

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE NEW JERSEY TAX SALES CERTIFICATES ANTITRUST LITIGATION	Master Docket No. 3:12-CV-01893-MAS-TJB
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
TO AUTHORIZE DISTRIBUTION OF THE SETTLEMENT FUND**

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Plaintiffs respectfully submit this memorandum in support of their motion to authorize distribution of funds from the Settlement Fund (as defined below) to claimants.

I. FACTUAL BACKGROUND

On September 30, 2016, the Court granted final approval of the settlements between Plaintiffs Gila Bauer as Trustee for the Gila Bauer Revocable Trust, Melissa Jacobs, Frances A. Schmidt and Donald W. Schmidt, and Son, Inc. (“Plaintiffs”) and 20 Defendant groups,¹ reached on behalf of the below Settlement Class:

¹ The complete list of Defendants is: 1) CCTS Capital, LLC n/k/a Crestar Capital, LLC and William S. Green (collectively, Crestar Defendants); 2) American Tax Funding, LLC; 3) BBX Capital Corporation f/k/a BankAtlantic Bancorp, Inc., Fidelity Tax, LLC, Heartwood 55, LLC, Michael Deluca, Gary I. Branse, and David Jelley; 4) Richard Simon Trustee, Betty Simon Trustee and Joseph Wolfson; 5) Mooring Tax Asset Group, LLC and Lambros Xethalis; 6) Norman T. Remick; 7) Michael Mastellone; 8) Pat Caraballese and PAM Investors; 9) Robert U. Del Vecchio Sr. and Robert U. Del Vecchio Pension Trust; 10) CCTS, LLC, CCTS Tax Liens I, LLC, CCTS Tax Liens II, LLC, DSBD, LLC, Pro Capital LLC, David Butler and David M. Farber; 11) Plymouth Park Tax Services, LLC; 12) M.D. Sass Investors Services, Inc., M.D. Sass Tax Lien Management, LLC, M.D. Sass Municipal Finance Partners – I, L.P., M.D. Sass Municipal Finance Partners – II, L.P., Sass Municipal Finance Partners – III, L.P., Sass Municipal Finance Partners – IV, L.P., Sass Municipal Finance Partners – V, L.P., Sass Municipal Finance Partners – VI, L.P. (collectively, “Sass Entities”), Vinaya K. Jessani and Stephen E. Hrubby (collectively with the Sass Entities, “Sass Defendants”); 13) Robert E. Rothman; 14) Royal Bancshares of Pennsylvania, Inc., Royal Bank America, Crusader Servicing Corporation, and Royal Tax Lien Services, LLC; 15) William A. Collins; 16) Isadore H. May; 17) Burlington Assembly of God/Fountain of Life Center, Mercer S.M.E., Inc., Susan M. Esposito, and David B. Boudwin; 18) Richard J. Pisciotta, Jr.; 19) Phoenix Funding, Inc. and Benedict Caiola; and 20) Robert W. Stein.

All persons who owned real property in the State of New Jersey who had a Tax Sale Certificate issued with respect to their property that was purchased by a Defendant during the Class Period from and including January 1, 1998 through February 2009 at a public auction in the State of New Jersey at an interest rate above 0%.

See ECF No. 475. Following an unsuccessful appeal by the lone objector (*see* ECF No. 510), that final approval order is now final.

Plaintiffs now seek authorization to distribute funds from those settlements to valid and eligible claimants. Gilardi & Co, LLC, (“Gilardi”), serving as the Court-approved Claims Administrator, has engaged in the claims administration process, and the Settlement Fund, less the deductions set forth in more detail below, is ready to be distributed to Settlement Class members. *See* Supplemental Declaration of Kenneth Jue on Behalf of the Settlement Administrator, dated July 18, 2019 (“Jue Decl.”).

