

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CITY OF SUNRISE GENERAL  
EMPLOYEES' RETIREMENT PLAN,  
on behalf of itself and all others  
similarly situated,

Plaintiff,

v.

FLEETCOR TECHNOLOGIES, INC.,  
RONALD F. CLARKE, and ERIC R.  
DEY,

Defendants.

Civ. A. No. 1:17-cv-02207-LMM

CLASS ACTION

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFF'S  
UNOPPOSED MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

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Lead Plaintiff, City of Sunrise General Employees' Retirement Plan, respectfully moves for entry of the proposed Order Approving Distribution Plan (the "Class Distribution Order"), which will approve the proposed plan for the distribution of the net proceeds of the Settlement to eligible Class Members in the above-captioned action (the "Action"). The Distribution Plan is included in the accompanying Declaration of Alexander Villanova in Support of Lead Plaintiff's Unopposed Motion for Approval of Distribution Plan (the "Villanova Declaration" or "Villanova Decl."),<sup>1</sup> submitted on behalf of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq").

If entered by the Court, the Class Distribution Order would, among other things, (i) approve Epiq's administrative recommendations accepting and rejecting Claims submitted in the Action; (ii) direct the Initial Distribution of the Net Settlement Fund to Claimants whose Claims are accepted by Epiq as valid and approved by the Court, while maintaining a Reserve for any tax liability and claims administration-related contingencies that may arise; and (iii) approve Epiq's unpaid fees and expenses incurred and estimated to be incurred in the

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<sup>1</sup> Unless otherwise indicated in this memorandum, all terms with initial capitalization shall have the meanings ascribed to them in the Villanova Declaration or in the Stipulation and Agreement of Settlement dated November 6, 2019 (ECF No. 96-2) (the "Stipulation"). The Settlement is contained in the Stipulation.

administration of the Settlement. Pursuant to the terms of the Stipulation, the motion is unopposed by Defendants.

There are no disputed Claims requiring Court review by any Class Member. As such, the motion is ripe for determination.

## **I. BACKGROUND**

The Court has approved the Stipulation entered into by Lead Plaintiff, on behalf of itself and the Class, and the Defendants in the Action. The Stipulation sets forth the terms of the settlement (the “Settlement”), which represents a complete resolution of this Action in return for a payment of \$50 million in cash, which Defendants have caused to be paid for the benefit of Class Members.

In accordance with the Order Preliminarily Approving Settlement and Providing for Notice (the “Preliminary Approval Order”) entered by the Court, Epiq has mailed the Notice of (i) Pendency of Class Action and Proposed Settlement; (ii) Settlement Fairness Hearing; and (iii) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) and the Proof of Claim and Release (the “Claim Form” or “Proof of Claim Form,” and, together with the Notice, the “Notice Packet”) to potential Class Members, brokers, and other nominees. Villanova Decl. ¶ 2. As stated in the Villanova Declaration, Epiq has disseminated 80,645 Notice Packets to potential Class Members and nominees. *Id.* ¶ 4. The

Notice informed Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit a properly executed Claim received or postmarked no later than May 13, 2020. *Id.* ¶ 7.

On April 15, 2020, the Court issued its Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 109) and its Order and Final Judgment Approving Class Action Settlement (ECF No. 110) (the “Judgment”). The Effective Date of the Settlement has occurred. Accordingly, the Net Settlement Fund may be distributed to Authorized Claimants. In accordance with paragraph 29 of the Stipulation, Lead Plaintiff respectfully asks the Court to enter the Class Distribution Order approving the Distribution Plan.<sup>2</sup>

## **II. CLAIMS ADMINISTRATION**

As detailed in the accompanying Villanova Declaration, through January 8, 2021, Epiq received and processed 48,893 Claims. Villanova Decl. ¶ 7. All Claims received through January 8, 2021, have been fully processed in accordance with the Stipulation and the Court-approved Plan of Allocation included in the Notice

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<sup>2</sup> The Court retained continuing and exclusive jurisdiction over, among other things, implementing the Settlement, including the disposition of the Settlement Fund and any motion to approve the Class Distribution Order. *See* Judgment ¶ 13.

