

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

IN RE AMERICAN HOME MORTGAGE SECURITIES LITIGATION	07-MD-1898 (WFK)(GRB)
THIS DOCUMENT RELATES TO ALL CLASS ACTIONS	Electronically filed

**LEAD PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO AMEND
DISTRIBUTION PLAN TO ALLOW FOR ADDITIONAL DISTRIBUTIONS**

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Lead Plaintiffs, the Teachers' Retirement System of Oklahoma and the Oklahoma Police Pension and Retirement System, on behalf of the Class, respectfully submit this memorandum in support of their motion for an order that will amend the Distribution Plan previously approved by the Court to provide for additional redistributions to Authorized Claimants (the "Order to Amend Distribution Plan").¹ The Distribution Plan is set forth in the accompanying Declaration of Richard W. Simmons Regarding Distribution of the Net Settlement Funds (the "Simmons Declaration"), submitted on behalf of the Court-approved Claims Administrator, Analytics Consulting, LLC ("Analytics").

BACKGROUND

This case was previously before Judge Thomas C. Platt, who oversaw this matter before his passing. On May 30, 2019, Lead Plaintiffs requested that the case be reassigned so that they could seek permission to distribute the remaining settlements funds to the Class. (ECF No. 126) This request was granted on June 4, 2019, and the case was reassigned to Judge William F. Kuntz, II, and Magistrate Judge Gary R. Brown.

Lead Plaintiffs achieved this \$37.25 million settlement for the benefit of the Class and Offerings Subclass through a series of three stipulations entered into with the Settling Defendants. In its Order Approving Distribution Plan (ECF No. 120) (the "Distribution Order"), the Court

¹ Unless indicated otherwise, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement (ECF No. 75-2) (the "Individual Defendant Stipulation"), the Stipulation and Agreement of Settlement with the Underwriter Defendants (ECF No. 75-14) (the "Underwriter Defendants Stipulation"), the Stipulation and Agreement of Settlement with Defendant Deloitte & Touche LLP (ECF No. 75-8) (the "Deloitte Stipulation") (collectively referred to as the "Stipulations"), and the Affidavit of Richard W. Simmons in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (ECF No. 118) (the "Simmons Affidavit").

accepted the administrative recommendations of Analytics accepting and rejecting the claims of Class Members submitted in the Action and authorized Analytics to distribute the Net Settlement Funds to Authorized Claimants. Pursuant to the Distribution Order, Analytics originally mailed 15,201 checks totaling \$30,401,677.21 to Authorized Claimants. Simmons Declaration ¶ 4. In the subsequent redistribution of the Net Settlement Funds, Analytics issued 5,382 payments in the aggregate amount of \$702,900.86 to eligible Authorized Claimants. *Id.* ¶ 5. To date, payments in the Distribution and redistribution for total proceeds of \$30,284,878.75 have been cashed, which is approximately 97.4% of the amount distributed from the Net Settlement Funds. *Id.* ¶ 6. Currently, there is a balance of \$99,375.93 available to distribute to eligible Authorized Claimants. Lead Plaintiffs are now seeking Court approval to permit Analytics to distribute the remaining balance of the Net Settlement Funds.

ANALYTICS' FEES AND EXPENSES

Analytics has performed notification and claims administration services in this action and has distributed the Net Settlement Funds to Authorized Claimants through both the Distribution and the redistribution of funds remaining in the Net Settlement Funds. Analytics undertook this work with the understanding and expectation that it would receive payment of the firm's fees and be reimbursed for the expenses it incurred. Pursuant to the terms of the Distribution Order, Analytics was paid its fees and reimbursed for expenses incurred for the work performed from the inception of the engagement through the Distribution and its follow-up. *See* Simmons Decl. ¶ 9.

