

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RALPH GAMBLES, THOMAS MERCK and
ELSIE COMPO, individually and as
representatives of the Classes,

Plaintiffs,

v.

STERLING INFOSYSTEMS, INC.,

Defendant.

Case No. 1:15-cv-09746-PAE

**UNOPPOSED MOTION REGARDING
SETTLEMENT FUND DISTRIBUTION**

AND

**JOINT STIPULATED ORDER
REGARDING DISTRIBUTION OF
SETTLEMENT FUNDS**

Plaintiffs Ralph Gambles, Thomas Merck and Elsie Compo (“Plaintiffs”) hereby submit the following report and motion.¹ Defendant Sterling Infosystems, Inc. (“Defendant”) has been informed of the substance of this filing and does not oppose the relief requested herein:

1. The Court previously granted final approval of the Settlement of this matter, and authorized the distribution of the Net Settlement Fund to the Settlement Class. ECF No. 205.

2. In accordance with the Court’s order, the Settlement Administrator, on December 30, 2020 sent the entirety of the Net Settlement Fund to the members of the class, issuing and mailing 200,386 checks. Chumley Decl. ¶ 3. Those checks were set to void on March 30, 2021, but, by agreement of the Parties, the void date was extended to April 30, 2021. *Id.*

3. Even with the extended check void date, a significant number of checks remain uncashed. Specifically, 84,291 checks remain uncashed, and a total of \$4,046,496.66 remains in the Settlement Fund. *Id.* Plaintiffs hypothesize that this low check cashing rate may be due to COVID, and individuals being unwilling to deposit checks in person at a bank.

¹ Unless otherwise defined herein, all capitalized terms have the same meaning as in the Settlement Agreement, which was made Exhibit 1 to the Motion for Preliminary Approval (ECF 180-2).

4. Further, the Administrator has recently received 787 checks returned as undeliverable, over four months after they were initially mailed. Chumley Decl. ¶ 4. Of those 787 returned checks, the Administrator has been able to locate updated addresses for 496. *Id.* This very late return of undeliverable checks is atypical of past experiences, but consistent with more recent postal service delays. *Id.*

5. Due to the extended time that the Administrator has been working on this matter, and the unexpected number of check forwarding and re-mailing required, the Administrator's expenses exceed the Administrator's initial proposal on this matter. An accounting of the Administrator's additional fees, totaling \$94,229.78, are attached. Chumley Decl. ¶ 5, Ex. A.

6. Given the large amount of settlement funds remaining, the Plaintiffs propose that the remaining amount in the Settlement Fund be re-distributed *pro-rata* to class members rather than being immediately donated to *cypres*. In particular, Plaintiffs propose that the Court authorize a second distribution to: (1) those class members who cashed their first checks and (2) those class members whose first checks were returned as undeliverable, and whose checks have not yet been reissued.

7. This redistribution will result in additional expenses for the Settlement Administrator, totaling \$105,716.63. A detailed estimate is attached. Chumley Decl. ¶ 6, Ex. B.

8. Plaintiffs seek court approval to pay \$94,229.78 to the Administrator for work performed on the settlement thus far, \$105,716.63 to the Administrator for future work related to the redistribution, and re-distribute the remaining \$3,846,550.25 to the class members as outlined in Paragraph 6 above.

9. If the Court approves this proposed redistribution, no additional funds would go Class Counsel in this matter, nor would any funds revert to Defendant.

10. This Court's Final Approval Order (ECF 205) defined the Settlement Class. Further, pursuant to Paragraph 24 of the Final Approval Order, and Section 9 of the Settlement (ECF 180-2), all Settlement Class Members have already released the Released Claims against Defendant and the Released Parties, regardless of whether such Settlement Class Members cashed or received a check.

11. The redistributed checks would be valid for 90 days. After that 90 days passes, any amounts remaining in the fund would be sent to *cy pres* as outlined in the settlement.

12. Because this proposal will not change the composition of the Settlement Class certified by this Court's Final Approval Order (ECF 205), or the releases provided by such Settlement Class Members pursuant to Paragraph 24 of the Final Approval Order and Section 9 of the Agreement, Defendant does not oppose the relief requested by Plaintiffs herein.

Dated: May 10, 2021

RESPECTFULLY SUBMITTED BY:

BERGER MONTAGUE PC

/s/E. Michelle Drake

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Attorneys for Plaintiffs and the Putative Classes

ORDER

IT IS SO ORDERED.

Entered May 13, 2021



Paul A. Engelmayer
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all ECF-Registered parties. The parties may access this filing through the CM/ECF system.

/s/E. Michelle Drake

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