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

PLAINTIFFS' NOTICE OF MOTION FOR FINAL APPROVAL OF ALL CLASS SETTLEMENTS, FINAL CERTIFICATION OF SETTLEMENT CLASS, AND FINAL APPROVAL OF PLAN OF ALLOCATION

TO: ALL COUNSEL IN THE CAPTIONED MATTER

PLEASE TAKE NOTICE that on April 25, 2016 at 10:00 a.m., or as soon thereafter as counsel may be heard, plaintiffs will move before Hon. Michael A. Shipp, U.S.D.J., at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, for an Order granting final approval of all of the class settlements in this matter, final certification of a settlement class, and final approval of the proposed Plan of Allocation.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, Plaintiffs will rely upon the accompanying Memorandum of Law and the Joint Declaration of Settlement Class and Liaison Counsel, with attached exhibits. A proposed form of Order is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that plaintiffs request oral argument.

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Dated: February 16, 2016

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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

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENTS AND THE PLAN OF ALLOCATION

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I. INTRODUCTION

The Court has previously preliminarily approved settlements with all defendants, whose cash value totals $9,585,000 (plus interest).[1] As additional consideration, all defendants who still hold a TSC that they purchased during the

[1] *See* Dkt. No. 276 (Order preliminarily approving five settlements with: 1) CCTS, LLC; CCTS Tax Liens I, LLC; CCTS Tax Liens II, LLC; DSBD, LLC; Pro Capital LLC; David Butler; and David M. Farber (collectively, the "Butler/Farber Defendants"); 2) Burlington Assembly of God/Fountain of Life Center; Mercer S.M.E., Inc.; Susan M. Esposito; and David B. Boudwin (collectively, the "Mercer Defendants"); 3) Richard J. Pisciotta, Jr.; 4) William A. Collins; and 5) Isadore H. May); Dkt. No. 277 (Order preliminarily approving settlement with Robert E. Rothman); Dkt. Nos. 339 , 376 (Magistrate Judge Bongiovanni Report and Recommendation recommending preliminary approval of the following four settlements and Judge Shipp Order adopting R&R: 1) M.D. Sass Investors Services, Inc.; M.D. Sass Tax Lien Management, LLC; M.D. Sass Municipal Partners – I, L.P.; M.D. Sass Municipal Partners – II, L.P.; M.D. Sass Municipal Partners – III, L.P.; M.D. Sass Municipal Partners – IV, L.P.; M.D. Sass Municipal Partners – V, L.P.; and M.D. Sass Municipal Partners – VI, L.P. (collectively, the "Sass Entities"), Vinaya K. Jessani and Stephen E. Hruby (collectively, with the Sass Entities, the "Sass Defendants"); 2) Royal Bancshares of Pennsylvania, Inc.; Royal Bank America; Crusader Servicing Corporation; and Royal Tax Lien Services, LLC (collectively the "Crusader Defendants"); 3) Plymouth Park Tax Services, LLC d/b/a Xspand ("Plymouth"); and 4) Phoenix Funding, Inc. and Benedict Caiola (the "Phoenix Defendants")); Dkt. No. 394 (Order preliminarily approving settlements with: 1) Norman T. Remick; 2) American Tax Funding, LLC; 3) Robert W. Stein; and 4) Lambros Xethalis); and Dkt. No.426 (Order preliminarily approving settlements with 1) CCTS Capital, LLC n/k/a Crestar Capital LLC, and William S. Green (the "Crestar Defendants"); 2) Mooring Tax Asset Group LLC; 3) Michael Mastellone; 4) the Robert U. DelVecchio, Sr. and Robert U. DelVecchio Pension Trust (the "DelVecchio Defendants"); 5) BBX Capital Corporation f/k/a Bank Atlantic Bancorp. Inc., Fidelity Tax LLC, Heartwood 55, LLC, Michael Deluca, Gary I. Branse, and David Jelley (collectively, the "BankAtlantic Defendants"); PAM Investors and Pat Caraballese (the "PAM Defendants"); and 7) Richard Simon Trustee, Betty Simon Trustee LLC, and Joseph Wolfson (collectively, the "Wolfson Defendants").

Class Period (only two defendants do not) will also provide discounts of up to 15% off the redemption amount for Settlement Class Members who redeem TSCs that defendants still hold. The discounts afford the Settlement Class yet more value on top of the nearly $10 million in cash.

The settlements are eminently fair, reasonable, and adequate. They resulted from protracted arm's-length negotiations by experienced counsel committed to the interests of their respective clients, after counsel obtained a full appreciation of the strengths and weaknesses of the case from, among other things, from their independent investigation, from extensive cooperation by early-settling defendants, from counsel's collective experience litigating antitrust class actions, and from the briefing and the Court's decisions on two sets of motions to dismiss.

The settlements provide immediate and significant benefits to members of the Settlement Class, and emove the risks that continued litigation of this matter would have entailed. Further, the proposed Settlement Class satisfies the requirements of Rule 23, as this Court previously concluded when it granted preliminary approval of all of the settlements.

Finally, notice was disseminated in accordance with the Court's October 30, 2015 Order, Dkt. No. 426, and the form and method of dissemination of the notice satisfy Rule 23 and due process, as the Court also previously determined. Accordingly, plaintiffs respectfully submit that the Court should grant final

approval of the settlements, finally certify the Settlement Class, approve the plan of distribution, and find that the notice as disseminated meets the requirements of Rule 23 and due process.

II. FACTUAL AND PROCEDURAL BACKGROUND

In March 2012, the first civil case was filed alleging that defendants engaged in a conspiracy to unlawfully manipulate interest rates associated with TSCs sold at public auctions throughout New Jersey. Defendants were alleged to have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, as well as various state laws. Certain defendants have pled guilty to violating Section 1 of the Sherman Act by participating in a conspiracy to rig bids and allocate customers at certain public tax lien auctions in New Jersey.[2] In September 2012, the consolidated proceeding captioned *In re New Jersey Tax Sales Certificates Antitrust Litig.*, No. 3:12-cv-1893-MAS-TJB, was reassigned to this Court.

Some defendants settled early and provided extensive cooperation, including providing documentary evidence of rigged auctions. *See, e.g.*, *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) (discussing such "ice-breaker" settlements and noting that they can "bring other defendants to the point

[2] A chart on page 7 of this brief shows which defendants pled guilty. Paragraphs 220-238 of plaintiffs' First Amended Consolidated Master Class Action Complaint, filed January 6, 2014 ("FAC"), contain a narrative description of the guilty pleas. Dkt. No. 320. After the filing of the FAC, there was an additional guilty plea. *See* Dkt. No. 360.

of serious negotiations. That is precisely what occurred in this case.") (citation omitted). These included the Butler/Farber Defendants, the Mercer Defendants, and defendants Rothman, Pisciotta, Collins, and May. *See* Dkt. No. 266-2.

The remaining defendants filed Rule 12(b)(6) motions. After voluminous briefing and an extensive oral argument, the Court granted those motions on October 23, 2013 and dismissed plaintiffs' Consolidated Amended Complaint with leave to replead (other than as to one of plaintiffs' claims under the New Jersey Tax Sale Law, N.J.S.A. 54:5-52 *et seq*.,which was dismissed with prejudice). Dkt. Nos. 300, 301. Plaintiffs then filed a First Amended Consolidated Complaint on January 6, 2014, which (among other things) incorporated information that plaintiffs obtained from the early-settling, cooperating defendants. Dkt. No. 320.

