

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

PLUMBERS' & PIPEFITTERS' LOCAL
#562 SUPPLEMENTAL PLAN & TRUST
and PLUMBERS' & PIPEFITTERS' LOCAL
#562 PENSION FUND, On Behalf of
Themselves and All Others Similarly Situated,

Plaintiffs,

v.

J.P. MORGAN ACCEPTANCE CORP. I, *et al.*,

Defendants.

No. 08-cv-1713 (PKC) (WDW)

ECF CASE

CLASS ACTION - CONSOLIDATED

**LEAD PLAINTIFF'S NOTICE OF UNOPPOSED MOTION
FOR DISPOSITION OF RESIDUAL FUNDS**

PLEASE TAKE NOTICE that upon the accompanying Lead Plaintiff's Memorandum in Support of Unopposed Motion for Disposition of Residual Funds, the Declaration of Stephanie Amin-Giwner Regarding Distribution of the Net Settlement Fund, submitted on behalf of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), and all prior proceedings in this Action, through its undersigned counsel, Lead Plaintiff, the Public Employees' Retirement System of Mississippi ("MissPERS"), now moves this Court before the Honorable Pamela K. Chen, United States District Judge, for an order that will, among other things: (i) approve the Claims Administrator's processing of Claims received after August 24, 2015; (ii) approve the Claims Administrator's additional distribution of the Net Settlement Fund to Authorized Claimants whose Claims were received or adjusted after August 24, 2015; and (iii) approve the *cy pres* recipient for any funds remaining in the Net Settlement Fund after payment of Authorized Claims.

Defendants have confirmed that they do not oppose the Motion and, accordingly, there will be no further briefing on the Motion. Lead Plaintiff respectfully submits that a hearing may not be necessary; however, in the event the Court requests a hearing, Lead Counsel will make itself available at the Court's convenience.

Lead Plaintiff's [Proposed] Order for Disposition of Residual Funds is attached hereto as Exhibit 1.

Dated: New York, New York
March 11, 2022

BERNSTEIN LITOWITZ BERGER
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*Co-Lead Counsel for Lead Plaintiff and
the Class*

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
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PLUMBERS' & PIPEFITTERS' LOCAL
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Defendants.

No. 08-cv-1713 (PKC) (WDW)

ECF CASE

CLASS ACTION - CONSOLIDATED

[PROPOSED] ORDER FOR DISPOSITION OF RESIDUAL FUNDS

Lead Plaintiff, on notice to Defendants' Counsel, moved this Court for an order providing for the disposition of the residual funds remaining in the Net Settlement Fund, and the Court having considered all the materials and arguments submitted in support of the motion, including the Declaration of Stephanie Amin-Giwner Regarding Disposition of Residual Funds (the "Amin-Giwner Declaration") and Lead Plaintiff's Memorandum in Support of Unopposed Motion for Disposition of Residual Funds.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement (the "Stipulation") and the Amin-Giwner Declaration, and all terms not otherwise defined herein shall have the meanings as set forth in those documents.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

3. In response to Plaintiff's Counsel and the Claims Administrator's request for direction under paragraph 4(h)(ii) of the Class Distribution Order, the Claims Administrator shall process Claims received after August 24, 2015, and, if any would have been eligible if timely received, these Claimants may be paid their distribution amounts, to the extent permitted by the amount of remaining funds, on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks.

4. With respect to previously submitted Claims that are cured or adjusted after August 24, 2015, the Claims Administrator will reevaluate such Claims upon receipt of the adjustment and, to the extent that they are found eligible for a distribution or additional distribution, they will be treated in the same manner as Claims received after August 24, 2015. However, should an adjustment result in a lower Recognized Claim, the Recognized Claim will be reduced accordingly prior to a distribution to that Claimant.

5. After payment of Authorized Claims received or adjusted after August 24, 2015, the Claims Administrator shall distribute the unclaimed balance of the Net Settlement Fund to the Investor Protection Trust ("IPT") as the *cy pres* recipient.

6. The Order will be self-executing and there is no need for Lead Plaintiff or the Claims Administrator to request any further orders of the Court. Accordingly, the Clerk of the Court may close this case.

