

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

**IN RE LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION**

**MDL No. 2262
Master File No. 1:11-md-02262- NRB
ECF Case**

**THIS DOCUMENT RELATES TO:
Case No. 12-CV-1025 (NRB)**

**BONDHOLDER PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR APPROVAL OF DISTRIBUTION OF THE NET SETTLEMENT FUNDS**

Karen L. Morris (Bar No. 1939701)
Patrick F. Morris
MORRIS AND MORRIS LLC
COUNSELORS AT LAW
4023 Kennett Pike, #254
Wilmington, DE 19807
Tel: (302) 426-0400
Cell: (302) 383-9611
kmorris@morrisandmorrislaw.com
pmorris@morrisandmorrislaw.com

David H. Weinstein
Robert S. Kitchenoff
WEINSTEIN KITCHENOFF
& ASHER LLC
24 W. Lancaster Avenue, Suite 201
Ardmore, PA 19003
Tel: (215) 545-7200
weinstein@wka-law.com
kitchenoff@wka-law.com

*Settlement Class Counsel for
Bondholder Plaintiffs*

TABLE OF CONTENTS

I. BACKGROUND 1

 A. Notice to the Settlement Class 3

 B. Claims Processing..... 4

II. ARGUMENT 7

 A. The Court Should Authorize Distribution of the
 Net Settlement Funds to Authorized Claimants..... 7

 1. Timely and Eligible Claims 7

 2. Late But Otherwise Eligible Claims 7

 B. The Court Should Confirm The De Minimis Payment Amount..... 10

 C. The Court Should Accept the Claims Administrator’s Recommendations
 to Reject the Ineligible Claims..... 10

 D. The Court Should Authorize Distribution of the
 Net Settlement Funds 11

 E. The Court Should Approve the Distribution of the
 Remaining Net Settlement Funds to Settlement
 Class Counsel’s *Cy Pres* Designee 12

 F. The Release of Claims 15

 G. Retention of Proof of Claim Forms and Other Documents 16

 H. Fees And Disbursements..... 16

III. CONCLUSION..... 17

TABLE OF AUTHORITIES

Cases

In re Agent Orange Prod. Liab. Litig.,
689 F. Supp. 1250 (E.D.N.Y. 1988) 8

Binotti v. Duke University,
Case No. 1:20-CV-470, 2021 WL 5363299 (M.D.N.C. Aug. 30, 2021)..... 15

Chery v. Conduent Ed. Serv. LLC,
1:18-cv-00075-DNH-CFH, 2023 WL 2643502 (N.D.N.Y. March 27, 2023)..... 16

Coppolino v. Total CallIntern., Inc.,
588 F. Supp. 2d 594 (D.N.J.2008) 13

In re Crocs, Inc. Sec. Litig.,
306 F.R.D. 672 (D. Colo. 2014) 10

In re Dental Supplies Antitrust Litigation,
1:16-cv-00696 (BMC) (E.D.N.Y. Feb. 29, 2024)..... 14

In re Ductile Iron Pipe Fittings (“DIPF”) Indirect Purchaser Antitrust Litigation,
No. 3:12-cv-00169 (D.N.J. Sept. 15, 2020) 15

In re Gilat Satellite Networks, Ltd.,
No. 02 Civ. 1510, 2009 WL 803382 (E.D.N.Y. Mar. 25, 2009) 8

In re Global Crossing Sec. & ERISA Litig.,
225 F.R.D. 436 (S.D.N.Y. 2004) 10

Gordon v. Sonar Capital Management LLC,
11-cv-9665 (JSR), 2016 WL 4272994 (S.D.N.Y. Aug. 10, 2016) 13

Jones v. National Distillers,
56 F. Supp. 2d 355 (S.D.N.Y. 1999) 13

In re Linerboard Antitrust Litig.,
MDL No. 1261, 2008 U.S. Dist. LEXIS 77739 (E.D. Pa. Oct. 3, 2008)..... 12, 13

Lin v. Liberty Health Sciences Inc.,
19-cv-00161 (MKV), 2022 WL 15773921 (S.D.N.Y. Oct. 28, 2022) 16

Masters v. Wilhelmina Model Agency, Inc.
473, F.3d 423 (2d Cir. 2007) 13

In re Orthopedic Bone Screw Prods. Liab. Litig.,
246 F.3d 315 (3d Cir. 2001) 8

Plotz v. NYAT Maint. Corp.,
 No. 98 Civ. 8860, 2006 WL 298427 (S.D.N.Y. Feb. 6, 2006) 13

In re Publication Paper Antitrust Litig.,
 No. 3:04 MD 1631, 2009 WL 2351724, at *2 (D.Conn. July 30, 2009) 14

Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC,
 22 F.4th 103 (2d Cir. 2021) 1

Seaman v. Duke Univ.,
 No. 1:15-CV-462, 2019 WL 13193731 (M.D.N.C. Sept. 24, 2019) 15

Six (6) Mexican Workers v. Ariz. Citrus Growers,
 904 F.2d 1301 (9th Cir. 1990) 12