Thereafter, plaintiffs reached settlements with other defendants. Those included the Sass Defendants, the Crusader Defendants, the Phoenix Defendants, and Plymouth, *see* Dkt. No.319-2, as well as defendants American Tax Funding, Remick, Stein, and Xetahlis, *see* Dkt. No. 369-2. All of these defendants, like the ice-breaker defendants, agreed to provide cooperation against the defendants against whom the litigation was continuing.

On March 14, 2014, those defendants who had not settled—the Crestar Defendants, Mooring, the BankAtlantic Defendants, the PAM Defendants, the Wolfson Defendants, the DelVecchio Defendants-- filed a new round of Rule

12(b)(6) motions, Dkt. Nos. 340, 341, 342, 343, 344, 345, as well as a motion to stay that was filed by defendant Mastellone, Dkt. No. 347. After extensive briefing, the Court on October 31, 2014 denied Mastellone's motion to stay and granted in part and denied the motions to dismiss, dismissing plaintiffs' state law claims with prejudice, while sustaining the Sherman Act claims. Dkt. No. 375.

Plaintiffs then achieved settlements with each of those remaining defendants. In the case of defendant Mastellone, an all-day mediation with Bruce I. Goldstein, Esq., a distinguished attorney and experienced mediator whom the Court appointed, was required before a settlement could be reached. Dkt. No. 399.

As discussed in more detail in the accompanying Joint Declaration of Settlement Class and Liaison Counsel ("Joint Decl."), and in Declarations submitted by plaintiffs in connection with preliminary approval of the settlements, Dkt. Nos. 266-2, 319-2, 369-2, 399-2, the process of negotiating the settlements was a lengthy and arduous one, in some cases lasting over two years. At in-person and telephonic meetings, including, as to defendant Mastellone, the mediation with Mr. Goldstein, the terms of each separate settlement agreement were vigorously negotiated among sophisticated counsel experienced in antitrust law and class actions. The Court granted preliminary approval, and preliminarily certified settlement classes as to each of the settlements. Plaintiffs now seek final approval of those settlements.

A. THE SETTLEMENT AGREEMENTS

The settlements resolve all claims against defendants for their roles in the alleged conspiracy to manipulate interest rates associated with TSCs sold at public auctions in New Jersey between January 1, 1998 and February 28, 2009 (the "Class Period"). The proposed Settlement Class in all agreements is defined as:

> 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 at a public auction in the State of New Jersey at an interest rate above zero percent.

The chart below shows the monetary payment that each defendant or defendant group agreed to make. These amounts were negotiated and arrived at as a result of a thorough weighing of the strengths and weaknesses of the parties' positions in this case, an evaluation of the economic harm that each defendant allegedly inflicted, the amount of commerce in which each defendant engaged, and and the financial condition of each defendant. *See* Joint Decl., ¶¶105-294.

The chart also shows how much those defendants who pled guilty paid to the Government in connection with that guilty plea, where available. In three out of four instances (the exception being the Crusader Defendants, whose financial condition limited their ability to pay in this case, Joint Decl., ¶178), plaintiffs obtained a far greater sum from defendants in settlement of this civil action than the Government did in resolving the criminal charges. In total, the nearly $10

million in settlement payments here dwarfs the $2,055,000 in total fines that the Government has imposed on defendants thus far (*see* Joint Decl., ¶8):

Defendant	Settlement Date	Settlement Payment	Discount Offered	Pled Guilty	Fine Paid if Guilty Plea
Defendant Robert E. Rothman	12/20/2012	$200,000	10% (on accrued interest only)	Rothman	Sentnencing pending
The Butler and Farber Defendants	12/28/2012	$115,000	10%	Farber Butler DSBD	Sentencing pending
Defendant Richard J. Pisciotta, Jr.	3/8/2013	$100,000	12%	Pisciotta	Sentencing pending
Defendant William A. Collins	3/12/2013	$170,000	10%	Collins	Sentencing pending
Defendant Isadore H. May	4/11/2013	$120,000	10%	May	Sentencing pending
The Mercer Defendants	4/23/2013	$250,000	15%	Mercer	$15,000
The Crusader Defendants	8/14/13	$1,650,000	15%	Stein Crusader	$2,000,000
The Sass Defendants	9/10/2013	$3,400,000	15%	Hruby Jessani	Sentencing pending
Defendant Plymouth Park	10/22/2013	$1,500,000	15%		
The Phoenix Defendants	12/17/2013	$225,000	15%		
Defendant Norman T. Remick	1/13/2014	$135,000	15%	Remick	$20,000
Defendant American Tax Funding	2/14/2014	$350,000	up to 15%		
Defendant Robert W. Stein	3/19/2014	$115,000	No TSCs still held	Stein	Sentencing pending
Defendant Lambros Xethalis	4/1/2014	--	No TSCs still held		
The Crestar Defendants	12/22/2014	$80,000	up to 15%	Farber Butler	Sentencing pending
The Mooring Defendants	2/5/2015	$300,000	15%		
Defendant Michael Mastellone	2/13/2015	$115,000	15%	Mastellone	Sentencing pending
The Del Vecchio Defendants	2/17/2015	$135,000	15%	DelVecchio	$20,000

The BankAtlantic Defendants	3/2/2015	$400,000	15%		
The PAM Defendants	3/2/2015	$100,000	15%		
The Wolfson Defendants	3/2/2015	$125,000	15%		

In addition to the monetary payments set forth above, and again as shown in the chart, every defendant who still holds TSCs (only defendants Stein and Xethalis do not) has agreed to provide discounts of up to 15% on the redemption amounts for Settlement Class Members who seek to redeem those TSCs. In that regard, as reflected in the settlement agreements that were previously submitted to the Court, each defendant has agreed to the following after final approval of the Settlement Agreements:

1) Not to initiate foreclosure proceedings for 90 days following final approval;

2) Within 30 days following final approval, to notify each property owner subject to a TSC purchased by the defendant at a public auction in New Jersey at an interest rate above 0% and still held by the defendant, of this discount offer;

3) To permit the property owner, within 45 days from the date of that notification, to redeem the tax lien for 15% off of the total amount owed (excluding statutory attorneys fees).[3]

Finally, every defendant agreed to provide cooperation to plaintiffs, assisting Interim Class Counsel in pursuing other defendants. Such cooperation was "a

[3] These provisions are not triggered until final approval. The notices regarding discounts on future redemption will be sent to all relevant property owners within 30 days of final approval of the settlement agreements.

substantial benefit to the class[ ] and stongly militates toward approval" of settlements. *Linerboard*, 292 F. Supp. 2d at 643.

Plaintiffs allege that defendants colluded to manipulate the *interest rates* associated with TSCs. Plaintiffs do not allege, and could not allege, for purposes of the antitrust claims, that the principal associated with each Settlement Class Member's TSC was colluded upon or that the principal was unlawful in any way (and the Court dismissed, with prejudice, plaintiffs' state law claims seeking to challenge the lien process). However, because the discounts generally extend not only to the interest rates, but also to the principal, acceptance of the discount likely will, by itself, result in relief that may exceed a Settlement Class Member's single damages on his, her, or its antitrust claim.

In exchange for these significant benefits to Settlement Class Members, the settlements each release defendants from all claims concerning any agreement or understanding among defendants to rig bids or allocate tax liens in connection with the public auction of TSCs in New Jersey during the Class Period. The releases do not, however, include any conduct or right of action unrelated to the released claims, or any claims of Settlement Class Members outside of the Class Period.

