

**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

**NOTICE OF LEAD PLAINTIFFS' MOTION
FOR APPROVAL OF DISTRIBUTION PLAN**

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Cirami Declaration") submitted by the Court-approved Claims Administrator, Garden City Group, LLC ("GCG"), and the Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan, and pursuant to Federal Rule of Civil Procedure 23(e), Lead Plaintiffs the Arkansas Teacher Retirement System and Fresno County Employees' Retirement Association will and hereby do move this Court, before the Honorable Jed S. Rakoff, United States District Judge, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York, for entry of the accompanying [Proposed] Order Approving Distribution Plan. That order will, *inter alia*: (i) approve GCG's administrative recommendations accepting and rejecting Proofs of Claim submitted herein; (ii) direct the distribution of the Net Settlement Fund to Claimants whose Proofs of Claim have been accepted as valid and approved by the Court; (iii) direct that distribution checks state that the check must be cashed within 120 days after the issue date; (iv) direct that Authorized Claimants will forfeit all recovery from the Settlement if they fail to cash their distribution checks in a timely

manner; (v) adopt the recommended plan for any funds remaining following the distribution; (vi) release claims related to the claims administration process; (vii) approve GCG's fees and expenses incurred and estimated to be incurred in connection with the administration of the Settlement; (viii) authorize the destruction of Proofs of Claim and supporting documents at an appropriate time; and (ix) provide that the Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as the Court deems appropriate.

The [Proposed] Order Approving Distribution Plan is attached hereto as Exhibit 1.

Dated: September 8, 2015

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER
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Employees' Retirement Association and the
Settlement Class*

#921317

Exhibit 1

**UNITED STATES DISTRICT COURT
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Case No. 13-cv-7183 (JSR)

ECF CASE

[PROPOSED] ORDER APPROVING DISTRIBUTION PLAN

Lead Plaintiffs moved this Court for an order approving a distribution plan for the Net Settlement Fund in the above-captioned class action (the "Action"). Having considered all the materials and arguments submitted in support of the motion, including the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Cirami Declaration"), and the Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan, submitted therewith;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Amended Stipulation and Agreement of Settlement dated September 17, 2014 (the "Stipulation") and the Cirami Declaration, and all terms used herein shall have the same meanings as set forth in the Stipulation or in the Cirami Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Lead Plaintiffs' plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly,

(a) The administrative recommendations of the Court-approved Claims Administrator, Garden City Group, LLC ("GCG"), to accept the Timely Eligible Claims set forth in Exhibit B-1 to the Cirami Declaration and the Late But Otherwise Eligible Claims set forth in Exhibit B-2 to the Cirami Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims, as set forth in Exhibit B-3 to the Cirami Declaration are adopted;

(c) GCG is directed to distribute 100% of the Net Settlement Fund, after deducting all payments previously allowed and the payments approved herein, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, to the Authorized Claimants whose *pro rata* share of the Net Settlement Fund, as set forth in the Court-approved Plan of Allocation, is at least \$10.00, as further detailed in paragraphs 43 and 45(a) of the Cirami Declaration (the "Distribution");

(d) In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to unpaid checks, all Distribution checks shall bear the following notation: "CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE]." Lead Counsel and GCG are authorized to take appropriate action to locate and/or contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 45(a)(4) footnote 7 of the Cirami Declaration;

(e) Authorized Claimants who do not cash their Distribution checks within the time allotted or on the conditions set forth in paragraph 45(a)(4) footnote 7 of the Cirami

Declaration shall irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks shall be available to be redistributed to other Authorized Claimants in any subsequent distribution of the Net Settlement Fund described below. Similarly, Authorized Claimants who do not cash subsequent distributions within the time allotted or on the conditions set forth in paragraph 45(a)(4) footnote 7 of the Cirami Declaration shall irrevocably forfeit any further recovery from the Net Settlement Fund;

(f) After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Distribution checks (as set forth in paragraph 45(a)(4) footnote 7 of the Cirami Declaration), 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 shall conduct a second distribution (the "Second Distribution") of the Net Settlement Fund, pursuant to which any amount 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, shall be distributed to all Authorized Claimants from the Distribution who cashed their Distribution check and would receive at least \$10.00 from such redistribution;

(g) If there is a Second Distribution and any funds remain in the Net Settlement Fund after completion of such distribution, whether by reason of uncashed checks, returned funds, tax refunds, or otherwise:

(1) If cost effective, not less than six (6) months after the Second Distribution is conducted, GCG shall conduct a further distribution of the Net Settlement Fund, pursuant to which the funds remaining in the Net Settlement Fund after the Second Distribution, 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 distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be distributed to Authorized Claimants who cashed their Second Distribution checks and who would receive at least \$10.00 from such redistribution, with additional redistributions thereafter in six-month intervals, subject to the conditions previously noted, until Lead Counsel, in consultation with GCG, determines that further redistribution is not cost effective; and

(2) At such time as Lead Counsel, in consultation with GCG, determines that the redistribution of funds remaining in the Net Settlement Fund is not cost effective, any otherwise valid Claims received after August 28, 2015 or adjusted upward based on information received after August 28, 2015 shall be paid in accordance with subparagraph (h) below. If any funds shall remain in the Net Settlement Fund after payment of any such late or late adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, shall be contributed to non-sectarian, not-for-profit

501(c)(3) organization(s) recommended by Lead Counsel subject to approval or veto by the Court on any ground the Court deems appropriate;

(h) No further Proofs of Claim may be accepted after August 28, 2015, and no upward adjustments may be made for any reason with respect to Proofs of Claim for which the information supporting the adjustment was received after August 28, 2015, subject to the following exception. If Proofs of Claim are received or modified after that date that would have been eligible for payment or additional payment under the 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 (g)(2) above, then, after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such Claimants, 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;

(i) 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, are hereby released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they receive payment from the Net Settlement Fund, are hereby barred 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;

(j) All of GCG's fees and expenses incurred in connection with the administration of the Settlement and estimated to be incurred in connection with the Distribution of the Net Settlement Fund as set forth in the unpaid invoices attached as Exhibit C to the Cirami Declaration are approved, and Lead Counsel is directed to pay \$245,220.43 out of the Settlement Fund to GCG; and

(k) Unless otherwise ordered by the Court, one year after the Second Distribution if that occurs or, if there is no Second Distribution, two years after the Distribution, GCG shall destroy the paper copies of the Proofs of Claim and all supporting documentation and, one year after all funds in the Net Settlement Fund have been distributed, GCG shall destroy electronic copies of the same.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and such other and further relief as this Court deems appropriate.

SO ORDERED:

Dated: New York, New York

_____, 2015

The Honorable Jed S. Rakoff
United States District Judge

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