IT IS SO ORDERED.

Dated: Brooklyn, New York

_____, 2022

PAMELA K. CHEN
United States District Judge

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

PLUMBERS' & PIPEFITTERS' LOCAL
#562 SUPPLEMENTAL PLAN & TRUST
and PLUMBERS' & PIPEFITTERS' LOCAL
#562 PENSION FUND, On Behalf of
Themselves and All Others Similarly Situated,

Plaintiffs,

v.

J.P. MORGAN ACCEPTANCE CORP. I, *et al.*,

Defendants.

No. 08-cv-1713 (PKC) (WDW)

ECF CASE

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFF'S
UNOPPOSED MOTION FOR DISPOSITION OF RESIDUAL FUNDS**

Lead Plaintiff, the Public Employees' Retirement System of Mississippi, respectfully submits this memorandum in support of its motion for an order that will provide for the disposition of the residual funds remaining in the Net Settlement Fund.¹

If entered by the Court, the Order for Disposition of Residual Funds would, among other things, (i) approve the Claims Administrator's processing of Claims received after August 24, 2015; (ii) approve the Claims Administrator's additional distribution of the Net Settlement Fund to Authorized Claimants whose Claims were received or adjusted after August 24, 2015; and (iii) approve the *cy pres* recipient for any funds remaining in the Net Settlement Fund after payment of Authorized Claims.

The motion is unopposed. 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, 22, 24. As such, the motion is ripe for determination.

BACKGROUND

Lead Plaintiff entered into the Stipulation and Agreement of Settlement with Defendants for a Settlement Amount of \$280,000,000 in cash for the benefit of the Class. *See* Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing, and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No. 222-2) (the "Notice") at 1. By its Class Distribution Order (ECF No. 232), the Court approved the administrative

¹ Unless indicated otherwise, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement (ECF No. 211) (the "Stipulation") and the accompanying Declaration of Stephanie Amin-Giwner Regarding Disposition of Residual Funds (the "Amin-Giwner Declaration" or "Amin-Giwner Decl.").

determinations of the Claims Administrator,² accepting and rejecting Claims filed in the litigation before August 24, 2015, and approved the distribution of the Net Cash Settlement Fund. *See* Class Distribution Order ¶¶ 3, 4. In the Initial Distribution of the Net Settlement Fund and pursuant to the Class Distribution Order, the Claims Administrator distributed 2,216 payments by check and wire with an aggregate value of \$207,382,742.84. *See* Amin-Giwner Decl. ¶ 4. After the Initial Distribution and the Claims Administrator's follow-up efforts, \$2,437,693.28 remained in the Net Settlement Fund and \$23,054,333.08 remained from the 10% reserve that was held back at the time of the Initial Distribution. *See id.*

In its Class Distribution Order, the Court authorized the Claims Administrator to conduct a Second Distribution and, if cost effective, subsequent distributions of the Net Settlement Fund to Authorized Claimants. *See* Class Distribution Order ¶¶ 4(g) and 4(h)(i). Pursuant to the Class Distribution Order, the Claims Administrator issued 2,114 payments totaling \$25,389,999.80 to Authorized Claimants. *See* Amin-Giwner Decl. ¶ 6. After the Second Distribution (including the Claims Administrator's follow-up efforts to reach Authorized Claimants whose checks remained uncashed or were returned as undelivered by the postal service), \$660,454.78 remained in the Net Settlement Fund. *See id.* In the Third Distribution of the Net Settlement Fund, the Claims Administrator issued 1,412 payments in the aggregate amount of \$660,454.78 to Authorized Claimants. *See id.* ¶ 7. After the Third Distribution and the Claims Administrator's follow-up efforts, \$43,653.17 remained in the Net Settlement Fund. *See id.* ¶ 8.

