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

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GEORGE MCREYNOLDS, MAROC	:	
HOWARD, LARUE GIBSON, JENNIFER	:	
MADRID, FRANKIE ROSS, MARVA YORK	:	
LESLIE BROWNE, HENRY WILSON,	:	
LEROY BROWN, GLENN CAPEL,	:	
CHRISTINA COLEMAN, J. YVES LABORDE,	:	
MARSHELL MILLER, CARNELL MOORE,	:	
MARK JOHNSON, CATHY BENDER-	:	Case No. 05-C-6583
JACKSON, and STEPHEN SMARTT,	:	
Individually on behalf of themselves	:	
and all others similarly situated,	:	Hon. Robert W. Gettleman
	:	Magistrate Judge Gilbert
Plaintiffs,	:	
	:	
- against -	:	
	:	
MERRILL LYNCH, PIERCE, FENNER	:	
& SMITH, INCORPORATED,	:	
	:	
Defendant.	:	

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~~PROPOSED~~ FINAL APPROVAL ORDER

Having considered Plaintiffs' Motion for Final Approval of Class Action Settlement (the "Motion), and the supporting materials, including the Settlement Agreement and the exhibits attached thereto, the oral arguments presented at the December 6, 2013 Fairness Hearing, and the complete record in this matter, it is ordered that the Motion is **GRANTED** under Rule 23 of the Federal Rules of Civil Procedure.

The Court further makes the following findings and rulings:

## **I. DEFINITIONS**

This Final Approval Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement.

## **II. 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 Class as defined below.

## **III. SETTLEMENT CLASS CERTIFICATION CLASS CERTIFICATION**

After extensive litigation over class certification, this Court previously certified a disparate impact class with respect to the teaming and account distribution policies under Rules 23(a), 23(b)(2), and 23(c)(4). Dkt. 534. The Settlement Class is broader because it includes the disparate treatment claim and involves certification under Rule 23(b)(3) as well. The only issues not addressed in the Court's prior certification Order, manageability and superiority, are met here because the Settlement provides a cohesive, orderly method for resolving the claims of the Settlement Class. *See Mache Prods., Inc. v. Windsor*, 521 U.S. 591, 619-20 (1997); *Carnegie v. Household Int'l, Inc.*, 376 Ph.D. 656, 660 (7th Cir. 2004). Therefore, Court certifies the following Settlement Class under Federal Rule of Civil Procedure 23(e), for purposes of this Settlement:

All African American Financial Advisors and Financial Advisor Trainees who have been assigned a production number in the domestic U.S. retail brokerage unit within the GPC division of Merrill Lynch at any time from May 6, 2001 through September 4, 2013.

The Settlement Class satisfies all of the requirements for certification under Federal Rules of Civil Procedure 23(a), 23(b)(2) and 23(b)(3).

#### **IV. CLASS NOTICE**

The Notice mailed to Settlement Class Members, pursuant to this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and was accomplished in all material respects. As set forth in the Claims Administrator's Declaration, on September 27, 2013, the Claims Administrator mailed the Notice to 1,433 Settlement Class Members. For Settlement Class Members whose mailings were returned as undeliverable, the Claims Administrator conducted searches for correct mailing addresses and sent the Notice to those addresses found. As of November 20, 2013, approximately 99% of the Settlement Class Members appear to have received the mailed Notice. The distribution of the Notice fully met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process under the U.S. Constitution, and any other applicable law. Additionally, because the Settlement Agreement received significant press coverage, including the New York Times and Wall Street Journal, all Settlement Class Members received effective public notice of the settlement.

On August 30, 2013, consistent with the Class Action Fairness Act ("CAFA"), the CAFA Notice was mailed to the Attorney General of the United States, to the Attorneys Generals of all 41 states in which Settlement Class Members reside, as well as the District of Columbia, to the Commissioners of Banking and Finance Institutions for all 50 states, including the District of Columbia, to the Office of the Comptroller of the United States, and to the Federal Deposit Insurance Corporation. No objections were received from any federal or state officials.

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

The Court hereby grants the Motion and finally approves the Settlement as set forth in the Settlement Agreement. The Court has reviewed the terms of the proposed Settlement Agreement along with its exhibits, including specifically the injunctive relief provisions and the plan of allocation for the Settlement Fund, and the Plaintiffs' Motion. Based on a review of those

papers, and the Court's familiarity with the case, the Court concludes that the Settlement Agreement is the result of extensive, arm's length negotiations between experienced counsel and parties after years of hard-fought litigation. The assistance of an experienced mediator in the settlement process also confirms that the Settlement is not collusive.

Having considered the strengths of the Plaintiffs' case versus the amount of the Settlement; the likely complexity, length, and expense of further litigation; the paucity of opposition to the Settlement among the Settlement Class; the opinion of competent counsel; and the advanced stage of the proceedings and the substantial amount of discovery already undertaken, the Court finds that the Settlement is fair, reasonable and adequate, and well within the range of final approval. The Settlement provides comprehensive and innovative injunctive relief designed to increase opportunities for African American Financial Advisors and Trainees at Merrill Lynch.