B. THE NOTICE PROGRAM

Through a competitive bidding process pursuant to which Interim Class Counsel solicited bids from four different vendors, Interim Class Counsel selected,

and the Court approved, Gilardi & Co. as settlement notice and claims administrator. Joint Decl., ¶317. The Court allowed Interim Class Counsel to defer notice of the previous settlements while an outside vendor, LienSource, gathered data and information on affected property owners throughout New Jersey.

As discussed in more detail in the Joint Decl., ¶¶318-328, LienSource made a comprehensive effort to contact all 566 New Jersey municipalities to gather relevant information on affected property owners whose properties were the subject of a lien sold at a municipal auction in New Jersey during the Class Period. Because of difficulties related to the data collection, including the failure of some municipalities to respond to LienSource's repeated requests for the data, LienSource was able to capture full address and other data for only about 300 of the 566 municipalities in New Jersey.

In addition to the LienSource data, plaintiffs collected class member address information from a number of defendants. Joint Decl., ¶329. Thus, mailing address information is available for a vast percentage of Settlement Class Members, *id*., and direct mail notice by postcard is a key component of a larger notice program that plaintiffs proposed and the Court approved.

To supplement the direct mail notice, a dedicated settlement website, www.njtaxliensettlements.com, has been established where copies of the full notice that the Court approved, as well as other case documents, are available. *See*

Joint Decl., ¶330-331. There is also a toll-free number that Settlement Class Members can call for further information. *Id.*, ¶330. A short form, summary notice was ordered to be published, and was in fact published, on the Internet and in New Jersey newspapers, as ordered by the Court. Besides all this, the notice program has also included various targeted search engine and other technological tools to assist in reaching Settlement Class Members. Plaintiffs will submit a Declaration with their reply papers that details the full notice program.

III. ARGUMENT

A. THIS COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENTS

Settlement spares litigants the uncertainty, delay and expense of a trial, and reduces the burden on judicial resources. As a result, "[c]ompromises of disputed claims are favored by the courts." *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910). This is "particularly [true] in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995); *see also Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (similar); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged").

There is generally "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class is presented for court approval." Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions*, §11:41, at 90 (4th Ed. 2002). Counsel's judgment that the settlement is fair and reasonable is entitled to great weight. *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997) (citation omitted) (court is "entitled to rely upon the judgment of experienced counsel for the parties")), *aff'd*, 148 F.3d 283 (3d Cir. 1998).

Continued litigation of this case would be long, complex, expensive, and a burden to this Court's docket, yet another factor favoring approval. Approving the settlements will reduce that litigation burden. *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297, 1300-01 (D.N.J. 1995) (burden on crowded court dockets to be considered), *aff'd*, 66 F.3d 314 (3d Cir. 1995).

1. The Settlements Are Fair, Reasonable, and Adequate

Before a settlement of a class action can be finally approved, the Court must determine "after a hearing" that it is "fair, reasonable, and adequate." *See* FED. R. CIV. P. 23(e)(2); *In re Prudential*, 148 F.3d at 316. "'Acting as a fiduciary responsible for protecting the rights of absent class members, the Court is required

to 'independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished.'" *In re Philips/Magnavox TV Litig*., 2012 U.S. Dist. LEXIS 67287, at *22 (D.N.J. May 14, 2012) (quoting *In re Cendant Corp. Litig*., 264 F.3d 201, 231 (3d Cir. 2001)). The Court must also have "direct[ed] notice in a reasonable manner to all class members who would be bound by the proposal." *See* FED. R. CIV. P. 23(e)(1).

The Third Circuit has directed the district courts to consider the following non-exhaustive list of factors in deciding whether to approve a proposed class action settlement:

> (1) the complexity, expense and likely duration of the litigation . . .; (2) the reaction of the class to the settlement . . .; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery. . . ; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation . . . .

In re Prudential, 148 F.3d at 317 (quoting *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).

In *Prudential*, the Third Circuit cited some additional factors to be considered "when appropriate." *Id*. at 323. The *Prudential* factors relevant here include "the extent of discovery on the merits, and other factors that bear on the ability to assess

the probably outcome of a trial on the merits of liability and individual damages," "whether class or subclass members are accorded the right to opt out of the settlement," "whether any provisions for attorneys'fees are reasonable," and "whether the procedure for processing individual claims under the settlement is fair and reasonable." *Id.*

Applying the *Girsh* and *Prudential* factors to these settlements, it is respectfully submitted that the Court should find them fair, reasonable, and adequate. Accordingly, the Court should grant final approval.

1. Complexity, Expense and Likely Duration of the Litigation

The first *Girsh* factor assesses "'the probable costs, in both time and money, of continued litigation.'" *In re Cendant*, 264 F.3d at 233 (quoting *In re GMC*, 55 F.3d at 812). This Court has long "consider[ed] the vagaries of litigation and compare[d] the significance of immediate recovery by way of compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *Bullock v. Administrator of Kircher's Estate*, 84 F.R.D. 1, 10-11 (D.N.J. 1979) (citation omitted).

The antitrust claims advanced on behalf of the Settlement Class are, by definition, complex. *E.g.*, *In re Processed Egg Prods. Antitrust Litig.*, 302 F.R.D. 309, 356 (E.D. Pa. 2014) ("antitrust suits, like this one, are often complex"). The case has been vigorously litigated, including through two sets of extensive motions

to dismiss, since 2012. Absent a settlement, defendants would surely have opposed class certification and moved for summary judgment on the merits. The parties would also have needed to engage in lengthy fact and expert discovery.

Continued litigation would be complex, time-consuming, and expensive, with no certainty of a favorable outcome. *See*, *e.g.*, *Weber v. Gov't Employees Ins. Co.*, 262 F.R.D. 431, 444 (D.N.J. 2009) (where discovery and dispositive motions would have "consume[d] no insubstantial amount of the parties' resources," this factor favored settlement approval). The settlements offer substantial benefits for Settlement Class Members, with none of the delay, risk, and uncertainty of ongoing litigation. Thus, this *Girsh* factor strongly favors final settlement approval. *In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *24-25.

2. The Reaction of the Settlement Class

The second factor "attempts to gauge whether members of the class support the settlement," *In re Prudential*, 148 F.3d at 318, and the Settlement Class's support "creates a strong presumption . . . in favor of the Settlement." *In re Cendant*, 264 F.3d at 235. A "small number of objections by Class Members to the Settlement weighs in favor of approval." *In re Ins. Brokerage Antitrust Litig.*, 2012 U.S. Dist. LEXIS 46496, at *69 (D.N.J. Mar. 30, 2012) (citations omitted).

The deadline by which Settlement Class Members may object to or exclude themselves is March 14, 2016. To date, however, no one has opted to exclude

themselves. Only Arlene Davies (a former plaintiff who has since turned against plaintiffs' cause and decided to pursue her own claim) and others represented by the same counsel, have expressed opposition to the settlements, *see*, *e.g.*, Joint Decl., ¶¶175-248 (describing Ms. Davies' opposition to preliminary settlement approvals), ¶295 n.238 (describing history of Ms. Davies' role in this case), though neither they nor anyone else have complied with the procedures established by this Court for actual objectors. Plaintiffs will be better able to address this *Girsh* factor on reply, following the deadline by which Settlement Class Members are to object to or opt out of the settlements.

