

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AXIOM INVESTMENT ADVISORS, LLC,
by and through its Trustee, Gildor
Management LLC,

Plaintiff,

v.

BARCLAYS BANK PLC and BARCLAYS
CAPITAL INC.,

Defendants.

CASE NO. 15-CV-09323 (LGS)

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR
APPROVAL OF NOTICE PLAN AND PLAN OF DISTRIBUTION**

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INTRODUCTION

Class Plaintiff respectfully requests that this Court grant its Motion for Approval of Notice Plan and Plan of Distribution. The content of the proposed notices, the plan for disseminating notice to members of the Settlement Class,¹ and the proposed Plan of Distribution were prepared by experienced class action counsel in consultation with industry and damages consulting experts and a leading class action claims and notice administrator. They meet and exceed all requirements of reasonableness and fairness called for by Rule 23 and Due Process.

Plan and Form of Notice. Class Counsel proposes a robust, multifaceted plan to provide members of the proposed Settlement Class – all or nearly all of which are identifiable from Barclays’ transaction records – with actual, individual, hard-copy notice by mail and supplemented by publication in national and international financial news outlets and a settlement website dedicated to providing members of the Settlement Class with detailed information about the case and the Settlement. This comprehensive, multi-pronged approach provides the Settlement Class with the best notice practicable under the circumstances.

Plan of Distribution. The proposed Plan of Distribution satisfies the requirement that the proposed allocation be fair and reasonable. All or nearly all of the members of the Settlement Class and all or nearly all of their trades and trade instructions qualifying for claims under the Settlement (“Covered Transactions”) are identifiable through Barclays’ transaction records. Members of the Settlement Class will have ready access to records of their Covered Transactions through a secure internet portal maintained by the Claims Administrator and populated with records furnished by Barclays and analyzed by Class Counsel’s consultants.

¹ Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Settlement Agreement or Preliminary Approval Order.

Class Counsel's consultants will estimate the amount of damage applicable to each member of the Settlement Class's Covered Transactions, and the proposed Plan of Distribution outlines how these estimates will be calculated. If approved, the Claims Administrator will compute each individual Authorized Claimant's estimated damages and the sum of the total estimated damages across each and every Authorized Claimant. Each Authorized Claimant's payment will be their *pro rata* share of the Net Settlement Fund.

[Proposed] Order and Exhibits. The [Proposed] Order filed with this Motion describes the proposed plan for dissemination of notice, attaches the proposed Plan of Distribution (Exhibit 1), the proposed long-form notice ("Mail Notice") and proof of claim and release form ("Claim Form") (together in Exhibit 2), the proposed summary notice for multimedia publication ("Publication Notice") (Exhibit 3), and a proposed Settlement Approval and Distribution Timeline ("Timeline") (Exhibit 4).

REQUESTED PROCEDURES AND TIMELINE

Class Plaintiff will provide the Court with a complete timeline for noticing the Settlement Class and submitting materials in support of final approval after certain information essential to initiating the Mail Notice process is provided by Barclays. Class Counsel understand that Barclays is attempting to determine an exact time of delivery of this information but is unable to do so presently. This is why certain deadlines are blank or noted as "to be determined" in the [Proposed] Order and its exhibits. Based on discussions with Barclays' counsel, Class Plaintiff expects Barclays to provide the missing information forthwith, and the Settling Parties will file a letter updating the Court on estimates in the timeline on July 5, 2016.

Once Class Plaintiff determines the date by which the Mail Notice may be sent ("Notice Date") and the Final Fairness Hearing date is set, the other remaining dates fall into place under the terms of the Settlement Agreement. For Class Plaintiff to determine when the Notice Date

can occur, certain interim deadlines, discussed below (and set forth on lines 3 through 7 of the Timeline attached to the [Proposed] Order as Exhibit 4) must be estimated.

