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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: BAYER CORP. COMBINATION ASPIRIN PRODUCTS MARKETING AND SALES PRACTICES LITIGATION THIS PLEADING RELATES TO: ALL CASES	09-md-2023 (BMC)(JMA) **COGAN**, District Judge

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO AMEND PLAN OF DISTRIBUTION

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Plaintiffs William Blank, Beverlysue Blank, Anne McCabe, and Douglas Vinson, by and through their attorneys, and in support of their Motion to Amend Plan of Distribution, state the following:

I. INTRODUCTION

Plaintiffs move to amend the proposed plan of distribution of the $15,000,000 Settlement Amount[1] in order to ensure that the Net Settlement Fund is paid, to the extent reasonably feasible, to Settlement Class Members submitting claims and to Settlement Class Members with known purchase records. Indeed, as part of the Court-approved notice plan in this case and in addition to publication notice, approximately 700,000 postcards were mailed to Settlement Class Members, advising them of the Settlement and providing them with the opportunity to make a claim.

Though claims continue to be submitted in this case, Plaintiffs expect that money will remain in the Net Settlement Fund based on the current claims rate.[2] Under the current plan of distribution, any leftover monies, if approved by the Court, would be paid *cy pres* to charities.

However, to see that the payments reach more Settlement Class Members before any *cy pres* distribution, Plaintiffs and Defendant have agreed to an Amendment to the Settlement Agreement and Release ("Amendment"), subject to Court approval. *See* Amendment, attached as Ex. 2. Pursuant to the Amendment, Plaintiffs propose the distribution of payments, *subject to the existing terms of the Settlement Agreement*, to Settlement Class Members for: (1) claims made through the claims submission process ("Claimed Purchases"), and (2) purchases known to have been made by Settlement Class Members with valid addresses as recorded in the retailer

[1] All capitalized terms reflect terms used in the Settlement Agreement and Release, attached as Ex. 1 to Plaintiffs' Motion to Amend Plan of Distribution ("Motion"). All exhibits are attached to the Motion.

[2] As of February 22, 2013, 18,938 claims have been submitted to the Claims Administrator.

purchase data obtained in discovery ("Recorded Purchases"). This approach will maximize depletion of the Net Settlement Fund to the direct benefit of known Settlement Class Members for both Claimed Purchases and Recorded Purchases.

This Amendment does not change, *inter alia*: (1) the Settlement Amount ($15,000,000); (2) the one-time payment of $4.00 for all purchases of "Bayer Women's Low Dose Aspirin + Calcium" and/or $6.00 for all purchases of "Bayer Aspirin With Heart Advantage" for Claimants without proof of purchase; (3) the payment of $4.00 for each purchase of "Bayer Women's Low Dose Aspirin + Calcium" and/or $6.00 for each purchase of "Bayer Aspirin With Heart Advantage" for Claimants with proof of purchase; (4) the Fee and Expense Application; or (5) any other material term of the Settlement. This Amendment serves to ensure Settlement Class Members with Recorded Purchases participate in the Settlement.

II. BACKGROUND

A. Original Claims-Made Settlement

After protracted negotiations, the parties agreed to a claims-made settlement, *i.e.*, Class Members were required to submit a simple claim form in order to receive money under the terms of the Settlement. Settlement Agreement, Ex. 1, § III.E.2.[3] After payment of all allowed expenses and fees under the Settlement Agreement, the Net Settlement Fund will be allocated to two classes "[b]ased on the recommendation and direction of Allocation Counsel and approval by the Court." Settlement Agreement, Ex. 1, § III.E.1. Specifically, 40% of the Net Settlement Fund will be allocated to the Bayer Heart Advantage Settlement Class, and the remaining 60% of the Net Settlement Fund will be allocated to the Bayer Women's Settlement Class. *Id.*

[3] *See also* Notice at 7, attached as Ex. 3 ("Any member of any Settlement Class that does not complete and timely return the Claim Form will not be entitled to share in any settlement proceeds unless the Court otherwise permits.").