3. The Stage of the Proceedings and the Discovery Completed.

The third *Girsh* factor "'captures the degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *In re Cendant*, 264 F.3d at 235 (quoting *In re GMC*, 55 F.3d at 813). The parties can adequately appreciate the merits of the case before negotiating when "substantial briefing and research on the legal issues has taken place." *McAlaren v. Swift Transp. Co.*, 2010 U.S. Dist. LEXIS 7877, at *5-6, 19-22 (E.D. Pa. Jan. 29, 2010) (ordering final approval of a class action settlement "before discovery" but after parties had briefed a motion to dismiss and amended the Complaint). Even where settlement occurs "at an early stage in the litigation

process," counsel can have a sufficient understanding of the matter to justify settlement. *See, e.g.*, *Weissman v. Philip C. Gutworth, P.A.*, 2015 U.S. Dist. LEXIS 67477, at *13 (D.N.J. May 26, 2015*);*[4] *see also In re Processed Egg Prods. Antitrust Litig*., 284 F.R.D. 249, 267 (E.D. Pa. 2012) (granting final settlement approval and noting that "although no formal discovery was conducted …, [class counsel] conducted informal discovery, including, *inter alia*, independently investigating the merits prior to filing the complaint (with additional investigation prior to filing amended complaints ….").

To begin with, Interim Class Counsel collectively possess extensive experience in litigating antitrust class actions, so they entered settlement negotiations in this case with a keen understanding of the complexities of such cases. In determining to enter into the earliest group of "ice-breaker" settlements, nearly all of which involved individual defendants whose role in the conspiracy was relatively small, Interim Class Counsel had the benefit not only of their experience in other cases, but their pre-suit investigation and informal discovery of those defendants as well. *See, e.g.*, Joint Decl., ¶¶57-59, 67, 110, 118, 120, 130, 140, 150, 160.

[4] In *Weissman*, class counsel had spent a total of only 37.2 hours on the entire case. *Id*. at *17. Thus, far less discovery surely occurred there than the extensive discovery from multiple cooperating defendants that took place here.

For the subsequent settlements, Interim Class Counsel had an even more detailed appreciation of the claims and defenses in the case, having obtained substantial cooperation and documentation from early-settling defendants, having briefed and argued two rounds of multiple dispositive motions, having reviewed the Court's opinions on those motions, and having participated in settlement discussions with the assistance of the Court. *See Rossi v. P&G*, 2013 U.S. Dist. LEXIS 143180, at *21 (D.N.J. Oct. 3, 2013) (noting that "stage of proceedings" factor favored approval although settlement was reached "in the early stages of discovery," since plaintiffs had done "an extensive pre-suit investigation," received some discovery from defendant and its employees, and successfully opposed a motion to dismiss).

The substantial informal discovery from and cooperation of defendants, and the briefing, argument, and decisions on the dispositive motions, brought the case to a stage where Interim Class Counsel had a more than adequate understanding of the merits and the risks. *See Prudential*, 962 F. Supp. at 541-42 (rejecting argument that informal discovery was not enough to justify settlement), *aff'd*, 148 F.3d at 319; *O'Brien v. Brain Research Labs, LLC*, 2012 U.S. Dist. LEXIS 113809, at *50-52 (D.N.J. Aug. 9, 2012) (approving settlement reached just six weeks after lawsuit was filed; "While class counsel did not engage in formal discovery, the Court is satisfied that his pre-suit investigation and Defendant's

informal disclosures were sufficiently comprehensive to enable counsel to review the factual basis for the case and assess the risks of continued litigation."). This factor too points to final settlement approval.

4. The Risk of Failing to Establish Liability

In negotiating and reaching the settlements, Interim Class Counsel were aware of potential difficulties and risks associated with proving liability. Those defendants that had not entered into "ice-beaker" settlements prevailed on their first set of motions to dismiss in their entirety. After plaintiffs filed an amended pleading, the defendants who remained succeeded in winning dismissal of plaintiffs' state law claims. Only plaintiffs' Sherman Act claim survived.

While Interim Class Counsel believed that their case was meritorious, continued litigation posed significant risks on liability. *See Weber*, 262 F.R.D. at 445 ("a jury trial carries an inherent risk for both sides of a case"). Though some defendants pled guilty, many others, including virtually all of the largest defendants, did not. Joint Decl., ¶8 (listing which defendants did and did not plead guilty); *see* above at 7-8 (chart showing guilty pleaders).

In 2015, the Wolfson Defendants went to trial on the criminal charges, and all but one of those defendants won not guilty verdicts. Joint Decl., ¶37. Though the standard of proof in this civil case is not as demanding as the standard for

criminal liability, that jury verdict was a warning that this case might have failed completely as to some or all defendants if litigation continued.

Though all litigation has risks, and even the most seemingly solid cases can be and have been lost, antitrust litigation is especially fraught with pitfalls for plaintiffs. *See, e.g.*, *In re Elec. Carbon Prods.Antitrust Litig.*, 447 F. Supp.2d 389, 400 (D.N.J. 2006) ("As in any antitrust case, this one presents substantial risks of non-recovery, even after preliminary victories were achieved"). The settlements avoid all of those potential snares and deliver immediate and substantial benefits.

In assessing the settlements, the Court should balance the benefits afforded the Settlement Class, including the immediacy and certainty of a recovery for a definitive settlement class against the risks of continued litigation. *See In re Prudential*, 148 F.3d at 317 (noting that "settlement provide[s] class members the opportunity to file claims immediately after court approval of the settlement, rather than waiting through what no doubt would be protracted litigation" (citation omitted)). In light of the risks associated with ultimately proving liability, this *Girsh* factor supports approval of the settlements.

5. The Risk of Establishing Damages

This factor, like the one before it, "'attempts to measure the expected value of litigating this action rather than settling it at the current time.'" *In re Cendant*, 264 F.3d at 238 (quoting *In re GMC*, 55 F.3d at 816). Even if plaintiffs were to

establish liability, plaintiffs still would have likely met substantial challenges in proving damages. Especially in antitrust cases, the presentation of damage testimony is a complex matter. *In re Elec. Carbon Prods.*, 447 F. Supp. 2d at 401 (proving damages at trial "can become an esoteric exercise with unpredictable results").

While Interim Class Counsel believe that convincing testimony on damages could have been provided and that a judgment might ultimately have been obtained for the full amount of damages available under the law, it is certainly possible that, in the unavoidable "battle of experts," a jury might have disagreed with plaintiffs' position. *See In re Cendant*, 264 F.3d at 239 ("establishing damages at trial would lead to a 'battle of experts,' with each side presenting its figures to the jury and with no guarantee whom the jury would believe"). Accordingly, this *Girsh* factor supports approval of the settlements. *See In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *32-33.

6. The Risks of Maintaining the Class Action Through Trial, and the Ability of Defendants to Withstand Greater Judgment

Although plaintiffs believe that their antitrust claims are well-suited for treatment on a class-wide basis, defendants had argued, as early as the briefing on motions to dismiss, that certification would be inappropriate because individual issues predominate over common issues, and that manageability issues would preclude class treatment. Class certification would have been, at best, a "battle of

the experts." *See In re Hydrogen Peroxide Antitrust Litig*., 552 F.3d 305, 323-24 (3d Cir. 2008) (requiring courts to weigh competing expert testimony in ruling on motion for class certification). It is clear that class certification would have been vigorously disputed, and whether plaintiffs would have obtained, and therafter maintained, certification was unclear. Accordingly, the sixth *Girsh* factor counsels in favor of final settlement approval.