(*id.*), and Epiq has worked with Claimants to help them perfect their Claims. *See id.* ¶¶ 20-27.

As discussed in the Villanova Declaration, many of the Claims submitted in the Settlement were initially deficient or ineligible for one or more reasons, including being incomplete, not signed, not properly documented, or otherwise deficient, which required substantial follow-up work by Epiq. *Id.* ¶¶ 20, 23.

If Epiq determined a Claim to be defective or ineligible, a letter (if the Claimant filed a paper Claim) or an email (if the Claimant filed an electronic Claim) was sent by Epiq to the Claimant or filer, as applicable, describing the defect(s) or condition(s) of ineligibility in the Claim and what was necessary to cure any curable defect(s) in the Claim (“Deficiency Notices”). *Id.* ¶¶ 21, 23. The Deficiency Notices advised the Claimant or filer that the appropriate information or documentary evidence to complete the Claim had to be sent within 20 days from the date of the letter, or Epiq would recommend the Claim for rejection to the extent the deficiency or condition of ineligibility was not cured. *Id.* ¶¶ 21, 24. Examples of the Deficiency Notices are attached as Exhibits A and B to the Villanova Declaration.

**A. No Disputed Claims**

Epiq carefully reviewed Claimants' and filers' responses to the Deficiency Notices and worked with them to resolve deficiencies where possible. Villanova Decl. ¶¶ 22, 27. Consistent with paragraph 27(e) of the Stipulation, the Deficiency Notices specifically advised the Claimant or filer that he, she, or it had the right, within 20 days after the mailing or emailing of the Deficiency Notice, to contest the rejection of the Claim and request Court review of Epiq's administrative determination of the Claim. Villanova Decl. ¶¶ 21, 24 and Exhibits A and B.

With respect to the fully processed Claims, Epiq received one (1) request for a review by the Court of its administrative determinations. *Id.* ¶ 29. To resolve the dispute without necessitating the Court's intervention, Epiq contacted the person requesting Court review and attempted to answer all questions, fully explain Epiq's determination of the Claim's status, and facilitate the submission of missing information or documentation where applicable. *Id.* As a result of these efforts, the Claimant withdrew the request for Court review. *Id.*

As shown in the Villanova Declaration, of the 48,893 Claims that are the subject of this motion, Epiq has determined that 21,819 are acceptable in whole or in part, and that 27,074 should be wholly rejected because they are ineligible for payment from the Net Settlement Fund. Villanova Decl. ¶¶ 34-37. Lead Plaintiff

respectfully requests that the Court approve Epiq's administrative determinations accepting and rejecting Claims as stated in the Villanova Declaration.

**B. Late Claims and Final Cut-Off Date**

The 48,893 Claims received through January 8, 2021, include 2,642 that were postmarked or received after the Court-approved Claim submission deadline of May 13, 2020, but were received before January 8, 2021. Villanova Decl. ¶¶ 30, 36. Those late Claims have been fully processed, and 1,402 of them are, but for their late submission, otherwise eligible to participate in the Settlement. *Id.* Although these 1,402 Claims were late, they were received while the processing of timely Claims was ongoing. Due to the amount of time needed to process the timely Claims received, the processing of these late Claims did not delay the completion of the Claims administration process or the distribution of the Net Settlement Fund. The Court has discretion to accept Claims received after the submission deadline.<sup>3</sup> Lead Plaintiff respectfully submits that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the distribution of the Net Settlement Fund solely because it was

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<sup>3</sup> See Preliminary Approval Order ¶ 8 (“*Unless the Court orders otherwise, all Claim Forms must be postmarked no later than one hundred twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Class.*”) (emphasis added).

received after the Court-approved Claim submission deadline if it was submitted while timely Claims were still being processed.

To facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off date after which no other Claims may be accepted. Accordingly, Lead Plaintiff respectfully requests that this Court order that any new Claims and any adjustments to previously-filed Claims that would result in an increased Recognized Claim amount received after January 8, 2021, be barred, subject to the provisions of paragraph 40(f) of the Villanova Declaration.<sup>4</sup> Paragraph 40(f) applies to any Claims received or modified after January 8, 2021, that would have been eligible for payment or additional payment under the Court-approved Plan of Allocation if timely received. At the time when Lead Counsel, in consultation with Epiq, determines that a further distribution is not cost-effective as provided in paragraph 40(e) of the Villanova Declaration, the post-January 8, 2021 Claimants, after payment of fees and expenses as provided in paragraph 40(f) of the Villanova Declaration and at the discretion of Lead Counsel and to the extent possible, may be paid the distribution amounts or additional distribution

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<sup>4</sup> Should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made, and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant. Villanova Decl. ¶ 31.

amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks.

### **III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR**

In accordance with Epiq's agreement with Lead Counsel to act as the Claims Administrator for the Settlement, Epiq was responsible for, among other things, disseminating notice of the Settlement to the Class, creating and maintaining a website and toll-free telephone helpline, processing Claims, and allocating and distributing the Net Settlement Fund to Authorized Claimants. Villanova Decl. ¶¶ 2, 3. As stated in the accompanying Villanova Declaration, Epiq's fees and expenses for its work performed through January 8, 2021, are \$410,238.57 and estimated to be performed on behalf of the Class in connection with the Initial Distribution are \$33,569.50, which together total \$443,808.07.<sup>5</sup> Villanova Decl. ¶ 39. To date, Epiq has received no payment for its fees and expenses. *Id.* Accordingly, there is an outstanding balance of \$443,808.07 payable to Epiq, which amount includes the estimated fees and expenses to be incurred by Epiq in connection with the Initial Distribution. *Id.* Lead Counsel reviewed Epiq's invoices

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<sup>5</sup> Should the estimate of fees and expenses to conduct the Initial Distribution of the Net Settlement Fund exceed the actual cost to conduct the distribution, the excess will be returned to the Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants. Villanova Decl. ¶ 39 n.2.

and respectfully requests on behalf of Lead Plaintiff that the Court approve all of Epiq's fees and expenses.

#### **IV. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

The Net Settlement Fund is ready to be distributed. Lead Plaintiff respectfully moves the Court for entry of an order approving Epiq's determinations concerning acceptance and rejection of the Claims that are included in the present motion and approving the proposed Distribution Plan as stated in the Villanova Declaration.<sup>6</sup>

##### **A. Distribution of the Net Settlement Fund**

Under the proposed Distribution Plan, Epiq will distribute approximately 95% of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by the Court on this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees (i.e., the "Initial Distribution"). Villanova Decl. ¶ 40(a). In the Initial Distribution, Epiq will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. *Id.*

¶ 40(a)(1). Epiq will first determine each Authorized Claimant's *pro rata* share of

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<sup>6</sup> Under the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 20, 24, 26.

the total Net Settlement Fund based on the Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *Id.* In accordance with the Court-approved Plan of Allocation, Epiq will eliminate from the Initial Distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00, as these Claimants will not receive any payment from the Net Settlement Fund and will be so notified by Epiq. *Id.* ¶ 40(a)(2). Epiq will then recalculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$10.00 or more based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants who would have received \$10.00 or more. *Id.* ¶ 40(a)(3). This *pro rata* share is the Authorized Claimant's "Distribution Amount." *Id.* Authorized Claimants whose Distribution Amount calculates to less than \$100.00 will be paid their full Distribution Amount in the Initial Distribution ("Claims Paid in Full"). *Id.* ¶ 40(a)(4). These Authorized Claimants will receive no additional funds in subsequent distributions. *Id.* After deducting the payments to the Claims Paid in Full, 95% of the remaining balance of the Net Settlement Fund will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$100.00 or more. *Id.* ¶ 40(a)(5). The remaining 5% of the Net Settlement Fund will be held in reserve (the "Reserve") to address any tax liability

and claims administration-related contingencies that may arise. *Id.* To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution” described in subparagraph 40(d) of the Villanova Declaration. *Id.*

In order to encourage Authorized Claimants to promptly cash their checks, Lead Plaintiff proposes that the distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].” *Id.* ¶ 40(b). Authorized Claimants who do not cash their checks within the time allotted or on the conditions stated in paragraph 40(b) footnote 3 of the Villanova Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all of these stale-dated checks will be available to be redistributed to other Authorized Claimants in any subsequent distribution, as described below. *Id.* ¶ 40(c).

