

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT TOPEKA**

**JIN NAKAMURA,
on behalf of himself and all others
similarly situated,**
Plaintiff,

v.

Case No. 5:17-cv-04029-DDC-GEB

**WELLS FARGO BANK,
NATIONAL ASSOCIATION
d/b/a WELLS FARGO DEALER
SERVICES, INC.,**
Defendant.

JOINT MOTION FOR DISTRIBUTION OF REMAINING NET SETTLEMENT FUND

Plaintiff Jin Nakamura and Wells Fargo Bank, N.A., d/b/a Wells Fargo Auto f/k/a Wells Fargo Dealer Services, Inc. (collectively, the “Parties”) jointly move the Court to enter an order authorizing distribution of the remaining Net Settlement Fund to the Settlement Class Members. In support thereof, the Parties state:

1. On May 21, 2019, the Court entered its Memorandum and Order (“Order”) [Doc. 144] granting final approval of the Settlement Agreement [Doc. 127-1] and entered its Judgment dismissing this case [Doc. 146]. However, the Court reserved jurisdiction over future proceedings concerning the administration of the Settlement. Doc. 127-1 at 7, ¶ 11.

2. The Court’s Order directed Epiq¹ to distribute the proceeds of the Net Settlement Fund to the Settlement Class Members (as those terms are defined in the Settlement Agreement)

¹ The Court appointed Epiq Class Actions & Claims Solutions, Inc. (“Epiq”) as the Settlement Administrator to administer the terms of the Settlement Agreement and the

as set forth under the Distribution Plan attached as Exhibit A to the Settlement Agreement [Doc. 127-1 at 29–30].

3. Epiq issued checks to the 405 Settlement Class Members on July 22, 2019, totaling \$5,114,996.10. Ex. 1, Declaration of Rachel A. McCown Regarding Distribution of Net Settlement (“McCown Decl.”) at ¶ 1. Per the Distribution Plan [Doc. 127-1 at 29–30], Epiq mailed two rounds of reminder notice letters, performed advanced address research, and sent letters to the VFW posts closest to the Settlement Class Members’ last known mailing addresses to attempt to reach those with uncashed checks. Ex. 1, McCown Decl. at ¶ 2. Additionally, Epiq has maintained the dedicated Settlement website and call center since February 29, 2019. *Id.*

4. At the conclusion of these efforts, 15 of the 405 checks issued were returned as undeliverable and Epiq was not able to obtain a current address, and 39 checks were never negotiated. *Id.* at ¶ 3. The 54 uncashed checks were voided on June 11, 2020, one year after the original issuance date, and the value of the checks was added back to the Net Settlement Fund per the Settlement Agreement [Doc. 1271-1 at 20, ¶ 2.c]. McCown Decl. at ¶ 4.

5. The 54 voided checks total \$669,369.86. *Id.* at ¶ 5. There is an additional \$3.90 in the settlement fund due to rounding. *Id.* In total, \$669,373.76 remains in the Net Settlement Fund. *Id.*

6. Per paragraph V.E. of the Settlement Agreement [Doc. 127-1 at 14]:

If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel shall distribute such balance consistent with the Distribution Plan set forth in Exhibit A.

notification and payment to class members in its Memorandum and Order preliminarily approving the class settlement [Doc. 135 at 4, ¶ 8].

7. The Distribution Plan attached as Exhibit A to the Settlement Agreement [Doc. 127-1 at 30] provides:

The remaining Net Settlement Fund proceeds shall then be distributed as cy pres to a not-for-profit organization providing services to military servicemembers and veterans. The Settling Parties have mutually agreed upon the following not-for-profit organization to receive any proceeds distributed from the Net Settlement Fund: The Warrior Initiative, P.O. Box 30624, Clarksville, TN 37040.

8. The Warrior Initiative is no longer active and cannot receive the remaining Net Settlement proceeds.²

9. The Parties now jointly request that the Court authorize the distribution of the remaining Net Settlement Fund, on a pro rata basis, to the 351 Settlement Class Members whose addresses are known to Epiq and who cashed their checks in the initial distribution (the “Second Distribution”). *See, e.g., In re Thornburg Mortg., Inc. Securities Litig.*, 912 F. Supp. 2d 1178, 1246 (D.N.M. 2012) (finding proposal to distribute make a second distribution of uncashed checks to class members who cashed their checks in the first distribution reasonable); *Sarkisov v. StoneMor Partners L.P.*, No. 13-cv-04834-JD, 2015 WL 1249169, at *4 (N.D. Cal. Mar. 18, 2015) (finding fair and reasonable a settlement that called for residual funds to “be redistributed to the Class Members who cashed their initial settlement payment checks on a pro-rata basis as a second distribution”).

² See the Business Entity Detail on the Tennessee Secretary of State’s website showing the status of The Warrior Initiative as “Inactive-Terminated”:
<https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=118035054156056065100110232038177005081059125100>

10. The Second Distribution will result in a pro rata payment of approximately \$1,900 to each of the 351 Settlement Class Members who cashed their checks in the initial distribution.

The Parties propose the second distribution proceed as follows:

a. Epiq will issue checks to the Settlement Class Members who cashed their checks in the initial distribution, which shall be marked “Void 60 days after the date shown on this check” and shall automatically be voided sixty (60) days after issuance;

b. Within this sixty (60) day timeframe, Epiq shall reissue a check if: i) the check is returned to Epiq as undeliverable; or ii) the Authorized Recipient (as that term is defined in the Settlement Agreement) asks for the check to be reissued. Reissued checks shall be valid for thirty (30) days; and

c. All uncashed checks shall be voided ninety (90) days after the original issuance date and the value of the uncashed checks shall be added back to the Net Settlement Fund and distributed as cy pres to a not-for-profit organization providing services to military servicemembers and veterans.

11. Additionally, the Parties jointly request that the Court authorize Epiq, upon completion of the steps set forth above in Paragraph 10.a–c. and without further order of the Court, to distribute any remaining Net Settlement Fund proceeds as cy pres to Military Family Advisory Network, Inc. (“MFAN”). MFAN is a 501(c)(3) organization that connects military families to the resources they need, including those related to financial planning and understanding their credit. The parties agree that MFAN should receive of any cy pres distribution in lieu of the recipient set forth in the Distribution Plan.

12. A proposed order directing distribution in accordance with the foregoing will be submitted for the Court's consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was filed using the Court's CM/ECF filing system, which automatically sends notice of filing to all attorneys of record, on August 7, 2020.

/s/ Rex A. Sharp
Rex A. Sharp