

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 THE INTEREST INCOME EARNED ON THE  
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 and General Counsel of the law firm of Berger Montague PC. Berger Montague serves as counsel 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, including claimant AMA Capital, LLC's ("AMA") appeal of the denied part of its claim, 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 the Interest Income Earned on the Settlement Funds to the authorized Claimants.

4. The Court previously approved 9,210 Claimants to receive payments from the Net Settlement Funds in the amounts calculated by Plaintiffs' expert economic consulting firm, applEcon, LLC ("applEcon"). ECF 562 at ¶¶ 1-4. The Court stayed the distribution of the settlement checks to authorized Claimants until "resolution of Claimant AMA Capital Management, LLC's appeal in favor of Class Counsel." *Id.* at ¶ 4. AMA's appeal was resolved in Class Counsel's favor. *See* Second Cir. Document No. 168-1 at 4 ("we **AFFIRM** the orders of the district court on appeal in Nos. 21-3058 and 22-159").

5. Included in the Net Settlement Funds in the Court's January 5, 2022 approval of the calculated amounts to be distributed to authorized claimants was \$122,683.24 of unspent funds from the Court-approved \$800,000 for notice and claims administration expenses. ECF 539 at 7.

6. As a result of the delay in issuing checks to the authorized Claimants based on the Court's January 5, 2022 Order, the two settlement escrow accounts (FX Indirect Citigroup Settlement Fund Escrow Account and FX Indirect MUFG Settlement Fund Escrow Account (collectively "Settlement Escrow Accounts") held at the Court-approved Escrow Agent Huntington Bank, have earned significant interest income. Specifically, the Settlement Escrow Accounts have collectively earned interest income of approximately \$636,668.56 from December 1, 2021 through May 15, 2023 and will continue to earn interest income until the funds are fully distributed.

7. Since the filing of the motion to distribute the settlement funds on November 30, 2021 through the mandate from the Second Circuit on May 8, 2023 ("Appeal Period"), Plaintiffs' economic consulting firm applEcon has incurred additional professional fees of \$1,307.65 in connection with analyses associated with AMA's appeal, which amounts Class Counsel

advanced on behalf of the Settlement Classes and applEcon also incurred an additional \$600 in uncompensated fees for the recalculation of the *pro rata* distribution amounts to account for interest earned. In addition, during the Appeal Period, the \$50,000 reserve previously ordered by the Court has reverted to the Settlement Escrow Accounts, the Settlement Escrow Accounts have paid \$14,956 in taxes on interest income for 2022, and it is estimated that the Settlement Escrow Accounts will incur another \$51,000 in taxes and associated professional fees for tax preparation work.

8. In connection with the determination, litigation and appeal of AMA's claim determination, Class Counsel incurred and advanced \$21,233.54 for subject matter experts and other litigation costs and incurred, but as yet paid, costs of \$903.00. On May 18, 2023, the Second Circuit Court of Appeals awarded costs taxed in the amount \$651.00. ECF 579. This amount has been excluded from the unreimbursed expenses sought for which we seek reimbursement.

9. Class Counsel spent significant time and effort litigating AMA's appeal of the portion of its claim denied by the Claims Administrator in the district court and the court of appeals. Berger Montague expended approximately 752 hours, resulting in \$534,833 of uncompensated professional fees, in connection with the determination, litigation and appeal of AMA's contested claim determination. Class Counsel is not seeking reimbursement for these attorneys' fees.

10. On November 20, 2020, the Court awarded attorneys' fees in the amount of \$6,194,083.33, which was equal to 26.2 percent of the total settlement fund. ECF 462. The Court's fee award Order provided for Class Counsel to "receive one-quarter of their attorneys' fees (\$1,548,520.83) five business days after the entry of this Order, and [to] receive the

remainder of their attorneys' fees (\$4,645,562.50) upon the mailing of claimant award checks.”  
*Id.*

11. As of the time Class Counsel filed the Distribution Motion on November 30, 2021, the total amount in the Settlement Escrow Accounts was approximately \$19,603,143.61. The attorneys' fees owed of \$4,645,562.50 constituted 23.7% of the total amount in the Settlement Escrow Accounts. Consequently, the attorneys' fees owed contributed to 23.7% of the interest income earned on the Settlement Escrow Accounts while the other 76.3% of the interest income earned attributable to amounts payable to class member claims and for administrative costs and fees.

12. After deducting \$128,336.54 for expenses incurred (both advanced and as yet paid), which amount includes a reasonable reserve of \$51,000 for future taxes and preparation of tax returns, and a reserve of \$10,000 for disputes that may arise regarding the distribution and unanticipated fees and expenses, if such expenses are approved by the Court, and apportioning 23.7% of the total interest income earned on the settlement escrow accounts to the yet to be distributed attorneys' fees, in total, there is an additional \$357,454, beyond that approved by the Court in the Distribution Motion (ECF 562), available for distribution to the Settlement Classes (“Additional Net Settlement Funds”).

13. The Additional Net Settlement Funds in the Net Settlement Funds should be distributed on a *pro rata* basis to the members of the Settlement Classes. Accordingly, applEcon has recalculated each authorized Claimant's *pro rata* share of the Net Settlement Funds to account for the distribution of the Additional Net Settlement Funds to eligible Settlement Class Members with approved claims as approved by the Court on January 5, 2022, less the requested reimbursements and future estimated taxes, expenses, and reserves, as set forth above. An Excel

file containing the proposed distribution amounts, accounting for the Additional Net Settlement Funds to individual Claimants, identifying Claimants by their claimant identification numbers provided to them during the registration process rather than by their names (to protect their identities), will be posted on the settlement website ([fxindirectantitrustsettlement.com](http://fxindirectantitrustsettlement.com)) and is being submitted to the Court as Exhibit A to this Declaration.

14. To avoid unnecessary delay and the unnecessary expenditure of resources by the Court and Class Counsel, it would benefit the Settlement Classes to have the interest income earned on the Settlement Escrow Accounts after the filing of this motion be apportioned 76.3% to the authorized Claimants, with that amount being distributed to the authorized Claimants using the same *pro rata* allocation formula used to calculate payments to authorized Claimants, and 23.7% to attorneys' fees owed, which percentages reflect the respective amounts in the Settlement Escrow Accounts.

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. 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, \$10,000 should suffice to address any unanticipated disputes or discrepancies. 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. For example, if feasible, monies remaining in the Net Settlement Funds after distribution is made could be distributed on a *pro rata* basis for, at least, a minimum payment amount to claimants who cashed their checks or a modest *cy pres* distribution.

16. The Qualified Settlement Funds will need to file tax returns and potentially pay taxes. The Claims Administrator estimates that \$51,000 in taxes and associated preparation fees on the escrow accounts for 2023. Declaration of Justin R. Hughes in support of Plaintiffs' Motion for Disbursement of the Interest Income Earned on the Settlement Funds ("Hughes Decl.") at ¶ 12. Class Counsel and the Claims Administrator will ensure that taxes are paid.

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 May 18, 2023, in Philadelphia, PA.

/s/ Michael Dell'Angelo  
Michael Dell'Angelo  
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