Settlement Class Members submitting claims will receive $6.00 for each purchase of Bayer Heart Advantage and/or $4.00 for each purchase of Bayer Women's. Settlement Class Members presenting valid proof of purchase(s), which can be satisfied with a number of flexible options,[4] will receive payment for each such purchase. *Id*. at § III.E.2.a. And, Settlement Class Members who do not submit a valid proof of purchase remain eligible for a one-time payment under the Settlement, *i.e.*, a one-time payment of $4.00 for all purchases of Bayer Women's and/or $6.00 for all purchases of Bayer Heart Advantage. *Id*. at § III.E.2.b.

The Settlement also provides direction for handling money in the Net Settlement Fund after payment to Settlement Class Members. Specifically, "[a]ny portion of the Settlement Amount remaining after payment of all Initial Authorized Payments and Single Payments shall be considered 'Excess Amounts.'" *Id*. at § III.E.3 ("Remaining Funds"). And, "[i]f there are any Excess Amounts remaining after all payments ordered by the Court have been made ('Final Excess Amount') … [t]he parties shall then apply to the Court for an order … to distribute the Final Excess Amount as *cy pres* payments to charities agreed to by the parties and approved by the Court." *Id*.

B. Amended Settlement Providing the Same Payments for Recorded Purchases

The Amendment to the Settlement has two changes.

First, Settlement Class Members with Recorded Purchases will be treated the same as Settlement Class Members who submitted proof of purchase with their claims. Amendment, Ex. 2, § III.E.2. Thus, Settlement Class Members with Recorded Purchases will receive $6.00 for each purchase of Bayer Heart Advantage and/or $4.00 for each purchase of Bayer Women's

[4] "Valid proof of purchase may include but is not limited to product bottles, product packaging, receipts, records from a retailer that identify the claimant and the purchases, or other records that show the Authorized Claimant purchased the Class Product(s)." Settlement Agreement, Ex. 1, § III.E.2.c.

reflected in the data. *Id.* The Amendment thus removes the requirement that the Settlement Class Members with Recorded Purchases submit a claim form before payment is issued. *Id*.

Second, the Amendment provides a spillover provision that provides for Excess Funds to move between the allocated Net Settlement Funds for the Bayer Heart Advantage Class and the Bayer Women's Class if one fund has excess monies after calculation of all claims and one is deficient – before any *pro rata* reductions are made and before any *cy pres* payments. Amendment, Ex. 2, § III.E.3. For example, the below chart reflects the distribution of the potential settlement fund by class pursuant to the Amendment.

Description	**Bayer Heart Advantage Class (40%)**	**Bayer Women's Class (60%)**
A. Estimated Net Settlement Fund After Class Allocation[5]	$3,400,000	$5,100,000
B. Exemplar Estimated Aggregate Units of Product Purchased by Settlement Class Members with Claimed and Recorded Purchases[6]	650,000 units	550,000 units
C. Award Per Unit	$6 per unit	$4 per unit
D. Value of Aggregate Units Purchased	$3,900,000	$2,200,000
Balance of Settlement Fund (Line A less Line D)	($500,000)	$2,900,000

Under the above example, the amended distribution plan would provide for a spillover of $500,000 from the Net Settlement Fund for the Bayer Women's Class to the Net Settlement

[5] This example assumes a Net Settlement Fund of $8,500,000.

[6] While these numbers are just an estimate for purposes of example, the actual number would include all Single Payments and Initial Authorized Payments (including Recorded Purchases).

Fund for the Bayer Heart Advantage Class in order to pay 100% of the Single Payments and Initial Authorized Payments before any *pro rata* reductions or *cy pres* payments.[7]

III. ARGUMENT

A. A Reasonable, Amended Plan of Distribution Will Provide Maximum Depletion of Settlement Funds Through Payments to Settlement Class Members

1. Plaintiffs propose that single payments for Claimed Purchases and Recorded Purchases be made, subject to any *pro rata* reductions.

