

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE WORLDCOM, INC. SECURITIES : Master File 02 Civ. 3288 (DLC)  
LITIGATION :  
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**REPLY DECLARATION OF SHANDARESE GARR IN FURTHER SUPPORT OF  
LEAD PLAINTIFF'S MOTION FOR APPROVAL OF FINAL DISTRIBUTION PLAN**

SHANDARESE GARR declares as follows:

1. I am Vice President and Managing Director of Strategic Initiatives for The Garden City Group, Inc. ("GCG"), the Notice and Claims Administrator authorized by this Court in connection with the settlements in the above-captioned Action. I have personal knowledge of the facts stated herein, and provide this reply declaration in further support of Lead Plaintiff's Motion for Approval of Final Distribution Plan.

**CLAIMANT RESPONSES TO  
LEAD PLAINTIFF'S MOTION FOR  
APPROVAL OF FINAL DISTRIBUTION PLAN**

2. On or about April 21, 2009, Lead Counsel sent to Claimants who submitted the 191 Disputed Rejected Claims and the 518 Payment Objections described in the Declaration of Shandarese Garr in Support of Lead Plaintiff's Motion for Approval of Final Distribution Plan executed April 16, 2009 (the "Garr Final Distribution Declaration") and Exhibits A-1 and B-1 thereto, copies of relevant portions of Lead Plaintiff's Motion for Approval of Final Distribution Plan (the "Final Distribution Motion") together with a cover letter that described the accompanying documents.<sup>1</sup> That cover letter explained why the accompanying documents were

<sup>1</sup> To reduce unnecessary costs, Disputed Rejected Claimants and Payment Objectors were not sent all of the exhibits to the Garr Final Distribution Declaration. They were sent copies of all other components of the Final Distribution Motion, but, with respect to the exhibits to the Garr Final Distribution Declaration, Disputed Rejected Claimants were sent only copies of Exhibit A-1 to the Garr Final Distribution

being sent, and advised each Disputed Rejected Claimant and Payment Objector as follows: (i) they were not required to respond to the Final Distribution Motion in order to obtain Court review of their Claim; and (ii) if they wanted to respond, any such response must be submitted to the Court and Ms. Hansen of Bernstein Litowitz Berger & Grossmann LLP by overnight or United States mail postmarked no later than May 15, 2009.<sup>2</sup>

3. As of the date hereof, responses from 44 Disputed Rejected Claimants and Payment Objectors have been received.<sup>3</sup> 34 of those responses did not include any relevant information that was not already addressed in the Garr Final Distribution Declaration; accordingly, GCG has no information to add concerning the rejection of, or the calculation of payments for, those Claims. Each of the remaining 10 responses is addressed below.

#### **DISPUTED REJECTED CLAIMS**

a. **Greenberg (Claim Nos. 842160592 & 5700086).** Mr. Greenberg disputes that his Claims are out of balance and not adequately documented. In support of his position, he submitted with his response to the Final Distribution Motion documents that he never previously provided to GCG. For example, although he previously corresponded with GCG on more than one occasion, he never previously mentioned or submitted any documentation that reflected his acquisition of WorldCom common stock through the acquisition by WorldCom of E.L. Acquisition, Inc., and he never documented his acquisition of certain other shares. With the submission of those documents,

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Declaration, and Payment Objectors were sent only copies of Exhibit B-1 to the Garr Final Distribution Declaration. In addition, those Claimants who filed exclusion requests were sent the section of the Compendium of Exclusion and Revocation Requests that related to them.

<sup>2</sup> An exemplar of the cover letter sent to all Disputed Rejected Claimants, and an exemplar of the cover letter sent to all Payment Objectors, are included as Exhibit A hereto.

<sup>3</sup> For the Court's convenience, copies of all responses from Claimants are included in the accompanying Compendium of Responses From Disputed Rejected Claimants and Payment Objectors.

