

**OUTTEN & GOLDEN LLP**

Adam T. Klein  
Cara E. Greene  
3 Park Avenue, 29th Floor  
New York, New York 10016  
Telephone: (212) 245-1000  
Facsimile: (212) 977-4005

**LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP**

Kelly M. Dermody, *admitted pro hac vice*  
Heather H. Wong, *admitted pro hac vice*  
275 Battery Street, 30th Floor  
San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

**LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP**

Rachel Geman  
250 Hudson Street, 8th Floor  
New York, NY 10013-1413  
Telephone: (212) 355-9500  
Facsimile: (212) 355-9592

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

JUDY CALIBUSO, JULIE MOSS, DIANNE GOEDTEL,  
JEAN EVANS, and MARY DESALVATORE, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

-against-

BANK OF AMERICA CORPORATION; MERRILL  
LYNCH & CO., INC.; and MERRILL LYNCH, PIERCE,  
FENNER & SMITH, INC.,

Defendants.

**No. 10 Civ. 1413 (PKC) (AKT)**

**NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS,  
APPROVAL AND DISTRIBUTION OF THE NOTICE OF SETTLEMENT, AND  
APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law In Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and the Declarations of Rachel Geman and Adam T. Klein in support thereof, Plaintiffs now move this Court before the Honorable Judge Chen at the United States Courthouse for the Eastern District of New York,

225 Camden Plaza East, Brooklyn, New York, 11201, at a time and date to be determined by the Court, for an order granting: (1) preliminary approval of class action settlement; (2) provisional certification of the settlement class and subclasses; (3) approval and distribution of the notice of settlement; and (4) appointment of Lief, Cabraser, Heimann & Bernstein, LLP and Outten & Golden LLP as Class Counsel.

Dated: September 6, 2013  
New York, New York

Respectfully submitted,

By: /s/ Cara E. Greene

OUTTEN & GOLDEN LLP  
Adam T. Klein  
Cara E. Greene  
Jennifer L. Liu  
3 Park Avenue, 29th Floor  
New York, New York 10016  
Telephone: (212) 245-1000  
Facsimile: (212) 977-4005

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
Kelly M. Dermody, *admitted pro hac vice*  
Heather H. Wong, *admitted pro hac vice*  
275 Battery Street, 29th Floor  
San Francisco, California 94111  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
Rachel Geman  
250 Hudson Street, 8th Floor  
New York, New York 10013  
Telephone: (212) 355-9500  
Facsimile: (212) 355-9592

***Attorneys for Plaintiffs and the Punitive Class and  
Collective***

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

JUDY CALIBUSO, JULIE MOSS, DIANNE GOEDTEL,  
JEAN EVANS, and MARY DESALVATORE, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

-against-

BANK OF AMERICA CORPORATION; MERRILL  
LYNCH & CO., INC.; and MERRILL LYNCH, PIERCE,  
FENNER & SMITH, INC.,

Defendants.

**No. 10 Civ. 1413 (PKC) (AKT)**

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR (1) PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT; (2) PROVISIONAL  
CERTIFICATION OF SETTLEMENT CLASS AND SUBCLASSES UNDER FED. R.  
CIV. P. 23 AND CERTIFICATION OF COLLECTIVE ACTION UNDER 29 U.S.C.  
216(b); (3) APPROVAL AND DISTRIBUTION OF THE NOTICE OF SETTLEMENT;  
AND (4) APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL**

Having reviewed Plaintiffs' Notice of Motion and Motion For: (1) Preliminary Approval of Class Action Settlement; (2) Provisional Certification of Settlement Classes; (3) Approval and Distribution of Notice of Settlement; and (4) Appointment of Plaintiffs' counsel as Class Counsel; Plaintiffs' Memorandum of Points and Authorities in Support thereof, and the proposed Settlement Agreement, along with the files and records of this case, the Court now FINDS, CONCLUDES, and ORDERS as follows:

**I. JURISDICTION**

This Court has jurisdiction over the subject matter of the litigation and over all parties to this litigation, including all members of the Settlement Classes, as defined below.

As used below, “Defendants” means Bank of America Corp., Merrill Lynch & Co., Inc., and Merrill Lynch, Pierce, Fenner & Smith, Inc. (“MLPF&S” or “Merrill Lynch”).

