

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

PAUL SHAPIRO, on behalf of himself as an individual, and on behalf of all others similarly situated,

Plaintiff,

v.

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN SECURITIES LLC, and J.P. MORGAN SECURITIES, LTD.,

Defendants.

Case No.:11-CV-8331 (CM)(MHD)  
ECF CASE

STEPHEN and LEYLA HILL, on behalf of themselves as individuals, and on behalf of all others similarly situated,

Plaintiffs,

v.

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN SECURITIES LLC, and J.P. MORGAN SECURITIES, LTD.,

Defendants.

Case No. 11-CV-7961 (CM)  
ECF CASE

**MEMORANDUM IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR  
DISTRIBUTION OF THE CLASS SETTLEMENT FUND**

**TABLE OF CONTENTS**

**PRELIMINARY STATEMENT** .....1

**FACTUAL BACKGROUND**.....2

**A. The Settlement**.....2

**B. The Approved Plan of Allocation** .....4

**C. The Claims Administration**.....5

**1. The Claims Administrator Provides Notice and Claims Materials to the Class** .....5

**2. Claims Processing, Review and Resolution** .....6

**D. The Class Settlement Fund to be Distributed and the Claims Administrator’s Fees** .....9

**CLASS COUNSEL AND CLAIMS ADMINISTRATOR’S ADMINISTRATIVE DETERMINATIONS SHOULD BE ACCEPTED** .....9

**THE COURT SHOULD AUTHORIZE THE REQUESTED DISTRIBUTUION OF THE NET SETTEMENT FUND**.....11

**A. Disposition of Any Unclaimed/Uncashed Balance** .....11

**B. Release of Claims** .....12

**THE CLAIMS ADMINISTRATOR SHOULD BE PERMITTED TO DISCARD CERTAIN RECORDS FOLLOWING A REASONABLE TIME AFTER THE INITIAL DISTRIBUTION**.....13

**CONCLUSION** .....14

Co-lead Counsel for the Class Plaintiffs respectfully submit this Memorandum in Support of their Motion for Distribution of the Class Settlement Fund (the “Class Distribution Motion”).

For the reasons set forth herein and in the accompanying Declaration of Vineet Sehgal in Support of Class Plaintiffs’ Class Distribution Motion (the “Sehgal Declaration”), prepared on behalf of AlixPartners, LLP (the “Claims Administrator” or “AlixPartners”), Class Plaintiffs respectfully request that the Court enter the [Proposed] Order submitted concurrently herewith permitting Co-Lead Class Counsel and AlixPartners to distribute the Class Settlement Fund (“CSF”) to Participating Accounts in accordance with the Agreement to Settle Common Law Claims dated January 6, 2014 (the “Settlement Agreement”) and approved by in this Court’s Amended Memorandum Opinion and Order Granting Plaintiffs’ Motions for Final Class Action Settlement Approval, dated March 24, 2014 (the “Final Order of Approval”).

### **PRELIMINARY STATEMENT**

Since the time the Court entered its Final Approval Order, Co-Lead Class Counsel and the Claims Administrator have worked diligently to provide notice to the Class and to administer the Settlement consistent with the Settlement Agreement and the Court’s Final Approval Order.

Between March 24, 2014 and the present, Co-Lead Class Counsel and AlixPartners communicated with all Settlement Class Members and claimants (i) to notify them of the Claims Administrator’s loss calculations from which their pro rata share of the Settlement would be calculated; (ii) to resolve ownership issues and disputes with respect to transferred claims; (iii) to resolve disputes, if any, with respect to the calculation of losses for purposes of this Class Action pursuant to the terms of the Settlement Agreement; and (iv) to notify claimants, where appropriate, of the final calculation of the loss to be recognized for purposes of this Class action, or to notify a claimant that they did not have recognized loss. Each Settlement Class Member

and claimant has received a letter advising them of these calculations, the fact that Co-Lead Counsel would be filing this motion seeking an order approving distribution of those amounts, and, where appropriate, not excluding claims or approving the escrowing of funds pending resolution of ownership disputes or any further matters which need to be resolved.

