

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ALBANY

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OWNER-OPERATOR INDEPENDENT DRIVERS  
ASSOCIATION, *et al.*,

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, *et al.*,

Defendants.

**ORDER**

Index No.: 5551-13

RJI No.: 01-13-111950

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(Supreme Court, Albany County, Motion Term)

APPEARANCES:

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The Cullen Law Firm, PLLC  
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*Lead Counsel for Plaintiffs*  
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Eric T. Schneiderman, Esq.  
Attorney General of the State of New York  
Helena Lynch, Esq., AAG  
*Attorney for Defendants*  
The Capitol  
Albany, New York 12224

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HON. JAMES H. FERREIRA, Acting Justice:

Plaintiffs' Counsel in this matter has advised the Court that, after diligent efforts to locate updated addresses for class members whose checks or class notices were returned as undeliverable, or whose checks have not been presented for payment, the State of New York was able to locate updated addresses for over 9,000 class members whose combined refunds amount to approximately \$900,000. Plaintiffs' Counsel has further advised the Court that there is a strong likelihood that at least a significant portion of this refund amount can be successfully delivered to the class members at their updated addresses. Accordingly, Plaintiffs' Counsel has requested that the Court amend the distribution schedule as stated in the Court's April 19, 2017 Order & Final Judgment to allow additional time for the distribution of these refunds. Counsel for Defendants has advised that Defendants do not oppose the relief requested by Plaintiffs.

Having considered the request submitted by Plaintiffs, the Court determines as follows:

(1) WHEREAS Defendants have made diligent efforts to obtain updated addresses for class members whose checks or class notices were returned as undeliverable, and have been successful in locating approximately 9,000 such addresses for class members whose refunds total approximately \$900,000; and

(2) WHEREAS if Plaintiffs mail new refund checks to these updated addresses, there is a strong likelihood of successfully delivering at least a significant portion of this additional \$900,000 in refunds to the class; and

(3) WHEREAS the mailing of new refund checks would necessitate a modification of the Court's distribution schedule specified in the Court's April 19, 2017 Order & Final Judgment; and

(4) WHEREAS Defendants do not oppose the relief requested; and

(5) WHEREAS the Court finds good cause to grant the relief requested;

ACCORDINGLY, it is hereby

ORDERED that the distribution schedule specified in the Court's April 19, 2017 Order & Final Judgment, attached hereto as Exhibit A, is amended as follows:


Event	Deadline
Mailing of checks as described in Plaintiffs' November 13, 2017 letter to the Court	As early as practicable
Deadline for class members to cash settlement checks issued pursuant to this Order	90 days following date on which checks are mailed to class members
Deadline for mediation and receipt of verification forms & excess funds	90 days following date on which checks are mailed to class members
Distribution of undeliverable funds according to the Settlement Agreement and the Court's Order granting final approval	30 days following deadline for mediation and pass-through of funds to owner-operators
Plaintiffs' final report to the Court regarding disbursement of Settlement Fund due	60 days following redistribution of undeliverable funds

SO ORDERED.

ENTER.

DATED: Albany, New York

November 21, 2017

  
Hon. James H. Ferreira  
Acting Justice of the Supreme Court

# **EXHIBIT A**

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

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OWNER-OPERATOR INDEPENDENT DRIVERS  
ASSOCIATION, *et al.*,

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, *et al.*,

Defendants.

**ORDER & FINAL JUDGMENT**

Index No.: 5551-13

RJI No.: 01-13-111950

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(Supreme Court, Albany County, Motion Term)

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Eric T. Schneiderman, Esq.  
Attorney General of the State of New York  
Helena Lynch, Esq., AAG  
*Attorney for Defendants*  
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HON. JAMES H. FERREIRA, Acting Justice:

Pending before the Court is Plaintiffs' Motion for Final Approval of: (1) Settlement Agreement; (2) Application for Attorneys' Fees, Expenses, Class Representative Awards, and Cy Pres Distribution; and (3) Class Distribution Plan (collectively, the "Requested Relief"). Counsel for Defendants has advised that Defendants are not filing a response to the motion.