In re Visa Check/MasterMoney Antitrust Litigation,
 Master File No. 96-CV-5238 (JG), 2011 WL 5029841 (E.D.N.Y. Oct 24, 2011) 14

Zients v. LaMorte,
 459 F.2d 628 (2d Cir. 1972) 8, 9

Zilhaver v. UnitedHealth Grp., Inc.,
 646 F. Supp. 2d 1075 (D. Minn. 2009) 10

In re Zynga Inc. Sec. Litig.,
 No. 12 Civ. 4007 (JSC), 2015 WL 6471171(N.D. Cal. Oct. 27, 2015)..... 10

Rules

Federal Rule of Civil Procedure 23(e) 1

Plaintiffs Ellen Gelboim and Linda Zacher (“Bondholder Plaintiffs”) respectfully submit this memorandum on behalf of themselves and the members of the Bondholder Settlement Classes in support of their motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order authorizing the distribution of the Net Settlement Funds to eligible Class Members as set forth in the accompanying Declaration of Stephanie Amin-Giwner In Support of Motion for Initial Distribution (the “Amin-Giwner Decl.”). Ms. Amin-Giwner is a Director of Client Services for Epiq Class Action and Claims Solutions, Inc. (“Epiq”), the Court-authorized claims administrator for the settlements in the above-captioned action. Bondholder Plaintiffs recommend that the Court grant this motion.

I. BACKGROUND

Bondholder Plaintiffs entered into separate settlements with ten of the defendants in this litigation, which settlements were approved by the Court and are final. The first seven settlements, with defendants Barclays Bank plc, UBS AG, HSBC Bank plc, Citibank, N.A. and Citigroup Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A., Bank of America Corporation and Bank of America, N.A., and the Royal Bank of Scotland Group plc, were granted final approval on December 16, 2020,¹ and are referred to as the Initial Settlements. The latter three settlements, with defendants MUFG Bank LTD (f/k/a The Bank of Tokyo-Mitsubishi, LTC), Credit Suisse Group AG, and The Norinchukin Bank, referred to as the Subsequent Settlements, were granted final approval on March 28, 2023.² The Initial Settlements and Subsequent Settlements totaled \$70.415 million, plus interest. The litigation is now concluded.³

¹ ECF 3246 (Final Judgment and Order, dated Dec. 16, 2020) at ¶ 4.

² ECF 3654 (Final Judgment and Order, dated Mar. 28, 2023) at ¶ 4.

³ The Court of Appeals upheld the District Court’s dismissal of the Bondholder Action on the merits, ending the case as to the non-settling defendants. *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC*, 22 F.4th 103 (2d Cir. 2021).

The Court awarded Bondholder Plaintiffs' Settlement Class Counsel⁴ attorneys' fees of \$18,515,286.00 from the Initial Settlements, and \$489,720.00 from the Subsequent Settlements, for a total of \$19,005,006.00, reimbursement of litigation expenses in the amount of \$818,793.03 (\$817,237.03 from the Initial Settlements, and \$1,556.00 from the Subsequent Settlements), and awarded \$55,000 in service awards (\$27,500 each) to the two class representatives. ECF 3246 at ¶¶ 14-15; ECF 3654 at ¶¶ 14-15.

The Final Approval Orders provide that the Court retains exclusive continuing jurisdiction over “(a) implementation of the Settlements, the Settlement Agreements and any award or distribution of monies under the Settlements and (b) all parties hereto for the purpose of construing, enforcing, and administering the Settlements and all future proceedings relating thereto.” ECF 3246 at ¶ 30; ECF 3654 at ¶ 30. Pursuant to the Settlement Agreements, Defendants have no interest in the relief sought by this motion.⁵

⁴ In the final approval orders, the Court confirmed the appointment of Morris and Morris LLC Counselors At Law and Weinstein Kitchenoff & Asher LLC as Settlement Class Counsel. ECF 3246 at ¶ 10; ECF 3654 at ¶ 10. The Court had previously appointed both firms to serve as Interim Co-Lead Counsel for the Bondholder Plaintiffs, ECF 206 (Pre-Trial Order No. 2, dated Aug. 14, 2012) at ¶ 5, and as Settlement Class Counsel in the Preliminary Approval Orders. ECF 2048 (Preliminary Settlement Approval Order, dated July 5, 2017); ECF. 3081 (Preliminary Settlement Approval Order, dated May 5, 2020) at ¶ 4; ECF 3578 (Preliminary Settlement Approval Order, dated Nov. 7, 2022) at ¶ 7.

