

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

ARKANSAS TEACHER RETIREMENT SYSTEM  
and FRESNO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

BANKRATE, INC. et al.,

Defendants.

Case No. 13-cv-7183 (JSR)

**ECF CASE**

**MEMORANDUM IN SUPPORT OF LEAD PLAINTIFFS'  
MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

**BERNSTEIN LITOWITZ  
BERGER & GROSSMANN LLP**  
Salvatore J. Graziano  
John Rizio-Hamilton  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444

Dated: September 8, 2015

**TABLE OF CONTENTS**

I.	BACKGROUND .....	1
II.	CLAIMS ADMINISTRATION .....	2
III.	FEES AND EXPENSES OF CLAIMS ADMINISTRATOR.....	5
IV.	DISTRIBUTION PLAN OF THE NET SETTLEMENT FUND .....	6
V.	RELEASE OF CLAIMS .....	8
VI.	CONCLUSION .....	8

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs the Arkansas Teacher Retirement System and Fresno County Employees' Retirement Association respectfully submit this memorandum in support of their motion for entry of the proposed order which would approve the Distribution Plan for the proceeds of the Settlement (the "Distribution Order") in the above-captioned action (the "Action"), as set forth in the accompanying Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Cirami Declaration" or "Cirami Decl."),<sup>1</sup> submitted on behalf of the Court-approved Claims Administrator, Garden City Group, LLC ("GCG").<sup>2</sup>

If entered by the Court, the Distribution Order will, among other things, (i) approve GCG's administrative recommendations accepting and rejecting Proofs of Claim submitted herein; (ii) direct the distribution of the Net Settlement Fund to Settlement Class Members whose Proofs of Claim have been accepted as valid and approved by the Court; and (iii) approve GCG's fees and expenses incurred and to be incurred in connection with the administration of the Settlement.

## **I. BACKGROUND**

The Court has approved the Stipulation entered into by Lead Plaintiffs and Defendants. The Stipulation sets forth the terms of the settlement (the "Settlement") which represents a complete resolution of this Action. Pursuant to the terms of the Settlement, \$18 million was deposited in escrow for the benefit of the Settlement Class.

In accordance with the Amended Order Preliminarily Approving Proposed Settlement and Proving for Notice (ECF No. 74) ("Preliminary Approval Order"), GCG has mailed the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II)

---

<sup>1</sup> Unless otherwise indicated herein, all terms with initial capitalization shall have the meanings ascribed to them in the Cirami Declaration or in the Amended Stipulation and Agreement of Settlement dated September 17, 2014 (ECF No. 73-1) (the "Stipulation").

<sup>2</sup> GCG was formerly known as The Garden City Group, Inc.

Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and the Proof of Claim and Release form (the "Proof of Claim" and, together with the Notice, the "Notice Packet") to potential Settlement Class Members and to brokers and other nominees. As set forth in the accompanying Cirami Declaration, GCG has mailed approximately 36,000 Notice Packets to potential Settlement Class Members and nominees. Cirami Decl. ¶ 3. The Notice informed Settlement Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Proofs of Claim by mail, postmarked no later than January 24, 2015.

The Court granted final approval to the Settlement and the Effective Date has occurred. Accordingly, the Net Settlement Fund may be distributed to Authorized Claimants. Pursuant to the Stipulation,<sup>3</sup> Lead Plaintiffs respectfully ask the Court to enter the Distribution Order approving the Distribution Plan as set forth herein.

## **II. CLAIMS ADMINISTRATION**

As detailed in the accompanying Cirami Declaration, through August 28, 2015, GCG received and processed 10,520 Proofs of Claim. Cirami Decl. ¶ 6. Many of the Proofs of Claim initially submitted were incomplete, not signed, not properly documented, or were otherwise deficient. Cirami Decl. ¶ 21. To the extent that a Proof of Claim was wholly deficient (for example, if the Proof of Claim was missing documentation for the entire Proof of Claim, the Claimant did not sign the Proof of Claim or provide enough information to calculate the Claim, or the Proof of Claim was determined to have no Recognized Claim when calculated under the Court-approved Plan of Allocation), GCG sent a rejection letter to the Claimant describing the defect(s) and stating what, if anything, was necessary to cure the Proof of Claim. *Id.* ¶ 22. GCG also mailed letters to each

---

<sup>3</sup> See Stipulation ¶¶ 25, 30.

