

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

**Michelle Lee Tannlund, et al.**

v.

**Real Time Resolutions, Inc.**

Case No. 1:14-cv-5149

Hon. Edmond E. Chang

**Plaintiff's Motion for  
Order Compelling Specific Performance and for Sanctions**

This Court previously ordered final approval of a class action settlement in this matter and half a million dollars was distributed to class members. However, more than \$261,000 remains in unclaimed funds and Defendant Real Time Resolutions, Inc. ("Real Time") is refusing to pay for a second distribution, contrary to the clear terms of the settlement agreement. Plaintiff brings this motion to force Real Time to comply with its obligations and pay for a second round of checks to class member claimants who cashed the first check issued.

The money is not trivial. The second distribution will be \$24.31 per person, well above the negotiated \$4 per person cut-off negotiated in the settlement agreement. The cost of a second distribution is about \$42,000 according to the claims administrator.

Plaintiff therefore asks that the Court order Real Time to comply with the terms of the agreement, pay for the costs of a second distribution, and pay sanctions in the amount of \$2,500 to reflect the unnecessary fees and costs incurred in bringing this Motion.

## Background

### 1. The Settlement Agreement and Final Approval

The proposed settlement establishes a Settlement Fund of \$1,300,000 to pay cash settlement awards to Settlement Class Members who submit timely and valid claims, attorneys' fees and costs as ordered by the Court, and a service award to Ms. Tannlund. Settlement Agreement ("SA") §§ 2.33, 5.02 (R. 81-1). No part of the fund reverts to Real Time "regardless of the number of claimants, claims made, checks cashed, or otherwise." *Id.* § 5.02. Notably, the Settlement Fund does not include money for settlement notice or claims administration costs, which is paid separately by Real Time and in addition to the \$1.3 million for the class and counsel. *Id.* § 8.03.

The Settlement Agreement also contemplated a second distribution if case a significant number of class members submitted timely claims but failed for whatever reason to cash the first check. *Id.* § 10.04. In order not to spend a dollar to deliver a dime, the parties agreed that \$4 per person would be the appropriate amount of minimum distribution. *Id.* If the remaining unclaimed funds was above that amount, then Real Time would pay the costs of a second distribution. Indeed, the Settlement Agreement was unambiguous on this point: "The postage and administration costs for any such second distribution shall be paid by Real Time." *Id.* (emphasis added). The entire Settlement Agreement is attached as Exhibit "A" to the declaration of counsel, filed contemporaneously.

The Court granted final approval of the settlement and awarded fees, costs, and an incentive award to the named plaintiff by its order dated August 23, 2017 (R. 101). After subtracting those amounts from the \$1.3 million common fund, \$754,694.45 remained for

distribution to the 16,485 class members who submitted valid and timely claims. Each claimant was issued a check for \$45.78 at the address submitted on September 29, 2017. Molina Decl., ¶ 5.

Paragraph Six of the Final Approval Order includes a specific direction that the parties “are ordered to carry out the Settlement according to the terms of the Amended Settlement Agreement.” R. 101, at 3.

## **2. Costs of a Second Distribution**

Class Counsel emailed ILYM Group, Inc., the approved notice and claims administrator, in July 2018 to see where things stood because more than 210 days had passed since the first checks had been sent out. ILYM reported that 10,766 of the claimants had cashed that first check, but \$261,815.82 remained unclaimed in the common fund. Ankcorn Decl., ¶¶ 2-4; Molina Decl., ¶¶ 7, 9. Dividing the unclaimed funds by the total claimants who cashed a check means that roughly \$24 is available for a second distribution, well above the \$4 per person cut-off. At the request of Class Counsel, ILYM prepared an estimate for the costs of a second distribution to these 10,766 claimants and determined that it would cost \$42,141.80 to distribute these funds. Ankcorn Decl., ¶ 4; Molina Decl., ¶ 9.