⁵ *See, e.g.*, Barclays Settlement Agreement, ECF 1947-3 at ¶ 8.1 (v) (“Barclays shall have no liability, obligation, or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund.”); and UBS Settlement Agreement, ECF 1947-5 at ¶ 9.2 (v) (“Except for the obligation to fund the settlement . . . , UBS shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund”). *See also* HSBC Settlement Agreement, ECF 1947-6 at ¶ 8.2 (v) (same); Citibank Settlement Agreement, ECF 2764-4 at ¶ 8.2 (v) (same); Bank of America and J.P. Morgan Settlement Agreement, ECF 3059-4 at ¶ 8.2 (v) (same); Royal Bank of Scotland, plc Settlement Agreement, ECF 3059-5 at ¶ 8.1 (v) (same); MUFG Bank Ltd Settlement Agreement, ECF 3563-4 at ¶ 8.2 (v) (same); Credit Suisse Settlement Agreement, ECF 3563-5 at ¶ 8.2 (v) (same); and The Norinchukin Bank Settlement Agreement, ECF 3563-6 at ¶ 8.2 (v) (same).

As of June 15, 2024, the total balance of the Net Settlement Funds, including accrued interest, is \$53,224,808.37. Amin-Giwner Decl. at ¶ 4. The Net Settlement Funds continue to accrue interest daily. *Id.* Epiq and Bondholder Settlement Class Counsel recommend distribution of the Net Settlement Funds as set forth in the Amin-Giwner Declaration.

The Court-approved Plan of Allocation⁶ describes the distribution of the Net Settlement Funds to Authorized Claimants. After deducting all payments approved by the Court, the Net Settlement Funds will be distributed on a pro rata basis among all Authorized Claimants based on the Authorized Claimant's Suppressed Payment Amount compared to the total Suppressed Payment Amount of all Authorized Claimants.⁷

To avoid paying claims where the cost of making payment would exceed the amount of the payment, paragraph 5 of the Plan of Allocation provides that no payment will be made to any claimant where the amount of the payment would be \$10.00 or less (the "De Minimis Amount"). Authorized Claimants who will not be receiving a distribution because their payment would be equal to or less than the De Minimis Amount will receive correspondence from Epiq so informing them. That money will be reallocated to Authorized Claimants with claims greater than \$10.00.

A. Notice to the Settlement Class

As the Court acknowledged, the Notice Program developed by Epiq and approved by the Court has been carried out. ECF 3246 at ¶ 11-12; ECF 3654 at ¶¶ 11-12. Notice was made available to the Settlement Class via multiple channels through which members of the Settlement Classes

⁶ ECF 3246 at ¶ 5; ECF 3654 at ¶ 5.

⁷ A copy of the Plan of Allocation was attached to the Morris and Kitchenoff Declaration in Support of Bondholders Motion for Approval of the Notice Plan and Preliminary Approval of the Allocation Plan, ECF 1983-1, and to the motion for preliminary approval of the Subsequent Settlements. ECF 3563-7. It is also published on the Bondholder Settlement website. <https://www.bondholderliborsettlements.com/Content/Documents/Plan%20of%20Allocation.pdf>, last visited June 26, 2024.

were able to learn about the benefits of the settlements, the process for filing a claim, and the requirements for excluding themselves from or objecting to the settlements. The Notice Program provided both individual and media notice through an extensive combination of direct mail, email, internet advertising, print publication, press releases, a website, and a toll-free telephone number. Amin-Giwner Decl., ¶¶ 5-7.

B. Claims Processing

Pursuant to the Court's Orders (ECF 3102 (Order Approving Notice Plan) at ¶ 19; ECF 3578 at ¶ 31 - 34), each member of the Settlement Classes wishing to participate in the distribution of the Net Settlement Fund established by the Initial and Subsequent Settlements were required to submit Proof of Claim forms postmarked on or before December 28, 2020, and February 27, 2023,⁸ respectively.

Epiq received 46,456 Claims in connection with the Initial and Subsequent Settlements, Amin-Giwner Decl. at ¶ 10, 43,827 of which were received in connection with the Initial Settlements and 2,629 in connection with the Subsequent Settlements. *Id.* at ¶ 8-9. Epiq prepared detailed reports of: (i) all valid and timely Claims submitted by Authorized Claimants, *id.*, Ex. A-1; (ii) Claims submitted after the filing deadline but on or before November 27, 2022,⁹ that were otherwise valid (the "Initial Settlements Late But Otherwise Eligible Claims"), and Claims

⁸ The February 27, 2023, deadline applied only to "[a]ny member of the Settlement Classes who did not submit a Proof of Claim Form in connection with the Initial Bondholder Settlements, but who wishes to receive a distribution from any of the Subsequent Bondholder Settlements . . ." *Id.* at ¶ 32. "Any claim already submitted in the Initial Bondholder Settlements will automatically be considered for recovery in the Subsequent Bondholder Settlements and should not be resubmitted in the Subsequent Bondholder Settlements." *Id.* at ¶ 31.

⁹ November 28, 2022, was the Distribution Date for Notice of the Subsequent Settlements. ECF 3578 at ¶19. It is logical to assume that any claim received before that date (i.e., on or before November 27, 2022) was submitted in connection with the Initial Settlements as notice had yet to be given regarding the Subsequent Settlements. By definition, claims received after that date would be considered only for a distribution in the Subsequent Settlements.

submitted on or after February 27, 2023, but before November 30, 2023,¹⁰ that were otherwise valid (the “Subsequent Settlements Late But Otherwise Eligible Claims” collectively, the “Late But Otherwise Eligible Claims”), *id.*, Ex. A-2; and (iii) all Claims that were wholly rejected. *Id.*, Ex. A-3.