## **II. NO DETERMINATION**

This Court hereby decrees that neither the Settlement Agreement, nor this Preliminary Approval Order, nor the fact of a settlement, are an admission or concession by the Defendants of any liability or wrongdoing whatsoever, or that certification of a litigation class or classes (as opposed to class certification for settlement purposes) is warranted.

## **III. CERTIFICATION OF SETTLEMENT CLASSES AND SUBCLASSES**

1. The Settlement Classes and Subclasses allege claims for gender discrimination brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* (“Title VII”); the federal Equal Pay Act (“EPA”), 29 U.S.C. §206, *et. seq.*; the New York Equal Pay Act, N.Y. Labor Law § 194, *et seq.*; the New York State Human Rights Law (“NYSHRL”), New York Executive Law § 296, *et seq.*; the Florida Civil Rights Act of 1992, F.S.A. § 760.01, *et seq.*; the Missouri Human Rights Act, RSMo. § 213.010, *et seq.*; and the New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1, *et seq.*

2. For settlement purposes only, the parties have proposed conditional certification of the following settlement classes:

a. For purposes of the programmatic and monetary relief provided in the Settlement Agreement, a nationwide class certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and comprised of all women employed as Financial Advisors or Financial Advisor trainees (*i.e.*, in the Pathways of Achievement, Paths of Achievement Program or Practice Management Development or predecessor programs who passed the Series 7 exam and received a production number) in the United States, Puerto Rico, or the U.S. Territories: (1) by Banc of America Investment Services, Inc. from March 16, 2006 through and including the date that

entity ceased to exist and thereafter, if applicable, by U.S. Wealth Management within MLPF&S through [add specific date]; and (2) by U.S. Wealth Management within MLPF&S from August 2, 2007 through [add specific date];

b. For purposes of the relief provided in the Settlement Agreement with respect to the federal EPA claim, a nationwide collective action certified under §16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) and comprised of all women employed as Financial Advisors or Financial Advisor trainees in the United States, Puerto Rico, or the U.S. Territories: (1) by Banc of America Investment Services, Inc. from March 16, 2006 through and including the date that entity ceased to exist and thereafter, if applicable, by U.S. Wealth Management within MLPF&S through [add specific date]; and (2) by U.S. Wealth Management within MLPF&S from August 2, 2007 through [add specific date] (“EPA Subclass”);

c. For purposes of the programmatic and monetary relief provided in the Settlement Agreement, a subclass certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and consisting of all female Financial Advisors and Financial Advisor trainees employed by Banc of America Investment Services, Inc. in New York from November 10, 2004 through the date that entity ceased to exist and thereafter, if applicable, by U.S. Wealth Management within MLPF&S through [add specific date] (“New York Settlement Subclass”);

d. For purposes of the programmatic and monetary relief provided in the Settlement Agreement, a subclass certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and consisting of all female Financial Advisors and Financial Advisor trainees employed by Banc of America Investment Services, Inc. in Florida from January 10, 2006 through the date that entity ceased to exist and thereafter, if applicable, by U.S. Wealth Management within MLPF&S through [add specific date] (“Florida Settlement Subclass”);

e. For purposes of the programmatic and monetary relief provided in the Settlement Agreement, a subclass certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and consisting of all female Financial Advisors and Financial Advisor trainees employed by U.S. Wealth Management within MLPF&S in Missouri from January 1, 2007 through [add specific date] (“Missouri Settlement Subclass”);

f. For purposes of the programmatic and monetary relief provided in the Settlement Agreement, a subclass certified under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and consisting of all female Financial Advisors and Financial Advisor trainees employed by U.S. Wealth Management within MLPF&S in New Jersey from January 1, 2007 through [add specific date] (“New Jersey Settlement Subclass”).

The Court hereby FINDS and CONCLUDES that, for purposes of this Settlement, the Settlement Classes set forth above satisfy all of the requirements for certification under Rule 23(a) and Rule 23(b)(3). There are approximately 4,812 Settlement Class Members satisfying the numerosity requirements.<sup>1</sup> Named Plaintiffs are typical and adequate representatives of the Settlement Classes they seek to represent, since their interests are co-extensive with those of Settlement Class Members, and they have retained experienced counsel to represent them. Plaintiffs raise common questions and the Settlement Classes satisfy the predominance and superiority requirements for certification under Rule 23(b)(3) for settlement class purposes. The Court CERTIFIES the Settlement Classes under Rules 23(a) and 23(b)(3).

