

**IN THE UNITED STATES DISTRICT COURT FOR THE
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

GERARDO ARANDA, GRANT
BIRCHMEIER, STEPHEN PARKES, and
REGINA STONE, on behalf of themselves
and a class of others similarly situated,
Plaintiffs,

Case No. 1:12-cv-04069

Honorable Matthew F. Kennelly

v.

CARIBBEAN CRUISE LINE, INC.,
ECONOMIC STRATEGY GROUP,
ECONOMIC STRATEGY GROUP, INC.,
ECONOMIC STRATEGY, LLC, THE
BERKLEY GROUP, INC., and
VACATION OWNERSHIP MARKETING
TOURS, INC.,
Defendants.

**PLAINTIFFS' MOTION FOR APPROVAL OF DISTRIBUTION PLAN FOR
REMAINING SETTLEMNT FUNDS**

Plaintiffs file this motion for approval of a proposed plan to distribute the remaining settlement funds owed to Class Members, stating in support as follows:

Background

1. In March of 2017, this Court approved the parties' settlement, which created a common fund of between \$56 million and \$76 million, depending on the number of approved claims. *See* Dkt. 596. The Seventh Circuit affirmed this Court's decision in 2018. *See Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 795-97 (7th Cir. 2018) ("The total award is not yet known only because the number of approved claims is not yet known. Once the parties know that number, computing the remaining fees will be a mechanical exercise.").

2. Two years after approving the settlement, the Court approved an initial distribution of \$200 to each Class Member with an approved claim, which was an amount that the parties agreed each Class Member would receive regardless of how any challenges to claims were resolved. Dkt. 803. Those checks were issued to Class Members on around August 22,

2019. Ex. 1 ¶ 3 (Declaration of Lana Lucchesi).

3. Approximately one week ago, the Seventh Circuit issued its mandate after affirming this Court's rulings on various challenges to Class Member claims. *See* Dkt. 901, 902, 903. The process for challenging claims is therefore complete, and the final value of the fund is set.

4. Following the Seventh Circuit's recent ruling, there are 184,427 approved calls, which means that fund is set at \$76 million. Ex. 1 ¶¶ 4-5; *see also* Dkt. 502 § 2.2(b) (approved calls are valued at \$500, subject to *pro rata* reduction if that value, plus fees and administration expenses, would exceed \$76 million).

5. Each of the approved calls is worth approximately \$302.24. Ex. 1 ¶ 5.¹

6. Defendants have already paid the entire \$76 million, and they have indicated that they will not be filing a petition for a writ of certiorari with the Supreme Court.

7. With the settlement fully funded and Defendants' confirmation that they are not filing a petition for a writ of certiorari, it is appropriate to begin distributing the remaining funds.

8. The Settlement Agreement in this case originally provided for Class Members to receive their awards in two installments, based on the timing of Defendants' installment payments into the Settlement Fund. *See* Dkt. 502 §1.38 (describing payment plan for Settlement Fund), §2.2 (describing the two distributions planned for Class Members).

9. However, because the initial distribution was limited to \$200 given the outstanding challenges at the time, the size of the average remaining award, and the fact that

¹ If claimant Daisy Exum files a petition for a writ of certiorari and succeeds in getting the Supreme Court to change her award from 15 calls to 700 calls, the value of each of the 184,659 approved calls will decrease by approximately \$1.12, but the total value of the fund will not change.

Defendants paid the full \$76 million before the claims process was fully resolved, the distribution plan that Plaintiffs propose here differs somewhat from the two-installment plan set out in the Settlement Agreement for some claimants.

Proposed Distribution Plan

10. The vast majority of claimants in this case are owed more than \$600. Ex. 1 ¶ 6. For tax reporting purposes, KCC must have a valid W-9 on file before it sends any claimant more than \$600 in one year. *Id.*

11. The plan proposed below ensures that KCC will be able to comply with its tax-reporting obligations while also ensuring that claimants receive the unpaid balance of their awards as soon as possible.

12. There are approximately 58,000 claimants with approved claims. Ex. 1 ¶ 6. Due to the varying size of their awards and the differing tax reporting implications for those awards, Plaintiffs have categorized claimants into three categories for this distribution plan: (a) claimants who are owed less than \$600 and can be paid the remainder they are owed in full immediately; (b) claimants who are owed \$600 or more, but less than \$1,200; and (c) claimants who are owed more than \$1,200.

Category 1: Claimants owed less than \$600 should be paid the full amount of their awards now.