Authorized Claimants that already submitted valid claims did not need to submit a claim form in the Subsequent Settlements. Stated conversely, **only** claimants submitting **new** claims that had not, for whatever reason, submitted a claim in the Initial Settlements needed to submit a claim form in the Subsequent Settlements. These new claims were considered **only** for distribution from the Subsequent Settlements Funds.

Epiq determined that 22,114 of 46,456 claims received in the Initial and Subsequent Settlements should be wholly rejected for one or more of the following reasons: (1) there were no eligible CUSIPS listed on the Claim; (2) the Proof of Claim did not result in a Suppressed Payment Amount; (3) their claims were defective and the condition of ineligibility was never cured; (4) the Claim was a duplicate claim; and (5) the Claim was withdrawn. Amin-Giwner Decl., ¶¶ 40-42.

Epiq made substantial efforts to contact claimants that had submitted ineligible or deficient claims and instruct those with deficient claims on how to cure any deficiencies. *Id.*, ¶¶ 22-23. Epiq provided deficiency and/or ineligibility notices and letters in connection with 1,697 (or approximately 82.1% of) Paper Claims and 12,315 (or approximately 27.7% of) Electronic Claims submitted in connection with the Settlements. *Id.*, ¶¶ 24, 27. These notices described the claim’s defect(s) and stated what was necessary to cure the claim. *Id.*, ¶¶ 24-27. Following the mailing of the

¹⁰ To calculate the distribution to class members, there needs to be a Claim Bar Date beyond which no new claims will be accepted. Bondholder Plaintiffs request that the Court enter a Claim Bar Date of November 30, 2023, which date Epiq has utilized in calculating the distribution proposed herein.

deficiency letters, as necessary, Epiq also engaged in additional follow-up discussions with claimants via telephone and email to assist these claimants in curing the deficiencies in their claims. *Id.*, ¶¶ 22-23.

Once the deficiency process was complete, Epiq performed a quality assurance review before reporting their work to Settlement Class Counsel. Amin-Giwner Decl. at ¶ 30-33. Epiq also took significant steps to verify the identity and continued existence of the beneficial owners who filed Claims or on whose behalf Claims were filed. Amin-Giwner Decl. at ¶¶ 15, 20. Prior to issuing payments to Authorized Claimants, Epiq will perform searches to identify and exclude potential payments to payees who reside in countries to which payments are prohibited in accordance with the regulations and guidelines of the U.S. Treasury Department, Office of Foreign Assets Control (“OFAC”) which maintains lists of individual and countries to whom or which payments may not be made by law. *Id.* at ¶ 46 v. Payment to any Authorized Claimant identified by the OFAC will be withheld until such time as Epiq is able to confirm that payment is not prohibited under OFAC regulations. If payment is prohibited, any money that claimants would have received will be added back into the Net Settlement Funds and the Suppressed Payment Amounts will be recalculated.

Epiq has now completed processing all 43,827 claims received in the Initial Settlement through November 28, 2022 (*Id.*, ¶ 8), and all 2,629 claims received in the Subsequent Settlement through November 30, 2023. *Id.*, ¶ 9. As of July 2, 2024, the date of the Amin-Giwner Declaration, no claimant has disagreed with Epiq’s administrative determination of deficiency or ineligibility. *Id.*, ¶ 29.

II. ARGUMENT

A. The Court Should Authorize Distribution of the Net Settlement Funds to Authorized Claimants

1. Timely and Eligible Claims

There were 24,342 Authorized Claimants who submitted timely and eligible claims (the “Timely Eligible Claims”) postmarked on or before the Court-approved claims filing deadlines of December 28, 2020, for the Initial Settlements, and February 27, 2023, for the Subsequent Settlements. Amin-Giwner Decl, ¶ 39 and Ex. A-1. The Authorized Claimants included institutional investors and individuals that owned (including beneficially in “street name”) any debt security issued by an entity other than one of the Defendants, with a CUSIP identification number on which interest was payable at any time between August 1, 2007, and May 31, 2010, where that interest was payable at a rate expressly linked to U.S. Dollar LIBOR. Amin-Giwner Decl. at ¶ 13. These Authorized Claimants have a total Suppressed Payment Amount of \$3,018,409,229. *Id.* at ¶ 39. Plaintiffs respectfully request that the Court approve the claims of the 24,342 Authorized Claimants with Timely Eligible Claims as listed in Exhibit A-1 to the Amin-Giwner Declaration.