In order to satisfy the dual goals of maximizing direct payment to Settlement Class Members and minimizing the amount of money paid via *cy pres*, Plaintiffs seek an amended plan of distribution to Settlement Class Members. "'As a general rule, the adequacy of an allocation plan turns on … whether the proposed apportionment is fair and reasonable' under the particular circumstances of the case.'" *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *7 (E.D.N.Y. Oct. 23, 2012) (quoting *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d at 518). Moreover, "[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001).

Specifically, Plaintiffs propose distributing payments to Settlement Class Members for all Claimed Purchases and Recorded Purchases, subject to the terms of the Settlement. Indeed, "[i]n cases where the identity of class members and amounts at issue are known with a high degree of certainty … class counsel may request that settlement funds be distributed to class members without the necessity of submission of a claim form," which further "ensur[es] a higher level of class member participation in the recovery." 2 MCLAUGHLIN ON CLASS ACTIONS § 6:23 (9th ed.

[7] Based on the numbers Plaintiffs have to date, it is expected that all claims can be paid subject to the Settlement Agreement, as amended, without any *pro rata* reductions.

2012). Thus, Plaintiffs propose that the Claims Administrator will calculate and pay Settlement Class Members $4.00 for all Claimed Purchases and Recorded Purchases of Bayer Women's and $6.00 for all Claimed Purchases and Recorded Purchases of Bayer Heart Advantage.[8]

This proposal has a reasonable, rational basis: to ensure that all Settlement Class Members for which the Claims Administrator has verified records participate in the Settlement. Under the particular circumstances here, discovery has resulted in Purchase Records for approximately 700,000 Settlement Class Members. Given the low claims rate, and the existence of the Purchase Records, it is fair to use those Purchase Records to ensure that payments are made to class members before *cy pres.*

2. Plaintiffs propose that, after single payments are calculated for Claimed and Recorded Purchases, any excess funds spillover between classes.

Furthermore, to avoid any *pro rata* reductions, Plaintiffs propose that a "spillover" between funds take place in the following situation: should money remain in the Net Settlement Fund as allocated to one class but the other class depletes the entire amount of its initial allocation such that *pro rata* reductions would occur, Plaintiffs propose a spillover in order to eliminate (or at least minimize) *pro rata* reductions from the agreed awards (*i.e.*, $4.00 for each Bayer Women's purchase and/or $6.00 for each Bayer Heart Advantage purchase). As a result, money from the Net Settlement Fund with excess funds should spillover to the class with deficient funds in a sufficient amount for all known Class Members to receive the full $4.00 or $6.00 award per unit (or at least reduce the degree of *pro rata* reduction).[9]

[8] This proposal does not change the restriction on Single Payments for claims without proof of purchase as set forth in the Settlement.

[9] Should no excess funds exist, a *pro rata* reduction would take place. Amendment, Ex. 2, ¶ III.E.3.a.

The spillover provision is standard to ensure that monies to the Classes are maximized through the projected payments of each full individual claims award. *See, e.g., Beecher v. Able*, 575 F.2d 1010, 1012, 1017 n.3 (2d Cir. 1978) (affirming district court's grant of equitable reallocation and denial of reversion subsequent to the entry of judgment approving settlement where "the actual number of claimants proved to be less than both sides estimated … the allocation plan itself made allowance for 'spillover' between the classes in the event that the amount allocated to a class exceeded the total of allowed claims"); *In re Metro. Life Ins. Co. Sales Practices Litig.*, No. 96-179, 1999 WL 33957871, at *1 (W.D. Pa. Dec. 28, 1999) (granting final approval of settlement where "rather than a reduction, it is likely that all Class Members will receive an increase in their applicable relief based on the 'spillover' of excess funds from the CRP Total Fund"). *See also Klier v. Elf Atochem N. Am., Inc*., 658 F.3d 468, 478 (5th Cir. 2011) (holding "that the district court erred when it rejected the settlement administrator's request that the funds be reallocated to the members of Subclass A," where the case involved a distribution protocol which "is an affirmation that funds initially allocated to a particular subclass are to be used, in the end, for the interests of the entire settlement class"). Accordingly, this Court should find the provision fair.

