

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Amaranth Natural Gas Commodities Litigation

MASTER FILE No. 07 CV 6377 (SAS)

This Document Relates To:

All Actions

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
DISTRIBUTION OF THE NET SETTLEMENT FUND AND INCENTIVE AWARDS**

Plaintiffs respectfully submit this Memorandum of Law in support of their Motion pursuant to Section 21 of the Stipulation and Agreement of Settlement [Docket No. 366-1] (“Settlement”) between the parties herein, seeking (1) approval for distribution of the Net Settlement Fund to members of the Settlement Class who have been determined by the Court-appointed Settlement Administrator, Rust Consulting, Inc. (“Rust”), to be eligible to share in the Net Settlement Fund; and (2) approval of incentive awards to the four persons whose service as class representatives helped achieve the \$77,100,000 settlement of this action.

The proposed distribution will provide members of the Settlement Class who submitted proof of claims determined by Rust to be eligible to share in the Net Settlement Fund with a projected average payout of approximately \$139,000. *See* Affidavit of Jason Rabe (“Rabe Affidavit”), ¶ 25. Nine claimants are projected to receive payouts in excess of \$1 million. *Id.*

In connection with this motion, Plaintiffs respectfully request that the Court enter the [Proposed] Order for Distribution of Net Settlement Fund (“Proposed Order,” attached as Exhibit 1 to Plaintiffs’ Notice of Motion), that, *inter alia*: (1) approves the administrative determinations by Rust concerning Settlement Class members’ proofs of claim; (2) directs distribution of the Net Settlement Fund to the Settlement Class members who have submitted claims which Rust has determined to be eligible to share in the Net Settlement Fund; (3) establishes a reserve fund in the amount of \$5,238,000 (or approximately 10% of the Net Settlement Fund); and (4) approves incentive awards to the class representatives in an aggregate amount of \$200,000 (or approximately 0.25% of the \$77.1 million settlement). *See* Proposed Order.

I. BACKGROUND

Plaintiffs alleged that Defendants, among other things, engaged in manipulation of New York Mercantile Exchange (“NYMEX”) natural gas futures contract prices in violation of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* *See* Docket No. 155.

On or about December 13, 2011, Plaintiffs entered into the Settlement with Defendants. *See* Docket Nos. 365-66. Defendants agreed to pay \$77,100,000 for the benefit of the Settlement Class in exchange for dismissal and release of the claims of Plaintiffs and the Settlement Class against Defendants. *Id.*

On January 3, 2012, the Court entered a preliminary approval order that certified a Settlement Class of persons who satisfy any one of the following conditions:

1. Purchased, between February 16, 2006 and September 28, 2006 (“Class Period”), New York Mercantile Exchange (“NYMEX”) natural gas futures contracts¹ for December 2006, January 2007, February 2007, or March 2007 either (i) to liquidate prior to September 1, 2006, a short position² in the contract, or (ii) as a long position³ in such contract which was not liquidated until after May 10, 2006;
2. Purchased, during the Class Period, a NYMEX natural gas futures contract for March 2006, April 2006, May 2006, June 2006, July 2006, August 2006, September 2006, October 2006, or November 2006 (“the 2006 Contracts”) or April 2007 as a long position in such contract, and liquidated such position after May 10, 2006;
3. Purchased a 2006 Contract as a long position in such contract, held such a position as of the start of or acquired such a position during any of the following time periods, and sold all or a portion of such position during or after the end of such time period and on or prior to September 28, 2006. Time Periods: (i) 2:00 p.m.-2:30 p.m. on February 24; (ii) 2:00 p.m.-2:30 p.m. on March 29; or (iii) 2:00 p.m.-2:30 p.m. on April 26, 2006.

Docket No. 376, ¶ 2. The Court’s January 3, 2012 Order further preliminarily approved the Settlement and directed implementation of a notice program to Settlement Class members. *Id.*, ¶¶ 7, 10-11. The notice program included: (a) mailed notice to all large traders and clearing brokers of

¹ In this class definition, the terms “NYMEX natural gas futures contracts” or “natural gas futures contracts” include the miNY Henry Hub natural gas futures contracts.

² As used in this class definition, a short position in a given contract expiration (*e.g.*, March 2006) means a position in which the class member’s open sales of that expiration exceed the class member’s open purchases of that expiration. This is so regardless of whether the short position is a standalone position or is part of a spread with a long position in a different contract expiration.