II. CLAIMS ADMINISTRATION PROCESS

Gilardi was charged with various administrative tasks, including: disseminating notices and claim forms; publishing summary notices; receiving and processing claims and requests for exclusion; responding to class member inquiries; establishing and maintaining a settlement website; and performing such other duties as were directed by the Court or the parties. *See* ECF No. 426 (October 30, 2015 Preliminary Approval Order); ECF No. 432 (as amended by the Court’s December 18, 2015 Letter Order approving a revised notice); ECF No. 475, ¶ 17

(approving Plan of Allocation as disclosed in the notice as fair, reasonable, and adequate). Gilardi also handled the administrative tasks associated with collecting claim forms from claimants, evaluating and auditing those claim forms, and ultimately calculating the appropriate allocated amount for each qualified claimant (based on the Court-approved Plan of Allocation). *See* Jue Decl. at ¶¶ 3-12, 14.

A. Claim Form Deadline and Documentation

The deadline for Settlement Class members to submit claims was June 17, 2016. *See* Jue Decl. ¶ 3. In addition to contact information, the Claim Form requested that the potential claimant enter the property address, the lien purchaser (to ensure that the lien was purchased by a defendant), the interest rate associated with the lien (to ensure that the lien carried an interest rate greater than 0%), the date the lien was purchased, and supporting documentation. *Id.*

Gilardi received a total of 504 Claim Forms. *See id.* at ¶ 4. Some claims included claims for one more than one lien. Gilardi reviewed claims for, among other things, completeness, duplication, timeliness, fraud, and whether the claim could be supported by documentation or defendant data. Following an initial review, Gilardi determined that 265 of the 504 claims were deficient because they either provided incomplete information on the Claim Form or failed to provide supporting documentation. *See id.* As a result, Gilardi sent out 218 deficiency letters on July 22, 2016 and 47 deficiency letters on July 26, 2016. *See id.* The goal of sending the letters was to allow eligible and valid claimants to cure deficiencies

to allow as many eligible and legitimate claimants to be able to claim against the Settlement Fund.

Following this initial review, the Court granted final approval of the settlements on September 30, 2016. *See* ECF No. 477. The lone objector to the settlements appealed final approval, however, and Class Counsel decided with Gilardi to put the claims administration process on hold so that efforts were not wasted in the event the Third Circuit either modified the settlements or rejected them altogether. *See* Jue Decl. ¶ 5. After the Third Circuit rejected the appeal on September 6, 2018 (*see* ECF No. 510), and the lone objector notified Class Counsel that she did not intend to pursue the appeal further, Gilardi and Class Counsel resumed the claims process.

B. Deficiency Review and Audit Process

Following the resolution of the appeal, Gilardi and Class Counsel provided additional opportunities for claimants to cure any deficiencies with their claims, all with the goal of ensuring that as many eligible claimants as reasonably possible who qualified for payment under the settlements received payment. *See* Jue Decl. ¶ 6. With this goal in mind, Class Counsel determined that supporting documentation would no longer be required for an otherwise valid claim so long as the claimant demonstrated that the lien at issue: named an eligible defendant, involved a lien sold at auction during the Class Period, listed an eligible property address, contained a reasonable lien dollar amount, and had an interest rate above zero

percent. *See id.* And, of course, the Claim Form needed to be signed acknowledging that the claimant attested to the accuracy of the information provided under penalty of perjury. The Claim Form itself did not require that documentation be provided with each claim. Rather, the Claim Form stated: “Please provide documentation of the face amount of lien purchased by Defendant. If you do not provide supporting documentation, your claim *may* be rejected.” (emphasis added).