Mr. Greenberg's Claims are now in good standing.<sup>4</sup> If Mr. Greenberg had submitted all of this documentation prior to the Initial Distribution, he would have been entitled to an aggregate payment amount from the Distributions of \$19,313.14, which he will receive now with the Court's approval.<sup>5</sup>

b. **Liverpool Limited Partnership (Claim No. 5821363).** The Liverpool Claim was included in Exhibits A-1 and A-2 to the Garr Final Distribution Declaration. Exhibit A-1 was sent to the address Liverpool listed on its Claim. On June 3, 2009, GCG sent to counsel for Liverpool certain documents in an effort to eliminate or at least reduce the matters remaining for judicial resolution. GCG informed Liverpool that, based on GCG's review of Liverpool's submission in response to the Final Distribution Motion, a transaction that GCG initially treated as an improperly documented sale of 50,000 shares of WorldCom common stock actually should have been treated as a purchase of 50,000 shares of WorldCom common stock. The change from an undocumented sale to a documented purchase caused Liverpool to be entitled to an additional payment from the Distributions of \$74.57. Liverpool also was informed that the remaining transactions either were undocumented or occurred outside the Class Period. As set forth in the Supplemental Declaration of Kimberly A. Reinhardt-Gonzales Concerning the Payment Objections of Claimants Elliott Associates LP #2 Account, Claim No. 5819255, and The Liverpool Limited Partnership, Claim No. 5821363 (the "Reinhardt-Gonzales

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<sup>4</sup> Mr. Greenberg also questions why GCG assigned a second Claim number (*i.e.*, Claim No. 5700086) to him. This was required because certain of the documentation he previously submitted included an account he shared with his wife. As a result of our review of his most recent submission, those two Claims will be consolidated into Claim No. 842160592 for the calculation of the Recognized Claim.

<sup>5</sup> Revised schedules of Disputed Rejected Claims (sorted alphabetically), Payment Objections (sorted alphabetically) and Adjusted Claims are attached hereto as Exhibits B, C and D, respectively.

Declaration”), attached hereto as Exhibit E,<sup>6</sup> Liverpool concurs with GCG’s current determinations.

c. **Mercier (Claim No. 1076087).** Mr. Mercier contends that, even though he timely filed an exclusion request and did not submit a revocation of that exclusion request, he should be included in the Class. Mr. Mercier submitted his exclusion request dated February 21, 2004, and filed his Claim on February 28, 2005, *after* the February 19, 2005 revocation bar date established by the Court.<sup>7</sup> A Final Letter of Rejection was sent to Mr. Mercier on June 12, 2006. The first post-Claim submission communication GCG had with Mr. Mercier was on June 19, 2006, after he was sent the Final Letter of Rejection; there were other telephone communications thereafter.<sup>8</sup>

d. **Poole (Claim Nos. 9011721 & 2859318).** Mr. Poole asserts that, because the request for exclusion his counsel filed on his behalf was submitted after the February 20, 2004 initial exclusion bar date and was never “reinstated,” his exclusion request was invalid, and, therefore, his February 11, 2005 Claim should be accepted. Mr. Poole also asserts that, “[f]ollowing 08/02/05, GCG did not contact me with an offer

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<sup>6</sup> The documents GCG sent to counsel for Liverpool are attached as Exhibit A to the Reinhardt-Gonzales Declaration (Exhibit E hereto). They include excerpts from a previous draft reply declaration, lists for both Liverpool and Elliott Associates of deficient transactions, and copies of Notices of Deficiency and Final Letters of Rejection that had been sent to Liverpool and Elliott Associates in 2006. The copies of the Notices of Deficiency and Final Letters of Rejection listed all of the rejected transactions, and explained why they were rejected; they also were marked to identify those specific transactions that remained deficient, and cross-referenced all of them to the separate lists of rejected transactions.