³ As used in this class definition, a long position in a given expiration (*e.g.*, April 2006) means a position in which the class member’s open purchases of that expiration exceed the class member’s open sales of that contract expiration. This is so regardless of whether the long position is a standalone position or is part of a spread with a short position in a different contract expiration (*e.g.*, March 2006).

NYMEX natural gas futures contracts during the Class Period whose names were obtained pursuant to subpoena to the NYMEX; (b) publication notice in two industry publications and on their respective websites; and (c) the creation of a settlement website, which is searchable on the Internet. *Id.*, ¶¶ 7-9. On March 12, 2012, Rust submitted an affidavit attesting to its compliance with the program of notice approved by the Court. Docket No. 380-3.

On March 19, 2012, two groups of Class Members, the self-styled “Floor Broker and Allocation Objectors,” filed objections to certain aspects of the Plan of Allocation and the Settlement. Docket Nos. 391-92. The Allocation Objectors challenged the scope of the Settlement’s release, while both sets of Objectors challenged portions of the Plan of Allocation. On March 30, 2013, both Defendants and Plaintiffs filed responses to the Objectors’ motions. Docket Nos. 395, 397.

On April 9, 2012, the Court held a fairness hearing. On April 10, 2012, the Court entered a Final Order and Judgment approving the Settlement while retaining jurisdiction over the plan of allocation and distribution of the Net Settlement Fund and incentive awards. Docket No. 404. On May 23, 2012, the Court entered an Order approving an amended plan of allocation. Docket No. 413. The Court also found the Plan of Allocation to be reasonable and fair in all respects and denied the objections brought by the Floor Broker and Allocation Objectors. *Id.*, ¶¶ 1-4.

II. THE CLAIMS ADMINISTRATION PROCESS

The deadline for members of the Settlement Class to seek to share in the Net Settlement Fund by submitting proof of claim forms was June 8, 2012. Docket No. 380-3 at 7.

As detailed in the accompanying Rabe Affidavit, processing the 766 claims and voluminous supporting documentation submitted by members of the Settlement Class was laborious and extremely time intensive. Rabe Affidavit, ¶¶ 5, 10-26. These 766 claims required the processing of 2,153,709 transactions encompassing an aggregate volume of 16,620,878 NYMEX natural gas

futures contracts. *Id.*, ¶ 11.

Since the inception of the program of notice, Rust has received a total of 2,500 calls to the Settlement Hotline (652 of which required assistance from a Rust customer service representative) and 810 emails to the Settlement email address. *Id.*, ¶ 5. This list of communications does not include the hundreds of calls with Class Counsel, claimants, and counsel for Objectors, including weekly status calls held throughout the claims administration process.

Beginning on February 11, 2013, Rust mailed “Notice of Ineligibility” letters to 361 claimants who were determined by Rust to be ineligible to share in the Net Settlement Fund. *Id.*, ¶ 13. The Notice of Ineligibility letter advised these claimants that they had twenty days to request review of Rust’s determination that their claims were ineligible. *Id.*, ¶ 17-18.

From February 11, 2013 through March 4, 2015, Rust mailed “Notice of Deficiency” letters to 526 claimants whom Rust determined could potentially cure their deficient proof of claim forms by submitting additional information and/or documentation. *Id.*, ¶ 14. The Notice of Deficiency letter advised claimants about the necessary information or documentation to cure the deficiency, and notified claimants that submission of same was required to be made within twenty days from the date of the letter or the Claim would be rejected. *Id.* The Notice of Deficiency letter further advised claimants that they had twenty days to request a review of Rust’s determination that their claims were deficient and/or rejected. *Id.*, ¶ 17-18.