C. Supplemental Notice Is Unnecessary Where the Original Notice Satisfied Due Process, There Are No Material Changes to the Settlement, and Additional Notice Would Only Serve to Reduce Money for Class Members

Here, the proposed amended plan of distribution does not serve to reduce class member benefits, but rather serves to increase the number of Settlement Class Members who participate in the Settlement. As a result, supplemental notice to the class is not necessary.

First, supplemental notice is not necessary because the original notice clearly satisfied Rule 23 and due process. *See* Preliminary Approval Order, ¶ 6 ("The form and method of notifying the Settlement Classes and its terms and conditions … constitutes the best notice

practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entitles entitled thereto."). As the Notice satisfied due process, nothing further is required.

Indeed, under Rule 23(e), "[t]he 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. 23(e). As this Court recognized in *In re Vitamin C Antitrust Litig.*, "[t]he Second Circuit has held that '[t]he 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.'" 2012 WL 5289514, at *8 (quoting *Wal-Mart*, 396 F.3d at 113). As a result, "[t]here are 'no rigid rules to determine whether a settlement notice satisfies constitutional or Rules 23(e) requirements'" rather, '"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.* (internal quotation marks omitted). In evaluating the adequacy of notice, courts consider various factors, including:

> (1) whether there has been a succinct description of the substance of the action and the parties' positions, (2) whether the parties, class counsel, and class representatives have been identified, (3) whether the relief sought has been indicated, (4) whether the risks of being a class member, including the risk of being bound by the judgment have been explained, (5) whether the procedures and deadlines for opting out have been clearly explained, and (6) whether class members have been informed of their right to appear in the action through counsel.

Id. (citing *In re Payment Interchange Fee & Merch. Discount Antitrust Litig.*, No. 05-MD-1720, 2008 WL 115104 (E.D.N.Y. Jan. 8, 2008)).

As this Court held in granting preliminary approval here, the Notice in this case satisfied Rule 23(e) and due process. Preliminary Approval Order, ¶ 6. Like in *In re Vitamin C*, "the contents of the class notice [here] provide[d] sufficient information about the lawsuit, the parties, the risks and rights of class members, and the procedures by which a class member can exclude himself from a class or object to the settlements." *Id*. *Compare id. with* Notice. Further like in *In re Vitamin C*, "[t]he notice was also distributed widely, through the internet, print publications, and targeted mailings." *Id*. Indeed, the Notice here provided information about this lawsuit, including why notice issued, what the lawsuits were about, and the current status, as well as described class actions generally. *See* Notice, Ex. 3, §§ 1.1-1.4. The Notice also described what purchases qualify Settlement Class Members to receive money from the Settlement, how settlement money will be distributed (*i.e.*, payments of $4.00 and $6.00 depending on proof of purchase), and how Settlement Class Members can receive money from the Settlement. *Id.* at §§ 1.5-1.7, 2.6. The Notice further described the lawyers representing the Settlement Classes (*id.* § 1.8) and explained how Settlement Class Members can object (*id.* at §§ 1.9, 2.13). And, the Notice described the effects of remaining in the lawsuit or opting-out. *Id.* at §§ 2.3, 2.7, 2.15.

Moreover, given that the amount of money due to any individual class member is not changed by the proposed amended plan of distribution, the proposed amendments are not facts of the type that would impact a reasonable person's decision of whether to remain in the class or exercise his or her right to opt out. *See Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 338 (2d Cir. 2006) (notice "need only contain 'information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class.'") (quoting *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d

1088, 1105 (5th Cir. 1977)).[10] Here, Settlement Class Members have been on notice of the aggregate award, their potential individual award as well as the scope of the release to which they will be bound if they do not opt-out of the Settlement. Thus, supplemental notice is not required.

Second, supplemental notice is unnecessary because the Notice informed Settlement Class Members that the Court could permit Settlement Class Members who did not submit a claim form to share in the Settlement. Specifically, Section 2.9 of the Notice explains in pertinent part that "[a]ny member of any Settlement Class that does not complete and timely return the Claim Form will not be entitled to share in any settlement money *unless the Court otherwise permits.*" Notice, Ex. 3, § 2.9. Under the proposed revised plan of distribution, the claim form requirement is effectively eliminated for Settlement Class Members identified through the Recorded Purchases.