Having considered the proposed Settlement Agreement, <sup>dated September 21, 2016, a copy of which is attached hereto,</sup> Plaintiffs' Motion for Final Approval, <sup>and having held a Fairness Hearing on April 13, 2017 and having received no objection to or opposition to the Motion,</sup> and the entire record, the Court determines as follows:

*JHF*

(1) WHEREAS the proposed Settlement Agreement has been agreed to by Plaintiffs, Defendants, and their respective counsel;

(2) WHEREAS the Settlement Amount of \$44,429,596.00 ("Settlement Amount") is fair and reasonable consideration for the compromise of the claims asserted in this action. The Settlement Amount reflects a good faith compromise in light of the risks and uncertainties for all of the Parties associated with trial of all of the outstanding issues remaining in this suit;

(3) WHEREAS the Parties have established that the proposed Settlement Agreement was negotiated at arm's length and in good faith by Parties with adverse interests. The Parties have further established that the terms and conditions of the proposed Settlement Agreement and distribution plan are fair and equitable to all Parties, including the named Plaintiffs and the absent Class Members;

(4) WHEREAS Plaintiffs have established that the proposed award of attorneys' fees and expenses in the total amount of \$11,607,399.00 ("Attorneys' Fees Award), to be paid out of the Settlement Amount, is reasonable;

(5) WHEREAS as part of the settlement process previously approved by this Court, notice of the settlement has been sent to the class. The Court finds that notice of the proposed

Settlement Agreement satisfies the requirements of New York law and due process;

(6) WHEREAS no class member has raised any objection or otherwise provided any comments regarding the proposed Settlement Agreement; and

(7) WHEREAS only four class members opted out of the class, and those class members would have received \$123.00 in total under the terms of the Settlement Agreement;

ACCORDINGLY, it is hereby

ORDERED that Plaintiffs' Motion for Final Approval of the Requested Relief is granted in its entirety; and it is further

ORDERED that the Attorneys' Fees Award is granted in its entirety; and it is further

ORDERED that all of the Requested Relief not specifically referenced herein is granted in its entirety; and it is further

ORDERED that Defendants shall pay the Settlement Amount, less \$123.00, for a total of \$44,429,473.00, pursuant to the terms of the Settlement Agreement and the distribution plan below; and it is further

ORDERED that the Parties shall comply with the distribution plan and proposed schedule specified in Plaintiffs' Memorandum in support of their Motion for Final Approval, as follows:

<b>Event</b>	<b>Deadline</b>
Payment of Settlement Amount by Defendants	On or before 120 days following entry of the Court's Order granting final approval
Deadline for class members to cash settlement checks	90 days following date on which checks are mailed to class members
Deadline for mediation and receipt of verification forms & excess funds	6 months following date on which checks are mailed to class members
Distribution of undeliverable funds according to the Settlement Agreement and the Court's Order granting final approval	30 days following deadline for mediation and pass-through of funds to owner-operators
Plaintiffs' final report to the Court regarding disbursement of Settlement Fund due	30 days following redistribution of undeliverable funds

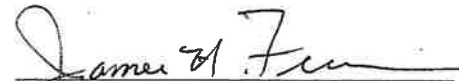
It is FURTHER ORDERED that neither the Parties' Settlement Agreement, this Final Approval Order, nor the Judgment to be entered herein shall be deemed to vacate, release, waive, or modify the Court's permanent injunction or declaratory judgment rulings in this matter in any respect; and it is further

ORDERED that Plaintiffs' claims on which judgment was not previously granted are hereby dismissed as moot.

SO ORDERED AND ADJUDGED  
ENTER.

DATED: Albany, New York

April 19, 2017

  
Hon. James H. Ferreira  
Acting Justice of the Supreme Court