First, the date for the completion of Barclays' transaction data must be determined (line 3 of the Timeline). To date, Barclays has produced transaction data for members of the Settlement Class for the period June 1, 2008 through December 31, 2014. Barclays will supplement its production with data for the period January 1, 2015 through April 21, 2016. When this data production is complete, Barclays will have produced all or nearly all transaction data for the entire Class Period for all or nearly all members of the Settlement Class. Class Counsel understands that counsel for Barclays is working with Barclays to estimate when the data production will be complete and that Barclays has made it a priority to produce the data as expeditiously as possible.

Second, after receiving and analyzing additional transaction data, Class Counsel, with the assistance of their consultants, will estimate the amount of time needed to compile the Covered Transaction Database and perfect the Plan of Distribution (line 4 of the Timeline). At Class Counsel's direction, these consultants have already analyzed transaction data produced by Barclays for the time period January 1, 2010 through December 31, 2014 for the following currencies: AUD, CAD, CHF, CNH, CZK, DKK, EUR, GBP, HKD, HUF, ILS, INR, JPY, MXN, NOK, NZD, TLN, RON, SEK, SGD, TRY, USD, and ZAR.² Based on this analysis, Class Counsel and their consultants have formulated the outline for the proposed Plan of Distribution, which is discussed below. Perfecting the Plan of Distribution will require additional analysis and calculation of estimated damages for Covered Transactions.

² The data for the earlier class period years, June 1, 2008 through December 31, 2009, and the additional currencies not listed above were received by Class Counsel on June 20, 2016. Accordingly, this data could not be analyzed in advance of this filing.

Third, Class Counsel understands that Barclays is analyzing the laws of various jurisdictions outside the United States in which members of the Settlement Class are domiciled to determine appropriate changes, if any, to the contents of the Mail Notice and Publication Notice, including whether translations into other languages are required (line 5 of the Timeline). Class Counsel also understands that Barclays is analyzing whether a portion of the Mail Notices to members of the Settlement Class domiciled in certain jurisdictions outside the United States must be sent out by Barclays or an agent of Barclays (rather than the Claims Administrator) due to data privacy and/or bank secrecy laws existing in certain of those jurisdictions (line 5 of the Timeline). The Settling Parties do not expect these analyses to delay the Notice Date and anticipate submitting any revisions to the content of the notices or any translations to the Court for approval well in advance of the Notice Date.

Fourth, Class Counsel understands that Barclays is working to estimate when it can produce a list of names and addresses of members of the Settlement Class to the Claims Administrator (or, if necessary, an agent of Barclays) (line 5 of the Timeline).

Finally, based on all of the foregoing, Class Counsel will provide an estimate of the Notice Date (the date the Mail Notice will be sent out) (line 6 of the Timeline).

ARGUMENT

THE COURT SHOULD APPROVE THE PROPOSED PLANS OF NOTICE AND DISTRIBUTION BECAUSE THEY SATISFY THE REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 23 AND THE DUE PROCESS CLAUSE

On April 21, 2016, the Court granted preliminary approval to the Settlement. ECF No. 65. That Order provided that Class Counsel would, at a later date, seek approval of a notice plan and plan of distribution. *Id.* at 5. Class Plaintiff now respectfully moves that the Court approve the proposed plans.

I. THE PROPOSED FORM OF NOTICE PROGRAM SHOULD BE APPROVED

Rule 23 provides that prior to granting final approval of a proposed class action settlement, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Where, as here, the notice is to be provided to a Settlement Class certified under Rule 23(b)(3), the court is required to “direct to class members the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).

“The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005). “There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must ‘fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.’” *Id.* at 114.³ In short, the notice must afford Settlement Class Members the ability to “make an informed decision about their participation” in the class action. MANUAL FOR COMPLEX LITIGATION (Fourth) §21.311, at 289 (2004).