## **3. Real Time Unreasonably Refused to Pay the Costs of a Second Distribution**

Class Counsel reached out to Real Time’s attorneys on July 27, 2018, forwarding the cost estimate by email and reminding them of the obligation under the Settlement Agreement to pay the costs of a second distribution. Ankcorn Decl., ¶ 4. This email was directed to Abraham Colman of Reed Smith in Los Angeles, the lead attorney for Real Time and the point of contact specifically designated in the Settlement Agreement for

notices. *Id.*; S.A. § 18.10. Mr. Colman replied on September 4 by return email that he thought the estimate too expensive and asked what could be done to lower the costs. *Id.*, ¶ 5. Class Counsel replied the same day that most of the quote was postage and check preparation, but invited him to communicate with ILYM directly to see what could be negotiated. *Id.*, ¶ 6. Class Counsel heard nothing back and wrote again on October 10, 2018 to see what had transpired, asking “Do I need to bring a motion to enforce the settlement agreement?” *Id.*, ¶ 7.

Since that time, Class Counsel has exchanged 57 emails and had at least two lengthy conference calls with Mr. Colman and his associate, but Real Time continues to insist that it is not obligated to pay for a second distribution and the \$261,000 in remaining funds should go to a *cy pres* charity. *Id.*, ¶ 8. Real Time has also not responded to Class Counsel’s suggestions regarding which non-profit group to select as an appropriate *cy pres* recipient. *Id.*, ¶ 9.

## Argument

### 1. Legal Standard

A court has the inherent authority to enforce a settlement agreement, and where neither the existence or the terms of a settlement agreement are in dispute, the district court need not hold an evidentiary hearing to resolve disputes or ambiguities. *Sims-Madison v. Inland Paperboard and Packaging, Inc.*, 379 F.3d 445, 449 (7th Cir. 2004). This is particularly true where, as here, the agreement was approved by and incorporated into a court order. See, e.g., *Gardiner v. A.H. Robins Co., Inc.*, 747 F.2d 1180, 1190 fn. 13 (8th Cir. 1984); see also *Young v. U.S. ex rel Vuitton et Fils S.A.*, 481 U.S. 787, 793

(1987) (“[I]t is long settled that courts possess inherent authority to initiate contempt proceedings for disobedience to their orders”).

Because this Court’s Final Approval Order specifically instructed the parties to carry out the terms of the Settlement Agreement, breach of those terms is not only a breach of the contract but also disobedience to this Court’s order.

## **2. A Second Distribution is Necessary and Costs are Born by Real Time**

As set out in Section 10.04 of the Settlement Agreement, if unclaimed funds would provide more than \$4 per person after the initial distribution, a second distribution will be made to ensure that the maximum amount of the fund is paid out to the class. Here, the second distribution would give claimants an additional \$24.31 — on top of the first check for \$45.78 — which is well above the negotiated threshold.

And it is beyond dispute that Real Time must pay for those costs. The Settlement Agreement couldn’t be clearer: “The postage and administration costs for any such second distribution shall be paid by Real Time.” S.A., § 10.04 (R. 81-1). Real Time’s refusal to pay despite repeated requests to do so is a direct breach of the Agreement.

## **3. Real Time Should be Sanctioned with Costs and Fees for Failing to Pay**

Real Time’s refusal to follow through with its obligations under the Settlement Agreement has caused needless and wholly unnecessary motion practice, which could have been avoided. Further, there is no basis for refusing to pay since the funds remaining far exceed the \$4 per person trigger for a second distribution and the terms of the agreement allocating those costs to Real Time (and not the class or the common fund) are unambiguous.

Class Counsel spent in excess of fifteen hours communicating with opposing counsel and preparing this motion with the supporting declarations. Ankcorn Decl., ¶ 11. At his customary and court-approved rate of \$725 per hour for similar work, the total for fees incurred is at least \$10,875. Costs of approximately \$1,925 will also be incurred specific to this motion. *Id.* However, Class Counsel will waive any fees and costs in excess of \$2,500.

### Conclusion

For these reasons, Class Counsel respectfully request that the Court order Real Time to pay the actual costs of postage and administration for a second distribution to claimants as plainly stated in the Settlement Agreement. The Court should also order Real Time to pay \$2,500 in fees and costs as an appropriate sanction for deliberate breach of contract and direct disobedience of this Court's final approval order.

Respectfully submitted,

Dated: May 22, 2018

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**Certificate of Service**

I hereby certify that on the date stated above, I electronically filed the above and foregoing through the Court's CM/ECF System, which perfected service on all counsel of record.

*/s/ Mark Ankorn*