Accordingly, Co-Lead Class Counsel and the Claims Administrator are prepared to distribute the Class Settlement Fund to Settlement Class Members as determined by Co-Class Counsel and the Claims Administrator (the “Class Distribution” or “Distribution”). Class Plaintiffs, therefore, respectfully request that the Court enter the proposed Class Distribution Order submitted herewith.

## **FACTUAL BACKGROUND**

### **A. The Settlement**

On January 10, 2014, this Court preliminarily approved a Settlement agreement<sup>1</sup> between plaintiffs Paul Shapiro, Stephen Hill and Leyla Hill, individually, and on behalf of a putative Class (the “Plaintiffs”), Intervenor Irving H. Picard, Trustee of the SIPA liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (the “SIPA Trustee”) and defendants JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, “JPMorgan”).<sup>2</sup> The Court found that the Settlement of this Class action was an integral piece of a global resolution of

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<sup>1</sup> The Settlement Agreement is attached as Exhibit 1 to the January 7, 2014 Declaration of Andrew J. Entwistle in Support of Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement with Defendants. [See Dkt. No 51-1] (“Entwistle Preliminary Approval Declaration”).

<sup>2</sup> See January 10, 2014 Order Preliminarily Approving Proposed Settlement and Providing for Notice [Dkt. No. 52] (“Preliminary Approval Order”).

Madoff-related litigation against JPMorgan involving three simultaneous, separately negotiated Settlements totaling \$2,243,000,000 consisting of: (i) this Class action Settlement in the amount of \$218 million (the “Settlement”); (ii) the SIPA Trustee’s Avoidance Action Settlement in the amount of \$325 million;<sup>3</sup> and (iii) a civil forfeiture in the amount of \$1.7 billion in connection with a resolution of U.S. government claims against JPMorgan concerning Madoff-related matters.

The Preliminary Approval Order also determined that “all reasonable costs incurred in notifying Settlement Class Members as well as in administering the Settlement shall be paid as set forth in the Settlement Agreement without further order of the Court.”

After the Preliminary Approval Order, Plaintiffs have provided direct notice of the Settlement to what is reasonably believed to be *every member* of the Settlement Class, and published notice in accordance with the Preliminary Approval Order. As further described herein, the notices were also available on the site maintained by AlixPartners. The deadline by which Settlement Class Members may opt-out of the Class or object to the Settlement was Friday, February 28, 2014, and to the extent there are any opt-outs or objections;

By its Amended Memorandum Opinion and Order Granting Plaintiff’s Motion for Final Class Action Settlement Approval dated March 24, 2014, this Court approved the Settlement as fair, reasonable and adequate, specifically noting the disbursement plan set forth in Paragraph 9 of the Settlement Agreement:

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<sup>3</sup> See Exhibit 2 to Entwistle Preliminary Approval Declaration [Dkt. No. 51-7] (“Trustee’s Motion for Entry of Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9010 of the Federal Rules of Bankruptcy Procedure Approving Settlement of Common Law Claims by and Between the Trustee and the Class Representatives and JP Morgan”) for a discussion and description of the Trustee’s settlement.

The Court authorized Co-Lead Class Counsel to make disbursements to Class Members in accordance with the Settlement Agreement<sup>4</sup> upon the Effective Date of the Settlement Agreement. That date passed upon the occurrence of each of the following, which have occurred: (a) the entry of a final and non-appealable 9019 Order (the “Final Common Law 9019 Order”); (b) the entry of a final and non-appealable Judgment (the “Final Judgment”); and (c) JPMorgan has not exercised its right to terminate the Settlement. *See* Settlement Agreement ¶4.