Recognizing that the lack of a requirement for supporting documentation brought with it a heightened possibility of fraud, Gilardi—with guidance from Class Counsel—embarked on an additional auditing process to ensure to the maximum extent possible that only valid claims received payment. Thus, Gilardi flagged claims that had a high dollar amount or were otherwise suspicious. *See* Jue Decl. ¶ 7. For example, several claimants asserted an extremely high dollar amount for the claim even though those claimants resided outside of New Jersey. In these suspicious instances, Gilardi and Class Counsel investigated the claim further, including through an investigation of the property at issue through public information such as Zillow. *See id.* After this additional due diligence process, Gilardi sent another 34 deficiency letters requesting additional information from suspect claimants, all with the intention of ensuring that only eligible claimants received payment from the Settlement Fund. *See id.*

After this second round of deficiency letters, Class Counsel and Gilardi performed a complete audit of all of the claims received to date. *See* Jue Decl. ¶ 9. After that process, Class Counsel and Gilardi determined that potentially fraudulent claims remained. *See id.* Gilardi, therefore, sent out a third and final round of 76 deficiency letters on June 14, 2019. *See id.* ¶ 8. These letters were targeted at claimants whose claims: involved a dollar amount below \$50; a dollar amount over \$10,000; claimed multiple liens on the same property for the same year, or had multiple claims on the same property for multiple years with the same dollar amount; claims with round dollar amounts; or claims with extremely high dollar amounts. *See id.* (including Exhibit D with guidance Gilardi followed when it issued the final round of deficiency letters).

Following this final auditing process, Gilardi has determined that 378 claims are eligible to claim against the Settlement Fund. *See* Jue Decl. ¶ 12.

C. The Settlement Fund

Each of the 19 settlement payments was held by the Escrow Agent in a separate account specific to each monetary settlement. To facilitate the distribution process, Class Counsel, in coordination with Gilardi, established a single distribution account from which all distributions of the settlement monies would be made. On December 14, 2018, Gilardi received wires from the escrow agent totaling \$9,594,920.90, and will be receiving an additional \$20,032.24, for deposit into the distribution account (which was held at Huntington Bank). *See* Jue Decl. ¶

13. This amount included the amounts received from all settlements plus interest earned on the settlements less any payments made for tax distributions (both tax payments and tax preparation expenses) over the years, and amounts held back in each of the 19 settlement escrow accounts to account for tax year 2018 tax liabilities and tax preparation fees. *See id.*

Between December 2018 and January 2019, Gilardi distributed a total of \$2,958,547.92 in Court-approved attorneys' fees and litigation expenses. *See id.* As of July 5, 2019, the settlement distribution account totaled \$6,636,372.98. *See id.* Certain funds—for future expenses for claims administration and distribution, for future tax preparation costs, and for Court-approved incentive awards—are being reserved in the fund to ensure that sufficient funds remain to finalize distribution. *See id.* As a result, \$6,447,970.63 remain as the “Net Settlement Fund” to be distributed to eligible claimants. *See id.*

III. PROPOSED DISTRIBUTION

The Net Settlement Fund will be allocated in accordance with the Plan of Allocation approved by the Court. *See* ECF No. 475, ¶ 17. Under the Plan of Allocation, the Net Settlement Fund shall be distributed as follows: the approved lien amount, multiplied by the interest rate for each lien, which are then aggregated with all eligible claims and prorated against the net settlement fund available for each of the settlements to arrive at the eligible check amount. *See* Jue Decl. ¶ 14. Claims that look otherwise valid, but have incomplete or unreliable information,

will have a class-wide average dollar amount applied to the claim to calculate the approved lien amount used in the above formula. *See id.* ¶¶ 10-11 (indicating that 17 claims will use this average to calculate the approved lien amount).

Gilardi has completed the processing of claims in connection with the settlement. The Net Settlement Fund is now available for distribution to Settlement Class members who have submitted valid claims. If the Court adopts the recommendations of Class Counsel and Gilardi, the distribution would be made pursuant to the chart attached as Exhibit G to the Jue Decl. The chart identifies each claimant by number as opposed to names for purposes of confidentiality, and Gilardi's recommended allocation is determined according to the Plan of Allocation.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court authorize distribution of the Net Settlement Fund to Settlement Class members who have submitted valid claims as set forth above and in the Jue Decl.

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Dated: July 18, 2019

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