

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT
SYSTEM, THE CITY OF BRISTOL PENSION
FUND, and THE CITY OF OMAHA POLICE
AND FIRE RETIREMENT SYSTEM, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

INSULET CORPORATION, DUANE
DESISTO, PATRICK J. SULLIVAN,
ALLISON DORVAL, and BRIAN ROBERTS

Defendants.

Civ. A. No. 15-12345-MLW

CLASS ACTION

ECF CASE

**LEAD PLAINTIFFS' MOTION
FOR APPROVAL OF DISTRIBUTION PLAN**

Lead Plaintiffs Arkansas Teacher Retirement System, the City of Bristol Pension Fund, and the City of Omaha Police and Fire Retirement System (collectively, "Lead Plaintiffs"), upon the accompanying Declaration of Michelle Kopperud in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Kopperud Declaration"),¹ submitted on behalf of the Court-approved Claims Administrator, Analytics Consulting, LLC ("Analytics"), and the accompanying Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan, hereby move this Court for entry of the [Proposed] Order Approving Distribution Plan (the "Distribution Order"), which will, *inter alia*:

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Kopperud Declaration or in the Stipulation of Settlement dated February 8, 2018 (ECF No. 110).

ALLOWED except with regard to § iii(a) because attorneys fees to be distributed shall be in the amounts in the June 25, 2021 Memorandum and Order (Dkt. No. 145). WCU, D. J. 6/25/21

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msj ~~PROPOSED~~ ORDER APPROVING DISTRIBUTION PLAN

Lead Plaintiffs moved this Court for an order approving a distribution plan for the Net Settlement Fund in the above-captioned class action (the "Action"). Having reviewed and considered all the materials and arguments submitted in support of the motion, including the Declaration of Michelle Kopperud in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan (the "Kopperud Declaration") and the Memorandum in Support of Lead Plaintiffs' Motion for Approval of Distribution Plan:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated February 8, 2018 (ECF No. 110) (the "Stipulation"), and the Kopperud Declaration, and all terms used in this Order shall have the same meanings as defined in the Stipulation or in the Kopperud Declaration.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Lead Plaintiffs' plan for distribution of the Net Settlement Fund to Authorized Claimants is **APPROVED**. Accordingly, it is further ORDERED that:

(a) The administrative recommendations of the Court-approved Claims Administrator, Analytics Consulting, LLC ("Analytics"), to accept the Timely Eligible Claims stated in Exhibit D to the Kopperud Declaration and the Late But Otherwise Eligible Claims stated in Exhibit E to the Kopperud Declaration, are adopted;

(b) The Claims Administrator's administrative recommendations to reject wholly ineligible Claims as stated in Exhibit F to the Kopperud Declaration are adopted;

(c) Analytics is directed to conduct an Initial Distribution of the proceeds of the Settlement as soon as practicable after the Effective Date of the Settlement (as defined in ¶ 6.1 of the Stipulation) occurs (the "Initial Distribution");

(d) In the Initial Distribution, Analytics shall distribute the full Settlement Amount plus any accrued interest (the "Settlement Fund") *less*

(i) ~~the total amounts of attorneys' fees, and litigation expenses, sought in Lead Counsel's pending Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (ECF No. 127) (which includes Lead Plaintiffs' requests for service awards to reimburse them for the time their employees spent prosecuting this action) (the "Fee and Expense Application"), with the further proviso that such amounts shall continue to remain in escrow in the Settlement Fund,~~
and service awards awarded in the June 25, 2021 Memorandum 6/25/21 and Order (ECF No. 145)

under the jurisdiction of the Court, until the Court rules on that Application;

- (ii) the amount of Analytics' fees and expenses that are approved by this Order; and
- (iii) the amount of any taxes and estimated taxes paid or to be paid, the costs of preparing appropriate tax returns, and any escrow fees.

Such net amount shall be distributed to Authorized Claimants on a *pro rata* basis based on their respective Recognized Claims, as detailed in paragraph 38(a) of the Kopperud Declaration. To the extent that the total amount of attorneys' fees and expenses ultimately awarded to Plaintiffs' Counsel and Lead Plaintiffs by the Court are less than the amounts sought in the Fee and Expense Application, the difference will be distributed in a "Second Distribution", as described in subparagraph (g) below.