The proposed form and method of notice are sufficient to lawfully notify the Settlement Class, which is composed of sophisticated business entities of the type that Class Counsel and the Claims Administrator have previously had success in notifying through direct mail, supplemented by publication. Here, with a manageable class consisting of, *inter alia*, sophisticated high-volume currency traders, money managers of significant funds, multinational

³ Unless otherwise noted, all citations are omitted and emphasis is added.

corporations, investment firms, and insurance companies, and Class Counsel's ability to identify individual class members, the proposed methods and proposed forms of notice readily satisfy all requirements of Rule 23 and of Due Process. The proposals to notify the class in the manner and form set forth in the [Proposed] Order, including the Mail Notice and Publication Notice warrant approval.

A. The Content of the Mail and Publication Notices Satisfies the Requirements of Rule 23 and Due Process

In consultation with the Claims Administrator, Class Counsel has prepared a long-form notice to be mailed to each member of the Settlement Class that can be identified and a summary notice for publication. The documents contain information designed to "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores*, 396 F.3d at 113.

Rule 23 expressly sets out the requisite contents to be included in a notice to prospective class members of a proposed settlement:

For any class certified under Rule 23(b)(3), . . . notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed R. Civ. P. Rule 23(c)(2)(B).

The Mail Notice complies with all of these requirements. It provides potential members of the Settlement Class with a plain language explanation of:

- The nature of the case, the claims and defenses, the class definition, the background of the Settlement, and how the settlement funds will be allocated upon final approval;
- The right to opt out of the Settlement Class, to object to the Settlement, and to appear at the Final Fairness Hearing – and the processes and deadlines for doing so; and
- The binding effect of judgment on those who do not exclude themselves from the Settlement Class, and the effect of final approval.

In addition, and beyond that which is expressly required, the Mail Notice contains other information, such as Class Counsel’s intent to request attorneys’ fees, expense reimbursement, and a service award, and it prominently features contact information for the Claims Administrator and Class Counsel, which Class Members can utilize to obtain other information, if desired.

Forms of notice containing such robust information have met with consistent approval, as reflected in opinions of, and within, the Second Circuit. *See, e.g., Wal-Mart Stores*, 396 F.3d at 105 (affirming preliminary and final approval of settlement with a “notice plan that required mailing the settlement notice to class members and publishing a condensed version of the settlement notice in numerous widely-distributed publications”).⁴ Attached as Exhibits 1 through

⁴ *See also, e.g., In re Elec. Books Antitrust Litig.*, No. 11-md-2293 (DLC), 2014 WL 3798764, at *3 (S.D.N.Y. Aug. 1, 2014) (approval of notice granted; “Notices describe the terms of the Settlement, inform the class about the allocation of attorneys’ fees, and provide specific information regarding the date, time, and place of the final approval hearing.”); *In re Vitamin C Antitrust Litig.*, No. 06-md-1738, 2012 WL 5289514, at *2 (E.D.N.Y. Oct. 23, 2012) (approval of notice granted; “The notice provided to class members contained descriptions and explanations of the lawsuit, the classes, the settlements, the methods of distributing the settlement funds, class counsel’s intent to seek fee awards, and class members’ rights.”); *Sykes v. Harris*, 09 Civ. 8486 (DC), 2016 WL 3030156, at *9-*10 (S.D.N.Y. May 24, 2016) (Chin, C.J.) (approving individual notice containing “(i) the caption of the litigation, (ii) a description of the action, (iii) a description of settlement Classes, (iv) identification of counsel for the class, (v) a comprehensive summary of the Settlement Agreements’ terms, (vi) detailed information about the releases, (vii) a description of the Allocation Plan and estimates of the amount each recipient Class Member would receive pursuant to different participation levels, (viii) the procedure for submitting claim forms, (ix) the hearing date, (x) the procedure for submitting objections, requests for exclusion from the Rule 23(b)(3) class . . . (xi) the consequences of approval of the settlements by the Court, (xii) notice of Class Counsel’s intent to request attorneys’ fees, (xiii) notice of Lead Plaintiffs’ intent to seek service awards, (xiv) the contact information for the Class Administrator (who was available to answer Class

3 to the Declaration of Angela Ferrante, filed herewith, are examples of long-form notices approved by courts in this District and other federal courts in complex cases, in which the quality of the contents is met or exceeded by the Mail Notice.

