remaining in the Net Settlement Funds after distribution is made will be distributed on a pro-rata basis for, at least, a minimum payment amount to claimants who cashed their checks.

16. The Qualified Set Funds will need to file tax returns and potentially pay taxes of up to \$3,000, which if owed would be paid out the \$50,000 requested to be withheld for unanticipated disputes. Two years of tax returns may be required depending on when distribution occurs. The interest earned has been offset by costs of the settlement thereby having no taxable income or tax payment due at this time. Castaneda Decl. ¶ 39. Class Counsel and the Claims Administrator will ensure that taxes are paid.

17. If the Court approves all the proposed payments in the motion to distribute the Net Settlement Funds (all of which are reflected in the accompanying Proposed Order), the average

payment to the 9,190 Option 1 Claimants will be \$966.82 (with a high of \$612,472.37), and the average payment to the 29 Option 2 Claimants will be \$209,746.60 (with a high of \$5,728,222.20). A total of 667 claimants will receive the de minimis \$10 for trades after January 1, 2014 as they have no trade data. For the period between December 1, 2007 and December 31, 2013 no Claimant will receive just the \$25 de minimis payment because they receive that amount plus an additional variable amount based on the available trade data. In total, 667 Claimants will receive de minimis awards; 1,148 Claimant received between \$10 and \$25; 3,962 Claimants will receive between \$25 and \$100; 1,989 Claimants will receive between \$100 and \$500; 522 Claimants will receive between \$500 and \$1,000; 631 Claimants will receive between \$1,000 and 5,000; 142 Claimants will receive between \$5,000 and \$10,000, and 149 Claimants will receive over \$10,000.

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, information, and belief.

Executed on November 30, 2021, in Philadelphia, PA.

/s/ Michael Dell'Angelo
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