2. Late But Otherwise Eligible Claims

Through November 27, 2022, Epiq received 1,315 claims after the December 28, 2020, submission deadline for the Initial Settlements. Amin-Giwner Decl., ¶ 34. In addition, from February 28, 2023, through November 30, 2023, Epiq received an additional 847 claims in the Subsequent Settlements. *Id.*, ¶ 35. Epiq processed these claims and has determined that there are 1,123 Authorized Claimants that submitted Late But Otherwise Eligible Claims. *Id.* ¶¶ 34-36. The Late But Otherwise Eligible Claims have a Suppressed Payment Amount of \$169,975,295. *Id.*, ¶ 39 and Ex. A-2. The Late But Otherwise Eligible Claims represent approximately 6% of the

combined Suppressed Payment Amount of all Authorized Claimants. *Id.*, ¶ 36. Epiq has not rejected any Claim solely based on its late submission in connection with either the Initial or Subsequent Settlements, and Epiq believes no delay or prejudice to other Claimants has resulted from the provisional acceptance of the Late but Otherwise Eligible Claims. *Id.* In view of the complexity and age of the data requested in the claim form, Epiq accepted and processed timely claims that required multiple revisions, and so-called placeholder Claims that were timely submitted but the data was provided after the filing deadline.¹¹ While the processing of these claims continued, Epiq also accepted late claims that were provided after the filing deadline but which required little additional processing or revisions. *Id.*, ¶¶ 36-37.

Until the Net Settlement Funds are distributed, the Court retains broad and inherent equitable powers to include late-filed claims as part of a settlement distribution. *Zients v. LaMorte*, 459 F.2d 628, 630-31 (2d Cir. 1972) (“Until the fund created by the settlement is actually distributed, the court retains its traditional equity powers.”) This is true even where the parties agreed to a claim deadline pursuant to the terms of a settlement agreement. *Id.* So long as there is no prejudice to the defendants and no delay of pay-out to timely claimants, acceptance of late-filed claims is appropriate. *In re Agent Orange Prod. Liab. Litig.*, 689 F. Supp. 1250, 1262-63 (E.D.N.Y. 1988) (internal citation omitted); *In re Gilat Satellite Networks, Ltd.*, No. 02 Civ. 1510, 2009 WL 803382, at *6 (E.D.N.Y. Mar. 25, 2009) (allowing payment of late claims); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 329 (3d Cir. 2001) (court allowed a late claim where all

¹¹ Epiq accepted claims as timely based upon the postmark date of the claim even if it required additional information to be considered complete, for example a placeholder claim, or needed additional information to cure a deficiency. The Late But Otherwise Eligible Claims, to the contrary, were submitted after the filing deadline but mostly with complete or near complete data. Thus, acceptance of such claims did not hold up the administration of the case and required less work by Epiq than many of the timely claims. Amin-Giwner Decl. at ¶¶ 36-37.

class members were asserting claims on a “finite pool of assets”).

[W]here, as here, all the equities are on the side of the claimants, the fund has not been distributed and the administration of the fund would be insignificantly hampered by allowing these few late claims, [claimants] should be permitted to participate in the fund.” *Zients*, 459 F.2d at 630-631. Bondholder Plaintiffs believe that when the equities are balanced, it would be unfair to prevent otherwise eligible claimants from participating in the Net Settlement Funds solely because their claims were submitted after the cut-off date, when they were submitted while claims were still being processed. Moreover, payment of the Late But Otherwise Eligible Claims will not cost Defendants any additional money nor will payment of these claims materially prejudice or delay payment to the timely claimants.

However, to facilitate the efficient and proportional distribution of the Net Settlement Funds, there must be a final cut-off after which no other claims (or further adjustment, corrections, or additional support for already filed claims) may be accepted. Accordingly, it is respectfully requested that the Distribution Order provide that any new Claims, any adjustments to previously filed Claims that increases the Suppressed Payment Amount,¹² and any responses to the Data Integrity Review that are received after November 30, 2023, be barred. Amin-Giwner Decl at ¶ 38.

Bondholder Plaintiffs respectfully request that the Court approve Epiq’s administrative recommendations to accept the Late But Otherwise Eligible Claims listed in Exhibit A-2 to the Amin-Giwner Declaration.

¹² Adjustments that decrease a Claim’s Suppressed Payment Amount will be allowed as they involve less verification work and would reallocate money rightfully belonging to other members of the Settlement Classes.

B. The Court Should Confirm The De Minimis Payment Amount.

To avoid paying claims where the cost of making payment would exceed the amount of the payment, paragraph 5 of the Plan of Allocation provides that no payment will be made to any claimant where the amount of the payment would be \$10.00 or less. Courts routinely approve plans of allocation which provide minimum claim thresholds of \$10.00 or more. *See, e.g., In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004).¹³ Authorized Claimants who will not be receiving a distribution because their payment calculates to \$10.00 or less will be sent correspondence from Epiq so informing them. That money will be reallocated to Authorized Claimants with claims greater than \$10.00. This Court approved the Minimum Payment Amount as part of its approval of the Plan of Distribution,¹⁴ and should confirm that decision here.