Claimant whose Proof of Claim was determined to be partially deficient (for example, if the Claimant was missing documentation for some transactions, or did not supply some transactional information), advising the Claimant of the defect(s) and stating what was necessary to cure them. *Id.*

¶ 23. Copies of sample rejection letters are attached as Exhibit A to the Cirami Declaration. Cirami Decl. ¶ 24 and Exhibit A thereto.

GCG carefully reviewed Claimants' responses to the rejection letters and worked with Claimants to resolve deficiencies where possible. Cirami Decl. ¶¶ 25-30. After responses to the rejection letters were received and processed, GCG called Claimants with still-deficient Proofs of Claim with potential payments of approximately \$250 or greater to assist them in curing the deficiencies (*id.* ¶¶ 26-28), and coordinated an automated calling campaign to those Claimants with potential payments of less than approximately \$250 (*id.* ¶ 29).

Consistent with the terms of the Stipulation (¶ 23(e)), all rejection letters specifically advised the Claimant that he, she or it had the right, within twenty (20) days after the mailing of the rejection letter, to contest the rejection of the Claim and request Court review of the disposition of the Claim. Cirami Decl. ¶¶ 24, 31 and Exhibit A thereto.

GCG received letters from 4 Claimants contesting the administrative rejection of their Claims in whole or in part. Cirami Decl. ¶ 31. As a result of GCG's communications further explaining the reasons for the rejection of the Claim, all 4 of the contesting Claimants affirmatively withdrew their requests for Court review, and their Proofs of Claim are being recommended for rejection. *Id.* ¶ 32. Accordingly, there are no Claims with outstanding requests for judicial review

As set forth in the Cirami Declaration, of the 10,520 Claims received and fully processed through August 28, 2015, GCG has determined that 5,595 are acceptable in whole or in part, and that 4,925 should be wholly rejected because they are ineligible for payment from the Net Settlement

Fund. Cirami Decl. ¶ 41. Lead Plaintiffs request that the Court approve GCG's administrative determinations accepting and rejecting Claims as set forth in the Cirami Declaration.

The 10,520 Proofs of Claim received through August 28, 2015 include 258 Proofs of Claim that were postmarked or received after the Court-approved Claim filing deadline of January 24, 2015, of which 65 are, but for the late submission, otherwise eligible. Cirami Decl. ¶ 33. While these 65 Claims were late, they were received while the processing of timely Claims was ongoing, and due to the amount of time needed to process the timely Claims received, the processing of these late Claims did not delay the completion of the claims administration process or the distribution of the Net Settlement Fund. The Court has discretion to accept Claims submitted after the filing deadline.<sup>4</sup> It is respectfully submitted that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the Net Settlement Fund solely because it was submitted after the Court-approved Claim filing deadline, when it was submitted while timely Claims were still being processed.

In order to facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off after which no other Proofs of Claim may be accepted. Accordingly, Lead Plaintiffs respectfully request that the Court order that any new Claims and any adjustments to previously filed Claims that would result in an increased Recognized Claim amount that are

---

<sup>4</sup> See Notice ¶ 43 (“*Unless the Court otherwise orders*, any Settlement Class Member who fails to submit a Claim Form postmarked on or before January 24, 2015 shall be fully and forever barred from receiving payments pursuant to the Settlement . . .”) (emphasis added); *see also* Preliminary Approval Order at ¶ 10 (“Unless the Court orders otherwise, all Proof of Claim Forms must be postmarked no later than January 24, 2015. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class.”).

postmarked or received after August 28, 2015 be barred<sup>5</sup> subject to the provision of ¶ 45(d) of the Cirami Declaration. That paragraph provides that, if any Proofs of Claim are received or modified after August 28, 2015 that would have been eligible for payment or additional payment under the Court-approved Plan of Allocation if timely received then, at the time that Lead Counsel, in consultation with GCG, determines that a redistribution is not cost effective as provided in subparagraph 45(c)(2) of the Cirami Declaration, such Claimants, after payment of fees and expenses as set forth in ¶ 45(d) of the Cirami Declaration, at the discretion of Lead Counsel, may be paid their Distribution Amounts or additional Distribution Amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible.

### **III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR**

In accordance with GCG's agreement with Lead Counsel to act as the Claims Administrator for the Settlement, GCG was responsible for, among other things, mailing and publishing notice to the Settlement Class, creating and maintaining a settlement website and toll-free telephone helpline, processing the Proofs of Claim, and allocating and distributing the Net Settlement Fund to Authorized Claimants. As set forth in the Cirami Declaration, GCG's fees and expenses for its work performed and estimated to be performed on behalf of the Settlement Class in connection with the Distribution of the Net Settlement Fund total \$245,220.43. Cirami Decl. ¶ 44. To date, GCG has not received any payments. *Id.* Accordingly, the full amount is owed to GCG. *Id.* Lead Plaintiffs respectfully request that the Court approve all of GCG's fees and expenses.

