

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

OSHONYA SPENCER, CHARLES	:	
STRICKLAND, and DOUGLAS McDUFFIE	:	
on behalf of themselves and all others	:	
similarly situated,	:	
	:	
Plaintiffs,	:	NO. 3:05cv1681 (JCH)
	:	
v.	:	
	:	
THE HARTFORD FINANCIAL SERVICES	:	
GROUP, INC., et al.,	:	
	:	
Defendants.	:	AUGUST 30, 2018

DECLARATION OF PETER R. KAHANA

Peter R. Kahana, does declare, under penalty of perjury, as follows:

1. I am an attorney admitted *pro hac vice* to the Bar of this Court and a member of the law firm of Berger Montague PC, one of the law firms appointed Class Counsel in the above-captioned action.¹

2. I submit this Declaration in support of Class Counsel’s Motion for Orders authorizing final distributions to class members and payment of the administrator’s fees and disbursements. The purpose of the Motion is to establish a procedure to complete distributions of the remaining settlement funds established for the benefit of the class members in this action and for payment of the class administrator’s fees and disbursements, thus completing the settlement process in the most cost-effective and efficient manner for the benefit of the Settlement Class.

¹ Our law firm moved on August 10, 2018 to its new address at 1818 Market Street, Suite 3600, Philadelphia, PA 19103. The firm name was changed on the same date from “Berger & Montague, P.C.” to “Berger Montague PC.”

THE INITIAL DISTRIBUTION

3. As set forth in the attached Declaration of Stephanie Amin-Giwner, Assistant Director of Operations for Garden City Group, LLC (“GCG”), the administrator of the class settlement, GCG conducted an initial distribution of the Settlement Fund to Settlement Class Members (the “Initial Distribution”) pursuant to the Court’s initial Order Granting the Motion for Approving Distribution of Net Class Settlement Proceeds (ECF No. 273) on October 22, 2010. On December 9, 2010, a total of 21,118 claims were issued payment via checks totaling approximately \$49,675,957.55.

4. After this Initial Distribution of payments, GCG monitored the status of all checks issued. In order to ensure that the maximum number of checks that had been issued were cashed, GCG implemented a calling campaign and e-mail campaign to follow up with Settlement Class Members whose checks were initially uncashed, either because they were returned to GCG as undeliverable or because the Settlement Class Member simply had not cashed the check. If the Settlement Class Member did not provide a telephone number, GCG used various local and national directories to locate telephone numbers. GCG also performed a National Change of Address search for Settlement Class Members whose checks were returned to GCG by the United States Postal Service as undeliverable. In connection with GCG’s calling campaign, GCG urged Settlement Class Members to cash their checks and offered Settlement Class Members the opportunity to have their checks reissued if they lost or damaged their check or otherwise required a new check. GCG reissued checks upon written instruction from the Settlement Class Members and requested that the Settlement Class Member return the first check where

appropriate. If a check was deemed lost, GCG voided the initial check prior to reissuing a substitute check.

5. During this process, GCG determined that there were numerous Settlement Class Members for whom GCG lacked current contact information, and so notified Class Counsel. Class Counsel thereupon moved for an Order directing defendants to disclose social security numbers and last known addresses for Settlement Class Members whose Initial Distribution checks were returned to GCG as undeliverable or who had failed to cash their Initial Distribution checks, and the Court granted that Motion on February 23, 2015. ECF No. 291. After available information was furnished by defendants, GCG performed Advanced Address Searches² and was able to obtain updated addresses for more than 2,700 Settlement Class Members. On October 27, 2016, GCG reissued a total of 2,733 checks for a total of \$4,893,268.19. GCG has continued thereafter to attempt to locate missing Class Members.

6. As a result of GCG's efforts, payments totaling \$45,040,966.65 or approximately 91% of the amount distributed in the Initial Distribution have been cashed by Settlement Class Members. After accounting for earned interest, the total amount of cashed checks from the Initial Distribution, and other authorized payments made to GCG for fees and expenses in connection with its administering the Settlement Fund up to this date³, approximately \$4,473,000+ remains in the Settlement Fund.

FINAL DISTRIBUTIONS

² GCG uses an Advanced Address Search ("AAS") database that pulls information from one of the largest collections of public and proprietary records available. The search tool pulls from over 40 billion public record filings from over 10,000 sources, and includes over 11.6 billion consumer records to locate the most current addresses for individuals.

³ On February 24, 2015, the Court authorized a second payment to GCG in the amount of \$208,722.72 (ECF No. 292).

7. Following the payment of GCG's outstanding and estimated future fees and expenses described in paragraph 15 below, there will be approximately \$4,258,000+ remaining in the Settlement Fund. Class Counsel, in consultation with GCG, believe that these funds should be distributed to Settlement Class Members pursuant to a second distribution, and most likely a third distribution, in accordance with the procedures described below.