C. The Court Should Accept the Claims Administrator’s Recommendations to Reject the Ineligible Claims.

Epiq recommends a total of 22,114 claims for rejection. Amin-Giwner Decl., ¶ 40. As noted above, the reasons for the rejections included one or more of the following: (1) no eligible CUSIPS listed on the Claim; (2) Proof of Claim did not result in a Suppressed Payment Amount; (3) defective Claim with the condition of ineligibility never cured; (4) the Claim was a duplicate claim; and (5) the Claim was withdrawn. *Id.*, ¶ 41. Epiq sent Defect Notices to these claimants and spent significant time and effort assisting claimants and their representatives in curing any defects. *Id.*,

¹³ *See also Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1080 (D. Minn. 2009) (“no allocation to . . . class members whose payout would be less than \$10.00.”); *In re Zynga Inc. Sec. Litig.*, No. 12 Civ. 4007 (JSC), 2015 WL 6471171, at *4 (N.D. Cal. Oct. 27, 2015) (“No distribution will be made to any claimants who would receive less than \$10.00”); *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 680 (D. Colo. 2014) (“a qualifying class member will not receive a distribution from the Settlement Fund if the class member is entitled to recover less than \$10.00”).

¹⁴ ECF 3246 at ¶ 5; ECF 3654 at ¶ 5.

¶¶ 22-23. As of the date of the Amin-Giwner Declaration, no claimant had contacted Epiq to disagree with its administrative determination of defects or ineligibility. *Id.*, ¶ 29.

Accordingly, Bondholder Plaintiffs respectfully request that the Court reject the ineligible claims listed in Exhibit A-3 to the Amin-Giwner Declaration.

D. The Court Should Authorize Distribution of the Net Settlement Funds

The Net Settlement Funds are ready for distribution. Bondholder Plaintiffs request that the Court direct Epiq to distribute the Net Settlement Funds to the claimants whose claims Epiq has administratively determined to be valid (those listed in Exhibits A-1 and A-2 to the Amin-Giwner Declaration) under the Court-approved Plan of Allocation. ECF 3246 at ¶ 5; ECF 3654 at ¶ 5. If these administrative determinations are approved, each of these claimants will receive a *pro rata* share of the Net Settlement Funds based on his, her, or its Suppressed Payment Amount compared to the total Suppressed Payment Amount of all Authorized Claimants (the “Distribution”). *Id.*

Given that many of the Authorized Claimants are institutional investors and financial institutions, a significant portion of the Net Settlement Funds will be distributed by wire transfer. There will nevertheless be a significant number of checks issued, and it may be expected that not all the checks distributed to Authorized Claimants will be cashed promptly. To encourage Authorized Claimants to promptly cash their Distribution checks, and to avoid or reduce future expenses relating to unpaid Distributions, Bondholder Plaintiffs propose that all the Distribution checks bear a notation: “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.” Bondholder Plaintiffs also propose that, following reasonable outreach efforts by Epiq, Authorized Claimants who whose Initial Distribution payments are unclaimed after the time allotted shall irrevocably forfeit all recovery from the Settlements, and the funds allocated to all such unclaimed payments shall be available in any redistribution, if economically feasible, to other Authorized Claimants.

Plaintiffs further request that the Court authorize that any amounts remaining in the Net Settlement Funds following the Initial Distribution – after deducting Epiq’s unpaid fees and expenses incurred in connection with administering the Settlements, including Epiq’s estimated costs of a second distribution (*see below*), and after deducting the payment of any estimated taxes, and the costs of preparing appropriate tax returns – will be distributed to all Authorized Claimants in the Initial Distribution who (i) received a wire payment or who negotiated their distribution payment, and (ii) would be eligible to receive more than the De Minimis Amount in such second distribution based on their *pro rata* share of the remaining funds. Additional distributions, after deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter in a reasonable amount of time after the preceding distribution until Class Counsel, in consultation with Epiq, determine that further distribution is not cost effective.

E. The Court Should Approve the Distribution of the Remaining Net Settlement Funds to Settlement Class Counsel’s *Cy Pres* Designee

In settling this litigation, the parties agreed that there would be no reversion of any portion of the Settlement Funds to any settling defendant, and that any remaining funds “shall be donated to a non-profit charitable organization selected by Bondholder Plaintiffs’ Counsel and approved by the Court.” *See, e.g.*, Barclay’s Settlement Agreement, ECF 1947-3, ¶ 7.5.¹⁵

“Most class actions result in some unclaimed funds.” *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2008 U.S. Dist. LEXIS 77739 at * 9 (E.D. Pa. Oct. 3, 2008) (“It is not uncommon to have funds remaining in a class action after payment of all identifiable claims. . . .”). The Second Circuit

¹⁵ *See also* ECF 1947-5, ¶ 8.5 (UBS); ECF 1947-6, ¶ 7.5 (HSBC); ECF 2764-4, ¶ 7.5 (Citibank); ECF 3059-4, ¶ 7.6 (Bank of America and J.P. Morgan); ECF 3059-5, ¶ 7.6 (Royal Bank of Scotland); ECF 3563-4, ¶ 7.6 (MUFJ); ECF 3563-5, ¶ 7.6 (Credit Suisse); and ECF 3563-6, ¶ 7.6 (Norinchukin).

has recognized that a *cy pres* distribution is appropriate “where there are unclaimed funds.” *Masters v. Wilhelmina Model Agency, Inc.* 473, F.3d 423, 436 (2d Cir. 2007). More specifically, the Second Circuit quoted the American Law Institute’s position that *cy pres* should be limited to “circumstances in which direct distribution to individual class members is not economically feasible, or where funds remain after class members are given a full opportunity to make a claim.”¹⁶ In such circumstances, “[t]he Court has broad discretion and equitable powers to permit the use of *cy pres* principles[.]” *Plotz v. NYAT Maint. Corp.*, No. 98 Civ. 8860, 2006 WL 298427, at *1 (S.D.N.Y. Feb. 6, 2006), citing *Jones v. National Distillers*, 56 F. Supp. 2d 355, 359 (S.D.N.Y. 1999); *Coppolino v. Total Call Int’l, Inc.*, 588 F. Supp. 2d 594, 605 n.6 (D.N.J. 2008) (noting that “*cy pres* distributions are permitted in situations where class recovery cannot feasibly be distributed to individual class members or where unclaimed funds remain following distribution to the class . . .”).

“Where settlement funds remain after distribution to class members, courts have approved charitable donations to organizations geared toward combating harms similar to those that injured the class members. Such a donation may serve the *cy pres* principle of indirectly benefiting all class members. *Linerboard*, 2008 U.S. Dist. LEXIS 77739 at * 10 (internal quotations omitted). See also *Jones*, 56 F. Supp. 2d at 358. Therefore, if there is any remaining money in the Net Settlement Funds, and if redistribution thereof is not economically feasible, Settlement Class Counsel seek¹⁷ the Court’s approval to donate such funds pursuant to the doctrine of *cy pres* to

¹⁶ *Id.*, quoting the American Law Institute’s Draft of the Principles of the Law of Aggregate Litigation, § 3.08. The draft is now in final form. *Gordon v. Sonar Capital Management LLC*, 11-cv-9665 (JSR), 2016 WL 4272994 at *2 (S.D.N.Y. Aug. 10, 2016).

¹⁷ “The distribution preference of class counsel should be entitled to deference when it is the only entity with a meaningful and equitable interest in the remaining funds, especially where the designated recipient is a legitimate and appropriate organization.” *Plotz*, 2006 WL 298427, at *2.

The American Antitrust Institute (“AAI”). AAI is an independent, not-for-profit 501(c)(3) organization devoted to protecting businesses, consumers, and society through the promotion of competition. AAI serves the public through education, research, and advocacy on the benefits of competition and the use of antitrust enforcement as a vital component of national and international competition policy.¹⁸ AAI is “part of the bipartisan tradition that has supported the antitrust enterprise for over 125 years.”¹⁹ It encourages rigorous public and private enforcement of the antitrust laws, “working collaboratively with enforcement agencies, sector regulators, Congress, academia, industry, and other advocacy groups.”²⁰ Its members include professors, economists, U.S. and international regulators, and lawyers from all sides of public and private antitrust enforcement.

Courts have recognized AAI as a worthy recipient of *cy pres* funds in antitrust cases. *E.g.*, *In re Publication Paper Antitrust Litig.*, No. 3:04 MD 1631, 2009 WL 2351724, at *2 (D.Conn. July 30, 2009) (awarding \$175,000 to the American Antitrust Institute “[b]ecause the plaintiffs’ claims here are based on antitrust injury, [and] the next best use for the settlement funds is to disburse those funds to charitable institutions designed to guard against antitrust injury and protect consumers.”); *In re Dental Supplies Antitrust Litigation*, 1:16-cv-00696 (BMC) (E.D.N.Y. Feb. 29, 2024) (“Given that this class action alleged violations of federal antitrust law, I find that AAI reasonably approximates the interests of the class.,” awarding 50% of remaining funds to AAI.); *In re Visa Check/MasterMoney Antitrust Litigation*, Master File No. 96-CV-5238 (JG), 2011 WL 5029841 (E.D.N.Y. Oct 24, 2011) (awarding 50% of remaining settlement funds to AAI finding

¹⁸See *Mission and History*, American Antitrust Institute, <https://www.antitrustinstitute.org/about-us/mission-and-history> (last visited July 2, 2024).

¹⁹ *Id.*

²⁰ *Id.*

that “AAI has made significant contributions to the development and enforcement of the antitrust laws and will no doubt make effective use of the funds it receives.”); *Binotti v. Duke University*, Case No. 1:20-CV-470, 2021 WL 5363299 (M.D.N.C. Aug. 30, 2021) (choosing AAI as the sole *cy pres* recipient); *Seaman v. Duke Univ.*, No. 1:15-CV-462, 2019 WL 13193731, at *3–5 (M.D.N.C. Sept. 24, 2019) (same).

To save the Court, the Claims Administrator, and Bondholder Counsel additional time, effort, and expense, it is appropriate for the Court to determine a *cy pres* designee currently. *See, e.g., Seaman v. Duke*, 2019 WL 13193731 at *5 (“Should unclaimed funds remain for which further redistribution would be economically unfeasible, the Settlement Administrator is authorized to distribute those funds to AAI”); *In re Ductile Iron Pipe Fittings (“DIPF”) Indirect Purchaser Antitrust Litigation*, No. 3:12-cv-00169 (D.N.J. Sept. 15, 2020) (“In the event that redistribution is not economically feasible . . . the Claims Administrator . . . shall donate pursuant to the doctrine of *cy pres*, any remaining funds in the Net Settlement Fund . . . [to] the American Antitrust Institute . . .”).

Accordingly, Bondholder Plaintiffs respectfully request that the Court approve the donation to the American Antitrust Institute if further distribution to the members of the Settlement Classes is not economically feasible.

F. The Release of Claims

In order to allow the full and final distribution of the Net Settlement Funds, it is respectfully requested that the Court bar any further claims against the Net Settlement Funds beyond the amount allocated to Authorized Claimants, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the settlement funds

or Net Settlement Funds, be released and discharged from any and all claims arising out of such involvement, provided, however, that the Court's distribution order shall not release any claim by Plaintiffs against the Claims Administrator with respect to distributions if later discovered to have been made not substantially in accordance with the Stipulations, the Plan of Allocation, or any order of the Court.

G. Retention of Proof of Claim Forms and Other Documents

Consistent with the practice of the District Courts in the Second Circuit, Bondholder Plaintiffs respectfully request that the Court authorize Epiq to destroy the paper and electronic copies of the Claims and all supporting documentation one year after all funds from these Settlements have been distributed. *See, e.g., Lin v. Liberty Health Sciences Inc.*, 19-cv-00161 (MKV), 2022 WL 15773921 *2 (S.D.N.Y. Oct. 28, 2022); *Chery v. Conduent Ed. Serv. LLC*, 1:18-cv-00075-DNH-CFH, 2023 WL 2643502 (N.D.N.Y. March 27, 2023).

H. Fees And Disbursements

Epiq agreed to serve as Claims Administrator in exchange for payment of its fees and expenses. Amin-Giwner Decl., ¶ 44. Pursuant to the Judgment and Order entered in connection with the Initial Settlements, Epiq was awarded reimbursement of expenses in the amount of \$375,000 it paid for the acquisition of the Bloomberg Data, ECF 3246, ¶ 16, which was used in determining the claimants' Suppressed Payment Amounts. Epiq was also paid \$240,896.47 for work performed through October 2020. Epiq has not received payment of its fees for work performed nor reimbursement of any expenses incurred since October 2020. *Id.*, ¶ 45.

Epiq managed all aspects of the Notice program for both the Initial and Subsequent Settlements, including the printing, mailing, and emailing of Notice, the training and set up of the call center, preparation and updating of the Settlement website, and other necessary actions. Epiq then began preparation for claim

processing, including computer programming, staff training, and development of a proprietary module to calculate claimants' Suppressed Payment Amount pursuant to the Court-approved Plan of Allocation. Epiq received data in both electronic and paper form from claimants, the latter of which required scanning and entry of information into the claims database. The Defect Process followed, in which Epiq prepared and sent deficiency letters, corresponded with class members by phone and email to resolve deficiencies, where possible. Epiq then conducted its data integrity review of certain Electronic Claims. Finally, Epiq determined payments to eligible class members. Epiq has incurred costs and expenses in connection with the administration of the Settlements from November 1, 2020, through May 31, 2024, totaling \$857,814.20. *Id.* ¶45.

In addition, Epiq estimates the cost of conducting the Initial Distribution to be \$32,860.68. *Id.* Therefore, the total amount requested to be paid from the Net Settlement Funds to Epiq is \$890,674.96. *Id.* Bondholder Plaintiffs' and Epiq will file a final report after the Settlement Funds have been fully distributed.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue the accompanying proposed Order Authorizing Distribution of the Net Settlement Funds granting the relief sought herein. A proposed Distribution Order is being submitted with this Motion.

Date: July 3, 2024

Respectfully submitted:

/s/ Robert S. Kitchenoff

David H. Weinstein
Robert S. Kitchenoff
WEINSTEIN KITCHENOFF
& ASHER LLC
24 W. Lancaster Avenue, Suite 2301
Ardmore, Pa 19003
Tel: (215) 545-7200
weinstein@wka-law.com
kitchenoff@wka-law.com

*Settlement Class Counsel for
Bondholder Plaintiffs*

Karen L. Morris (Bar No. 1939701)
Patrick F. Morris
MORRIS AND MORRIS LLC
COUNSELORS AT LAW
4023 Kennett Pike, #254
Wilmington, DE 19807
Tel: (302) 426-0400
Cell (302) 383-9611
kmorris@morrisandmorrislaw.com
pmorris@morrisandmorrislaw.com

*Settlement Class Counsel for
Bondholder Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned certifies that on July 3,2024, the foregoing Notice of Motion to Authorize Distribution of Net Settlement Funds, the memorandum and declaration in support thereof, including exhibits thereto, a proposed Distribution Order, and this Certificate of Service were served on all counsel of record via the Court's Case Management/Electronic Case Files (CM/ECF) electronic filing system.

/s/ Robert S. Kitchenoff

Robert S. Kitchenoff