[10] And, even if class member relief increased, supplemental notice would not be required. *See, e.g., In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1111 (10th Cir. 2001) ("[T]he addition of opt-out rights merely expanded the rights of class members and gave members the right to opt out after they saw all of the terms of the settlement. Therefore, we see no way that the court's failure to provide new notice of the opt-out rights prior to accepting the settlement gave rise to a risk that unfavorable terms would be forced upon some class members or otherwise diminished class members' ability to bring objections before the court. Accordingly, we hold the district court did not abuse its discretion by failing to notify class members of their opt-out rights prior to conducting a fairness hearing of the settlement's terms."); *Childs v. United Life Ins. Co.*, 2012 U.S. Dist. LEXIS 70113, at *16-17 (N.D. Okla. May 21, 2012) (noting "[c]ourts have held that where amendments to a proposed settlement expand or improve rights for the class, new notice may not be required" where the proposed "amendments to the original settlement agreements provide enhanced relief for the Class Members" by providing that "Class members with valid claims will be reimbursed 100 percent of their premiums, rather than 50 percent," but requiring amended notice under the facts before it where the court previously required direct notice by individual first class mailings, but the claims administrator mailed individual notices in bulk in single envelopes to various nursing homes where class members resided); *Manners v. American Gen. Life Ins. Co.*, 1999 U.S. Dist. LEXIS 22880, at *13 (M.D. Tenn. Aug. 10, 1999) ("Because these amendments enhance the relief provided to Class Members, the Court finds that additional notice was not and is not necessary.").

Third, supplemental notice is not necessary where case law further confirms that plans of distribution can be finalized after notice has issued and even after a final approval hearing has taken place. The Second Circuit recognized that finalization of a plan of distribution can take place even after final approval:

> [t]he formulation of the [distribution] plan in a case such as this is a difficult, time-consuming process. To impose an absolute requirement that a hearing on the fairness of a settlement follow adoption of a distribution plan would immensely complicate settlement negotiations and might so overburden the parties and the district court as to prevent either task from being accomplished.

In re "Agent Orange" Prod. Liab. Litig., 818 F.2d 145, 170 (2d Cir. 1987). More recently, in *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632 (5th Cir.), *cert. denied*, __ U.S. __, 133 S. Ct. 317, 184 L. Ed. 2d 239 (2012), the Fifth Circuit affirmed a district court's restructuring of a class action settlement which revised a planned distribution by eliminating a settlement's *de minimis* provision, all without requiring supplemental notice. As the Fifth Circuit explained:

> The district court eliminated the de minimis provision on June 10, 2010, one month after the deadline for filing claims had passed. Under the new plan of allocation, class members who stood to receive less than ten dollars from the settlement were now eligible to recover. The court nevertheless refused to reissue notice to the class and did not reopen the claims-filing period, concluding that "[t]here is no justiciable basis to incur the additional expense and time to re-notice the class and re-open the time for claims to be filed."

Id. at 641. However, on appeal, "[b]oth groups of objectors contend that this amounted to a violation of Rule 23 and due process." *Id*. The Fifth Circuit rejected this argument, finding "persuasive support for the district court's judgment," where, as here "[t]he notice was sent to all potential class members … and warned that by doing nothing, they would give up their rights and get no payment" and where "the objectors point[ed] to no cases requiring a second round of

notice to class members, nor an extended filing deadline, when a plan of allocation is amended." *Id*.