### **B. The Approved Plan of Allocation**

As noted above, JP Morgan paid \$218 million to settle the claims advanced in the Action. [Plan of Allocation, at pp. 13-14 of the Notice mailed to all Class Members and attached as Exhibit 1-D to the Entwistle Preliminary Approval Declaration. [Dkt. No. 51-5]]. The \$218 million settlement amount, less any costs in connection with the administration of the Settlement by the Claims Administrator, is to be distributed to all Members of the Settlement Class who file a timely Proof of Claim Form (“Claim Form”), on a *pro rata* basis, based on a Settlement Class Member’s “Net Losses” as of December 11, 2008.<sup>5</sup> If a Settlement Class Member has already

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<sup>4</sup> The Settlement Agreement provides that the Class Settlement Funds will be distributed to members of the Settlement Class following the Effective Date of the Settlement Agreement. Settlement Class members will be able to make a claim on the Class Settlement Funds regardless of whether they have submitted a claim in the SIPA proceeding. For purposes of distributions from the Class Settlement Fund, a claim filed with the Trustee in the SIPA proceeding will be deemed a claim against the Class Settlement Fund. If a Settlement Class member did not file a claim in the SIPA proceeding, that Class member will need to file a claim against the Class Settlement Fund. Members of the Settlement Class, including those Net Losers that are defendants in avoidance actions by the Trustee, shall receive their *pro rata* shares of the Class Settlement Fund based on their Net Losses as of December 11, 2008. Final Approval Order at 11; Settlement Agreement ¶9.

<sup>5</sup> *See* pages 13-14 (“Plan of Allocation”) of the notice mailed to all class members and attached as Exhibit 1-D to the Entwistle Preliminary Approval Declaration. [Dkt. No. 51-5]

filed a Claim Form in connection with the SIPA Proceeding, that Class Member was not required to file another Claim Form, and their Claim Form filed in the SIPA proceeding will be used in this proceeding.<sup>6</sup> A Class Member's Net Losses was calculated by taking the amount of money a Class Member deposited into their Madoff account, and subtracting any withdrawals.<sup>7</sup> This calculation of Net losses has been upheld by the Second Circuit.<sup>8</sup>

**C. The Claims Administration**

**1. The Claims Administrator Provides Notice and Claims Materials to the Class**

The Claims Administrator, AlixPartners, caused to be mailed, by first-Class mail, to each member of the Settlement Class, a "Notice of Proposed Settlement of Class Action to Direct Investors in Bernard L. Madoff Investment Securities LLC." In total, AlixPartners mailed 2,778 packages containing the Settlement Notice and Proof of Claim Form. Pursuant to the Notice Order, AlixPartners also caused the Summary Notice of the Settlement (the "Summary Notice") to be published on January 27, 2014 on Bloomberg. *See* Declaration of John Franks of AlixPartners dated January 22, 2014, and filed on February 13, 2014.

AlixPartners established and maintained a toll-free number for claimants and interested parties to ask questions concerning the Class Action Settlement. The toll-free number - (888) 369-6601 - went live on January 24, 2014, and has been operational at all times since then. In addition to the toll-free number, AlixPartners established and maintains a website - <https://www.shapiro-hillClassSettlement.com> - which contains links to, among other things, copies of the Notice, the Proof of Claim Form, the Settlement Agreement, and other pleadings

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *See generally In re Bernard L. Madoff Inv. Sec., LLC*, 654 F.3d 229 (2d Cir. 2011).

relevant to the Settlement. The website went live on January 24, 2014 and has been operational at all times since then. *See* Sehgal Declaration ¶ 5.

## **2. Claims Processing, Review and Resolution**

Under the terms of the Stipulation and as set forth in the Notice, Settlement Class Members who previously submitted a customer claim in the SIPA proceeding and who wished to participate in the Settlement did not need to submit a Claim Form or take any additional steps; they automatically participated in the Class Settlement unless they elected to be excluded from the Settlement by following the procedure outlined in the Notice. Settlement Class Members who did not submit a customer claim in the SIPA proceeding but who wished to participate in the Settlement and to be eligible to receive a distribution from the Class Settlement Fund were directed to complete and submit a Claim Form. By submitting a Claim, a person or entity was deemed to have submitted to the jurisdiction of this Court with respect to his, her or its Claim and the subject matter of the Settlement.

As of the SIPA proceeding filing date of December 11, 2008, there were 2,395 account holders who directly had capital invested with BLMIS and under the net investment method upheld by the United States Court of Appeals for the Second Circuit, had net losses. Of these 2,395 account holders, 71 were excluded from the Settlement Class because they were Madoff family members, BLMIS employees, defendants in criminal Madoff-related proceedings, or part of a Settlement agreement with the SIPA Trustee -- The Estate of Jeffrey Picower Settlement, The Carl Shapiro Family Settlement or The Jeanne Levy-Church and Francis N. Levy Settlement. After excluding these 71 account holders from the 2,395 net losers, 2,324 account holders potentially remain in the Settlement Class. In January 2014, 2,778 notices were mailed to potential Class Members. These 2,778 parcels represent the 2,324 unique account holders.



Several accounts had more than one address, so in those instances all known addresses were served. Of the 2,324 unique accounts, 8 opt'ed-out of the Settlement Class and 34 did not file a claim in the SIPA proceeding or submit a Proof of Claim, for a total of 42 excluded accounts. This leaves 2,282 accounts participating in the Settlement. *See* Sehgal Declaration ¶7 and Exhibit A attached thereto.

Each of the 2,282 accounts which Co-Lead Counsel and AlixPartners have determined will participate in the Settlement Class Distribution received a letter identifying the amount of their claim for purposes of this Class Settlement. These letters served as notice of the distributions they can expect to receive and state their amount of net losses in the BLMIS case and that their distribution in this case is based on their pro rata share of the total net losses. The aggregate net equity of these 2,282 accounts is \$17,449,222,268.08. *See* Sehgal Declaration ¶¶9-10 and Exhibit B attached thereto.

AlixPartners also received a total of 45 Proofs of Claim Forms as of April 1, 2014. Many of these claimants were already included in the Settlement Class and claimed the same amount calculated by AlixPartners. AlixPartners, in consultation with Co-Lead Counsel, recommended that 36 of those claims be accepted. Notice was provided to each of the 45 parties which filed Proof of Claim Forms, and where there were deficiencies, each was given an opportunity to cure. AlixPartners then recommended and Co-Lead Counsel accepted the rejection of 9 claims. Each claimant received a letter either identifying whether or not their claim was accepted or rejected, and if applicable, the amount of their claim for purposes of this Class Settlement. *See* Sehgal Declaration ¶¶11-12 and Exhibit C attached thereto.

Finally, of the 2,282 account holders participating in the Class action distribution, 397 account holders traded their SIPA claims and potential rights of recoveries from other sources. In

order to finalize the transferee's right to recover from other sources, including this Settlement, Co-Lead Counsel required that those parties sign indemnity agreements to protect the Class Settlement Fund, Co-Lead Counsel, the Trustee, and all involved in the Settlement or the administration thereof in case ownership was disputed now or in the future. AlixPartners mailed these indemnity agreements to all transferees with a copy to the transferors. Several indemnity agreements received by AlixPartners were incomplete or missing requested information, such as claim numbers. AlixPartners worked with many of the transferees to obtain additional information to finalize these indemnity agreements. AlixPartners has now received fully executed and complete indemnity agreements, with no unresolved disputes, for 386 of the 397 accounts. AlixPartners has not received indemnity agreements related to 2 accounts that transferred their claims. Distribution funds for these 2 accounts will be held until resolution is reached regarding ownership. *See* Sehgal Declaration ¶13.

Of these 397 accounts, disputes were raised related to ownership of 16 accounts, including the right to recover from this Settlement. AlixPartners mailed letters notifying both transferors and transferees of the dispute. AlixPartners actively communicated with both transferors and transferees via telephone and electronic mail. AlixPartners was not involved in the negotiations between the parties. Resolutions were reached for 7 of the 16 disputes. The remaining 9 are currently in a dispute regarding ownership of rights to recover from this Settlement. Distribution funds for these 9 accounts will be held until the ownership resolution is reached. In total, distribution funds will be held for 11 accounts, comprised of the 2 transferred accounts missing indemnity agreements and the 9 accounts with outstanding ownership disputes. *See* Sehgal Declaration ¶13 and Exhibit D attached thereto.