#### **IV. APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

1. The Court finds that Named Plaintiffs Judy Calibuso, Julie Moss, Dianne Goedtel, Jean Evans, and Mary DeSalvatore have claims typical of Settlement Class Members and are

---

<sup>1</sup> For purposes of this Settlement, Named Plaintiffs also are “similarly situated” to members of the Class under EPA collective action claims for the purposes of settlement.

adequate representatives of Settlement Class Members. The Court appoints them to serve as Settlement Class Representatives of the nationwide Title VII and EPA classes. The Court also appoints Dianne Goedtel as Settlement Class Representative of the New York Settlement Subclass; Mary DeSalvatore as Settlement Class Representative of the New Jersey Settlement Subclass; Judy Calibuso and Julie Moss as Settlement Class Representatives of the Florida Settlement Subclass; and Jean Evans as Settlement Class Representative of the Missouri Settlement Subclass.

2. The Court finds that Lieff, Cabraser, Heimann & Bernstein, LLP, and Outten & Golden LLP have, separately and collectively, extensive experience and expertise in prosecuting employment discrimination class action cases. The Court appoints these firms as Class Counsel for the Settlement Classes under Fed. R. Civ. P. 23(g).

#### **V. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

The Court has reviewed the terms of the Proposed Settlement Agreement attached as Exhibit 1, including the programmatic relief provisions and the plan of allocation, and the Plaintiffs' description of the settlement in the Motion papers. The Court has also read and considered the Declaration of Rachel J. Geman in support of preliminary approval of the Settlement. Based on review of those papers, and the record in this case, the Court concludes that the settlement and Settlement Agreement are the result of extensive, arms-length negotiations between the parties after they investigated the class claims and became familiar with the strengths and weakness of Plaintiffs' case. The assistance of an experienced mediator in the settlement process confirms that the Settlement is non-collusive. Based on that review, and the Court's review of the issues in the case, the Court concludes that the proposed Settlement Agreement has no obvious defects and is within the range of possible settlement approval, such that notice to the Settlement Class is appropriate.



IT IS THEREFORE ORDERED THAT:

1. The Proposed Settlement Agreement and the Settlement it embodies are hereby PRELIMINARILY APPROVED. Final approval and entry of the Settlement Agreement is subject to the hearing of any objections of members of the Settlement Classes to the Proposed Settlement embodied in the Settlement Agreement.

2. Pending the determination of the fairness of the Settlement Agreement, all further litigation of this action is hereby STAYED.

**VI. CONFIDENTIALITY**

The Court hereby enjoins disclosure to third parties of the documents and information discussed or exchanged during the parties' confidential settlement negotiations and mediation to any third party not specified in the parties' confidentiality agreements.

**VII. OTHER CASES ENJOINED**

Pending Final Approval, the Court hereby preliminarily enjoins each member of the Settlement Classes and Subclasses, including any member who makes an irrevocable election to exclude herself from the Settlement Classes, from commencing, prosecuting or maintaining in any court other than this Court any claim, action or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision or ruling of this Court in connection with the Settlement Agreement. The Court further enjoins any member of the Settlement Classes and Subclasses who has not, by the deadline for opting-out, made a timely, irrevocable election to exclude herself from the Settlement Classes from commencing, prosecuting or maintaining, either directly, representatively or in any other capacity, any claim that is subsumed within the Settlement Agreement.

Upon Final Approval by the Court, all Settlement Class Members who opt-in to the Settlement or do not opt-out, will be bound to the Release and Bar Order as set forth in the Settlement Agreement. Individuals who do not opt-out will be deemed to have opted-in.

Settlement Class Members may not assign or transfer their rights to participate in the Settlement Agreement.

**VIII. APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING CLASS NOTICE AND CLAIM FORM**

The parties have also submitted for this Court's approval a proposed Class Notice and a proposed Claim Form, which the Court has carefully reviewed. The Court FINDS and CONCLUDES as follows:

1. The proposed Class Notice is the best notice practical under the circumstances and allows Settlement Class Members a full and fair opportunity to consider the proposed Settlement. The proposed plan for distributing the Class Notice and Claim Form likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the Settlement. Under this plan, the Claims Administrator will distribute the Class Notice and Claim Form to Settlement Class Members by first class U.S. Mail to their last known addresses. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