The inability of a number of defendants to withstand a greater judgment also supports final approval. The financial condition of those defendants, especially many of the individual defendants, ATF, Mooring, and the Crusader Defendants, left them unable to offer more in settlement, as plaintiffs carefully explored in settlement negotiations. *See*, *e.g*., Joint Decl., ¶¶178, 215, 224, 269, 278, 287. Accordingly, the seventh *Girsh* factor also supports approval, or is, at worst, neutral. *See also In re Philips/Magnavox*, 2012 U.S. Dist. LEXIS 67287, at *35 ("Plaintiffs acknowledge that there is currently no indication that Defendant here would be unable to withstand a more significant judgment. Nevertheless, the Court is satisfied that the Settlement is fair, reasonable, and adequate, despite the possibility that Philips could pay a greater sum.") (internal citations omitted).

7. The Range of Reasonableness of the Settlement to a Possible Recovery in Light of All the Attendant Risks of Litigation

The eighth and ninth *Girsh* factors— the range of reasonableness considering the best possible recovery and the risks of litigation— also support

approval of the settlements. The determination of a "reasonable" settlement is not susceptible to a mathematical equation yielding a particularized sum. Rather, this inquiry evaluates the recovery "in light of all the risks considered under *Girsh*." *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 263 (D.N.J. 2000).

Given the risks of this case, on the merits and on class certification, as well as the harm caused by defendants, an aggregate settlement amount of $9,585,000 (plus accrued interest on those settlement funds), plus the value of the discounts on redemptions of TSCs currently held by defendants, is well within the range of reasonableness. *See In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 313 n.17 (N.D. Ga. 1993) (noting that it is proper for courts to consider settlements in aggregate, rather than individually, especially where some settlements were "ice-breakers").

8. The Prudential Factors

As discussed above, the *Prudential* factors relevant here include "the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages," "whether class or subclass members are accorded the right to opt out of the settlement," "whether any provisions for attorneys'fees are reasonable," and "whether the procedure for processing individual claims under the settlement is fair

and reasonable." *Prudential*, 148 F.3d at 323. All of them favor approval of the settlements.

The extent of discovery and other factors bearing on the Court's ability to assess the outcome of a trial largely overlap with the *Girsh* factors involving the stage of the proceedings, the amount of discovery obtained, and the risks attendant to the issues of liability, dmages, and class certification. For the reasons stated above in connection with those *Girsh* factors, this *Prudential* factor weighs in favor of settlement approval.

Settlement Class Members are afforded the right to opt out of any or all of the settlements. Joint Decl., ¶¶298-299 (referring to this right).[5] That *Prudential* factor supports approval of the settlements.

Each settlement provides that whatever award of attorneys' fees and reimbursement of expenses to Interim Class Counsel is made by this Court will be paid out of the settlement fund. No fixed percentage that will go toward attorneys' fees and expenses has been specified in any settlement. Rather, Interim Class Counsel will apply for fees in accordance with Third Circuit precedent, and the Court will make an award that it finds appropriate. Providing for a fee application

[5] The settlement agreements themselves, previously submitted to the Court in connection with plaintiffs' motions for preliminary approval, expressly provide for the right to opt out, as Rule 23 requires.

in accordance with existing standards is certainly reasonable, and this *Prudential* factor thus likewise supports final approval.

Finally, the procedure for processing claims for settlement benefits is fair and reasonable. A claim form, in as simple a form as possible given the nature of the case, is being required in order to obtain cash from the settlement fund. *See* Joint Decl., ¶¶299-300 (describing the use of claim forms). Claim forms are routinely used in class action settlements. Accordingly, this factor, like all the other applicable *Prudential* factors, counsels in favor of final settlement approval.

Given the size of the Settlement Class, the potential benefits available, and the risks in proving liability and damages and in obtaining class certification, the settlements fairly and adequately reward the class. Accordingly, the settlements are fair, adequate and reasonable under the *Girsh* factors. This Court should therefore grant final approval of the settlements.

B. THIS COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS

This Court preliminarily certified the proposed Settlement Class, rightly concluding that it met all requirements of Rule 23(a) and (b)(3). The Court also concluded that the Settlement Class is sufficiently ascertainable. All of those things are still true, and the Court should grant final settlement class certification.

1. The Settlement Class Is Numerous and Ascertainable

"No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). Here, although the exact number of potential Settlement Class Members is unknown, the information collected by LienSource and the data supplied by defendants confirms that there are thousands of Settlement Class Members.

The proposed Settlement Class also satisfies Rule 23's implicit requirement that a class's membership be ascertainable. *See, e.g.*, *Byrd v. Aaron's, Inc.*, 784 F.3d 154, 163 (3d Cir. 2015). Settlement Class membership is based upon the objective criterion of ownership of real property in New Jersey for which a TSC was issued and was purchased by a defendant during the Class Period, and for which the purchase was made at an interest rate above zero percent. As in *Byrd*, these objective criteria are determinable based on defendants' own records. The class is thus ascertainable.

2. There Are Common Questions of Law and Fact

The proposed Settlement Class also satisfies Rule 23(a)'s commonality requirement. "[A] finding of commonality does not require that all class members share identical claims." *In re Warfarin*, 391 F.3d at 530. "The commonality

requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Stewart*, 275 F.3d at 227 (quotation marks and emphasis omitted).

Here, there are common questions of law and fact that go to the central issue in this matter – whether defendants engaged in a conspiracy to manipulate interest rates associated with TSCs sold at public auctions in New Jersey, thereby injuring plaintiffs when they paid (or will be required to pay) more in interest payments than they would have paid absent the alleged bid-rigging conspiracy.

The allegations of the bid-rigging conspiracy give rise to numerous common questions of law or fact:

a. Whether defendants conspired with others to fix bids and allocate TSCs at auctions in New Jersey, in violation of the Sherman Act;

b. Whether defendants' conduct had the anticompetitive effect of reducing and unreasonably restraining the market for the purchase of TSCs;

c. The names of the individuals and entities who participated in the anticompetitive scheme;

d. The duration of the anticompetitive scheme;

e. The effect of defendants' conduct and the extent of injuries sustained; and

f. The amount of damages the anticompetitive scheme caused members of the class.

These questions revolve around the existence, scope, effectiveness, and implementation of defendants' conspiracy and are central to the claims of each member of the Settlement Class. Thus, the proposed Settlement Class satisfies the commonality requirement.

3. The Named Plaintiffs' Claims Are Typical

The proposed Settlement Class also satisfies Rule 23(a)'s typicality requirement. The "typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals." *In re Warfarin*, 391 F.3d at 531. "Typicality lies where there is a strong similarity of legal theories or where the claims of the class representatives and the class members arise from the same alleged course of conduct by the defendant." *Varacallo*, 226 F.R.D. at 231 (quoting *In re Prudential*, 962 F. Supp. at 519).

In this case, the claims of the named plaintiffs are typical of the claims of the proposed Settlement Class Members because they all arise from the same alleged bid-rigging conspiracy that gives rise to the claims of the class. Plaintiffs assert the same legal claims on behalf of themselves and the proposed class. Defendants' bid-rigging scheme for TSCs is the basis for the claims of every named plaintiff and putative class member. Further, the group of named plaintiffs includes both

plaintiffs who have redeemed their liens and plaintiffs who are still subject to TSCs owned by defendants. These similarities satisfy Rule 23(a) typicality.