Moreover, the Publication Notice is a plain language supplement to the long-form Mail Notice. The Publication Notice will be widely disseminated and further buttresses the adequacy of the Mail Notice. “Separately and together, these notices provide[] sufficient information for Class Members to understand the Settlement and their options.” *Sykes*, 2016 WL 3030156, at *10. Attached as Exhibits 4 to 6 to the Ferrante Declaration are examples of summary notices approved by courts in this District and other federal courts in complex cases, in which the quality of the contents is met or exceeded by the [Proposed] Summary Notice.

Before the Final Fairness Hearing, declaration(s) attesting to compliance with paragraphs 4 through 6 of the [Proposed] Order (governing the manner for distributing notice) will be filed for the Court’s consideration before final approval of the settlement. *See* [Proposed] Order, ¶7.

In accordance with the Preliminary Approval Order, Class Counsel will file a separate motion with the Court for an award of a reasonable attorneys’ fee, reimbursement of litigation

Members’ questions), and (xv) the procedure for obtaining additional information”); *Karic v. Major Automotive Companies, Inc.*, No. 09 Civ. 5708, 2015 WL 9433847, at *11-*12 (E.D.N.Y. Dec. 22, 2015) (Pollack, M.J.), *report and recommendation adopted*, 2016 WL 323673 (E.D.N.Y. Jan. 26, 2016) (recommending preliminary approval upon finding proposed notice to be “sufficiently detailed so as to inform the Class members of their rights and obligations,” where it contained: “(1) an explanation of who is entitled to a settlement award; (2) a brief contextual background to this lawsuit; (3) a summary of legal rights and options; (4) an explanation of the purpose of the Notice; (5) identifying information for Class Counsel; (6) an explanation of the benefits of settlement; (7) an overview of how each members’ settlement amount will be calculated; (8) an overview of the process for obtaining a copy of the Settlement Agreement, which contains the allocation formula and other important information; (9) an overview of attorneys’ fees, expenses, and the award that will be paid to the class representatives; (10) the result if the Court approves or does not approve the Settlement Agreement; (11) an explanation of the Fairness Hearing and the date, time, and place of the Hearing; (12) an overview of an individual’s options regarding the Settlement Agreement; and (13) additional contact information should a recipient of the notice have any questions”).

expenses, and a representative plaintiff service award, to be paid out of the Settlement Fund.⁵ Under Rule 23(h), the “attorneys whose efforts created the fund are entitled to a reasonable fee – set by the court – to be taken from the fund.” *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). The “percentage method for establishing common-fund fees is preferred . . . and provides a powerful incentive for the efficient prosecution and early resolution of litigation,” as in this case. 7B Charles Alan Wright, Arthur R. Miller, *FED. PRACTICE & PROCEDURE CIV.* §1803.1 (3d ed. 1998) (citing *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344 (S.D.N.Y. 2014)).

Class Counsel will be guided in particular by the teachings of this Court in *Colgate-Palmolive*, and, as reflected in the Mail Notice, will request that their fee award be based on a percentage of the Settlement Fund in an amount not to exceed 17.5% of the Settlement Fund. Class Counsel will also seek reimbursement for reasonably incurred litigation expenses, including for experts and mediation. *Id.* at 353 (cited in *NEWBERG ON CLASS ACTIONS* §16:5 (5th ed.)) (such services are “critically important” and their reimbursement is “routinely award[ed]”).