---

<sup>5</sup> Should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.

#### IV. **DISTRIBUTION PLAN OF THE NET SETTLEMENT FUND**

Lead Plaintiffs, on notice to Defendants' Counsel, respectfully move the Court for an order approving GCG's determinations concerning the acceptance and rejection of the Claims that are included in this motion and approving the proposed plan for distribution of the Net Settlement Fund as set forth in the Cirami Declaration (the "Distribution Plan").<sup>6</sup>

##### **Distribution of Net Settlement Fund**

Pursuant to the proposed Distribution Plan, GCG will distribute 100% of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved by the Court on this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees (the "Distribution"). In the Distribution, GCG will determine a Distribution Amount for each Authorized Claimant which shall be the Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *See* Cirami Decl. ¶ 45(a)(1). Pursuant to the Court-approved Plan of Allocation, GCG will eliminate from the distribution any Authorized Claimant whose *pro rata* share calculates to less than \$10.00, and then re-calculate the *pro rata* share for Authorized Claimants who are entitled to receive \$10.00 or more (the "Distribution Amount"). *Id.* ¶¶ 45(a)(2) and (a)(3).

In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to uncashed checks, Lead Plaintiffs propose that the Distribution checks bear the notation, "CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE]." In an effort to have as many

---

<sup>6</sup> Under the terms of the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 17, 22.

Authorized Claimants as possible cash their checks, GCG will perform follow up with Authorized Claimants who initially fail to cash their checks. Cirami Decl. ¶ 45(a)(4) n.7. Authorized Claimants who do not cash their checks within the time allotted or on the conditions set forth in paragraph 45(a)(4) footnote 7 of the Cirami Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in any subsequent distribution as described below. *Id.* ¶ 45(a)(5).

**Second/Additional Distribution(s) of Net Settlement Fund**

After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Distribution checks, to the extent that any monies remain in the fund nine (9) months after the Distribution, if Lead Counsel, in consultation with GCG, determines that it is cost-effective to do so, GCG will conduct a second distribution (the “Second Distribution”) of the Net Settlement Fund. In any such Second Distribution, any amounts remaining in the Net Settlement Fund after the Distribution (including the funds for all void stale-dated checks), after deducting GCG’s fees and expenses incurred in connection with administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants from the Distribution who cashed their Distribution check and would receive at least \$10.00 from such redistribution. Cirami Decl. ¶ 45(b). If cost effective, subsequent distributions of the funds remaining in the Net Settlement Fund will take place in six-month intervals thereafter. *Id.* ¶ 45(c)(1). At such time as Lead Counsel, in consultation with GCG, determines that further redistribution is not cost-effective, the balance of the Net Settlement Fund, after payment of any unpaid costs or fees and any payment, at the discretion of Lead Counsel, of any otherwise valid Claims received or adjusted upward after August 28, 2015, shall be donated to non-

sectarian, not-for-profit 501(c)(3) organization(s) recommended by Lead Counsel and approved by the Court. *Id.* ¶¶ 45(c)(2) and (d).

**V. RELEASE OF CLAIMS**

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement. Accordingly, Lead Plaintiffs respectfully request that the Court release and discharge 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 or taxation of the Settlement Fund or the Net 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 Net Settlement Fund, from making any further claims against the Net Settlement Fund, Lead Plaintiffs, Lead Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Lead Plaintiffs or Lead Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to Authorized Claimants.

**VI. CONCLUSION**

For the foregoing reasons, it is respectfully submitted that Lead Plaintiffs' Motion for Approval of Distribution Plan should be granted, and the proposed Order Approving Distribution Plan should be entered.

Dated: September 8, 2015

Respectfully submitted,

**BERNSTEIN LITOWITZ  
BERGER & GROSSMANN LLP**

*/s/ John J. Rizio-Hamilton* \_\_\_\_\_

Salvatore J. Graziano  
John J. Rizio-Hamilton  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 554-1400  
Facsimile: (212) 554-1444

*Attorneys for Lead Plaintiffs Arkansas Teacher  
Retirement System and Fresno County  
Employees' Retirement Association and the  
Settlement Class*

#921318