13. Approximately 12,000 claimants are owed less than \$600. Ex. 1 ¶ 7. KCC can send those claimants the full balance of the remainder of their award without a W-9. *Id.*

14. Plaintiffs therefore propose that KCC sends the full final payment to these class members as soon as possible.

Category 2: Claimants owed more than \$600 but less than \$1,200 should be paid \$575 now and the rest upon receipt of a W-9 or next year, whichever is earlier.

15. The remaining 46,735 claimants (out of approximately 58,000 total claimants with approved claims) are owed more than \$600. ¶ 8. KCC cannot pay those Class Members the full amount of their awards this year without a valid W-9. *Id.*

16. Of the 46,735 claimants in this category, the vast majority are owed less than \$1,200 and therefore could be paid the full amount that they are owed without a W-9 form *if* the payments are split over two years. Ex. 1 ¶ 9.

17. To ensure that as many Class Members as possible receive funds as quickly as possible, Plaintiffs propose that KCC immediately send each Class Member who falls into this category \$575.

18. When KCC sends the initial \$575 check to claimants who fall into this category, it will include a cover letter explaining that: (a) KCC cannot pay the remainder of the award this year without a W-9; and (b) claimants who do not provide a W-9 will not get the rest of their award until next year. Ex. 1 ¶ 10.

19. KCC will also update the case website to notify Class Members of the need to submit a W-9. Ex. 1 ¶ 11.

20. Class Members will be able to securely submit W-9s online at the case website, and they will be able to mail in W-9s if they are unable to complete the form online. Ex. 1 ¶ 11.

21. KCC will collect W-9s and send final payment approximately 90 days after issuance of the initial \$575 checks to claimants in this category who have provided a W-9 by then. Ex. 1 ¶ 12.²

² If any Class Members provide a W-9 before KCC sends the initial \$575 check, those Class Members will receive their full award right away.

22. All other claimants in this category (i.e., claimants who do not submit a W-9 by before September 2021) will receive their final payment in January 2022. Ex. 1 ¶ 12.

Category 3: Claimants owed more than \$1,200 should be paid \$575 now and the remainder upon receipt of a W-9.

23. Finally, 881 claimants are owed more than \$1,200 and therefore cannot be paid the full amount of their award without a W-9 even if the payments are split over two years. Ex. 1 ¶ 13.

24. KCC and Class Counsel will promptly begin reaching out to these claimants to collect W-9s. Ex. 1 ¶ 14.

25. Any claimant who has provided a completed W-9 by the time KCC is ready to make the initial payments described above for the other two categories of claimants will receive their full payment right away. Ex. 1 ¶ 15. All other claimants in this category will receive \$575 right away and the rest when they provide a W-9. *Id.*

26. If any claimants in this category have not provided a W-9 by January 2022, Plaintiffs will alert the Court and make a new proposal with respect to the remaining funds owed to those claimants. Ex. 1 ¶ 15.

Potential petition for writ of certiorari by Daisy Exum

27. Class Member Daisy Exum indicated in a filing with the Seventh Circuit that she might try to appeal to the Supreme Court, but that potential writ of certiorari should not prevent the implementation of Plaintiffs' proposed distribution plan.

28. Ms. Exum is in the third category of Plaintiffs described above, because she was awarded 15 calls. Therefore, if she provides KCC with a completed W-9, she should receive full payment for those 15 calls right away.

29. Ms. Exum did not ask the Seventh Circuit to stay proceedings in the district court

pending a potential petition for a writ of certiorari, and she may not ask this Court to stay proceedings here so that she can try to appeal to the Supreme Court. “[A] district court has no jurisdiction to stay a circuit court’s mandate simply to await the outcome of a *certiorari* petition seeking review of the circuit court’s decision on appeal.” *United States ex rel. Owens v. Duncan*, No. 08 C 7159, 2015 WL 5950124, at *3 (N.D. Ill. Oct. 13, 2015) (internal quotation and citation omitted). Therefore, even if Ms. Exum asked the Court to stop the proposed distribution to the other 58,000 Class Members, that request would not be well grounded.