Throughout the claims process, Class Counsel worked with Rust and claimants, including counsel for the Floor Brokers and Allocation Objectors to resolve claims issues. The primary cause for the lengthy administration process was the fact that Rust had to have intraday transaction data for nearly all claimants in order to finalize the analyses required by the Court-approved plan of allocation. Such data was expected to be fully available from NYMEX. However, NYMEX did not possess sufficient data to allow Rust to match each claim. Rust and Class Counsel diligently worked

with NYMEX to get as much intraday data as possible. NYMEX provided Rust “street book” transactional data on natural gas futures transactions that traded on the NYMEX around the Class Period. *Id.*, ¶ 10. The data for each transaction contained a “masked” account number. *Id.* NYMEX was unable to “unmask” many claimants’ data, necessitating further efforts by Rust to identify individual claimants’ data. *Id.*, ¶¶ 10-11. Rust developed a reverse-engineering process whereby Rust could identify a specific claimant’s intraday transactions within the NYMEX “masked” street book data. *Id.*, ¶¶ 9-10. Rust successfully matched 66 claims in whole or in part using this methodology. *Id.*, ¶ 10.

Rust also worked with Class Counsel and representatives for numerous claimants, including counsel for the Floor Broker and Allocation Objectors, to review and analyze the claimants’ trade results and resulting Allowed Claim Amounts. Such review often included consultation with Plaintiffs’ expert. Such detailed review was necessary because the average eligible claim is projected to recover approximately \$139,000 from the Net Settlement Fund and nine (9) claimants are projected to receive over \$1,000,000. *See id.*, ¶ 25.

Rust also mailed 89 letters to claimants with NYMEX natural gas futures option transactions, querying whether they had assigned or exercised these options during the Class Period, as natural gas contracts resulting from exercised or assigned options were not included in the NYMEX street book data. *Id.* Six claimants responded to Rust’s outreach, either confirming which of their transactions corresponded to Rust’s list of known option contracts, or providing their own list of eligible natural gas futures transactions resulting from an exercised or assigned option. *Id.*

Rust imported 1,861,728 transactions from the NYMEX-provided street book data to use in the calculation of claims. *Id.* These transactions represented aggregate purchase and sale quantities of 14,439,529 natural gas futures contracts. *Id.* In total, including both the street book transactions and data entered from submitted notice of claim documentation and other sources, Rust processed

2,153,709 transactions encompassing a total aggregate and sale quantity of 16,620,878 natural gas futures contracts. *Id.*

III. THE COURT SHOULD ENTER THE PROPOSED DISTRIBUTION ORDER

A. Rust's Administrative Determinations are Reasonable and Should Be Approved

Ineligible Claims. Rust determined that 399 claims are ineligible to share in the Net Settlement Fund. *Id.*, ¶ 23. A schedule of these 399 claims determined to be ineligible and the reason(s) why each claim is ineligible is attached as Exhibit E to the Rabe Affidavit. In order to protect the identities of the claimants, Exhibit E to the Rabe Affidavit identifies claimants by their claim number.

From February 11, 2013 through January 19, 2016, Rust mailed notice to each ineligible claimant regarding its ineligibility status. Rabe Affidavit, ¶¶ 14, 16, 23. No claimant has contested Rust's determination. *Id.*, ¶ 23. Plaintiffs respectfully request that the Court approve Rust's determinations with regards to these 399 ineligible claims.

Eligible Claims. As of May 17, 2016, Rust has received 766 Claim Forms. Rust has determined that 365 claims are eligible to share in the Net Settlement Fund. *Id.*, ¶ 25. The aggregate Allowed Claim value for these 365 claims is \$398,234,651.39. *Id.*

Of the 365 claims Rust determined are eligible, 265 were timely postmarked by the claims submission deadline of June 8, 2012. *Id.* The aggregate Allowed Claim value for these 265 claims is \$390,771,778.91. *Id.* A schedule of the 265 timely claims determined to be eligible to share in the Net Settlement Fund and the Allowed Claim amount for each of these claims is attached as Exhibit F to the Rabe Affidavit. In order to protect the identities of claimants, Exhibit F to the Rabe Affidavit identifies claimants by their claim number.

Late Claims. 100 otherwise-valid claims were submitted after the claims submission deadline of June 8, 2012 (the "Late Claims"). *Id.* Courts in this and other circuits have considered

four factors when addressing untimely claims in a class action settlement, including (1) the danger of prejudice to the nonmovant; (2) the length of delay and its potential effect on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

Class Counsel and Rust recommend that all 100 Late Claims be accepted, as no party will be meaningfully prejudiced nor will there be any delay in the processing or distribution of the Net Settlement Fund as a result of accepting the Late Claims. *See, e.g., In re Gilat Satellite Networks, Ltd.*, No. 02-cv-1510, 2009 U.S. Dist. LEXIS 25109, at *6 (E.D.N.Y. Mar. 25, 2009) (“Because there is no showing of delay or prejudice, the late filed claims should be included in the class for settlement disbursement.”).