(e) In order to encourage Authorized Claimants to cash their checks promptly, all distribution checks will bear the following notation: "CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE]." Lead Counsel and Analytics are authorized to take appropriate action to locate and contact any Authorized Claimant who has not cashed his, her, or its check within said time as detailed in paragraph 38(b) footnote 4 of the Kopperud Declaration;

(f) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions stated in paragraph 38(b) footnote 4 of the Kopperud Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all of these stale-dated checks will be available to be distributed to other Authorized Claimants. Similarly, Authorized Claimants who do not cash their check from

a second or any subsequent distribution within the time allotted or on the conditions stated in paragraph 38(b) footnote 4 of the Kopperud Declaration will irrevocably forfeit any further recovery from the Settlement;

(g) After Analytics has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks (provided in paragraph 38(b) footnote 4 of the Kopperud Declaration) but not earlier than nine (9) months after the Initial Distribution, Analytics shall, unless the Court otherwise directs, conduct a Second Distribution in which all amounts remaining after the Initial Distribution (consisting of (i) any portion of the amount reserved for attorneys' fees and litigation expenses that was not awarded by the Court; (ii) any unclaimed funds on any void or otherwise uncashed checks to Settlement Class Members; and (iii) any other funds that may still remain in the Settlement Fund)—but *less* any amounts for Analytics' fees and expenses incurred in administering the Settlement for which it has not yet been paid (including Analytics' estimated costs of making a Second Distribution) and *less* any amounts for unpaid taxes or estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees—shall be distributed to all Authorized Claimants in the Initial Distribution who cashed their Initial Distribution check and are entitled to receive at least \$10.00 from the Second Distribution based on their *pro rata* share of the remaining funds. Additional distributions, after deduction of costs and expenses as described above and subject to the same conditions, may occur thereafter in six-month intervals until Lead Counsel, in consultation with Analytics, determine that further distribution is not cost-effective;

(h) When Lead Counsel, in consultation with Analytics, determine that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective, if

sufficient funds remain to warrant the processing of Claims received after March 14, 2019, those Claims will be processed, and any otherwise valid Claims received after March 14, 2019, as well as any earlier-received Claims for which an adjustment was made after March 14, 2019, which resulted in an increased Recognized Claim amount, will be paid in accordance with subparagraph (i) below. If any funds remain in the Net Settlement Fund after payment of these late or late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any unpaid fees or expenses incurred in administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to one or more secular § 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court, as provided in ¶ 4.5(d) of the Stipulation;

(i) No new Claims may be accepted after March 14, 2019, and no further adjustments to Claims received on or before March 14, 2019, that would result in an increased Recognized Claim amount may be made for any reason after March 14, 2019, subject to the following exception. If Claims are received or modified after March 14, 2019, that would have been eligible for payment or additional payment under the Plan of Allocation if timely received, then, at the time that Lead Counsel, in consultation with Analytics, determine a further distribution is not cost-effective as provided in subparagraph (h) above, and after payment of any unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, these Claimants, at the discretion of Lead Counsel, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity with other

Authorized Claimants who have cashed all their prior distribution checks to the extent possible;

(j) Defendants, all other Released Defendant Persons, and Defendants' Counsel have no responsibility or liability whatsoever for the administration or distribution of the Settlement Fund and no person shall have any claim against any Defendant, Released Defendant Person, or Defendants' Counsel related to the administration or distribution of the Settlement Fund. No person shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, the Claims Administrator, and the Escrow Agent related to their involvement in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted, or who are otherwise involved in the administration or distribution of the Settlement Fund, based on any distributions of the Settlement Fund that are made in accordance with this Order. All Settlement Class Members and other Claimants, whether or not they receive payment from the Settlement Fund, are hereby barred from making any further claims against the Settlement Fund beyond the amounts allocated to Authorized Claimants pursuant to this Order;

(k) All of Analytics' fees and expenses incurred in the administration of the Settlement and estimated to be incurred in connection with the Initial Distribution of the Net Settlement Fund as stated in the invoices attached as Exhibit G to the Kopperud Declaration are approved, and Lead Counsel are directed to pay \$151,801.08 out of the Settlement Fund to Analytics; and

(l) Unless otherwise ordered by the Court, one year after all funds have been distributed, Analytics may destroy paper and electronic copies of the Claims and all supporting documentation.

4. This Court retains jurisdiction to consider any further applications concerning the administration of the Settlement, and any other and further relief that this Court deems appropriate.

SO ORDERED this 20th day of June 2019. 2021


The Honorable Mark L. Wolf
United States District Judge