4. The Named Plaintiffs and Interim Class and Liaison Counsel Fairly and Adequately Represent the Interests of the Settlement Class

The named plaintiffs will "fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). The adequacy inquiry "assures that the named plaintiffs' claims are not antagonistic to the class and that the attorneys for the class representatives are experienced and qualified to prosecute the claims on behalf of the entire class." *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (quotation marks omitted).

Here, the interests of the named plaintiffs and the Settlement Class Members are aligned because they all suffered similar injury in the form of inflated interest rates due to the alleged collusion at TSC auctions. Plaintiffs have no interests that are antagonistic to the Settlement Class. Further, as this Court has previously recognized in appointing Interim Class and Liaison Counsel, and in granting preliminary approval of the settlements, Interim Class and Liaison Counsel are experienced class action litigators familiar with the legal and factual issues involved, and they have competently, aggressively, and successfully prosecuted this complex case, as the Court has seen. Thus, for settlement purposes, the adequacy requirement is satisfied.

5. The Proposed Settlement Class Satisfies Rule 23(b)(3)

Rule 23(b)(3) provides that a class may be certified if the Court finds that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The Settlement Class satisfies these predominance and superiority requirements.

a. Common Questions of Law and Fact Predominate

The common questions identified above predominate over any individual questions in this case. "Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem Prods., Inc. v.Windsor*, 521 U.S. 591, 625 (1997). "The focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 298, 345 (3d Cir. 2011) (explaining that to show that common questions predominate with respect to antitrust injury, plaintiffs must demonstrate that the element of antitrust impact is "capable of proof at trial through evidence that is common to the class rather than individual to its members") (internal citation omitted).

Here, plaintiffs would necessarily have focused on the conduct of defendants, rather than the conduct of individual class members, to demonstrate

that the conspiracy existed. As in other antitrust cases, proof of how defendants implemented and enforced their conspiracy would be common for all Settlement Class Members, because it would be predicated on establishing the existence of defendants' conspiracy to manipulate TSC interest rates across auctions during the Class Period. *Sullivan*, 667 F.3d at 298; *see, e.g.*, *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 268 (3d Cir. 2009) (finding predominance by determining that the elements of a Sherman Act violation for concerted anticompetitive activity focused on "the conduct of the defendants"); *see also In re Linerboard Antitrust Litig.*, 305 F.3d 145, 163 (3d Cir. 2002) ("[C]ommon issues [ ] predominate here because the inquiry necessarily focuses on defendants' conduct, that is, what defendants did rather than what plaintiffs did.") (internal citation omitted). As a result, common issues relating to the existence and effect of the alleged conspiracy to manipulate TSC interest rates predominate over any questions arguably affecting individual Settlement Class Members.

b. A Class Action Is Superior to Other Methods of Adjudication

Rule 23(b)(3) also requires a showing that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Class adjudication of the claims here would be superior to thousands of individual trials. The class action mechanism is superior to its alternatives, particularly with respect to settlements, because it ensures that the claims of the absent class members will

be resolved efficiently. *O'Brien*, 2012 U.S. Dist. LEXIS 113809, at *27 (finding superiority because, among other things, "denying certification would require each consumer to file suit individually at the expense of judicial economy").

Absent class certification, many Settlement Class Members here would go uncompensated because they would lack adequate monetary incentives to pursue their claims individually. *See Varacallo*, 226 F.R.D. at 233 (finding superiority where it was "unlikely that individual Class Members would have the resources to pursue successful litigation on their own"). The prosecution of separate actions by individual members of the proposed class would impose heavy burdens on the courts and the parties, and would create a risk of inconsistent rulings, which further favors class treatment. Moreover, the interests of class members in individually controlling the prosecution of separate claims are outweighed by the efficiency of the class mechanism. Therefore, a class action is the superior method of adjudicating the claims raised in this case.

Because the proposed Settlement Class meets the requirements of Rule 23(a) and 23(b)(3), final certification of the Settlement Class should be granted.

C. THE NOTICE GIVEN WAS APPROPRIATE, AS IT FULLY COMPLIED WITH THIS COURT'S PREVIOUS ORDER, AND THE PLAN OF DISTRIBUTION SHOULD BE APPROVED

Rule 23(c)(2) provides that class members must receive the "best notice that is practicable under the circumstances, including individual notice to all members

who can be identified through reasonable efforts." Similarly, Rule 23(e)(1) requires a court to "direct notice in a reasonable manner to all class members who would be bound by the propos[ed] [settlement]." "First-class mail and publication have consistently been considered sufficient to satisfy the notice requirements of Rule 23[(c)] and Rule 23(3) for advising class members of a proposed settlement and of their right to file claims." *Zimmer Paper Prod's, Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985).

As discussed above at 10, the information collected by LienSource and the data supplied by many defendants, in combination, allows for the vast majority of Settlement Class Members to be reached by mail. The extensive publication notice, the dedicated settlement website, and the other electronic components of the notice campaign that the Court ordered to occur only enhance further the sufficiency of the notice, as the Court previously concluded. Since the notice program was fully and timely carried out as required, the Court should reaffirm its prior ruling that the notice program satisfies Rule 23 and due process.

The proposed Plan of Allocation similarly merits final approval. Plans of allocation, like settlement agreements, are to be approved if fair, reasonable, and adequate. *In re Computron Software, Inc. Sec. Litig.*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998). "The court's principal obligation is simply to ensure that the fund

distribution is fair and reasonable as to all participants in the fund." *Walsh v. Great A&P Tea Co.*, 726 F.2d 926, 964 (3d Cir. 1983).

Here, it is alleged that defendants' conspiracy resulted in inflated interest rates associated with TSCs purchased at public auctions in the period January 1, 1998 through February 2009. Thus, each Settlement Class Member's share of the settlement funds is based on the amount of interest associated with his, her, or its lien, over the value of the interest associated with all Settlement Class Members' liens during the Class Period. This calculation will yield a fractional percentage, which will then be multiplied against the available settlement funds, yielding the appropriate share of the available settlement funds. Joint Decl., ¶300.

The Plan of Allocation treats all similary situated Settlement Class Members equally, and ensures that everyone will receive a share of the settlement funds on the basis of their applicable loss. Since that is eminently fair and reasonable, the Plan of Allocation should be approved. *Computron*, 6 F. Supp. 2d at 321 (approving plan of allocation that provided class members with "a pro rata share of their defined loss"); *In re Par Pharm. Sec. Litig.*, 2013 U.S. Dist. LEXIS 106150, at *25-26 (D.N.J. July 29, 2013) (similar).

IV. CONCLUSION

For the foregoing reasons, plaintiffs respectfully ask this Court to: (1) grant final approval of the settlements: (2) grant final certification of the Settlement

Class; (3) reaffirm that the notice program satisfied Rule 23 and due process; and (4) approve the Plan of Allocation.

LITE DEPALMA GREENBERG, LLC

Dated: February 16, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Plaintiffs' Notice of Motion for Final SettlementApproval; Supporting Memorandum of Law and Joint Declarations of Settlement Class and Liaison Counsel in support thereof; proposed form of Order; and Certificate of Service were electronically filed and served upon all counsel via the Court's CM/ECF filing system.