To date, payments in the Initial Distribution, Second Distribution, and Third Distribution for total proceeds of over \$230,395,422.75 have been cashed, which is approximately 99.98% of

² Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 219) (the "Preliminary Approval Order"), the Court authorized The Garden City Group, Inc. ("GCG"), as Claims Administrator in connection with the Settlement. GCG was acquired by Epiq Class Action and Claims Solutions, Inc. ("Epiq"), on June 15, 2018, and now is continuing operations as part of Epiq.

the Net Cash Settlement Fund. *See id.* As of March 11, 2022, a total of \$43,653.17 remains in the Net Settlement Fund. *See id.*

AMENDMENT OF DISTRIBUTION PLAN

Notwithstanding the Claims Administrator's extensive follow-up with Authorized Claimants whose checks were returned as undeliverable or uncashed (which included attempting to contact such Authorized Claimants by telephone, letter, or email, offering to reissue checks where necessary, and seeking updated addresses for Authorized Claimants whose checks were returned as undeliverable (*see id.* ¶¶ 4, 6, 7)), there remains in the Net Settlement Fund \$43,653.17 available for distribution from checks mailed in the Third Distribution that were either uncashed or returned to the Claims Administrator for other reasons. *See id.* ¶¶ 7-8.

The Court's Class Distribution Order instructs Lead Counsel to seek direction from the Court for the remaining funds in the Net Settlement Fund:

At such time as [Claims Administrator] GCG and Lead Counsel determine that further distribution is not cost effective, Lead Counsel shall seek direction from the Court with respect to the disposition of the balance of the Net Settlement Fund, after payment of any unpaid expenses or fees incurred by the Claims Administrator in connection with administering the Net Settlement Fund and after the payment of any estimated escrow fees or taxes and the costs of preparing appropriate tax returns.

Class Distribution Order ¶ 4(h)(ii).

Lead Counsel, in consultation with the Claims Administrator, has determined that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective. *See* Amin-Giwner Declaration ¶ 10. In light of the amount currently remaining in the Net Settlement Fund, Lead Plaintiff recommends that the Claims received after August 24, 2015, be processed prior to donating the remaining funds to charity. The Claims Administrator concurs with that recommendation and sufficient funds remain to warrant the processing of Claims received after August 24, 2015. *See id.* These Claims will be processed and, if any would have been eligible if

timely received, these Claimants may be paid their distribution amounts, to the extent permitted by the amount of remaining funds, on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks. With respect to previously submitted Claims that are cured or adjusted after August 24, 2015, such Claims will be reevaluated upon receipt of the adjustment and, to the extent that they are found eligible for a distribution or additional distribution, they will be treated in the same manner as Claims received after August 24, 2015. However, should an adjustment result in a lower Recognized Claim, the Recognized Claim will be reduced accordingly prior to a distribution to that Claimant.

After payment of Authorized Claims received or adjusted after August 24, 2015, Lead Plaintiff recommends that the remaining balance of the Net Settlement Fund be contributed to a non-sectarian, not-for-profit organization(s). Lead Counsel and Lead Plaintiff have selected the Investor Protection Trust (“IPT”) as the *cy pres* recipient. *See id.* ¶ 12. IPT is a non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. *See About the Investor Protection Trust*, Investor Protection Trust, <https://www.investorprotection.org/ipt-activities/?fa=financials> (last visited Jan. 4, 2022). Founded in 1993, IPT’s primary mission is to provide independent, objective information needed by consumers to make informed decisions. *See IPT Activities*, Investor Protection Trust, <https://www.investorprotection.org/ipt-activities/?fa=about> (last visited Jan. 4, 2022). “IPT has undertaken several national investor education and protection programs that also feature strong State and local outreach elements. Programs include events for members of the military, programs for clinicians who work with older patients, online workplace education and many others.” *Investor Education Programs*, Investor Protection Trust, <https://www.investorprotection.org/ipt-activities/?fa=programs> (last visited Jan. 4, 2022) (emphasis omitted). Federal courts have

approved IPT as a *cy pres* recipient of residual balances of net settlement funds in other settlements.³

All the Claims Administrator's fees and expenses have been paid, and no further fees or expenses will be incurred by the Claims Administrator in the processing and payment of Claims received or adjusted after August 24, 2015. *See* Amin-Giwner Declaration ¶ 11.