**B. Additional Distribution(s) of the Net Settlement Fund**

After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, but not earlier than seven (7) months after the Initial Distribution, Epiq will, after consulting with Lead Counsel, conduct a second distribution of the Net Settlement Fund (the “Second Distribution”). Villanova Decl. ¶ 40(d). In the Second Distribution, any amounts remaining in the Net Settlement Fund after the Initial Distribution, including from

the Reserve and the funds for all void stale-dated checks, after deducting Epiq's fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid, including the estimated costs of the Second Distribution, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants in the Initial Distribution who cashed their Initial Distribution checks and would receive at least \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds. *Id.* ¶ 40(d). If, after the Second Distribution, any funds remain in the Net Settlement Fund because of uncashed checks or otherwise, then after Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, and if cost-effective, subsequent distributions of the funds remaining in the Net Settlement Fund, after deduction of costs and expenses as described above and subject to the same conditions, will take place at six-month intervals thereafter. *Id.* When Lead Counsel, in consultation with Epiq, determines that further distribution is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after January 8, 2021, Epiq will process those Claims. *Id.* ¶ 40(e). Any of these Claims that are otherwise valid, as well as any earlier-received Claims for which an adjustment was received after January 8, 2021, which resulted in an increased

Recognized Claim, may be paid in accordance with paragraph 40(f) of the Villanova Declaration. *Id.* ¶ 40(e). If any funds remain in the Net Settlement Fund after payment of these late or late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to the National Consumer Law Center (“NCLC”), a non-sectarian, not-for-profit, 501(c)(3) organization. *Id.*

Lead Counsel requests that the Court approve the National Consumer Law Center (“NCLC”) to be the recipient of the remaining settlement funds. NCLC is a private, non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. NCLC was founded in 1969 through a federal grant to provide legal services addressed to two main goals: improving the access of low-income people to the legal system and enabling advocates to seek remedies where needed. Today, NCLC continues to advocate for low-income consumers and provides many resources to civil legal aid and private attorneys representing low-income consumers. NCLC’s lawyers provide policy analysis, advocacy, litigation, expert-witness services, and training for consumer advocates throughout the United States. *See* <https://www.nclc.org/about-us/our->

story.html. As NCLC states on its website, it “works to ensure a fair marketplace and access to justice for all consumers, including low-income people, older Americans, students, military service members and veterans,” and its “work covers a broad range of consumer issues, including consumer protection, fair credit, debt collection, student loans, mortgages and foreclosures, financial services, bankruptcy, [and] unfair and deceptive acts and practices. . . .”  
<https://www.nclc.org/about-us/cy-pres-awards.html>.

Federal courts have approved NCLC as a *cy pres* recipient of residual balances of net settlement funds in other settlements. *See, e.g., In re Nu Skin Enterprises, Inc., Sec. Litig.*, Master File No. 2:14-cv-00033-JNP-BCW, ECF Nos. 152-154 (D. Utah Aug. 30, 2018); *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1261 (C.D. Cal. 2016), *appeal dismissed*, 2016 WL 9778633 (9th Cir. Nov. 7, 2016); *Perkins v. Am. Nat’l Ins. Co.*, 2012 WL 2839788, at \*5 (M.D. Ga. July 10, 2012) (“The Court is also satisfied that The National Consumer Law Center’s mission, reputation and established track record will ensure that it will be a good steward of the grant award made to it.”).

## **V. RELEASE OF CLAIMS**

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the

amounts 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 Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from all claims arising out of that involvement. Accordingly, Lead Plaintiff respectfully requests that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from all claims arising out of that involvement, and bar all Class Members and other Claimants, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims Administrator, the Escrow Agent, or any other agent retained by Lead Plaintiff or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund or any other person released under the Settlement beyond the amounts allocated to Authorized Claimants.

## VI. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully submits that Lead Plaintiff's Unopposed Motion for Approval of Distribution Plan should be granted and the [Proposed] Order Approving Distribution Plan should be entered.

Dated: February 3, 2021

Respectfully submitted,

/s/ Katherine M. Sinderson

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