2. The Class Notice fairly, plainly, accurately, and reasonably informs Settlement Class Members of: (1) appropriate information about the nature of this litigation, the Settlement Classes, the identity of Class Counsel, and the essential terms of the Settlement Agreement, including programmatic relief and the plan of allocation; (2) appropriate information about Class Counsel's forthcoming application for attorneys' fees, the proposed Service Awards to the Class Representatives and other payments that will be deducted from the Settlement Fund;

(3) appropriate information about how to participate in the Settlement; (4) appropriate information about this Court's procedures for final approval of the Settlement Agreement and Settlement, and about Settlement Class Members' right to appear through counsel if they desire; (5) appropriate information about how to challenge or opt-out of the Settlement, if they wish to do so; and (6) appropriate instructions as to how to obtain additional information regarding this litigation or the Settlement Agreement.

3. Similarly, the proposed Claim Form allows members of the Settlement Classes a full and fair opportunity to submit a claim for proceeds in connection with the Settlement. Moreover, the Claim Form fairly, accurately, and reasonably informs Settlement Class Members that failure to complete and submit a Claim Form, in the manner and time specified, shall constitute a waiver of any right to obtain any share of the Settlement Fund.

4. The Court finds and concludes that the proposed plan for distributing the Notice and Claim Form ("Notice Materials") will provide the best notice practicable, satisfies the notice requirements of Rule 23(e), and satisfies all other legal and due process requirements.

5. Accordingly, the Court hereby ORDERS as follows:

a. The form of the Notice Materials is approved. Non-material changes may be made as the parties deem appropriate.

b. The manner of distributing the Notice Materials is approved.

c. Promptly following the entry of this Order, the Claims Administrator shall prepare final versions of the Notice Materials, incorporating into the Notice the relevant dates and deadlines set forth in this Order.

d. Within five (5) business days following entry of this Order, Defendants shall provide the Claims Administrator the name and last known address of each Settlement

Class Member. This information will be provided in a computer readable format acceptable to the Claims Administrator. For Settlement Class Members for whom the Notice is returned to the Claims Administrator, Defendants will provide a Social Security number within two (2) business days to the Claims Administrator to allow the Claims Administrator to expeditiously locate the Settlement Class Member's new location. The Claims Administrator shall utilize such Settlement Class Members' Social Security numbers only for the purpose of locating and identifying Class Members and shall keep those Social Security numbers confidential.

e. Prior to the mailing of the Notice Materials, the Claims Administrator will update any new address information for potential Class Members as may be available through the National Change of Address ("NCOA") system.

f. Within twelve (12) business days after the entry of this Order, the Claims Administrator shall mail the Notice Materials to each Settlement Class Member by first class U.S. mail at her last known address or at the most recent address that may have been obtained through the NCOA.

g. The Claims Administrator shall maintain a log of its activities undertaken in its efforts to locate Settlement Class Members. The expense of the Claims Administrator shall be paid by the Settlement Sum as described in the Settlement Agreement.

h. The Claims Administrator shall take all other actions in furtherance of claims administration as are specified in the Settlement Agreement.

## **IX. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

### **A. Final Approval Hearing**

1. The Court hereby schedules a hearing to determine whether to grant final certification of the Settlement Classes, and final approval of the Settlement Agreement (including the proposed plan of allocation, programmatic relief, payment of attorneys' fees and

costs, and Service Awards to the Named Plaintiffs) (the “Final Approval Hearing”) for \_\_\_\_\_ at \_\_\_\_\_ am/pm. [90 days after CAFA Notice.]

**B. Deadline To Request Exclusion From The Settlement**

1. Settlement Class Members may exclude themselves, or opt-out, of the Settlement. Any request for exclusion must be in the form of a written, signed “opt-out” statement. A person wishing to opt-out must sign a statement confirming that the individual is aware that by opting-out she will forego the opportunity to receive monetary benefits from this Settlement. To be effective, this opt-out statement must be post-marked on or before forty-five (45) days after the date the Notice is mailed to Settlement Class Members.

2. The Claims Administrator shall provide to all counsel and file with the Court all opt-out statements that are timely received and not rescinded. The Settlement Class will not include those individuals who file and serve a timely opt-out statement, and individuals who opt-out are not entitled to any monetary award under the Settlement Agreement. With respect to each such individual, the statute of limitations for her to assert any claim for individual relief will resume running on the postmark date of her signed, written statement that she is opting-out of the Settlement Class. In the event that a Settlement Class Member files both a Claim Form and an opt-out letter, Class Counsel will contact the Settlement Class Member to ascertain her intent.