CONCLUSION

The Order for Disposition of Residual Funds will complete the distribution of the Net Settlement Fund, and there should be no need for Lead Plaintiff or the Claims Administrator to request any further orders from the Court. Accordingly, following entry of the proposed order, the Court may direct that this case be closed.

For the foregoing reasons, we respectfully request that the Court enter the proposed Order for Disposition of Residual Funds and designate a *cy pres* recipient for funds remaining in the Net Settlement Fund after payment of Authorized Claims.

Dated: New York, New York
March 11, 2022

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³ *See, e.g., In re Volkswagen "Clean Diesel" Marketing, Sales Pracs., and Prods. Liab. Litig.*, 2018 WL 6198311, at *5 (N.D. Cal. Nov. 28, 2018) ("The proposed *cy pres* recipient, the Investor Protection Trust, is a nonprofit organization focused on investor education. A savvy, educated investor is hopefully more likely to identify signs of securities fraud, which furthers the Exchange Act's purpose of maintaining 'fair and honest markets.'" (citation omitted)); *In re Patriot Nat'l, Inc. Sec. Litig.*, 2021 WL 1040462, at *2 (S.D.N.Y. Mar. 18, 2021) (approving IPT as *cy pres* recipient); *Wilson v. LSB Indus., Inc.*, 2020 WL 5628039, at *2 (S.D.N.Y. Sept. 21, 2020) (same).

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Co-Lead Counsel for Lead Plaintiff and the Class

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ECF CASE

CLASS ACTION CONSOLIDATED

**DECLARATION OF STEPHANIE AMIN-GIWNER
REGARDING DISPOSITION OF RESIDUAL FUNDS**

I, STEPHANIE AMIN-GIWNER, declare and state as follows:

1. I am a Director of Client Services for Epiq Class Action and Claims Solutions, Inc. (Epiq).¹ I am over 21 years of age and not a party to the above-captioned Action.² I have personal knowledge of the matters set forth in this declaration and, if called upon as a witness, I could and would competently testify to these matters under penalty of perjury.

2. I am submitting this Declaration in support of Lead Plaintiff s Unopposed Motion for Disposition of Residual Funds.

¹ Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 219) (the Preliminary Approval Order), the Court authorized The Garden City Group, Inc. (GCG), as Claims Administrator in connection with the Settlement. GCG was acquired by Epiq on June 15, 2018, and now is continuing operations as part of Epiq.

² Unless indicated otherwise, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated March 7, 2014 (ECF No. 211) (the Stipulation).

**STATUS REPORT ON COMPLETED DISTRIBUTIONS
OF THE NET SETTLEMENT FUND**

3. Lead Plaintiff entered into the Stipulation with Defendants for a Settlement Amount of \$280,000,000 in cash for the benefit of the Class.³ By its Class Distribution Order (ECF No. 232), the Court approved the administrative determinations of Epiq accepting and rejecting Claims filed in the litigation before August 24, 2015, and instructed Epiq to conduct an Initial Distribution of the Net Settlement Fund. *See* Class Distribution Order ¶¶ 3, 4.

4. In the Initial Distribution of the Net Settlement Fund on October 26, 2015, Epiq distributed 2,216 payments by check and wire with a total value of \$207,382,742.84. To ensure that the maximum number of Initial Distribution checks were cashed, Epiq performed extensive follow-up with many of the Authorized Claimants whose checks were initially uncashed, either because those checks were returned to Epiq as undeliverable or because the Authorized Claimant simply had not cashed the check. Epiq implemented calling campaigns to urge Authorized Claimants with uncashed checks in the Initial Distribution to cash their checks. Those Authorized Claimants were informed that, if they did not cash their checks, they risked forfeiture of their funds; where an Authorized Claimant lost or damaged the check or otherwise required a new check, Epiq performed check reissues. After the Initial Distribution and Epiq's follow-up efforts, \$2,437,693.28 remained in the Net Settlement Fund and \$23,054,333.08 remained from the 10% reserve that was held back at the time of the Initial Distribution.

5. In its Class Distribution Order, the Court authorized Epiq to conduct a Second Distribution and, if cost effective, subsequent distributions of the Net Settlement Fund to Authorized Claimants. *See* Class Distribution Order ¶¶ 4(g) and 4(h)(i).