**D. The Class Settlement Fund to be Distributed and the Claims Administrator's Fees**

The current estimated amount of distribution is approximately \$217,000,000.00 plus any interest accrued, which represents the \$218,000,000.00 Class Settlement Fund plus any interest accrued less \$1,000,000.00 for AlixPartners' current and estimated total billings. Based on these figures, the pro-rata distribution share for each account is approximately 1.244%. *See* Sehgal Declaration ¶10.

AlixPartners' monthly invoices for work performed on behalf of the Class through October 31, 2014, totals \$753,971.48. To date, AlixPartners has received no payment of its fees and reimbursement of expenses. Accordingly, there is an outstanding balance of \$753,971.48 payable to AlixPartners. *See* Sehgal Declaration ¶20.

In addition, AlixPartners estimates \$250,000.00 to complete the initial distribution, maintain books and records and execute a potential second distribution. This estimate assumes the initial distribution occurs in November 2014 and that there are no objections filed to the allocation motion that prolong the initial distribution period.<sup>9</sup> *See* Sehgal Declaration ¶20.

**CLASS COUNSEL AND CLAIMS ADMINISTRATOR'S ADMINISTRATIVE DETERMINATIONS SHOULD BE ACCEPTED**

As detailed above and in the accompanying Sehgal Declaration, Co-Lead Counsel and the Claims Administrator have corresponded with each Settlement Class Member and claimant, and have determined that the amount of net losses set forth for eligible participant in each

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<sup>9</sup> Should the estimate of fees and expenses to conduct the distribution exceed the actual cost to conduct the distribution, the excess shall be returned to the Settlement Fund and will be available for any subsequent distributions of the Settlement Fund to Participating Accounts.

account listed in Exhibit B of the Sehgal Declaration, should be used for purposes of determining the numerator for each account holders *pro rata* share of the Class Settlement Fund. The total amount of net losses is of all the Settlement Class Member participants, also set forth on Exhibit B is \$17,449,222,268.08. That total with represent the Denominator for purposes of determining the pro rate distribution to each Settlement Class Member. Class Plaintiffs and Co-Lead Class Counsel respectfully request that the Court adopt Co-Lead Class Counsel and the Claims Administrator's administrative determinations concerning the participation of only these accounts in the Class Distribution and the determination of their net losses for purposes of calculating each account's *pro rata* share of the Class Distribution.

**C. The Ineligible Claims Should be Rejected**

AlixPartners has recommended and Co-Lead Class Counsel accepted the rejection of 9 claims. These claimants either did not have an account with BLMIS or they had no losses -- they took out more than they put in. Each of these 9 claimants received a letter identifying that their claim was rejected. *See* Sehgal Declaration ¶¶11-12 and Exhibit C attached thereto. Class Plaintiffs and Co-Lead Class Counsel respectfully request that the Court adopt Co-Lead Class Counsel and the Claims Administrator's administrative determinations concerning the rejection of these claims.

AlixPartners has recommended and Co-Lead Class Counsel accepted the continued escrow of distributions related to 11 accounts where ownership of the claim is disputed or the parties have failed to provide an indemnity agreement. *See* Sehgal Declaration ¶13 and Exhibit D attached thereto. Class Plaintiffs and Co-Lead Class Counsel respectfully request that the Court adopt Co-Lead Counsel and the Claims Administrator's administrative determinations concerning the continued escrowing of these accounts.

**THE COURT SHOULD AUTHORIZE THE REQUESTED DISTRIBUTUION OF THE NET SETTEMENT FUND**

As set forth herein and in the Sehgal Declaration, Co-Lead Class Counsel and the Claims Administrator have performed the work necessary to effectuate Distribution of the Class Settlement Fund that is consistent with the Court's prior Orders and the plan of allocation. Class Plaintiffs and Co-Lead Class Counsel respectfully request that the Court order distribution as set forth herein.