Class Counsel also intends to file a motion seeking a service award for Class Plaintiff, in an amount not to exceed \$25,000, given its service to the members of the Settlement Class. 36 F. Supp. 3d at 354 (granting service award to named plaintiffs that “reviewed draft pleadings and

⁵ The Preliminary Approval Order provides (at ¶¶17-18) that “any application for attorneys’ fees, service awards or expenses submitted by Plaintiff or counsel for Plaintiff . . . will be considered separately from the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement. At or after the Fairness Hearing, the Court will determine whether the Settlement Agreement, the proposed Plan of Distribution, any application for a service award, and any application for attorneys’ fees and/or expenses by counsel for Plaintiff should be finally approved.”

motions, searched for and produced relevant documents, reviewed filings, and communicated regularly with Class Counsel”).

These motion papers will be made available on the docket and on the dedicated website maintained by the Claims Administrator, with other important case documents, for the benefit of the members of the Settlement Class.

B. The Proposed Method of Notice Complies with Rule 23 and Due Process

“After granting preliminary approval, the court ‘must direct the preparation of notice of the certification of the settlement class, the proposed settlement and the date of the final fairness hearing.’” *In re Currency Conversion Fee Antitrust Litig.*, No. 01-MDL-1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006). Where, as here, an action is certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

The Court has approved Garden City Group as the Claims Administrator for purposes of notifying members of the Settlement Class of the proposed Settlement and to administer claims if the settlement is finally approved. Garden City Group has substantial experience in implementing class action notice programs and has administered such programs in more than 3,200 settlements. Ferrante Decl., ¶2.

As set out in the [Proposed] Order, Class Counsel plans to provide individual, direct mail notice of the Settlement to members of the Settlement Class that can be identified. In light of the ability to identify all or nearly all individual class members by name, and provide each such class member with notice directly, the proposed notice plan satisfies Rule 23 and Due Process based on the mailing alone. However, to supplement this direct individual notice, Class Counsel

proposes publication of a summary notice in a number of business publications and maintenance of a dedicated website to further disseminate information and facilitate the submission of valid claims.

Such multi-faceted notice programs combining direct mail and publication have been approved by federal courts in numerous complex class actions litigated and settled in the Southern and Eastern Districts of New York.⁶

1. Individual Direct Mail Notice Will Be Sent to Members of the Settlement Class

The plan is to provide individual, mailed notice via first-class U.S. Mail, postage prepaid to members of the Settlement Class that can be identified. The Mail Notice will be sent out by the Claims Administrator, or due to data privacy and/or bank secrecy laws existing in certain of the jurisdictions outside of the United States where members of the Settlement Class are domiciled, a portion of the Mail Notices may be sent out by Barclays or an agent of Barclays.

The mailing will contain the long-form Mail Notice and Claim Form. The mailing also will direct recipients to a secure internet portal where potential claimants' relevant Covered Transactions, as furnished by Barclays, will be available for review.

⁶ See, e.g., *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *5 (S.D.N.Y. Apr. 26, 2016) (“Class Counsel mailed notice packets to each of 13,923 identified Class members. . . . The Summary Notice was also published on January 11 in several important business publications. . . . The Garden City Group (the “Claims Administrator”) launched a website for the Settlement which posted the Settlement agreements, notices, court documents, and other information relevant to the Settlement.”); *Vitamin C*, 2012 WL 5289514, at *2 (“Pursuant to this plan, a copy of the settlement notice was mailed to every potential member of the Direct Purchaser Damages Class whose address was provided by defendants. The notice that was ultimately mailed to 147 members of this class also contained a claim form. Additionally, the class notice was published in eight print publications, as well as on Facebook and on the approximately 800 websites that comprise the 24/7 Network. Finally, the settlement notice, along with other lawsuit and settlement-related information, was made available on a website operated by the settlement administrator.”).