³ *See* Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing, and Motions for Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No. 222-2) (the "Notice") at 1.

6. Pursuant to the Class Distribution Order, Epiq commenced the Second Distribution of the Net Settlement Fund to Authorized Claimants on November 7, 2017. In connection with the Second Distribution, Epiq issued 2,114 payments with a total value of \$25,389,999.80 to Authorized Claimants. Following the Second Distribution, Epiq monitored the status of distribution checks issued to Authorized Claimants. As with the follow-up efforts in the Initial Distribution described above in paragraph 4, Epiq undertook an extensive outreach campaign and made multiple attempts to locate the Authorized Claimants whose checks issued in the Second Distribution remained uncashed or were returned as undelivered by the postal service. Every Authorized Claimant with an uncashed or undeliverable check received personalized emails, letters, and/or telephone calls in attempts to get their distribution checks cashed. After the Second Distribution and Epiq's follow-up efforts, \$660,454.78 remained in the Net Settlement Fund.

7. Pursuant to the Class Distribution Order, on October 16, 2020, Epiq commenced a Third Distribution of funds remaining in the Net Settlement Fund to Authorized Claimants. In the Third Distribution of the Net Settlement Fund, Epiq issued 1,412 payments with an aggregate total value of \$660,454.78 to Authorized Claimants. Following the January 21, 2021 stale date of Third Distribution checks, Epiq conducted a complete review of all uncashed checks and conducted additional outreach to these Claimants. Epiq will continue to work with Authorized Claimants to reissue checks and wires upon request particularly as the COVID-19 pandemic has necessitated more extensive outreach and greater flexibility when dealing with Claimants, for example by wiring funds instead of reissuing a replacement check, so as to allow for the maximum amount of funds to be distributed to Authorized Claimants.

8. To date \$230,395,422.75 has been negotiated in the three distributions, which is approximately 99.98% of the amount distributed from the Net Cash Settlement Fund. As of March 11, 2022, a total of \$43,653.17 remains in the Net Settlement Fund.

ADDITIONAL DISTRIBUTIONS

9. The Court's Class Distribution Order, in subparagraph 4(h) thereof, provides for the disposition of the Net Settlement Fund after the Third Distribution:

(ii) At such time as [Claims Administrator] GCG and Lead Counsel determine that further distribution is not cost effective, Lead Counsel shall seek direction from the Court with respect to the disposition of the balance of the Net Settlement Fund, after payment of any unpaid expenses or fees incurred by the Claims Administrator in connection with administering the Net Settlement Fund and after the payment of any estimated escrow fees or taxes and the costs of preparing appropriate tax returns.

10. Epiq, in consultation with Lead Counsel, has determined that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective. Lead Counsel now seeks direction from the Court with respect to the disposition of the balance of the Net Settlement Fund. In light of the amount currently remaining in the Net Settlement Fund, Epiq concurs with Lead Plaintiff's recommendation that the Claims received after August 24, 2015, be processed prior to donating the remaining funds to charity. Sufficient funds remain to warrant the processing of Claims received after August 24, 2015. These Claims will be processed and, if any would have been eligible if timely received, these Claimants may be paid their distribution amounts, to the extent permitted by the amount of remaining funds, on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks. With respect to previously submitted Claims that are cured or adjusted after August 24, 2015, such Claims will be reevaluated upon receipt of the adjustment and, to the extent that they are found eligible for a distribution or additional distribution, they will be treated in the same manner as Claims received

after August 24, 2015. However, should an adjustment result in a lower Recognized Claim, the Recognized Claim will be reduced accordingly prior to a distribution to that Claimant.

11. All of Epiq's fees and expenses have been paid, and no further fees or expenses will be incurred by Epiq in the processing and payment of Claims received or adjusted after August 24, 2015.

12. After payment of Authorized Claims received or adjusted after August 24, 2015, the remaining balance of the Net Settlement Fund will be contributed to the Investor Protection Trust ("IPT"), a non-sectarian, not-for-profit 501(c)(3) organization.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on March 11, 2022.


STEPHANIE AMIN-GIWNER