The Court further finds that the response of the Settlement Class Members to the Settlement Agreement supports approval of the Settlement. As of November 13, 2013, the last date by which Settlement Class Members were permitted to submit timely opt-out statements, only a single opt-out statement was submitted. Therefore, only one Settlement Class Member has opted out of the monetary settlement of the Settlement Agreement without releasing any monetary claims he may have. This individual is listed in Exhibit A to this Final Approval Order.

As of November 13, 2013, the last date by which Settlement Class Members were permitted to submit timely objections, only a single objection was submitted. Given that the Settlement Class numbers more than 1,400, the dearth of objections indicates strong support for

the Settlement from the Settlement Class. The Court has reviewed and considered the objections of the sole objector and rejects them.

The Settlement Agreement attached hereto as Exhibit B is hereby approved and incorporated herein and shall become effective according to its terms. On or before December 20, 2013, the Claims Administrator shall (a) mail to all Settlement Class Members a Notice of Final Approval of Class Action Settlement (“Final Notice”), attached as Exhibit C, and (b) post a copy of this Order and the Final Notice on the website maintained by the Claims Administrator, <http://www.merrillracesettlement.com>. The Final Notice shall enclose both the Simple Claim Form and the Detailed Claim Form and shall inform Settlement Class Members that claim forms may be filed either electronically, through the Claims Administrator’s website, or by mail, and that the deadline for filing claim forms is February 18, 2014. The Court finds the proposed claims process is rationally related to the relative strengths and weaknesses of the respective claims asserted. The mechanisms and procedures set forth in the Settlement Agreement by which payments are to be calculated and made to Settlement Class Members filing timely claims are fair, reasonable and adequate.

## **VI. SERVICE AWARDS**

The Class Notice included the exact amount of the requested service awards for Class Representatives and Steering Committee Members. No member of the Settlement Class filed any objection to the service awards, which the Court takes as an indication that the Settlement Class values the efforts of the Class Representatives and Steering Committee Members on behalf of the class. In light of the lack of objection by the Settlement Class and the Declarations submitted in support of the service awards, the Court approves service awards of (a) \$250,000 to each Class Representative and (b) \$75,000 to each of the six members of the Steering Committee.

## **VII. CLASS COUNSEL'S ATTORNEYS' FEES AND COSTS**

The Court has considered the favorable results obtained on behalf of the Settlement Class, the market value of the legal services provided, the risk Class Counsel undertook in accepting the representation, and the quantity and quality of the legal services provided to the Settlement Class. Class Counsel spent more than 40,000 hours of attorney and professional time in litigating this case vigorously over the past eight years. The Court has also considered the lodestar amount and the expert opinions of Professors John C. Coffee, Jr. and Theodore Eisenberg that the fees requested are reasonable in light of these factors and when compared to fee awards in comparable cases. Accordingly, the Court grants Class Counsel's requested attorneys' fees. The Court also approves reimbursement of the costs and expenses Class Counsel incurred in prosecuting this action.


## **VIII. RELEASES AND EFFECT OF SETTLEMENT**

By operation of this Final Approval Order, all released claims of Settlement Class Members, Named Plaintiffs and Steering Committee Members (as described in the Settlement Agreement and Exhibits B and C thereto) are fully, finally and forever released, relinquished, and discharged pursuant to the terms of the Settlement Agreement, other than the one individual listed in Exhibit A to this Final Approval Order who timely opted out pursuant to the Court's Preliminary Approval Order. The Court has reviewed the release provisions in the Settlement Agreement and in the Named Plaintiff Release and Steering Committee Member Release annexed as Exhibits B and C, respectively, to the Settlement Agreement, and the Court finds the releases to be fair, reasonable and enforceable under applicable law. All claims released pursuant to the Settlement Agreement are dismissed with prejudice as to all Settlement Class Members other than the individual listed in Exhibit A to this Final Approval Order.

This Final Approval Order and Settlement Agreement are binding on all Settlement Class Members, other than the individual listed in Exhibit A to this Final Approval Order. Neither the Settlement Agreement, nor this Final Approval Order, nor the fact of a settlement, are an admission or concession by Merrill Lynch of any liability or wrongdoing whatsoever, or a finding by this Court as to the merits of any claim or defense asserted or that could have been asserted in this Action.

Ten business days after the Effective Date of the Settlement, the Second Amended Complaint shall automatically be dismissed with prejudice, except that the Court will retain continuing jurisdiction limited to resolving issues relating to the administration, implementation and enforcement of the Settlement Agreement and this Final Approval Order. This Order shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 6<sup>th</sup> day of December 2013.

  
ROBERT W. GETTLEMAN  
United States District Judge