Dated: February 16, 2016

/s/ Bruce D. Greenberg
Bruce D. Greenberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE NEW JERSEY TAX SALES CERTIFICATES ANTITRUST LITIG.	Master Docket No. 3:12-CV-01893-MAS-TJB

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENTS WITH ALL DEFENDANTS AND PLAN OF ALLOCATION, AND ENTRY OF FINAL JUDGMENT

THIS MATTER having been opened to the Court by Interim Class and Liaison Counsel (on behalf of the Named Plaintiffs as set forth below) by way of their motion for final approval of the proposed settlements and the Plan of Allocation in the above action; and

WHEREAS, the Court has reviewed and considered the motion for final approval and supporting materials filed by plaintiffs, and has reviewed the pleadings and other papers on file in this action, and a hearing on the fairness of the settlements was held on April 25, 2016;

WHEREAS, the Court has previously entered the following orders preliminarily approving settlements with all defendants: August 13, 2013 Order preliminarily approving Butler/Farber, Pisciotta, May, Burlington, and Collins settlements [ECF No. 276]; August 13, 2013 Order preliminarily approving Rothman settlement [ECF No. 277]; March 11, 2014 Report and Recommendation Recommending Approval and Appointment of Settlement Class Counsel for the

Sass, Crusader, Plymouth Park and Phoenix settlements [ECF No. 339] and October 31, 2014 Order adopting Report and Recommendation [ECF No. 376]; January 29, 2015 Order preliminarily approving settlements with Remick, ATF, Stein and Xethalis [ECF No. 394]; and the October 30, 2015 Order preliminarily approving settlements with Crestar, Mooring, Mastellone, Del Vecchio, BankAtlantic, PAM and Wolfson [ECF No. 426];[1]

WHEREAS, in the Court's October 30, 2015 Preliminary Approval Order, as amended by the Court's December 18, 2015 Letter Order approving a revised notice [ECF No. 432], the Court also approved plaintiffs' proposed notice plan and authorized the dissemination of notice of the Settlements to the Settlement Class; and

WHEREAS, this Court has fully considered the record and the requirements of law, and good cause appearing;

IT IS THIS __ day of _____, 2016

ORDERED that the Settlements with all defendants, and the proposed Plan of Allocation, are hereby **FINALLY APPROVED**. The Court further finds and orders as follows:

[1] The settlements with all Defendants shall be referred to collectively as the "Settlements," and the agreements with regard to the Settlements shall be collectively referred to as the "Settlement Agreements."

I. Final Approval of the Settlements

1. Terms capitalized in this Order shall have the same meaning as those capitalized in the Settlement Agreements.

2. The Settlements were the result of the parties' good-faith negotiations. The Settlements were entered into by experienced counsel and only after extensive arm's-length negotiations. With regard to one Settlement (the Mastellone settlement), it was only achieved after the involvement of an experienced mediator, Bruce I. Goldstein, Esq. The Settlements were not the result of collusion.

3. The Settlements each fall well within the range of reasonableness. The Settlements do not unreasonably favor the Named Plaintiffs or any segment of the proposed Settlement Class.

4. Because the Settlements meet the standards for final approval, and are fair, reasonable, and adequate, individually and in the aggregate, the Court grants final approval to the terms of the Settlements.

5. The following class of plaintiffs ("Settlement Class") is certified for settlement purposes only:

> 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%.

6. The Court now finally certifies the proposed Settlement Class, and finds that the requirements of Rule 23(a) are satisfied, for settlement purposes only, as follows:

a. Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so numerous that joinder of all members is impracticable.

b. Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that there are common issues of law and fact for the Settlement Class including:

(i) Whether defendants conspired with others to fix bids and allocate TSCs at auctions in New Jersey, in violation of the Sherman Act and New Jersey's Antitrust Act;

(ii) Whether defendants' conduct had the anticompetitive effect of reducing and unreasonably restraining the market for the purchase of TSCs;

(iii) The names of the individuals and entities who participated in the anticompetitive scheme;

(iv) The duration of the anticompetitive scheme;

(v) The effect of defendants' conduct and the extent of injuries sustained by plaintiffs and Class Members; and

(vi) The amount of damages the anticompetitive scheme caused members of the Class.

c. Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Named Plaintiffs are typical of the claims of the Settlement Class that they represent

in that the Named Plaintiffs allege that they sustained damages as a result of defendants' common course of conduct in violation of the antitrust laws.

d. Pursuant to Fed. R. Civ. P. 23(a)(4), the Named Plaintiffs will fairly and adequately protect and represent the interests of all members of the Settlement Class, and the interests of the Named Plaintiffs are not antagonistic to those of the Settlement Class. The Named Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

7. The Court further finds that the requirements of Rule 23(b)(3) are satisfied, as follows:

a. Questions of fact and law common to the members of the Settlement Class, as described above, predominate over questions that may affect only individual members; and

b. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

8. The Court hereby appoints the following Named Plaintiffs as class representatives for the Settlement Class: Gila Bauer as Trustee for the Gila Bauer Revocable Trust, Melissa Jacobs, Frances A. Schmidt and Donald W. Schmidt, and Son, Inc.

9. The Court appoints Hagens Berman Sobol Shapiro, LLP and Hausfeld LLP as Class Counsel and Settlement Class Counsel and Lite DePalma Greenberg, LLC as Liaison Counsel.

10. The persons and entities listed in the attached Exhibit A to this order have timely and validly requested exclusion from the Settlement Class, and are hereby excluded from the Settlement Class. Such excluded persons and entities are not bound by this Order and Final Judgment, and may not make any claim under the Settlement Agreements, or receive any benefits from the Settlement Agreements. Such excluded persons and entities may also not make any claim for any person or entity bound by the Settlements. Each Settlement Class member not listed in Exhibit A to this Order, however, shall be forever bound by the Settlement Agreements.

11. Any and all lawsuits pending against any of the Releasees asserting the Released Claims shall be dismissed with prejudice and without costs, except as provided for in the Settlement Agreements.

12. The Releasors are permanently enjoined and barred from instituting or pursuing any Released Claims in any of the Settlement Agreements, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state or federal court, or in any tribunal, agency or other authority or forum wherever located.

13. The Releasors release, discharge and covenant not to sue each Releasee with respect to any Released Claims.

14. This Order and Final Judgment does not release or compromise any claims against any person or entity that fall outside of the Released Claims.

15. Neither the Settlement Agreements, nor any of the negotiations, discussions or proceeding relating to the Settlement Agreements shall be:

a. Offered or received against any Releasor or Releasee as evidence of or construed as or deemed to be evidence of any presumption, concession or admission by any Releasor or Releasee of the truth of any fact alleged by plaintiffs or the validity of any claim that has been or could have been asserted in the action or in any other proceeding, or the deficiency of any defense that has been or could have been asserted in the Action or in any proceeding or of any alleged liability, negligence, fault, or wrongdoing of any Releasor or Releasee; or

b. Offered or received against any Releasor or Releasee, as evidence of a presumption, concession, or admission of any fault, misrepresentation or omission, with respect to any statement or written document approved or made by any Releasor or Releasee.

II. Notice of the Settlements to the Settlement Class

16. The October 30, 2015 Preliminary Approval Order [ECF No. 426], as supplemented by the December 18, 2015 Letter Order [ECF No. 432] outlined the form and manner by which plaintiffs would provide notice of the Settlements, the deadline by which members of the Settlement Class were to object or exclude themselves from the Settlements, and the date of the Fairness Hearing, as well as other related matters. The notice to the class included sending mailed notice of the Settlements directly to individual members of the Settlement Class who could be identified through reasonable effort, publication of a summary notice in multiple New Jersey newspapers, targeted internet advertising, and the establishment of a dedicated case website, www.njtaxliensettlements.com. Proof of this notice program was made by the filing of an affidavit from the notice and claims administrator, attesting under oath that notice to the class was carried out in accordance with the October 30, 2015 Preliminary Approval Order and the December 18, 2015 Letter Order. The Court finds that this method of notice was the most practicable under the circumstances, constituted sufficient notice, and meets the requirements of due process.