Class Members who timely filed eligible notice of claims would not be meaningfully prejudiced by approving the 100 Late Claims. The aggregate Allowed Claim value for these 100 Late Claims is \$7,462,872.48, or approximately 2% of the total aggregate Allowed Claim value of all eligible claims. Rabe Affidavit, ¶ 25. Further, no defendant would be prejudiced by allowing the Late Claims as defendants do not maintain any reversionary interest in the Net Settlement Fund. *See Settlement*, ¶ 11. Finally, due to the lengthy administration process discussed *supra*, no delay in the processing or distribution of the Net Settlement Fund has or will result from the acceptance of the Late Claims due to the time required to fully process the timely-submitted Claims. 76 of the Late Claims were filed within 90 days of the claims submission filing deadline. Rabe Affidavit, ¶ 25.

A schedule of these 100 Late Claims determined to be eligible to share in the Net Settlement Fund and the Allowed Claim amount for each of these claims is attached as Exhibit G to the Rabe Affidavit. In order to protect the identities of the claimants, Exhibit G to the Rabe Affidavit identifies claimants by their claim number.

105 of the total 365 eligible claims were submitted by Class Members who filed objections to the Plan of Allocation and two other aspects of the Settlement—*i.e.* the Floor Broker and Allocation Objectors. *See* Docket Nos. 391-92, 401-02, 405. These 105 claims represent an aggregate Allowed Claim value of \$46,124,336.43, or approximately 12% of the aggregate Allowed Claim value for all eligible claims.

Within 7 days of the filing of this motion, Rust will mail each eligible claimant or its counsel notice of their eligible claim amount and notice of the filing of this motion. *Rabe* Affidavit, ¶ 13. Plaintiffs respectfully request that the Court approve Rust's determinations with regard to the 365 eligible claims.

In addition to the eligible and ineligible claims referenced above, there are two additional claims in which the claimants, who had trading accounts with now-bankrupt MF Global, Inc., have not been able to obtain the necessary documentation to support their claims. *Id.*, ¶ 26. Counsel for both claimants is attempting to obtain this documentation from MF Global and has requested more time to submit necessary data, as counsel for the claimants believes they can obtain the necessary records. *Id.* Plaintiffs respectfully request that the Court permit these two claimants additional time obtain their claim documentation. This additional time will not result in any delay of the proposed distribution herein, as these claims can be paid out of the Reserve Fund.

B. The Court Should Approve the Creation of a Reserve Fund

The Settlement Fund (which includes accrued interest) less attorneys' fees and expenses awarded by the Court and notice and administration fees and expenses paid to date, is referred to as the "Net Settlement Fund." The current size of the Net Settlement Fund is \$52,382,491.71. *Id.*, ¶ 24.

Class Counsel and Rust recommend that the Court approve the establishment of a reserve fund in the amount of \$5,238,000 (or approximately 10% of the Settlement Fund) to be used to pay

any additional late claims as may be directed by the Court (such as the two MF Global-related claims discussed above), to adjust errors in payments or to make other equitable adjustments. If no such late claims are approved, a large portion of these monies will be available to be paid to the eligible claiming class members herein. Class Counsel will petition the Court for an equitable distribution of any such remaining funds after the initial distribution requested herein has been finalized.

C. Rust's Administrative Expenses and Fees Should Be Approved

The Settlement provides that expenses and costs incurred in connection with the administration of the Settlement may be paid from the Settlement Fund subject to approval by the Court. Settlement, Section 6.

Rust's administrative fees and expenses incurred to date and expected to be incurred through the distribution of the Net Settlement Fund total \$1,738,695.19. Rabe Affidavit, ¶ 36. To date, Rust has received payment for initial out-of-pocket expenses totaling \$30,027.81 from the Settlement Fund. *Id.* Accordingly, Rust is due a balance payment of \$1,708,667.38 from the Settlement Fund, which includes Rust's estimates of the fees and expenses that will necessarily be incurred through the distribution of the Net Settlement Fund.

