

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REYNALDO REYES,  
*on Behalf of Himself and All Others*  
*Similarly Situated,*

Plaintiff,

v.

Civ. A. No. 2:10-cv-0345

ZIONS FIRST NATIONAL BANK,  
NETDEPOSIT, LLC, MP TECHNOLOGIES  
d/b/a MODERN PAYMENTS, and TELEDRAFT,  
INC.

Defendants.

EXHIBIT 1: PLAN OF DISTRIBUTION

- a) For each class member for whom there is a record, their account information will be sorted by routing number. The routing numbers will be checked to determine whether the bank at issue has been acquired by another bank or has otherwise changed its status. The claims administrator shall be guided by the distributing bank as to how to proceed with accounts for which the routing number indicates the account was acquired by another bank.
- b) An ACH Pre-notification entry shall be sent over the ACH system to each class member for whom there is a record.
- c) For those class members where the pre-notification is not rejected, i.e. anyone for whom there is no response from the receiving bank or a positive response, an ACH credit will be sent to the class member's pre-notified account, pursuant to the method described in (h) below.
- d) For those class members for whom there is an address from which the notice has not been returned, but no valid bank account (including all persons rejected by either the pre-notification or the actual ACH transfer), a check will be mailed to the existing address. The check will either contain a limiting endorsement and/or be accompanied by a notice that after 120 days a stop order will be placed on the check.

- e) There will be written follow up by the claims administrator 30 days after mailing to recipients of all uncashed checks. There will be telephone follow-up sixty days following mailing to all recipients of checks above \$250 that have not been cashed.
- f) If the Teledraft/Vexeldale databases are not discovered by preliminary approval and a claims process is required, the claims process (as described in the Settlement Agreement) shall be complete prior to final approval of the settlement to ensure that each class member's claim is based on the same formula.
- g) Pursuant to Section 2.2 of the Settlement Agreement, if the Teledraft/Vexeldale databases are discovered by the time of preliminary approval, the claims administrator shall inform Zions of the amount—not to exceed \$250,000.00—that Zions must add to the Settlement Fund. This amount shall be added to the net Settlement Fund before distribution to the Settlement Class to ensure that each class member's claim is based on the same formula.
- h) The funds shall be distributed in the following manner:
  - 1. The net fund following payment of attorneys' fees, costs, an incentive award, and costs of notice and administration shall be divided pro-rata among qualified class members based upon their claim amount.<sup>1</sup>
  - 2. A claim amount shall consist of any sums debited from the class-member on behalf of one of the telemarketers and/or any NSF charges incurred by the victim. For purposes of the distribution an NSF charge shall be assumed where a return code in the database indicates an item was returned NSF. A claim amount shall be \$25 for each NSF. Thus, by way of example, a person whose account was debited \$100 on behalf of a telemarketer and shows three NSF return will have a claim amount of \$175. A class member with just one NSF charge will have a claim amount of \$25.
  - 3. The net fund, less any hold-back amount recommended by the claims administrator, will be distributed pro-rata based upon the relation of each qualified class member's claim amount to the total net fund.
  - 4. One hundred and twenty days following the initial distribution, the claims administrator shall calculate any funds remaining for distribution. These funds shall include any initial ACH distribution which was returned by the receiving

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<sup>1</sup> Qualified class members are those class members to whom funds were successfully distributed pursuant to paragraphs (c) and (d) above.

bank, any funds attributable to checks which were not cashed, and any other remaining funds, less an amount to pay any fees of the claims administrator. This remaining fund shall be distributed pro-rata based upon the claim amounts to all qualified class members whose initial ACH distribution was successful or whose check cleared, provided a sufficient sum exists to warrant such distribution.<sup>2</sup>

5. All funds remain property of the collective class fund until an ACH transaction actually clears or a check is actually deposited by the recipient. Any funds represented by a returned ACH item or any check not deposited within 120 days of the initial distribution shall be property of the collective class fund and not of any individual.
  6. Any remaining fund that the claims administrator deems to be economically impracticable to distribute to the class shall be distributed a *cy pres* designee designated by Class Counsel and approved by the Court.
  7. Under no circumstances shall any sums held in the fund be deemed the property of any individual class member.<sup>3</sup>
  8. Under no circumstances shall any part of the fund revert to the defendants or their insurers.
- i) In the event any element of the above plan of distribution proves impracticable, Class Counsel shall recommend appropriate alternative methods of distribution to the Court.

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<sup>2</sup> The value of a claim will change if subsequent distributions are required. Accordingly, if Zions has not already exhausted the \$250,000.00 Contingent Fund, the Claims Administrator shall notify Zions of the additional sums it must add to the fund before a subsequent disbursement is made to qualified Class Members.

<sup>3</sup> Because there is account information for the class members debited on behalf of Group One, but not their addresses, individual notice will not be mailed to these class members. However, since the information exists allowing implementation of the distribution procedure, the distribution procedures outlined above will be followed.