Once the Court authorizes the Class Distribution, the Claims Administrator will determine each Authorized Claimant's payment from the Class Settlement Fund (the "Settlement Payment") by calculating each Authorized Claimant's *pro rata* share of the Class Settlement Fund as set forth above. This calculation will be determined by comparing the participants' net losses with the total net losses set forth in Exhibit B to the Sehgal Declaration and multiplying that percentage by the total dollar value of the Class Settlement Fund at the time of Distribution (approximately \$217 million) in order to calculate payment amounts. The Claims Administrator will then mail a Settlement Payment check to each Authorized Claimant by pre-paid first Class mail.

The Claims Administrator will distribute all of the available balance of the Class Settlement Fund after deducting payments for current and estimated total billings.

**A. Disposition of Any Unclaimed/Uncashed Balance**

In order to encourage Participating Accounts to cash their Class Distribution checks promptly and to avoid or reduce future expenses relating to uncashed checks, Co-Lead Class Counsel and the Claims Administrator propose that all Distribution checks bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY 120 DAYS AFTER ISSUE DATE." In an effort to have as many Participating Accounts as

possible cash their checks, AlixPartners will make reasonable and diligent efforts in assisting Participating Accounts who initially fail to cash their Class Distribution checks. *See* Sehgal Declaration ¶¶ 16-17.

Consistent with the Court-approved Class Settlement Fund POA, if any funds remain in the Class Settlement Fund after the Distribution because of uncashed distributions or other reasons, and after AlixPartners has made reasonable and diligent efforts assisting Participating Accounts with cashing their Class Distribution checks, AlixPartners may conduct a second distribution pursuant to which any balance remaining in the Class Settlement Fund six months after the Distribution will be re-distributed to Participating Accounts who have cashed their checks and who would receive at least \$25.00 from such re-distribution, after payment of any unpaid costs or fees incurred in administering the Class Settlement Fund or for such re-distribution. *See* Sehgal Declaration ¶¶18-19. If any funds shall remain in the Class Settlement Fund six months after such re-distribution, then such balance shall be donated *cy pres*.

**B. Release of Claims**

In order to allow the full and final distribution of the Class Settlement Fund, it is necessary to bar any further claims against the Class Settlement Fund beyond the amount allocated to the participating accounts in Exhibit B, and to provide that all persons involved in the review, verification, calculation, tabulation or any other aspect of the processing of the Claims submitted herein, or otherwise involved in the administration of claims, be released and discharged from any and all claims arising out of such involvement. Accordingly, Class Plaintiffs respectfully request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation or any other aspect of processing of the Claims submitted herein, or otherwise involved in the administration or taxation of the Gross Settlement

Fund or the Class Settlement Fund from any and all claims arising out of such involvement, and bar all Settlement Class Members, whether or not they receive payment from the Class Settlement Fund, from making any further claims against the Class Settlement Fund, Class Plaintiffs, Class Plaintiffs' Counsel, the Claims Administrator, or any other agent retained by Class Plaintiffs' Counsel in connection with the administration or taxation of the Gross Settlement Fund or the Class Settlement Fund beyond the amount allocated to Participating Accounts.

**THE CLAIMS ADMINISTRATOR SHOULD BE PERMITTED TO DISCARD CERTAIN RECORDS FOLLOWING A REASONABLE TIME AFTER THE INITIAL DISTRIBUTION**

Class Plaintiffs and Co-Lead Class Counsel respectfully request that the Class Distribution Order provide that: (i) the Claims Administrator may discard paper copies of Proof of Claim forms and all supporting documentation not less than one year after the Distribution of the Class Settlement Fund; and (ii) the Claims Administrator may discard copies of such materials maintained in electronic form not less than three years after the Distribution of the Class Settlement Fund.

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## CONCLUSION

For the foregoing reasons, Class Plaintiffs respectfully request that the Court enter the [Proposed] Order Granting Class Plaintiffs' Motion for Distribution of the Class Settlement Fund.

Dated: November 7, 2014  
New York, New York

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*/s/ Andrew J. Entwistle*

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*Co-Lead Counsel for Class Plaintiffs*



**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2014, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Jason A. Zweig  
JASON A. ZWEIG