3. Settlement Class Members shall be permitted to withdraw or rescind their opt-out statements by submitting a signed, written “rescission of opt-out” statement to the Claims Administrator. To be effective, the statement must be received by the Claims Administrator at least one day before the Final Approval Hearing.

**C. Deadline For Filing Objections To Settlement**

1. Any Settlement Class Member who has not opted-out of the Settlement Classes and wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement or

the Settlement must do so in writing. Settlement Class Member objections to the Settlement Agreement must include a detailed description of the basis of the objection. Objections must be filed with the Court, with copies served on Class Counsel and counsel for Defendants, postmarked on or before forty-five (45) days after the Notice is mailed to Settlement Class Members. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement Agreement without first having filed and served her objection(s) in writing postmarked on or before forty-five (45) days after the Notice was mailed to Settlement Class Members.

**D. Deadline For Submitting Claims Forms**

1. A Settlement Class Member who does not opt-out will be eligible to a share of the settlement benefit. To receive this share, such a Settlement Class Member must properly and timely complete and submit a Claim Form to the Claims Administrator in accordance with the terms of the Settlement Agreement. To be effective, Settlement Class Members, including the Named Plaintiffs, must submit a Claim Form which must be postmarked no later than one hundred twenty (120) days after the initial mailing of the Class Notice to Settlement Class Members.

2. The Claims Administrator will provide counsel for Defendants' payroll department with the names of all Settlement Class Members who submitted Claim Forms ("Claimants"). The identity of the Claimants will not be disclosed to anyone at Defendants other than counsel and Defendants' payroll department, or as required for other tax or business and legal reporting purposes. The content of the Claims Form will be kept confidential.

3. After receiving the Claimant information discussed in the paragraph above, Defendants, through their counsel, will provide the Claims Administrator with the dates each

Claimant was employed by Defendants as a Financial Advisor. The Claims Administrator will provide that information to each Claimant.

**E. Settlement Proceeds**

1. Within a reasonable time period after the date specified for receipt of claims, the Claims Administrator – based on Claimant’s tenure as defined by work weeks, Claimant’s position, and whether Claimant (based on information she may provide) believed she was terminated or constructively discharged – shall render a determination as to the monetary award if any, that will be paid to the Claimant from the Settlement Fund.

2. The total amount of settlement awards (including any and all payments to Settlement Class Members and the Named Plaintiffs for settlement of their class claims only) shall not exceed the net amount of the Settlement Sum after all costs related to the Settlement (excluding the cost of an Independent Consultant and Independent Settlement Monitor, the costs of the Programmatic Relief and the Defendants’ employer share of FUTA/FICA/SUTA and Medicare taxes) and Plaintiffs’ Counsel attorney’s fees and costs and the Claims Administrator’s fees and costs are considered.

3. The total amount of settlement awards for Named Plaintiffs Julie Moss, Dianne Goedtel, Jean Evans and Mary DeSalvatore for settlement of their individual non-class claims shall not in the aggregate exceed the net amount of the Individual Named Plaintiffs’ Settlement Fund.

4. Following its determination as to the monetary award, if any, that should be paid to each Claimant from the Settlement Fund, the Claims Administrator shall send a check to each eligible Claimant along with a reminder that the Claimant has released claims and has opted-into this action. If the amount of undistributed funds that remain after six (6) months from the mailing of the Notice of Award due to uncashed checks is in excess of \$100,000, such

undistributed funds shall be redistributed to Settlement Class Members who filed Claim Forms on a pro-rata basis in accordance with the plan of allocation (as determined by the Claims Administrator) and, if the undistributed funds are less than \$100,000, they shall be distributed to Legal Momentum (Women's Legal Defense and Education Fund), a 501(c)(3) organization advancing career opportunities for women.

5. The Claims Administrator shall maintain the distribution plan and allocation list for a period of seven (7) years. Defendants shall have access to individual allocation amounts for tax and reporting purposes, but shall not have access to Settlement Class Member Claim Forms or Settlement Class Member descriptions of their discharge from Defendants.

