

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**ASHBY HENDERSON and THOMAS  
HERSHENSON**, Individually and on Behalf of  
Others Similarly Situated,

Plaintiffs,

v.

**BNY MELLON, NATIONAL  
ASSOCIATION**,

Defendant.

Case No. 1:15-cv-10599-PBS

**REVISED ~~[PROPOSED]~~ FINAL JUDGMENT AND ORDER  
OF DISMISSAL WITH PREJUDICE**

Plaintiffs Ashby Henderson and Thomas Hershenson (“Plaintiffs” or “Class Representatives”) have submitted a Motion for Final Approval of the Settlement set forth in the Class Action Settlement Agreement dated May 14, 2019 (the “Agreement” or “Settlement Agreement”). Class Counsel has also submitted to the Court their Motion For Award of Attorneys’ Fees, Costs, and Incentive Payments.

On May 28, 2019, this Court granted preliminary approval to the proposed class action settlement set forth in the Agreement. This Court also provisionally certified a Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on September 6, 2019. The Court finds that due and adequate notice was given to the Settlement Class as required in the Court’s Order.

The Court has reviewed the papers filed in support of the motion for Final Approval,

including the Settlement Agreement and exhibits thereto, memoranda and arguments submitted on behalf of the Settlement Class, and supporting affidavits.

On September 6, 2019, this Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the Settlement Class Members' Released Claims on the merits and with prejudice; and (3) whether and in what amount to award attorneys' fees and expenses to Class Counsel; and any award to the Class Representatives for their representation of the Class.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and by other interested persons at the Final Approval Hearing, it appears to the Court that the Settlement Agreement is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Agreement.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members, and venue in this Court is proper.

3. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

4. **Settlement Class.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this Action as a class action, with the Class defined as: from

2008 to the date of Preliminary Approval, all grantors, settlors, co-trustees, and qualified beneficiaries of personal trusts for which:

- (1) BNY Mellon served or serves as trustee;
- (2) BNY Mellon charged line-item tax-preparation fees amounting to at least \$400 per year for grantor trusts, at least \$750 per year for revocable and “simple” irrevocable trusts, or at least \$950 per year for “complex” irrevocable trusts for one or more of the covered years;
- (3) the preparer of the fiduciary return covered by the line item tax-preparation fee was PricewaterhouseCoopers; and
- (4) the trust’s Tax Preparation Fee Claim is not barred by the applicable state statute of repose.

5. The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual question; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; (d) the Class Representatives and their counsel will fairly and adequately represent and protect the interests of the Settlement Class; (e) the Settlement Class is ascertainable; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. **Designation of Class Representatives and Class Counsel.** The Court confirms the prior appointments of the Plaintiffs Ashby Henderson and Thomas Hershenson as Class Representatives, and the law firms of Bailey & Glasser LLP and Derek G. Howard Law Firm, Inc., as Class Counsel.

7. **Settlement Approval.** Pursuant to Rule 23(e), this Court hereby approves the Settlement and finds that it is, in all respects, fair, reasonable and adequate to the Parties. The

Court further finds that the Settlement is the result of good faith arm's-length negotiations between experienced counsel representing the interests of the Parties. Accordingly, the Settlement is hereby finally approved in all respects, there is no just reason for delay, and the Parties are hereby directed to perform its terms.

8. **Dismissal with Prejudice.** Final Judgment is hereby entered with respect to the Released Claims of all Settlement Class Members, and the Released Claims in the Action are hereby dismissed in their entirety with prejudice and without costs, and the case shall be closed pursuant to Paragraph 21 of this Order. Nothing herein is intended to waive or prejudice the rights of Settlement Class Members who have validly and timely excluded themselves from the Settlement Class, as identified on Exhibit 1 hereto.

9. **Releases.** The releases as set forth in section 11 of the Agreement together with the definitions in paragraphs 1.1-1.32 relating thereto are expressly incorporated herein in all respects and made effective by operation of this Judgment. The Court hereby approves the release provisions as contained and incorporated in section 11 of the Agreement, including but not limited to the definitions of Released Claims, Releasers, Released Parties, and Unknown Claims. The Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims (including Unknown Claims) against the Released Parties.

10. **Permanent Injunction.** The Releasers, including the Class Representatives and all Settlement Class Members, and anyone claiming through or on behalf of any of them, are forever barred and enjoined from: (a) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims; and (b) organizing Settlement Class Members, or soliciting the participation of

Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action) in any jurisdiction based on or relating to any of the Released Claims.

11. **Approval of Class Notice.** The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said Notice fully satisfied the requirements of Rule 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

12. **Attorneys' Fees and Expenses.** Plaintiffs and Class Counsel have moved for an award of attorneys' fees in the amount of \$3,333,333.00, and costs and expenses of \$404,234. The Court has considered this application separately from this Judgment. The Court finds that an award of \$<sup>3,333,333.00</sup> in attorneys' fees, and \$<sup>\$ 404,234.00</sup> in costs and expenses is fair and reasonable, and the Court approves of Class Counsel attorneys' fees, costs and expenses in these amounts to be paid from the Cash Settlement Fund.

13. The Court further finds that incentive awards for Ms. Henderson in the amount of \$<sup>30,000</sup>, and Mr. Hershenson in the amount of \$<sup>30,000</sup>, are fair and reasonable, and the Court approves of the service awards in this amount. The Court directs the Settlement Administrator to disburse these amounts to Ms. Henderson and Mr. Hershenson from the Cash Settlement Fund as provided in the Settlement Agreement.

14. **Use of Order.** Neither this Order, the fact that a settlement was reached and

filed, the Agreement, nor any related negotiations, statements or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of BNY Mellon. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

15. **Continuing Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purpose, including to ensure compliance with the Protective Order.

16. **Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the Agreement, or the Agreement is terminated pursuant to section 12 of the Agreement, the Parties shall be restored to their respective positions in the Action prior to the execution of the Agreement, the certification of the Settlement Class shall be automatically vacated, and this Judgment shall be rendered null and void (except paragraph 14 of this Order shall remain in effect) to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement. By three business days after such termination or disapproval, the Cash Settlement Amount shall be returned by the Settlement Administrator to BNY Mellon;

provided, however, that the interest accrued in the Cash Settlement Fund shall first be used to pay settlement administration costs already incurred by the Settlement Administrator pursuant to the Agreement, and, if any interest money remains, it too shall be returned to BNY Mellon.

17. **Implementation of the Agreement.** The Parties are hereby authorized to implement the terms of the Agreement.

18. **Reasonable Extensions.** Without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement. The Court has approved a 14 day extension of the date for issuing settlement payments.

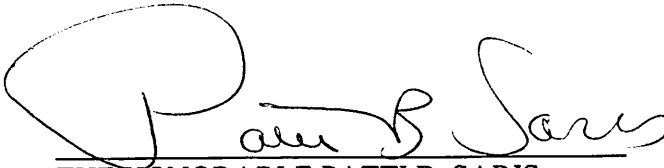
19. **CAFA Notice.** BNY Mellon has provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. § 1715.

20. **Class Notice List.** No later than thirty calendar days after the Effective Date (as defined in the Agreement), the Settlement Administrator shall file with this Court, under seal pursuant to the Protective Order entered in this litigation (in order to protect the names, addresses, and other personal information of Settlement Class Members), a list of the names and addresses of all Settlement Class Members to whom the Class Notice was sent.

21. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

22. **Action Closed.** The Clerk of the Court is hereby directed to close the Action.  
IT IS SO ORDERED.

DATED: 9/16/19

  
THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE