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UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMRISH RAJAGOPALAN, MARIE
JOHNSON-PEREDO, ROBERT HEWSON,
DONTE CHEEKS, DEBORAH HORTON,
RICHARD PIERCE, ERMA SUE CLYATT,
ROBERT JOYCE, AMY JOYCE, ARTHUR
FULLER, DAWN MEADE, WAHAB
EKUNSUMI, KAREN HEA, ALEX
CASIANO, DECEMBER GUZZO, BEN
PARKER, CHERYL ANDERSON, CARMEN
ALFONSO, BETH JUNGEN, TANYA
GWATHNEY, KEVIN DELOACH, SCOTT
SNOEK, KELLY ENDERS, THOMAS
LUDWICK, DONALD BOGAN, BILL
KRUSE, JOYCE DRUMMOND, TAMARA
COOPER, DEBRA MILLER, GEORGE
LAWRENCE, CYNTHIA OXENDINE,
MARTIN ANDERSON, ANGELA ROSS,
ANDREA TOPPS, DEBRA FINAZZO,
SHARRON BLACK, SYLVIA HADCOCK,
AUDRIE LAWRENCE (POOLE), ADAM
WARD, ISHULA MCCONNELL, ERICA
CHASE, STEPHEN YOUNKINS, DAN
WEDDLE, STILLMAN PARKER, TINA
ROBERTS-ASHBY, BRANDON ASHBY,
VALERIE NEWSOME, AND RUSSEL
TANNER, on behalf of themselves and others
similarly situated.

Plaintiffs,

v.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND and PLATTE RIVER
INSURANCE COMPANY, as Sureties for
Meracord LLC,

Defendants.

No. 3:16-cv-05147-BHS

**ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 This matter comes before the Court on Settlement Class Representatives' Motion for
2 Final Approval of Class Action Settlement,¹ filed August 16, 2016 ("Final Approval Motion"),
3 and Settlement Class Representatives Amended Motion for Attorneys' Fees, Expenses, and
4 Incentive Awards ("Fee Motion"). Settlement Class Representatives and Platte River Insurance
5 Company ("Platte River" or "Settling Defendant") entered into a Class Action Settlement
6 Agreement and Release, dated March 23, 2016 ("the Settlement Agreement" or "the
7 Settlement"), to settle the above-captioned lawsuit, as well as the action captioned *Cheeks v.*
8 *Fidelity and Deposit Company of Maryland and Platte River Ins. Co., as sureties for Meracord*
9 *LLC*, No. 4:13-cv-01854-DMR (N.D. Cal. Filed April 23, 2013) (together, the "Lawsuits"). The
10 Settlement Agreement sets forth the terms and conditions for a proposed Settlement and
11 dismissal with prejudice of Platte River from the Lawsuits.

12 The Court has carefully considered the Final Approval Motion, Fee Motion, and the
13 associated Declarations; the Settlement Agreement; the objection thereto by Nicola Damerel; the
14 arguments of counsel; and the record in this case, and is otherwise advised in the premises. IT IS
15 HEREBY ORDERED AND ADJUDGED:

16 1. The Court hereby gives its final approval to the Settlement, finding that the
17 Settlement is sufficiently fair, reasonable, and adequate; and that adequate notice was given to
18 Settlement Class Members in accordance with the Settlement Agreement and the Court's Order
19 preliminarily approving the Settlement. The Settlement Agreement is hereby incorporated by
20 reference in this Order, and all terms and phrases used in this Order shall have the same meaning
21 as in the Settlement Agreement.

22 _____
23 ¹ Ben Parker (Alaska), December Guzzo (Alabama), Deborah Horton (Arkansas), Donte
24 Cheeks (District of Columbia), Tanya Gwathney (Delaware), Bob Joyce (Florida), Amy Joyce
25 (Florida), Erma Sue Clyatt (Florida), Scott Snoek (Hawaii), Bill Kruse (Iowa), Kelly Enders
26 (Idaho), Tom Ludwick (Illinois), Joyce Drummond (Kansas), Tamara Cooper (Kentucky), Debra
Miller (Louisiana), George Lawrence (Maine), Martin Anderson (Minnesota), Angela Ross
(Mississippi), Amrish Rajagopalan (North Carolina), Adam Ward (North Dakota), Debra
Finazzo (Nebraska), Sharron Black (Nevada), Ishula McConnell (Oklahoma), Stephen Younkins
(South Dakota), Tina & Brandon Ashby (Virginia), Stillman Parker (Vermont), Valerie
Newsome (West Virginia), and Russel Tanner (Wyoming) are collectively referred to as
"Settlement Class Representatives."

1 2. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court approves
2 the Settlement set forth in the Settlement Agreement, and finds that the Settlement Agreement is,
3 in all respects, fair, reasonable, and adequate, and in the best interests of, the Settlement Class
4 Representatives, the Settlement Class, and each of the Settlement Class Members, and is
5 consistent and in compliance with all requirements of due process and federal law. This Court
6 further finds that the Settlement is the result of arm's-length negotiations between experienced
7 counsel representing the interests of the Settlement Class Representatives, the Settlement Class
8 Members, and the Settling Defendant. The Court further finds that the Parties have evidenced
9 full compliance with the Court's Preliminary Approval Order. The Settlement shall be
10 consummated pursuant to the terms of the Settlement Agreement, which the parties are hereby
11 directed to perform.

12 3. This Court has personal jurisdiction over all Settlement Class Members and subject
13 matter jurisdiction to approve the Settlement Agreement.

14 4. The Court confirms its previous certification of the following Settlement Class, for
15 settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(b)(3):

16 All persons who had an account at Meracord from which Meracord
17 deducted any fees related to debt settlement services (including
18 mortgage assistance relief services) and who, while residing in a
19 Platte River State, made payments to such account within the Bond
20 Period² of their state of residence.

21 Excluded from Settlement Class are the Released Parties and Fidelity, their officers and
22 directors, members of their immediate families and their legal representatives, heirs, successors,
23 or assigns, and any entity in which any Released Parties or Fidelity has or had a controlling
24 interest.

25 5. The Court finds that (a) Members of the Settlement Class are so numerous as to
26 make joinder of all Settlement Class Members impracticable; (b) there are questions of law or
fact common to Members of the Settlement Class; (c) the claims of the Settlement Class

² The Bond Periods are those listed in Appendix A to the Settlement Agreement.

1 Representatives are typical of the claims of the Settlement Class Members; (d) Settlement Class
2 Representatives and Class Counsel will fairly and adequately protect the interests of the
3 Settlement Class Members; (e) questions of law or fact common to the Settlement Class
4 Members predominate over questions affecting only individual Settlement Class Members; and
5 (f) a class action is superior to other available methods for the fair and efficient adjudication of
6 the controversy.

7 6. Class Notice. The Court finds that the notice program, previously approved by the
8 Court in its Preliminary Approval Order, has been implemented and complies with Fed. R. Civ.
9 P. 23. The Court finds that the Class Notice plan as performed by the Administrator and Class
10 Counsel—including the form, content, and method of dissemination of the Class Notice to
11 Settlement Class Members as described in the Settlement Agreement—(1) is the best practicable
12 notice; (2) is reasonably calculated, under the circumstances, to apprise Settlement Class
13 Members of the pendency of the Lawsuits and of their right to object to and/or exclude
14 themselves from the proposed Settlement; (3) is reasonable and constitutes due, adequate, and
15 sufficient notice to all Persons entitled to receive notice; and (4) meets all applicable
16 requirements of Federal Rule of Civil Procedure 23 and due process. The Court further finds that
17 the procedures followed by the Administrator for identifying current addresses and email
18 addresses for potential Settlement Class Members constituted an appropriate and sufficient effort
19 to locate potential Settlement Class Members for notice purposes. The Administrator
20 successfully delivered direct notice to 92.8% of the Settlement Class—well within the range of a
21 reasonable “reach rate.”

22 7. Rule 23 requires that class notice “must clearly and concisely state in plain, easily
23 understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the
24 class claims, issues, or defenses; (iv) that a class member may enter an appearance through an
25 attorney if the member so desires; (v) that the court will exclude from the class any member who
26 requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect

1 of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). The Court
2 finds that the Long-Form Notice, previously approved by the Court, contained detailed
3 information regarding the Settlement meeting those requirements.

4 8. Plan of Allocation. The Court finds that the Plan of Allocation as set forth in the
5 Settlement Agreement is fair, reasonable, and adequate. The Plan of Allocation provides
6 monetary recovery to Settlement Class Members on a *pro rata* basis in proportion to the Total
7 Unreturned Fees paid from each Settlement Class Member’s Meracord account. *See In re Oracle*
8 *Secs. Litig.*, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994) (“A plan of allocation that
9 reimburses class members based on the extent of their injuries is generally reasonable.”). The
10 Court also notes that there is no reversion to Platte River of the Settlement Fund, maximizing the
11 amount of payments to Settlement Class Members. Accordingly, the Plan of Allocation is
12 approved.

13 9. Exclusions. The Court has reviewed Exhibit D to the Declaration of Lori Castaneda,
14 and determines that it contains the complete list of all Persons who have submitted timely and
15 untimely requests for exclusion from the Settlement Class under the procedures set forth in the
16 Settlement Agreement and the Long-Form Notice and previously approved by the Court. The
17 Court rules that all Persons who requested exclusion shall be excluded from the Settlement
18 Class. **Exhibit 1** to this Order is the complete list of all Persons who are excluded from the
19 Settlement Class, and who therefore shall neither share in nor be bound by this Order.

20 10. Objection. The Court has also reviewed the sole objection to the Settlement filed by
21 Nicola Damerel, Dkt. 25, and overrules the objection, finding it without merit for the reasons set
22 forth in the Motion for Final Approval and in open court.

23 11. Incentive Awards. The Court confirms its previous appointment of the Settlement
24 Class Representatives as representatives of the Settlement Class, and approves Incentive Awards
25 of \$500 each for the twenty-eight Settlement Class Representatives, or \$14,000 total; finds that
26

1 such awards are fair and reasonable; and orders said awards to be paid pursuant to the Settlement
2 Agreement.

3 12. Attorneys' Fees. The Court confirms its previous appointment of Hagens Berman
4 Sobol Shapiro LLP and The Paynter Law Firm PLLC as Class Counsel, and finds that Class
5 Counsel have adequately represented the Settlement Class for purposes of entering into and
6 implementing the Settlement. The Court hereby awards to Class Counsel (a) attorneys' fees in
7 the amount of \$1,323,363.50 (representing 25% of the Settlement Fund); and (b) reimbursement
8 of expenses in the amount of \$17,525.16. In making this award of attorneys' fees and
9 reimbursement of expenses, the Court has considered and finds as follows.

10 13. This Court has discretion to award fees either as a percentage of the common fund
11 established or pursuant to the lodestar method. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir.
12 2000). Under either approach the focus should be on whether the “end result is reasonable.” *Id.*
13 The Court finds that under both methods the requested fees are reasonable.

14 14. The Court finds that the attorneys' fees award—reflecting the Ninth Circuit's 25%
15 benchmark—is fair and reasonable under the percentage-of-the-recovery method based on the
16 following factors:

- 17 (a) The results obtained by counsel in this case. *See Vizcaino v. Microsoft Corp.*, 142
18 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001), *aff'd*, 290 F.3d 1043 (9th Cir. 2002).
19 Class Counsel litigated for over three and a half years against Meracord to establish
20 its underlying liability for the wrongful conduct that formed the basis of the original
21 complaint, and after Meracord itself was insolvent, Class Counsel continued to
22 pursue the most realistic remaining avenue of recovery: the Bonds. The Settlement
23 provides significant relief to Settlement Class Members in the form 85% of Platte
24 River's maximum exposure on the Bonds—an excellent result.
- 25 (b) The risks and complex issues involved in this case, which were significant and
26 required a high level of skill and high-quality work to overcome. *See In re*

1 *Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Class
2 Counsel maintained this litigation for years, despite the risks, and even after
3 Meracord was effectively insolvent, to obtain relief for the Settlement Class. Class
4 Counsel devoted significant time and effort in the prosecution of the initial actions
5 against Meracord and the Sureties, and the success of the Settlement builds on the
6 groundwork laid in those actions.

7 (c) The attorneys’ fees requested were entirely contingent upon success and counsel
8 risked time and effort and advanced costs with no guarantee of compensation. *See*
9 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).
10 Class Counsel bore a high degree of risk in bringing and pursuing this action,
11 including the considerable risk of non-payment.

12 (d) The range of awards made in similar cases justifies an award of 25% here, *see In re*
13 *Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989).

14 (e) The Settlement Class Members have been notified of the requested fees and had an
15 opportunity to inform the Court of any concerns they have with the request, and no
16 such concerns were voiced by any Settlement Class Member.

17 Given these factors, the Court finds that the requested fee award comports with the
18 applicable law and is justified by the circumstances of this case.

19 15. Alternatively, the Court also finds the fees awarded reasonable using the “lodestar”
20 method. Under this method, the Court first calculates Class Counsel’s “lodestar” by multiplying
21 the hours worked by their hourly rate(s). This lodestar may then be adjusted upwards by a
22 multiplier based on the results obtained and the risk borne by Class Counsel. Here, the
23 declarations submitted by Class Counsel indicate that their lodestar is \$1,309,117.50, based on a
24 total of 2,452.4 hours expended in the litigation.³ The Court need not make a specific finding that

25 _____
26 ³ The Court approves as appropriate and reasonable Class Counsel’s method of attributing
time spent on the overall litigation to this particular Settlement, as outlined in Section II(A)(2)(a)
of the Fee Motion.

1 the hourly rates of Class Counsel as set out in their supporting declaration are consistent with
2 hourly rates charged by firms and attorneys of comparable skill, experience and reputation
3 because this case could likely have justified a multiplier of 1.5 or more of the lodestar amount
4 that, even with somewhat lower hourly rates, would have resulted in an amount exceeding the
5 requested fee. The Court also finds that the hours devoted to this case were reasonable given the
6 complexity of the legal issues involved, which were addressed in extensive briefing before both
7 this Court and the Ninth Circuit, as well as the extensiveness of both discovery and settlement
8 negotiations. Class Counsel's requested fees under both settlements represent a negligible
9 multiplier of 1.01, which the Court finds appropriate given the recovery Class Counsel have
10 achieved for Settlement Class Members, as well as the risks faced by Class Counsel, as
11 explained above.

12 16. In light of the above, the Court finds the requested fees reasonable and that an award
13 of \$1,323,363.50 for this Settlement is appropriate under both the lodestar and common fund
14 approaches.

15 17. The Court also awards reimbursement of reasonable costs and expenses in the
16 amount of \$17,525.16. The Court finds that these amounts were reasonably incurred in the
17 ordinary course of prosecuting this case and were necessary given the complex nature and
18 nationwide scope of the case, and that the total costs and expenses granted are allowable under
19 the Settlement.

20 18. Administration Costs. The Court confirms its previous appointment of Garden City
21 Group, LLC ("GCG") as the Administrator, and finds that the Administrator has so far fulfilled
22 its duties under the Settlement. The Court orders that, by agreement between Class Counsel and
23 the Administrator, a total of \$198,656.00 be paid from the Settlement Fund to the Administrator
24 for past and future unreimbursed expenses relating to notice and administration of the
25 Settlement.
26

1 19. As of the Effective Date, the Settlement Class Representatives and all other
2 Settlement Class Members (other than those listed in Exhibit 1 hereto), and their heirs, estates,
3 trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and
4 successors, and anyone claiming through them or acting or purporting to act for them or on their
5 behalf, regardless of whether they have received actual notice of the Settlement, have
6 conclusively compromised, settled, discharged, and released all Released Claims against Platte
7 River and the Released Parties, and are bound by the provisions of the Settlement, as further
8 provided by the Agreement.

9 20. The Court permanently bars and enjoins all Settlement Class Members (other than
10 those listed in **Exhibit 1**) (i) from filing, commencing, prosecuting, intervening in, or
11 participating as plaintiff, claimant, or class member in any other lawsuit or administrative,
12 regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims,
13 including specifically *Cheeks v. Fidelity and Deposit Company of Maryland and Platte River*
14 *Ins. Co., as sureties for Meracord LLC*, No. 4:13-cv-01854-DMR (N.D. Cal. Filed April 23,
15 2013); and (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory,
16 arbitration, or other proceeding as a class action on behalf of any Settlement Class Members,
17 based on the Released Claims.

18 21. The above-captioned action, and all individual and class claims contained therein,
19 including all of the Released Claims, are dismissed with prejudice and on the merits as to the
20 Settlement Class Representatives and all other Settlement Class Members (other than those listed
21 in Exhibit 1 hereto), and as against each and all of the Released Parties, without fees or costs
22 except as provided in the Settlement Agreement.

23 22. Without further approval from the Court, the Parties are authorized to agree to and
24 adopt such amendments, modifications, and expansions of the Settlement Agreement, including
25 all Exhibits thereto, as (i) shall be consistent in all material respects with this Order and Final
26 Judgment and (ii) do not limit the rights of Settlement Class Members.

1 23. The Court finds, under Fed. R. Civ. P. 54(b), that there is no just reason for delay in
2 entering final judgment, and directs that this Order and Final Judgment shall be final and entered
3 forthwith.

4 24. Without affecting the finality of this Order and Final Judgment, the Court reserves
5 jurisdiction over the Settlement Class Representatives, the Settlement Class, and Platte River as
6 to all matters concerning the administration, consummation, and enforcement of the Settlement
7 Agreement.

8 IT IS SO ORDERED.

9 Dated this 30th day of August, 2016.

10 

11 BENJAMIN H. SETTLE
12 United States District Judge

13 Presented By: HAGENS BERMAN SOBOL SHAPIRO LLP

14 By: /s/ Steve W. Berman

15 /s/ Thomas E. Loeser

16 Steve W. Berman, WSBA #12536
17 Thomas E. Loeser, WSBA # 38701
18 1918 Eighth Avenue, Suite 3300
19 Seattle, WA 98101
20 steve@hbsslaw.com, toml@hbsslaw.com

21 THE PAYNTER LAW FIRM PLLC

22 Stuart M. Paynter (pro hac vice)
23 1200 G Street N.W., Suite 800
24 Washington, DC 20005
25 Telephone: (202) 626-4486, Facsimile: (866) 734-0622
26 stuart@paynterlawfirm.com

Celeste H.G. Boyd (pro hac vice)
106 Churton St., Suite 200
Hillsborough, NC 27278
Telephone: (919) 307-9991, Facsimile: (866) 734-0622
cboyd@paynterlawfirm.com

*Attorneys for Settlement Class
Representatives*

EXHIBIT 1

Persons Excluded from Settlement Class

Name	City	State
Donna Losier	Mokena	IL

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