Rust's invoice for its outstanding administration fees and expenses incurred in connection with the administration of the Settlement is attached as Exhibit H to the Rabe Affidavit. Rust's estimate of the fees and expenses it will necessarily incur to complete the distribution of the Net Settlement Fund, file the necessary tax returns, and respond to claimant inquiries is attached as Exhibit I to the Rabe Affidavit. Plaintiffs respectfully request that the Court authorize payment from the Settlement Fund to Rust in the amount of \$1,708,667.38 for past and expected expenses in administering the Settlement.

D. The Requested Incentive Awards Should Be Approved

Plaintiffs respectfully request that the Court approve class representative incentive awards in

an aggregate amount of \$200,000 to be shared among the three Court-appointed class representatives (*i.e.*, John F. Special, Gregory H. Smith, and Roberto E. Calle Gracey), and plaintiff Alan H. Martin who was a proposed class representative for almost three years until the definition of the Class was amended in June 2010. *See* Declarations of John F. Special, Gregory H. Smith, Alan Harris Martin, and Louis F. Burke; *see also* Docket No. 376, ¶ 4.

Notice of the requested incentive award was previously provided to members of the Class. Specifically, Section V.B. of the Class Notice stated in part:

At the time the Net Settlement Fund is distributed to Class Members, the Plaintiffs will seek reimbursement of their own expenses and compensation for their time devoted to this litigation in the aggregate amount of no more than \$200,000 to be paid from the Settlement Fund. A separate notice of this application and an opportunity to object will later be provided to Class Members who submit approved Proofs of Claim. Plaintiff Alan Martin is not a Member of the Class as ultimately defined for purposes of the Settlement. However, Plaintiff Alan Martin will seek reimbursement of his expenses and compensation for his time devoted to this litigation, including the time he spent helping Plaintiffs successfully obtain the order of attachment.

To date, there have been no objections to the requested incentive award. As set forth in Section “E” below, notice of this application will be provided, again, to eligible claimants and will also be posted on the official settlement website. This will allow eligible class members a *second* opportunity to object to the requested incentive award.

Class representative incentive awards are routinely approved in connection with class action settlements and, in fact, incentive awards in excess of the requested award here have previously been approved in connection with prior class action settlements involving claims of manipulation in violation of the CEA. *See, e.g., Hershey, et al. v. Pacific Investment Management Company Llc*, 05-cv-4681, Docket No. 614, (N.D. Ill. Apr. 11, 2012) (approving \$325,000 in class representative incentive awards among three class representatives in connection with commodity futures manipulation class action settlement).

As set forth below and in the declarations submitted by the class representatives and Plaintiff

Alan Martin, the requested incentive award is merited in this case due to the substantial contributions of the class representatives, the size of the recovery for the class, the complex, long-running nature of the litigation, and for public policy reasons.

First, the class representatives have collectively contributed hundreds of hours of work to advance this complex litigation on behalf of the Class. The class representatives assisted Class Counsel in the prosecution of this lawsuit including, for example, by producing and reviewing relevant documents, assisting in developing the factual background of the case, making themselves available to testify at depositions, and otherwise diligently carrying out their duties as representatives of the class.

Plaintiff John F. Special spent more than 300 hours fulfilling his obligations as class representative. *See* Declaration of John F. Special (“Special Declaration”), ¶ 25. Plaintiff Special has over 30 years of experience in the oil and natural gas industry, both as a commodities trader and as a principal in numerous oil and natural gas ventures throughout the southwest United States. *Id.*, ¶ 5. Plaintiff Special is currently President and CEO of Special Energy Corporation, a company involved in the acquisition and drilling of oil and natural gas wells. *Id.* Plaintiff Special offered substantial assistance to Class Counsel in the prosecution of this case on behalf of the Class by, *inter alia*, taking time away from his business to respond to defendants’ discovery requests, reviewing complaints, motions, and other court documents, assisting Class Counsel with case strategy over the course of numerous phone calls and in-person meetings, and traveling to New York to attend a deposition. *Id.*, ¶¶ 8-25.