2. Publication Notice Will Be Disseminated for the Members of the Settlement Class

a. Publication of a Summary Notice to Media Sources of Particular Relevance to the FX Community Will Supplement the Individual Notice

In addition to individually notifying potential class members by mail with the Mail Notice, the summary Publication Notice will be published in a number of business publications read widely in the FX community: *The Wall Street Journal*, *Investor's Business Daily*, *FX Week*, and *Financial Times*. Given the general business sophistication of FX traders, these publications provide a valuable supplement to the already-thorough direct notice plan. As indicated in the [Proposed] Order, Class Plaintiff requests that it be allowed to make appropriate changes to the publication notice plan in consultation with the Claims Administrator and Barclays, including publishing the Publication Notice in additional publications to meet any additional requirements of jurisdictions outside of the United States where members of the Settlement Class are domiciled.

b. Establishment of a Dedicated Website Will Provide Additional Notice

Copies of the approved Mail Notice, Summary Notice, Settlement Agreement, Plan of Distribution, and other important documents, such as the Complaint and the Court's orders, will be published to a website established and maintained by the Claims Administrator. A toll-free telephone number will be provided in the notices and listed on the website so that members of the Settlement Class can raise questions and/or receive assistance in preparing or filing their claims.

II. THE PROPOSED PLAN OF DISTRIBUTION SHOULD BE APPROVED

The *pro rata* allocation and distribution of the Net Settlement Fund described in the proposed Plan of Distribution is "fair and reasonable." *In re PaineWebber Ltd. P'ships Litig.*,

171 F.R.D. 104, 133 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Since “in the case of a large class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision,” *id.*, “[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by ‘experienced and competent’ Class Counsel.” *In re NASDAQ Market-Makers Antitrust Litig.*, No. 94 Civ. 3996 RWS, 2000 WL 37992, at *2 (S.D.N.Y. Jan. 18, 2000). “A principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.” *Credit Default Swaps*, 2016 WL 2731524, at *9.

By returning the proposed Claim Form, which is to be delivered with the Mail Notice, members of the Settlement Class will be able to ensure that they receive their fair share of the proposed Settlement upon final approval. *All* of the Net Settlement Fund (the amount remaining after attorneys’ fees, litigation expenses and costs, claims administration costs, and any service award) will be allocated among those members of the Settlement Class having submitted valid Claim Forms. This is a non-reversionary fund; no portion of the Net Settlement Fund will revert to Barclays.

The Net Settlement Fund will be allocated among the members of the Settlement Class on the basis of the alleged harm each suffered relative to one another. A damages model constructed by Class Counsel’s consultants for purposes of distribution will be used in allocating the Net Settlement Fund. The model will use available transaction data maintained by Barclays and produced to Class Plaintiff.

This process will occur in three steps: (1) identifying the trades and trade instructions qualifying for claims under the Settlement Agreement (“Covered Transactions”); (2) for each Covered Transaction, estimating the amount of damage resulting from the alleged conduct; and

(3) calculating the *pro rata* share of an individual claimant's Settlement proceeds in relation to the total Settlement proceeds for all claimants that submit a valid claim. Further information about each of these steps is provided in the proposed Plan of Distribution.

A copy of the proposed Plan of Distribution, once approved by the Court, will be posted to the settlement website prior to notice being mailed to the Settlement Class. In addition, when considering whether to file a claim, object to the Settlement, or opt out of the Settlement Class, members of the Settlement Class will be able to review information concerning their Covered Transactions, as produced by Barclays from their books and records, on a secured internet portal maintained by the Claims Administrator. Members of the Settlement Class will also have the opportunity to submit additional transactions and information for consideration in the claims administration process.

A similar system was approved and used in the distribution of settlement proceeds in another complex financial services class action recently resolved, *Credit Default Swaps*, 2016 WL 2731524, at *9, where Judge Cote aptly observed: "This sophisticated Class is in an excellent position to swiftly and competently assess whether the Plan, and the model upon which it is based, achieves a fair distribution of this very sizeable Settlement Fund."

CONCLUSION

For the foregoing reasons, Class Plaintiff respectfully requests that the Motion for Approval of Notice Plan and Plan of Distribution be GRANTED.

DATED: June 20, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and I caused the foregoing document or paper to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List.

s/ Christopher M. Burke

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