17. The Court also finds that the proposed Plan of Allocation, which was also disclosed in the notice sent to members of the Settlement Class, is fair,

reasonable and adequate, and otherwise meets the standards for preliminary approval. Therefore, the Court grants final approval to the Plan of Allocation.

III. Redemption Discounts to New Jersey Property Owners

18. With regard to the discounts being offered to certain New Jersey property owners by the defendants, the Court hereby authorizes the following:

a. **Robert Rothman.** Pursuant to paragraph 22 of the Rothman Settlement Agreement, the Court hereby authorizes a notice[2] to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by Rothman during the Class Period, and is still held by Rothman. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by Rothman to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 22 of the settlement agreement with Rothman. The tax collector shall be authorized to accept 10% off of the accrued interest on the normal

[2] The notice to be sent to those entitled to receive notice shall be in a form substantially the same as the form of the notice attached as exhibits F-H to the July 12, 2013 Declaration of Seth Gassman in Support of Motion for Preliminary Approval of Settlement, Preliminary Certification of Settlement Class, Appointment of Class Counsel as Settlement Class Counsel and Deferral of Class Notice [ECF No. 266-8-266-10].

redemption amount and to tender those monies to Rothman in accordance with the settlement agreement. Rothman shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

b. **William A. Collins.** Pursuant to paragraph 20 of the Collins Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by Collins during the Class Period, and is still held by Collins. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by Collins to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 20 of the settlement agreement with Collins. The tax collector shall be authorized to accept 90% of the redemption amount and to tender those monies to Collins in accordance with the settlement agreement. Collins shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

c. **The Mercer Defendants.** Pursuant to paragraph 22 of the Mercer Defendants Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by any of the Mercer Defendants during the Class Period, and is still held by any of the Mercer Defendants. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by any of the Mercer Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 22 of the settlement agreement with the Mercer Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the Mercer Defendants in accordance with the settlement agreement. The Mercer Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

d. **The Sass Defendants.** Pursuant to paragraph 25 of the Sass Defendants Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a

tax sale certificate issued with respect to their property that was purchased by any of the Sass Defendants during the Class Period, and is still held by any of the Sass Defendants. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by any of the Sass Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 25 of the settlement agreement with the Sass Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the Sass Defendants in accordance with the settlement agreement. The Sass Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

e. **The Crusader Defendants.** Pursuant to paragraph 22 of the Crusader Defendants Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by any of the Crusader Defendants during the Class Period, and is still held by any of the Crusader Defendants. Pursuant to N.J.S.A. 54:5-54.1,

the Court hereby authorizes every property owner who is the subject of such a lien held by any of the Crusader Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 22 of the settlement agreement with the Crusader Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the Crusader Defendants in accordance with the settlement agreement. The Crusader Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

f. **Plymouth Park.** Pursuant to paragraph 23 of the Plymouth Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by Plymouth during the Class Period, and is still held by Plymouth. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by Plymouth to redeem such lien through the relevant municipality as required by law. The redemption shall be performed

in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 23 of the settlement agreement with Plymouth. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to Plymouth in accordance with the settlement agreement. Plymouth shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

g. **Remick.** Pursuant to paragraph 23 of the Remick Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by Remick during the Class Period, and is still held by Remick. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by Remick to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 23 of the settlement agreement with Remick. The tax collector shall be authorized to accept 85% of the redemption amount and to tender those monies to Remick in

accordance with the settlement agreement. Remick shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

h. **ATF.** Pursuant to paragraph 23 of the ATF Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by ATF during the Class Period, and is still held by ATF. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by ATF to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 23 of the settlement agreement with ATF. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to ATF in accordance with the settlement agreement. ATF shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

i. **The Crestar Defendants.** Pursuant to paragraph 23 of the Crestar Defendants Settlement Agreement, the Court hereby authorizes a

notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by any of the Crestar Defendants during the Class Period, and is still held by any of the Crestar Defendants. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by any of the Crestar Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 23 of the settlement agreement with the Crestar Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the Crestar Defendants in accordance with the settlement agreement. The Crestar Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

j. **The Del Vecchio Defendants.** Pursuant to paragraph 23 of the Del Vecchio Defendants Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by any of the Del Vecchio Defendants during the Class Period,

and is still held by any of the Del Vecchio Defendants. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by any of the Del Vecchio Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 23 of the settlement agreement with the Del Vecchio Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the Del Vecchio Defendants in accordance with the settlement agreement. The Del Vecchio Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

k. **The BankAtlantic and PAM Defendants.** Pursuant to paragraph 24 of the BankAtlantic and PAM Defendants Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by any of the BankAtlantic Defendants or any of the PAM Defendants during the Class Period, and is still held by any of the BankAtlantic or PAM Defendants. Pursuant to

N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by any of the BankAtlantic or PAM Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 23 of the settlement agreement with the BankAtlantic and PAM Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the BankAtlantic or PAM Defendants, as the case may be, in accordance with the settlement agreement. The BankAtlantic and PAM Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

l. **Mooring.** Pursuant to paragraph 24 of the Mooring Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by Mooring during the Class Period, and is still held by Mooring. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by Mooring to redeem such lien through the relevant municipality

as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 24 of the settlement agreement with Mooring. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to Mooring in accordance with the settlement agreement. Mooring shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

m. **The Wolfson Defendants.** Pursuant to paragraph 24 of the Wolfson Defendants Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by any of the Wolfson Defendants during the Class Period, and is still held by any of the Wolfson Defendants. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by any of the Wolfson Defendants to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with

paragraph 23 of the settlement agreement with the Wolfson Defendants. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to the Wolfson Defendants in accordance with the settlement agreement. The Wolfson Defendants shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

n. **Mastellone.** Pursuant to paragraph 24 of the Mastellone Settlement Agreement, the Court hereby authorizes a notice to be sent to those property owners entitled to receive such notice, who had a tax sale certificate issued with respect to their property that was purchased by Mastellone during the Class Period, and is still held by Mastellone. Pursuant to N.J.S.A. 54:5-54.1, the Court hereby authorizes every property owner who is the subject of such a lien held by Mastellone to redeem such lien through the relevant municipality as required by law. The redemption shall be performed in accordance with the terms of the offer. This Order authorizes a municipal tax collector to accept a redemption sum in accordance with paragraph 24 of the settlement agreement with Mastellone. The tax collector shall be authorized to accept 85% of the redemption amount (excluding statutory attorneys' fees) and to tender those monies to

Mastellone in accordance with the settlement agreement. Mastellone shall be required to tender the subject tax sale certificate for redemption and accept the reduced redemption amount in accordance with the settlement.

IV. Miscellaneous

19. The Court retains exclusive jurisdiction over this action to consider all further matters arising out of or connected with the Settlements.

20. The settlement escrow accounts established with respect to each settlement, are approved as a Qualified Settlement Fund pursuant to Internal Revenue Code 468B and the regulations promulgated thereunder.

21. Pursuant to Fed. R. Civ. P. 54(b), the Court finds that there is no just reason for delay, and hereby directs the dismissal forthwith of all defendants.

IT IS SO ORDERED.

Dated: _____, 2016

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Honorable Michael A. Shipp, U.S.D.J.