Finally, given the extensive dissemination of the original Notice in this case, Notice costs were approximately $887,000.[11] Sending out supplemental notice would cost the same or more (as publication costs may have increased) and would only serve to deplete the monies that could be awarded to the Classes. Moreover, class members have been on notice of the Settlement website located at www.BayerCombinationAspirinSettlement.com, where an update to the proceedings is maintained and available (including this Motion). *See*, *e.g.*, *In re Compact Disc Minimum Advertised Price Antitrust Litig*., 292 F. Supp. 2d 184, 185-186 (D. Me. 2003) (concluding "notice was sufficient because it would be too burdensome and costly to repeat a mailing to the over eight million class members informing them of favorable changes in the proposed amended settlement, especially to those who never objected to the first proposed settlement" and noting that certain "websites were continuously updated and maintained to reflect the terms of the amended settlement and an informational toll-free number was continued"). And the Objectors are and will continue to receive notices of the proceedings. *In re Auction Houses Antitrust Litig*., 138 F. Supp. 2d 548, 549 (S.D.N.Y. 2001) (noting that "[t]he Court did not require the sending of a new notice to the class" but noted the amendment "was served on objectors who already had come forward" after it "granted final approval to the proposed settlement…subject to the conditions that the parties amend (1) the settlement documents to conform the releases to the requirements of the Court's opinion, and (2) other settlement documents to contain provisions satisfactory to the Court to maximize the value of the certificates, the prospects for the development of an efficient secondary market, and the

[11] Publication notice costs were $698,187. In addition, another $189,645 in costs were incurred to print and mail postcard notice to Settlement Class Members.

likelihood that one or more qualified persons will make a market in the certificates") (internal quotations omitted).

The proposed amended allocation here does not take away rights from Settlement Class Members. Rather it eliminates the claim form requirement for the Settlement Class Members, *see generally* Notice, Ex. 3, § 2.9, who previously were sent direct notice of this case, providing reasonable methods for minimizing *cy pres* payments while maximizing participation of Class Members. Supplemental notice is not required.

D. The Concerns Voiced By The Third Circuit in *In re Baby Products Antitrust Litigation* Are Addressed By This Amended Plan

As a final matter, the revisions to the proposed plan of distribution ensure that the number of direct payments to Settlement Class Members will be maximized. In *In re Baby Prods. Antitrust Litig.*, No. 12-1165, 2013 WL 599662 (3d Cir. Feb. 19, 2013), the Third Circuit recently considered "for the first time the use of *cy pres* distributions in class action settlements," arising out of a $35 million dollar consumer antitrust settlement. *Id.* at *1. While this decision is not binding on this Court, the Third Circuit "join[ed] other courts of appeals in holding that a district court does not abuse its discretion by approving a class action settlement agreement that includes a *cy pres* component directing the distribution of excess settlement funds to a third party to be sued for a purpose related to the class injury." *Id*. at *4. The Third Circuit, however, cautioned "that direct distributions to the class are preferred over *cy pres* distributions." *Id*.

Here, the concerns voiced by the Third Circuit are instructive in supporting the amendment to the Agreement. As the Third Circuit noted, "[t]hough the parties contemplated that excess funds would be distributed to charity after the bulk of the settlement fund was distributed to class members through an exhaustive claims process," the actual allocation in that case appeared to "be just the opposite," with an estimate of only approximately $3 million being

directly distributed to class members. *Id*. at *1. As a result, that Court remanded to permit the district court to "consider whether [the] settlement provides sufficient direct benefit to the class before giving its approval." *Id.* at *2. Here, Plaintiffs seek to address these issues directly now – rather than waiting until after the Objectors appeal any perceived imperfections.

While Settlement Class Members have the opportunity to submit claims for payment, under the proposals here, Settlement Class Members with Recorded Purchases will also receive direct distributions. These efforts will ensure that direct compensation to class members comprises the largest payment category under the Settlement.

IV. CONCLUSION

Accordingly, for the reasons provided above, in their Motion to Amend Plan of Distribution, and for good cause shown, Plaintiffs respectfully request that the Court: (1) grant their motion to amend the plan of distribution in order to ensure that the Settlement Fund inures to the direct benefit of Settlement Class Members; (2) with this amendment, grant Plaintiffs' Motion For Final Approval and enter the [Proposed] Final Order and Judgment filed with the Motion to Amend Plan of Distribution; and (3) grant Plaintiffs all such other relief the Court deems necessary and appropriate.

Dated: March 1, 2013

Respectfully submitted,

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