8. First, based on GCG's preliminary calculations, GCG expects to issue approximately 18,500 checks to Settlement Class Members who negotiated their Initial Distribution payment and would receive a check for at least \$10.00 (the "Second Distribution"). Class Counsel concur in this estimate.

9. In order to encourage Settlement Class Members to cash their Second Distribution checks promptly and to avoid or reduce future expenses relating to outstanding payments, GCG has recommended that all Second Distribution checks bear the following notation "CASH PROMPTLY -- VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE." Class Counsel concur in this recommendation.

10. In an effort to have as many Settlement Class Members as possible cash their Second Distribution checks, GCG will perform extensive follow-up with those Settlement Class Members whose checks are initially uncashed, either because they are returned to GCG as undeliverable or because the Settlement Class Member simply did not cash the check after a period of time elapses (the "Outreach Program"). For Settlement Class Members whose checks are returned as undeliverable, GCG will endeavor to locate new addresses by running the undeliverable addresses through the US Postal Service National Change of Address database and, where appropriate, via outreach to the Settlement Class Members. Where a new address is located, GCG will update the database

accordingly and re-issue a distribution check to the Settlement Class Member at the new address. For any Settlement Class Members whose distributions are not returned but who simply do not cash their checks, GCG will use a mix of automated and personalized telephone calls to urge such Settlement Class Members to cash their distribution checks.

11. In the event a Settlement Class Member loses or damages his, her or its check, or otherwise requires a new check, GCG will issue replacement checks. Distribution re-issues will be undertaken only upon written instructions from the Settlement Class Member. GCG will void the initial payment check prior to re-issuing a payment. Consistent with GCG policies and practice, should any distribution re-issues be requested due to the death of the Settlement Class Member, GCG will additionally require a copy of the Settlement Class Member's death certificate and either the Settlement Class Member's will, probate documents, or other documentation listing the Settlement Class Member's beneficiaries.

12. In order not to delay further distributions to Settlement Class Members who have timely cashed their checks, GCG's Outreach Program shall end 30 days after the initial void date. Settlement Class Members will be informed that if they do not cash their Second Distribution checks within the 90 days from the mail date, or if they do not cash check reissues within 30 days of the mailing of such reissued check, their check will lapse, their entitlement to recovery will be forfeited, and the funds will be re-allocated to other Settlement Class Members. Reissue requests for lost or damaged checks will be granted after GCG ends its Outreach Program, however, void dates on such reissues will be adjusted so that all such checks will no longer be negotiable 30 days after the end of the Outreach Program. Requests for reissued checks in connection with any subsequent distributions will be handled in the same manner.

13. If any balance remains in the Net Settlement Fund six months after the Second Distribution or once all checks issued in the Second Distribution have been tendered for payment, whichever occurs first, such remaining funds shall be used: (i) first, to pay any additional notice and administration costs incurred in administering the Settlement including tax preparation and filing; (ii) second, to pay any taxes due on the Settlement Fund; and (iii) finally, to make a subsequent distribution (the “Third Distribution”) to Settlement Class Members who cashed their checks from the Second Distribution and who would receive at least \$10.00 from such subsequent distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this subsequent distribution, if such subsequent distribution is economically feasible.

14. The redistribution process outlined in ¶¶ 7-13 will continue until the Net Settlement Fund is exhausted by combined notice and administration costs, tax payments, and payments to Settlement Class Members, as approved by Class Counsel, without any requirement for further Court approval.

FEES AND DISBURSEMENTS

15. Class Counsel further seek entry of an Order authorizing payment to GCG of its current outstanding fees and expenses for work performed through July 31, 2018 in the amount of \$110,050.50 and for the necessary work to complete the Second and Third Distributions described above in the amount of \$105,005.56, for a total payment to GCG of \$215,056.06. (Attached as Exhibit A to the Amin-Giwner Declaration are invoices containing documentation supporting GCG’s current and future fees and disbursements.) I have reviewed the attached invoices and Class Counsel have discussed with GCG (including with the experienced Senior Project Manager on this project) the future work to be performed by GCG. Class Counsel confirm that GCG is entitled to be paid the requested amount, and that there are sufficient funds in the settlement account to pay the requested

amount.

16. Class Counsel believe and affirm to the Court their view that adherence to the above-described procedures in regard to the final (supplemental) distributions to class members (and payment to GCG of its administration fees and disbursements) will facilitate completion of the settlement process in this matter in the most efficient manner possible in order to provide the maximum cash benefit to as many Settlement Class Members as possible.

17. Accordingly, Class Counsel respectfully submit that the Court should grant the above-referenced Motion and authorize the distributions and payments described above.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct.

Executed on August 30, 2018.

/s/ Peter R. Kahana
PETER R. KAHANA

CERTIFICATION

I hereby certify that on August 30, 2018, the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic

