

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO.1684-CV-03611-BLS2

MATTHEW PERLOW, on behalf of himself
and others similarly situated,

Plaintiff,

v.

ABC FINANCIAL SERVICES, INC. and
SEAS & ASSOCIATES, LLC,

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION TO APPROVE PLAN OF ALLOCATION AND
AUTHORIZE DISTRIBUTION OF THE NET SETTLEMENT AMOUNT**

Plaintiff Matthew Perlow respectfully moves the Court, individually and on behalf of the Settlement Class, to (1) approve reservation of funds from the Settlement Fund to pay the Settlement Administrator for the costs and expenses of the settlement administration as described below, (2) approve the allocation of the Net Settlement Amount in the manner described below, (3) authorize distribution of the Net Settlement Amount to the Settlement Class in the manner described below, and (4) authorize the distribution of any residual funds to be paid equally between the Massachusetts IOLTA Committee and the National Consumer Law Center. In support of this motion, Plaintiff submits herewith the Declaration of Adam M. Stewart ("Stewart Declaration").

As grounds for this motion, Plaintiff states as follows:

1) On December 19, 2018, this Court entered the Final Order and Judgment in this action that, among other things, approved the Stipulation and Settlement Agreement (the "Settlement") as fair, reasonable, adequate and in the best interest of the Settlement Class. Paper No.

- 2) The Settlement provides for the distribution of the Settlement Fund as follows:
 - a. First, to pay the Fee Award to Class Counsel;
 - b. Second, to pay Settlement Costs;
 - c. Third, to pay Notice and Distribution Costs;
 - d. Fourth, to pay the Service Award to Plaintiff; and
 - e. Fifth, to pay the Settlement Class Members.

Settlement, ¶20.

3) Under the Settlement, the amount available for distribution to the Settlement Class after payment of the Settlement Costs, the Notice and Distribution Costs, the Fee Award and the Service Award is the “Net Settlement Amount”. Settlement, ¶21.

4) The Settlement provides that the Net Settlement Amount shall be distributed in a manner such that each Settlement Class Member who made a payment to ABC and received an LD0 letter will be entitled to a pro rata share of the Net Settlement Amount in proportion to the number of LD0 letters they received in relation to the total number of LD0 letters received by all Settlement Class Members. Settlement, ¶23.

5) The Settlement also provides that there would be a *de minimis* threshold of \$10 for any payments to the Settlement Class Members under the Settlement such that any Settlement Class Member whose pro rata share results in a distribution amount from the Net Settlement Amount of less than \$10, would not receive a Settlement payment because the cost of administration and processing of such payments would not be economical. Settlement, ¶24.

6) As the Court may recall, Plaintiff and Plaintiff's counsel proposed this plan of allocation because it was Plaintiff's contention in this action that the LD0 letter was the communication that violated the Massachusetts regulations governing debt collectors' communications with consumers.

7) The Court's Final Order and Judgment approved this plan of allocation by which the Net Settlement Amount would be distributed on a pro rata basis based on the number of LDO letters received by each Settlement Class Member along with a \$10 *de minimis* threshold.

8) Pursuant to the Settlement, on October 9, 2018, Defendants paid the \$1,800,000 Settlement Fund to Class Counsel, who have held it in an escrow account since that time. Stewart Declaration, ¶3.

9) When this Court allowed the motion for final approval of the Settlement, it authorized payment of the \$600,000 Fee Award to Class Counsel, \$10,000 as a Service Award to Plaintiff and to effectuate the Settlement pursuant to its terms. Paper No. 26.

10) To date, \$610,000 has been paid out of the Settlement Fund as follows:

- a. The \$600,000 Fee Award has been paid to Class Counsel; and
- b. The \$10,000 Service Award has been paid to Plaintiff.

Stewart Declaration, ¶5

11) In addition, the Settlement Administrator has incurred fees and expenses of \$39,580.72 in connection with the administration of the Settlement through December 31, 2018, including the sending of notice to the Settlement Class. The Settlement Administrator anticipates incurring up to \$80,074.70 in additional costs in connection with the remaining administration of the Settlement, including the distribution of the Net Settlement Amount to the Settlement Class Members. The Settlement Administrator has agreed to cap its fees and expenses for the administration of the Settlement at that total of \$119,655.42. Stewart Declaration, ¶6. This cap on administration costs is \$34,633.58 less than initially estimated for the administration of the Settlement. *Id.*, ¶7. Therefore, Plaintiff proposes to reserve \$119,655.41 from the Settlement Fund for the settlement administration costs and request permission to disburse that amount to the

Settlement Administrator, as needed, to cover the costs of the Settlement administration. Stewart Declaration, ¶6.

12) After accounting for the forgoing amounts, this would result in \$1,070,344.58 being available as the Net Settlement Amount to be distributed to the Settlement Class. Stewart Declaration, ¶8. Plaintiff requests that the Court approve the allocation of this Net Settlement Amount to 79,849 Settlement Class Members who made a payment to ABC and received two or more LD0 letters on a pro rata basis in relation to the total number of LD0 letters received by all Settlement Class Members. Under this allocation, these Settlement Class Members would be entitled to a payment ranging from \$9.37 for those that received two LD0 letters up to a maximum of \$145.20 for those that received 31 LD0 letters. Stewart Declaration, ¶¶9-10.

13) The Settlement originally contemplated a \$10.00 *de minimis* threshold for payments to Settlement Class Members, but because the costs for settlement administration have been less than anticipated to date,¹ Plaintiff requests that the *de minimis* threshold be lowered to allow for checks in the amount of \$9.37 to be payable to Settlement Class Members who made a payment to ABC and received two LD0 letters. Lowering the *de minimis* threshold to this amount will result in an additional 46,442 Settlement Class Members receiving a payment from the Net Settlement Amount. Stewart Declaration, ¶¶11-12.

14) Under this proposed plan of distribution as with the original plan of allocation, Settlement Class Members who only received 1 LD0 letter will not receive a payment because their pro rata share would be below the *de minimis* threshold. As a result, the pro rata shares of Settlement

¹ When Defendants finalized and provided the Class List, there ended up being less Settlement Class Members than originally anticipated due to duplicate account entries and there ended up being email addresses for more Settlement Class Members, which reduced the cost of sending notice by mail. Stewart Declaration, ¶11.

Class Members who received only 1 LD0 letter will be reallocated to Settlement Class Members who received 2 or more LD0 letters.

15) Specifically, the proposed plan of distribution provides the following pro rata amounts to Settlement Class Members:²

Number Of LD0 Letters Received	Settlement Check Amount
2	9.37
3	14.05
4	18.73
5	23.42
6	28.10
7	32.79
8	37.47
9	42.15
10	46.84
11	51.52
12	56.20
13	60.89
14	65.57
15	70.26
16	74.94
17	79.62
18	84.31
19	88.99
20	93.67
21	98.36
22	103.04
23	107.73
24	112.41
25	117.09
26	121.78
28	131.14
29	135.83
31	145.20

² There were no Settlement Class Members who received 27 or 30 LD0 letters.

16) In light of this Court's ruling granting summary judgment to Defendants, Plaintiff submits that this plan of allocation represents a fantastic recovery for the maximum number of Settlement Class Members.

17) If the Court approves this plan of allocation and authorizes distribution of the Net Settlement Amount as set forth above, Class Counsel and the Settlement Administrator would effectuate the distribution promptly and issue checks to the eligible Settlement Class Members by mail and the checks will be valid for 90 days from their issuance. Stewart Declaration, ¶13.

18) The Settlement further provides that "[a]ny portion of the Settlement Amount that shall remain undistributed to Settlement Class Members shall be distributed in the manner determined by the Court in accordance with Mass. R. Civ. P. 23(e)." Settlement, ¶27.

19) Following the distribution of the Net Settlement Amount, if there are any residual funds that remain, Plaintiff respectfully requests that the Court authorize, pursuant to Mass. R. Civ. P. 23(e), distribution of any residual, undistributed funds equally between the Massachusetts IOLTA Committee and the National Consumer Law Center. The Massachusetts IOLTA Committee and the National Consumer Law Center have agreed to this proposed allocation of any residual funds. Stewart Declaration, ¶14. Such residual funds would include any funds that are not claimed by Settlement Class Members who do not cash the settlement check sent to them. Plaintiff's counsel and the Settlement Administrator will not know how much in residual funds will remain following distribution until after the settlement checks are mailed to Settlement Class Members and the 90-day period following issuance has run.

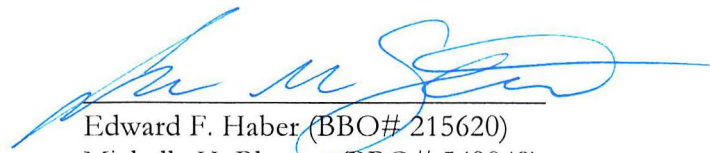
20) Upon completing the distribution of the Net Settlement Fund, including the payment of any residual funds to the Massachusetts IOLTA Committee and the National Consumer Law Center, Plaintiff would file a Status Report with the Court identifying how the Net Settlement Fund was ultimately distributed pursuant to this plan of distribution.

21) Defendants do not oppose this motion.

For the forgoing reasons, Plaintiff respectfully requests that the Court: (1) approve reservation of funds from the Settlement Fund to pay the Settlement Administrator for the costs and expenses of the settlement administration as described above, (2) approve the allocation of the Net Settlement Amount in the manner described above, (3) authorize distribution of the Net Settlement Amount to the Settlement Class in the manner described above, and (4) authorize the distribution of any residual funds to be paid equally between the Massachusetts IOLTA Committee and the National Consumer Law Center.

Dated: March 7, 2019

Respectfully submitted,

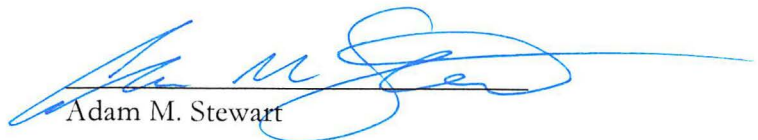


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Certificate of Service

I hereby certify that a true copy of the above document was served upon counsel of record for Defendants by e-mail on March 7, 2019. I also certify that a copy of the above document was sent to counsel for the Massachusetts IOLTA Committee and the National Consumer Law Center by e-mail on March 7, 2019.



Adam M. Stewart