30. In addition, in the event that Ms. Exum chooses to file a writ of certiorari, the Supreme Court grants the petition, and she ultimately gets an order awarding her the full 700 calls she originally claimed, there would likely be sufficient funds to available to pay Ms. Exum for the additional 685 calls because the distribution plan provides for payments in multiple phases.³

31. Finally, without weighing in on the merits of a potential petition for a writ of certiorari by Ms. Exum, Plaintiffs note that it is extremely unlikely such a petition would succeed. The Supreme Court grants review of at most approximately 2% of such petitions, and Ms. Exum’s claim does not involve any issues that are typically present in cases the Supreme Court agrees to decide. *See Supreme Court Procedures*, <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1#:~:text=Typically%2C%20the%20Court%20hears%20cases,vote%20to%20accept%20a%20case>. The long odds of a successful appeal to the Supreme Court also weigh in favor of permitting

³ For the avoidance of all doubt, Plaintiffs are not suggesting that KCC should or would have any authority to pay Ms. Exum for 700 calls now. This Court awarded her 15 calls, and the Seventh Circuit affirmed that award. The only way that Ms. Exum might be entitled to more calls would be through a successful appeal to the Supreme Court.

the distribution to proceed.

Conclusion

32. For the reasons stated above, Plaintiffs respectfully request that the Court grant their motion to approve the proposed final distribution plan.

Dated: May 6, 2021

Respectfully submitted by:

/s/ Scott Rauscher

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Class Counsel

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BERKLEY GROUP, INC., and
VACATION
OWNERSHIP MARKETING TOURS,
INC.,

Defendants.

Case No. 1:12-cv-04069

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
LANA LUCCHESI RE: DISTRIBUTION
PLAN**

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I, LANA LUCCHESI, declare and state as follows:

1. I am a Vice President with KCC Class Action Services (“KCC”), located in San Rafael, California. Pursuant to the Preliminary Approval Order dated October 5, 2016, the Court appointed KCC as the Claims Administrator in connection with the proposed Settlement of the above-captioned Action.¹ I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

2. This declaration supplements my previous declarations for the purpose of providing the proposed plan to distribute the remaining settlement funds owed to Class Members.

3. Pursuant to the Court’s Order, on or around August 22, 2019, KCC issued class member settlement payments representing an initial payment of \$200 to 57,926 class members totaling \$11,585,200.

4. Following the Seventh Circuit’s recent ruling dated March 19, 2021, there are currently 184,427 approved calls.

5. Each of the 184,427 calls is worth approximately \$302.24.

PROPOSED DISTRIBUTION PLAN

6. KCC has approved a total of 57,926 total claims. Of these, 46,735 claimants are owed more than \$600. Federal law requires KCC to report to the Internal Revenue Service payments of \$600 or more to any person in a given year. In order to properly pay the claimants the full amount of their award, the claimants will be required to submit an executed Substitute Form W-9.

7. There are 11,191 claimants that are owed less than \$600. Because these payments are under the \$600 threshold for tax reporting, KCC can send these claimants the full balance of the remainder of their award without a valid W-9.

8. The remaining 46,735 claimants (out of 57,926 total claimants with approved claims) are owed more than \$600. KCC cannot pay these claimants the full balance of the remainder

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Class Action Settlement Agreement, dated September 26, 2016 (the “Settlement Agreement”) and/or the Preliminary Approval Order.

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of their award this year without a valid W-9 Form on file.

9. Of these 46,735 claimants, the vast majority are owed less than \$1,200 and therefore could be paid the full balance of the remainder of their award without a valid W-9 *if* the payments are split over two years and the distribution amount per calendar year remains below the reportable threshold of \$600.

10. KCC intends to send an initial \$575 check to these claimants along with a letter explaining that: (a) KCC cannot pay the remainder of the award this year without a valid W-9 Form; and (b) claimants who do not provide a valid W-9 Form will not get the rest of their award until next calendar year.

11. KCC will also update the settlement website (www.freecruiseallclassaction.net) to notify affected claimants of the need to submit an executed Substitute Form W-9. The claimants will be able to securely submit their W-9 information online. They will also be able to mail in completed Substitute Form W-9s if they are unable to complete the form online.

12. KCC will collect and validate the W-9s and anticipates sending the final payment approximately 90 days after issuance of the initial \$575 check to claimants who have provided a valid W-9 at that time. For the remaining claimants who do not submit a valid W-9 within this timeframe will receive their final payment in January 2022.

13. Finally, 881 claimants are owed more than \$1,200 and therefore cannot be paid the full balance of the remainder of their award without a valid W-9 even if the payments are split over two years.

14. KCC intends to promptly begin the outreach to these claimants to collect W-9s.

15. Any claimant who has provided a valid W-9 at the time KCC is ready to make the initial payments described above, claimants will be able to receive the full balance of the remainder of their award right away. Those claimants that do not provide a valid W-9 by this time will receive \$575 initially and the balance when KCC receives a valid W-9. KCC understands that Class Counsel will seek further guidance from the Court if any claimants in this category have not provided a W-9 by January 2022.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 5, 2021 at San Rafael, California.



LANA LUCCHESI