**F. Deadline For Submitting Motion Seeking Final Approval**

No later than twenty (20) days before the last date on which Settlement Class Members may object or opt-out of the Settlement, Plaintiffs shall file a Motion for Final Approval of the Class Action Settlement and Petition for Attorneys' Fees, Costs and Service Awards to Class Representatives ("Motions"). These documents will be posted on Class Counsel's websites as well as the website maintained by the Claims Administrator set forth in the Notice to be mailed. No later than seven (7) days before the Final Approval Hearing, Plaintiffs shall file reply memoranda in support of their Motions.

**X. NAMED PLAINTIFFS' AND SETTLEMENT CLASS MEMBERS' RELEASE**

If, at the Final Approval Hearing, this Court grants Final Approval to the Settlement and Settlement Agreement, Named Plaintiffs and each individual Settlement Class Member who do not timely opt-out will release claims, as set forth in the Settlement Agreement, by operation of this Court's entry of the Judgment and Final Approval, regardless of whether she submits a Claim Form or receives any share of the Settlement Fund.



**XI. APPOINTMENT OF CLAIMS ADMINISTRATOR**

Rust Consulting, Inc. is hereby appointed Claims Administrator to carry out the duties set forth in this Order and the Settlement Agreement.

**XII. SETTLEMENT FUND**

No later than ten (10) business days after the Effective Date of the Settlement, Defendants shall pay, by wire transfer to the Claims Administrator, (i) the sum of Seven Hundred Seventy-Five Thousand Dollars (\$775,000) for the “Individual Named Plaintiffs’ Settlement Amount,” which Named Plaintiff Judy Calibuso is not entitled to participate in or receive any amounts from and (ii) Thirty-Eight Million Two Hundred Twenty-Five Thousand Dollars (\$38,225,000) (the “Settlement Sum”) minus the amount previously paid to Plaintiffs’ Counsel for attorneys’ fees and costs and minus the Claims Administrator’s reasonably anticipated fees and costs advanced to the Claims Administrator upon Preliminary Approval of the Settlement Agreement (“the Settlement Fund”). These amounts shall be placed into an interest bearing escrow account established by the Claims Administrator.

The Settlement Sum and the Individual Named Plaintiffs’ Settlement Fund constitute the total settlement cash outlay by Defendants in connection with the resolution of this Action, except for payments to the Independent Consultant and Independent Settlement Monitor, the costs of the Programmatic Relief and Defendants’ share of taxes, as discussed above. No other money shall be separately paid by Defendants in connection with this Settlement (including, without limitation, in connection with any taxes, attorneys’ fees, retirement or other employee benefits, or in any other respect). The Settlement Sum and Individual Named Plaintiffs’ Settlement Fund are inclusive of payment for: (a) all amounts paid to Settlement Class Members, including the Named Plaintiffs; (b) all amounts paid to Named Plaintiffs, which includes amounts paid as Service Awards, amounts paid as Settlement Class Members and amounts paid

to Named Plaintiffs Julie Moss, Dianne Goedtel, Jean Evans and Mary DeSalvatore for signing individual releases; (c) all attorneys' fees associated or incurred in connection with Named Plaintiffs' individual claims up through Preliminary Approval or, if later, the date Moss, Goedtel, Evans and DeSalvatore sign their individual release agreements; (d) all attorneys' fees and costs awarded by the Court, including those in connection with securing Court Approval of the Settlement and the claims process and the monitoring by Class Counsel of the Settlement Agreement; (e) all costs in connection with the Settlement Fund and Individual Named Plaintiffs' Settlement Fund including, but not limited to, those related to notice and claims processing, independent legal advice obtained by the Claims Administrator relating to the establishment of the Qualified Settlement Fund and tax treatment and tax reporting of awards to Claimants, and preparation of the Fund's tax returns (and the taxes associated with such tax returns as defined below); and (f) applicable federal, state and local taxes, and all federal and state unemployment taxes required by law to be withheld by Defendants. The Settlement Sum and Individual Named Plaintiffs' Settlement Fund do not include Defendant's share of taxes or contributions (*i.e.*, FICA, FUTA, SUTA and Medicare) which will be paid separately by Defendants to the Claims Administrator, the payments to the Independent Consultant and Independent Settlement Monitor or the costs of the Programmatic Relief, which payments and costs will be borne by Defendants directly. Defendants shall, upon notice from the Claims Administrator, remit any required tax payment to the Claims Administrator.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2013

---

PAMELA K. CHEN  
U.S. District Court Judge, E.D.N.Y.