

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

ADAM S. LEVY on behalf of himself and all others
similarly situated,

Plaintiff,

v.

THOMAS GUTIERREZ, RICHARD J. GAYNOR,
RAJA BAL, J. MICHAL CONAWAY, KATHLEEN A.
COTE, ERNEST L. GODSHALK, MATTHEW E.
MASSENGILL, MARY PETROVICH, ROBERT E.
SWITZ, NOEL G. WATSON, THOMAS WROE, JR.,
MORGAN STANLEY & CO. LLC, GOLDMAN,
SACHS & CO., AND CANACCORD GENUITY INC.,
AND APPLE, INC.

Defendants.

No. 1:14-cv-00443-JL

ECF CASE

ORDER APPROVING DISTRIBUTION PLAN

Lead Plaintiff moved this Court for an order approving a distribution plan for the Net Settlement Funds in the above-captioned class action (the “Action”). Having reviewed and considered all the materials and arguments submitted in support of the motion, including the Memorandum of Law in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan and the Declaration of Tara Donohue in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan (the “Donohue Declaration”),

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement with Individual Defendants dated January 26, 2018 ([ECF No. 178-1](#)) (the “Individual Defendant Stipulation”), and the Stipulation and Agreement of Settlement with Settling Underwriter Defendants dated August 18, 2017 ([ECF No. 158-2](#)), and the Supplement thereto dated January 26, 2018 ([ECF No. 178-2](#)) (the “Underwriter Defendant Stipulation” and, collectively with the Individual Defendant Stipulation, the “Stipulations”), and the Donohue Declaration and all terms

used in this Order shall have the same meanings as defined in the Stipulations or in the Donohue Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Lead Plaintiff's plan for distribution of the Net Settlement Funds to Authorized Claimants is **APPROVED**. Accordingly:

(a) The administrative recommendations of the Court-approved Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), to accept the Timely Eligible Claims stated in Exhibit E to the Donohue Declaration and the Late But Otherwise Eligible Claims stated in Exhibit F to the Donohue Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims, as stated in Exhibit G to the Donohue Declaration, including the Disputed Claims discussed in paragraphs 27 to 31 of the Donohue Declaration and Exhibit D to the Donohue Declaration, are adopted;

(c) Epiq is directed to conduct an Initial Distribution of the Net Settlement Funds, after deducting all payments previously allowed and the payments approved by this Order, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 5% reserve from the Net Settlement Funds to address any tax liability and claims administration-related contingencies that may arise, as stated in paragraph 42(a) of the Donohue Declaration. Specifically, as stated in paragraph 42(a) of the Donohue Declaration: (1) Epiq will calculate each Authorized Claimant's: (a) *pro rata* share of the Individual Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Exchange Act Recognized Claim in comparison to the total Exchange Act Recognized Claims of all Authorized Claimants; and (b) *pro rata* share of the Underwriter Defendant Net Settlement Fund based on the amount of the Authorized Claimant's Securities Act Recognized Claim in comparison to the total Securities Act Recognized Claims of all Authorized Claimants, as stated in subparagraph 42(a)(1) of the

Donohue Declaration; (2) Epiq will, in accordance with the terms of the Court-approved Plan of Allocation, calculate the total amount each Authorized Claimant would recover in accordance with the calculations stated in subparagraph (c)(1) above and then it will eliminate from the Initial Distribution any Authorized Claimant whose combined *pro rata* share of the Individual Defendant Net Settlement Fund and/or Underwriter Defendant Net Settlement Fund calculates to less than \$10.00. These Claimants will not receive any payment from the Net Settlement Funds and will be so notified by Epiq; (3) After eliminating Claimants who would have received less than \$10.00 in the Initial Distribution, Epiq will recalculate the *pro rata* share of the Individual Defendant Net Settlement Fund and the Underwriter Defendant Net Settlement Fund for all Authorized Claimants who would have received \$10.00 or more pursuant to the calculations described in subparagraph (c)(1) above. The sum of these *pro rata* shares is the Authorized Claimant's "Distribution Amount"; (4) 95% of the remaining balance of the Net Settlement Funds will be distributed *pro rata* to Authorized Claimants whose Distribution Amount calculates to \$10.00 or more under subparagraph (c)(3) above. The remaining 5% of the Net Settlement Funds will be held in reserve (the "Reserve") to address any tax liability and claims administration-related contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the "Second Distribution" described in subparagraph (f) below.

(d) In order to encourage Authorized Claimants to cash their checks promptly, all Distribution checks will bear the following notation: "CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE]." Lead Counsel and Epiq are authorized to take appropriate action to locate and contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 42(b) footnote 9 of the Donohue Declaration;

(e) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions stated in paragraph 42(b) footnote 9 of the Donohue Declaration will irrevocably forfeit all recovery from the Settlements, and the funds allocated

to all such stale-dated checks will be available to be distributed to other Authorized Claimants in the second distribution;

(f) After Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (provided in paragraph 42(b) footnote 9 of the Donohue Declaration), but not earlier than nine (9) months after the Initial Distribution, Lead Counsel shall seek Court approval to conduct a second distribution (the “Second Distribution”), in which any amount remaining in the Net Settlement Funds after the Initial Distribution, including from the Reserve and the funds from all void stale-dated checks, after deducting Epiq’s fees and expenses incurred in administering the Settlements for which it has not yet been paid, including Epiq’s estimated costs of the Second Distribution, and after deducting the 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 check;

(g) Any Claims received or adjusted after November 6, 2019, will be processed and presented to the Court in connection with Lead Counsel’s motion for a Second Distribution;

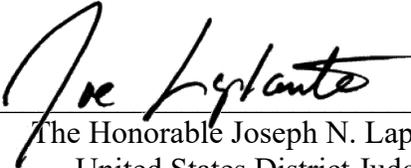
(h) All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted, or who are otherwise involved in the administration or taxation of the Settlements, are hereby released and discharged from any and all claims arising out of that involvement, and all Settlement Class Members and other Claimants, whether or not they receive payment from the Net Settlement Funds, are hereby barred from making any further claims against the Net Settlement Funds, 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 Funds or the Net Settlement Funds, or any other person released under the Settlements beyond the amounts allocated to Authorized Claimants;

(i) All of Epiq's fees and expenses incurred in the administration of the Settlements and estimated to be incurred in connection with the Distribution of the Net Settlement Funds as stated in the invoices attached as Exhibit H to the Donohue Declaration are approved, and Lead Counsel is directed to pay the outstanding balance of \$416,403.22 out of the Settlement Funds to Epiq; and

(j) Unless otherwise ordered by the Court, Epiq may destroy the paper copies of the Claims and all supporting documentation one year after the Second Distribution, and one year after all funds have been distributed may destroy electronic copies of the same.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlements, and any other and further relief that this Court deems appropriate.

SO ORDERED this 13th day of January, 2019.



The Honorable Joseph N. Laplante
United States District Judge