

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JAMES CONTANT, <i>et al.</i> , Plaintiffs, v. BANK OF AMERICA CORPORATION, <i>et al.</i> , Defendants.	Civil Action No. 17-cv-3139-LGS (related to No. 13-cv-7789-LGS)
--	--

**NOTICE OF PLAINTIFFS' MOTION TO UPDATE
PRO RATA DISTRIBUTION AMOUNTS TO CORRECT CERTAIN
ADMINISTRATIVE MATCHING ERROR IN OPTION ONE CLAIMS, UPDATE
ESTIMATED INCOME TAX RESERVE AND FOR LEAVE TO PAY FUTURE
INCOME TAXES ON THE SETTLEMENT FUND**

PLEASE TAKE NOTICE that, on a date and at a time to be determined by the Court, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, in the Courtroom of the Honorable Lorna G. Schofield, Plaintiffs will, and hereby do, move this Court, for an Order:

1. Establishing a reserve of \$30,000 for the payment of taxes associated with the Settlement Fund and the professional fees for preparing tax returns for the fourth quarter of 2023;
2. Authorizing Class Counsel to direct the preparation and filing of tax returns and the payments for such services and the payment of taxes due on the Settlement Fund after the filing of tax returns for the fourth quarter of 2023, without further leave of Court;
3. Approving the corrected *pro rata* distribution amounts to correct certain administrative matching error identified by the Court-appointed Claims

Administrator Heffler Claims Group (“Heffler”), now known as Kroll Settlement Administration (“Kroll”), in Option One claims; and

4. Authorizing the Claims Administrator to distribute to each Authorized Claimant the corrected *pro rata* share of the Net Settlement Fund.

Submitted herewith in support of this Motion are the following:

- (1) Memorandum in Support of Plaintiffs’ Motion to Update *Pro Rata* Distribution Amounts to Correct Administrative Matching Error in Option One Claims, Update Estimated Income Tax Reserve and For Leave to Pay Future Income Taxes on the Settlement Fund;
- (2) Second Supplemental Declaration of Justin R. Hughes in Connection with Plaintiffs’ Motion for Disbursement of the Settlement Funds; and
- (3) [PROPOSED] Order Granting Plaintiffs’ Motion to Update Pro Rata Distribution Amounts to Correct Certain Administrative Matching Error in Option One Claims, Update Estimated Income Tax Reserve and For Leave to Pay Future Income Taxes on the Settlement Fund.

Dated: December 8, 2023

Respectfully submitted,

/s/ Michael Dell’Angelo

Michael Dell’Angelo

Michael J. Kane

BERGER MONTAGUE PC

1818 Market Street, Suite 3600

Philadelphia, PA 19103

Tel: (215) 875-3000 / Fax: (215) 875-4604

mdellangelo@bm.net

mkane@bm.net

Settlement Class Counsel

Todd M. Schneider
**SCHNEIDER WALLACE COTTRELL
KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100 / Fax: (415) 421-7105
tschneider@schneiderwallace.com

Counsel for Plaintiffs and the Settlement Classes

Joseph C. Peiffer
PEIFFER WOLF CARR & KANE, APLC
201 St. Charles Ave. Suite 4610
New Orleans, LA 70170
Tel: (504) 523-2434 / Fax: (504) 523-2464
jpeiffer@pwcklegal.com

Counsel for Plaintiffs and the Settlement Classes

R. Bryant McCulley
Stuart McCluer
MCCULLEY MCCLUER PLLC
701 East Bay Street
Suite 411
Charleston, SC 29403
Tel: (843) 444-5404 / Fax: (843) 444-5408
bmcculley@mcculleymccluer.com
smccluer@mcculleymccluer.com

Counsel for Plaintiffs and the Settlement Classes

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JAMES CONTANT, <i>et al.</i> , Plaintiffs, v. BANK OF AMERICA CORPORATION, <i>et al.</i> , Defendants.	Civil Action No. 17-cv-3139-LGS (related to No. 13-cv-7789-LGS)
--	--

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO UPDATE
PRO RATA DISTRIBUTION AMOUNTS TO CORRECT CERTAIN
ADMINISTRATIVE MATCHING ERROR IN OPTION ONE CLAIMS, UPDATE
ESTIMATED INCOME TAX RESERVE AND FOR LEAVE TO PAY FUTURE
INCOME TAXES ON THE SETTLEMENT FUND**

WHEREAS, the Action is pending before this Court;

WHEREAS, on July 17, 2020, the Court preliminarily approved the proposed settlements in this action and approved the Plan of Allocation for the calculation of authorized claims by members of the Settlement Classes (ECF 441);

WHEREAS, on November 19, 2020, the Court entered Final Judgment, Order of Dismissal with Prejudice, and Order Granting Motion for Final Approval of the Settlements (ECF 460);

WHEREAS, on November 30, 2021, Plaintiffs filed their Motion for Distribution of Settlement Funds ("Distribution Motion") and supporting materials (ECF 538-541);

WHEREAS, on January 5, 2022, the Court granted the Distribution Motion ("Settlement Distribution Order") (ECF 562);

WHEREAS, the Court stayed the distribution of the settlement funds to authorized Claimants until “resolution of Claimant AMA Capital Management, LLC’s (“AMA”) appeal in favor of Class Counsel” (ECF 562, at ¶ 4);

WHEREAS, the Court retained “jurisdiction over any further application or matter which may arise in connection with these Settlements” (ECF 562, at ¶13);

WHEREAS, on April 14, 2023, the Second Circuit denied AMA’s appeal and entered an Order and Opinion affirming the orders of this Court (Second Cir. Document 168-1, at 4);

WHEREAS, on May 14, 2023, the Second Circuit issued its mandate sending the case back to this Court (ECF 578);

WHEREAS, on May 18, 2023, Plaintiffs filed their Motion for Disbursement of Interest Income on the Settlement Funds (“Interest Distribution Motion”) and supporting materials (ECF 580-583);

WHEREAS, on October 17, 2023, the Court granted Plaintiffs’ Interest Distribution Motion (“Interest Distribution Order”) which, among other things, authorized a reserve of \$51,000 for the payment of taxes associated with the Settlement Fund and the professional fees for preparing tax returns through the second quarter of 2023 (EFC 608);

WHEREAS, the Court has considered Plaintiffs’ Motion to Update *Pro Rata* Distribution Amounts to Correct Certain Administrative Matching Error on Option One Claims, Update Estimated Income Tax Reserve and For Leave to Pay Future Income Taxes on the Settlement Fund, and other documents submitted in support, and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. A reserve of \$30,000 for the payment of taxes associated with the Settlement Fund and the professional fees for preparing tax returns through the fourth quarter of 2023, is hereby approved.
2. Without further leave of Court, Class Counsel are authorized to direct the preparation and filing of tax returns and the payments for such services and the payment of taxes due on the Settlement Fund after the filing of tax returns for the fourth quarter of 2023.
3. The corrected *pro rata* allocation determinations made by the Court-appointed Claims Administrator Heffler Claims Group (“Heffler”), now known as Kroll Settlement Administration (“Kroll”), in consultation with Plaintiffs’ expert economic consulting firm, applEcon, based on the Court-approved Plan of Allocation, are hereby approved.
4. Distribution by the Claims Administrator to each authorized Claimant of their corrected *pro rata* share of the Net Settlement Funds pursuant to this Order and the Settlement Distribution Order and Interest Distribution Order is hereby approved.
5. No more than 90 days after the final disposition of the Settlement Fund, Class Counsel will submit a final report regarding the disposition of the Settlement Fund.
6. The Court retains jurisdiction over any further application or matter which may arise in connection with the administration of these Settlements.

SO ORDERED.

DATED _____, 2023

The Honorable Lorna G. Schofield
UNITED STATES DISTRICT JUDGE