Plaintiff Alan Martin dedicated at least 122 hours to his work as proposed class representative. *See* Declaration of Alan Harris Martin (“Martin Declaration”), ¶ 9. Plaintiff Martin has been involved with commodity futures trading and analysis for over 25 years, including ten years with Morgan Stanley and subsequently as an independent trader and fund manager. *Id.*, ¶ 7. Martin’s

experience with commodities futures markets placed him in a unique position to offer valuable assistance to Class Counsel and protect the interests of the Class. For example, Martin submitted a declaration in support of Plaintiffs' motion for an order of attachment. The order of attachment was successfully obtained (in the amount of \$72.4 million) and the Court's opinion and order specifically referenced Plaintiff Martin's declaration. *Id.*, ¶ 5; *see also In re Amaranth Nat. Gas Commodities Litig.*, 711 F. Supp. 2d 301, 310 (S.D.N.Y. 2010).

Plaintiff Gregory H. Smith devoted approximately 68 hours in support of litigation. *See* Declaration of Gregory H. Smith ("Smith Declaration"), ¶ 11. Plaintiff Smith actively participated in discovery by producing hundreds of pages of his natural gas trading records to defendants and traveling from his home in Texas to New York to appear for a deposition. *Id.*, ¶¶ 6-7, 10.

Plaintiff Roberto Calle Gracey devoted at least 175 hours to his duties as class representative from July 2007 – December 2011. Declaration of Louis F. Burke, ¶ 5. Plaintiff Calle Gracey provided substantial assistance to Class Counsel in prosecuting this litigation, relying on his extensive experience as a commodity futures trader. *Id.*, ¶ 4. Plaintiff Calle Gracey conducted significant pre-complaint work and factual investigation, reviewed thousands of pages of documents produced by defendants and third parties, reviewed deposition transcripts in this action and related Federal Energy Regulatory Commission ("FERC") proceedings against Amaranth, and prepared and appeared for a deposition. *Id.*, ¶ 3.

Second, the substantial work done by the class representatives in connection with their service as representatives of the class helped result in the \$77.1 million settlement of this action, which was, at the time of the Settlement, the third largest class action recovery in the history of the CEA. The Settlement has conferred a substantial benefit upon the eligible claimants who will receive an average payout of approximately \$139,000, including nine claimants that will receive payouts in excess of \$1 million. Rabe Affidavit, ¶ 25. The requested incentive award represents 0.25% of the \$77.1 million

Settlement and 0.38% of the \$52.3 million Net Settlement Fund.

Third, claims for commodity futures manipulation are “esoteric” and notoriously “complex and difficult.” *Compare Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 356 (1982), quoting H.R. Rep. No. 93-975, p. 1 (1974), 1974 U.S. Code Cong & Admin. News at 5843, *with In re Sumitomo Copper Litigation*, 74 F.Supp. 2d 393, 395 (S.D.N.Y. 1999) (CEA manipulation cases are “complex and difficult”). Each class representative’s extensive experience with commodity futures markets enabled him to make significant contributions in this complex and esoteric area of the law. *See generally* Special Declaration, Martin Declaration, and Smith Declaration.

Fourth, Congress viewed private lawsuits such as this action as “critical to protecting the public and fundamental to maintaining the credibility of the futures market.” *Cange v. Stotler & Co.*, 826 F.2d 581, 594-595 (7th Cir. 1987) *citing* to H.R. Rep. No. 565(II), pt.1, at 56-7 (1982), *reprinted* in 1982 U.S.C.C.A.N 4022, 1982 WL 25140. Thus, public policy strongly favors the requested incentive awards in connection with this successful CEA manipulation action.

Accordingly, Class Counsel respectfully request that the Court approve an aggregate incentive award of \$200,000.

E. Notice of This Distribution Motion Will Be Provided to Claimants

Class Counsel has instructed Rust to post this motion and its supporting documentation on the official Settlement website so that it may be viewed by members of the Settlement Class. Also, within 7 days of the filing of this motion, Rust will mail each eligible claimant or its counsel notice of its eligible claim amount and notice of the filing of this motion. Rabe Affidavit, ¶ 13. Ineligible claimants have previously been provided notice that their claims were determined to be ineligible to share in the Net Settlement Fund. *Id.*, ¶ 14, 16, 23.

CONCLUSION

Plaintiffs respectfully submit that this Court should enter the [Proposed] Order for

Distribution of the Net Settlement Fund attached as Exhibit 1 to Plaintiffs' Notice of Motion.

Dated: New York, New York
June 24, 2016

Respectfully submitted,

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