As set forth below, Analytics, in consultation with Lead Counsel, proposes to conduct additional distributions of the Net Settlement Funds to Authorized Claimants. Analytics estimates that the additional fees and expenses that will be incurred in connection with an additional distribution of the Net Settlement Funds will be \$13,270.10. Simmons ¶ 10 and Exhibit A attached thereto. Pursuant

to the terms of the Preliminary Approval Order (ECF No. 79) (*see* ¶¶ 12-13), this amount would be deducted from the balance in the Net Settlement Funds as well as any taxes that may be due (including the costs of preparing any tax returns) prior to the additional distribution.

AMENDMENT OF DISTRIBUTION PLAN

Notwithstanding the extensive follow-up performed by Analytics with Authorized Claimants whose checks were returned as undeliverable or uncashed, which included attempts to contact such Authorized Claimants by phone, letter, or email, offers to reissue checks where necessary, and seeking updated addresses for Authorized Claimants whose checks were returned as undeliverable, there remains in the Net Settlement Funds \$97,775.37 from checks mailed in the redistribution that were either uncashed or returned to Analytics for other reasons. Simmons Decl. ¶ 7. As of August 22, 2019, there remains a total of \$99,375.93 in the Net Settlement Funds. *Id.* ¶ 8.

The Distribution Plan, as approved in the Distribution Order, provides only for a single redistribution of the Net Settlement Funds and provides that, if any funds remain in the Net Settlement Funds six (6) months after that redistribution, such balance will be donated to non-sectarian, not-for-profit 501(c)(3) organizations:

If any funds remain in the Net Settlement Funds after the Distribution because of uncashed checks or other reasons, then, after Analytics has made reasonable and diligent efforts to have Authorized Claimants cash their Distribution checks, any funds remaining in the Net Settlement Funds one (1) year after the Distribution shall be re-distributed to Authorized Claimants who have cashed their Distribution checks and who would receive at least \$10.00 from such redistribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Funds for such redistribution. If any funds shall remain in the Net Settlement Funds six (6) months after such redistribution, then such balance shall be contributed to non-sectarian, not-for-profit, 501(c)(3) organizations designated by Lead Counsel after notice to the Court and subject to direction, if any, by the Court.

See Distribution Order ¶ 3(e).

In light of the amount currently remaining in the Net Settlement Funds, Analytics concurs with Lead Plaintiffs' recommendation that the Distribution Plan be modified to allow for one or more additional redistributions to Authorized Claimants prior to donating the remaining funds to charity. The proposed amendment to the Distribution Plan will allow Analytics to conduct additional redistributions to Authorized Claimants who have cashed each of their prior Distribution checks and who would receive at least \$10.00 from such redistribution, after payment of the costs of the redistribution as well as any taxes that may be due (including the costs of preparing any tax returns), in six-month intervals until such time as Lead Counsel, in consultation with Analytics, determines that further redistribution of the funds remaining in the Net Settlement Funds is not cost-effective, at which time, as provided for in the Distribution Order, the remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s) designated by Lead Counsel.

In accordance with the terms of the Distribution Order, Lead Counsel and Lead Plaintiffs designate the National Consumer Law Center ("NCLC") to be the recipient of any remaining settlement funds, subject to the Court's approval. NCLC is a private, non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. NCLC was founded in 1969 through a federal grant to provide legal services addressed to two main goals: improving the access of low-income people to the legal system and enabling advocates to seek remedies where needed. NCLC continues to advocate for low-income consumers and provides many resources to civil legal aid and private attorneys representing low-income consumers. NCLC's lawyers provide policy analysis, advocacy, litigation, expert-witness services, and training for consumer advocates throughout the United States. *See* <https://www.nclc.org>.

CONCLUSION

The Distribution Plan as amended by the Court will be self-executing and there should be no need for Lead Plaintiffs or the Claims Administrator to request any further orders of the Court to complete the distribution of the Net Settlement Funds. Accordingly, following entry of the proposed Order, the Court may direct that this case be closed.

For the foregoing reasons, we respectfully request that the Court enter the proposed order to amend the Distribution Plan allowing additional redistributions of the Net Settlement Funds to Authorized Claimants.

Dated: October 18, 2019

Respectfully submitted,

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