<sup>7</sup> GCG’s records indicate that Mr. Mercier was sent the August 2, 2004 “Special Notice to Class Members Who Previously Requested to Be Excluded from the Class, and Form of Request for Revocation of Exclusion” (the “Special Revocation Notice”), which, among other things, set forth the procedures for revoking requests for exclusion and stated that, as of that date, the bar date for doing so was September 1, 2004.

<sup>8</sup> GCG’s Call Center records logged calls with Mr. Mercier on September 19, 2006, November 17, 2006, December 4, 2006 and January 12, 2007.

to either revoke the prior Exclusion Request or to reinstate it.”<sup>9</sup> As Mr. Poole admits, however, his request for exclusion was submitted to GCG “by 07/23/2004,” which was before the effective exclusion bar date, which, as set forth in the August 2, 2004 Citigroup Notice and the August 2, 2004 Special Revocation Notice, was September 1, 2004.<sup>10</sup> Mr. Poole also notes in his response that the Citigroup Notice explicitly cautioned Class Members in his precise situation:

Such persons who previously requested to be excluded from the Class may revoke their prior request, pursuant to the terms described in the Special Notice by September 1, 2004.

And the Special Revocation Notice, at paragraph 3, unequivocally cautioned those in Mr. Poole’s situation:

If you do not revoke your prior request to be excluded from the Class in the manner described below, you will not have any further opportunity to re-join the Class. Accordingly, if you do not revoke your prior exclusion request, you will not be eligible to participate in any other recovery Lead Plaintiff might obtain from any other defendant in the Class Action, either through future settlements or through trial.

Mr. Poole admits that he is a person who requested to be excluded, acknowledges that his exclusion request was submitted prior to the effective Court-established exclusion bar date, and admits as well that he did not revoke his request prior to the bar date for doing so.<sup>11</sup>

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<sup>9</sup> Mr. Poole references August 2, 2005 (08/02/05) as the date of what he calls “[t]he Court’s Notice of Proposed Settlement of Class Action Against [the Citigroup] Defendants.” That Notice (the “Citigroup Notice”) actually was dated August 2, **2004**, not 2005, as was the Special Revocation Notice.

<sup>10</sup> By order dated February 3, 2004, the Court of Appeals for the Second Circuit directed this Court to extend the deadline to opt out of the class action until at least 30 days after the Second Circuit’s mandate issued. As Mr. Poole notes, the Citigroup Notice stated that the deadline was extended to September 1, 2004.

<sup>11</sup> Mr. Poole states that he was not contacted by GCG concerning his request for exclusion or the opportunity to revoke it. However, GCG’s records indicate that the Special Notice was sent to him. Attached hereto as Exhibit F are copies of the following documents: (1) a July 28, 2004 “Data

e. **Redwine (Claim Nos. 1075977, 311249, 311614 & 311618).**

Mr. Redwine acknowledges that he requested exclusion, but contends that he “opted back in before the deadline.” Attached hereto as Exhibit G is a July 25, 2006 letter Mr. Redwine sent to GCG in response to the June 28, 2006 “Final Letter of Rejection” GCG sent to him. In his letter, which was sent well after the February 19, 2005 revocation bar date, Mr. Redwine stated, in relevant part, as follows:

If I inadvertently excluded myself, I would like to revoke that and request to be included in the class.

Thus, Mr. Redwine did not revoke his exclusion request prior to the Court-established revocation bar date.

f. **Rubin (Claim Nos. 842189889 & 842169585).** Mr. Rubin admits that he submitted a request for exclusion, and did not attempt to revoke that exclusion request until August 5, 2005, almost six months after the February 19, 2005 revocation bar date. And although he now states that he had requested exclusion based on the advice of his counsel in order to pursue his own claims, in prior correspondence Mr. Rubin stated that any request to exclude himself was inadvertent and that “I in no way intentionally desired to exclude myself from this lawsuit.”<sup>12</sup>

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Transmission Confirmation” to GCG’s printer, Lawler Direct, for the mailing of the Special Revocation Notice (identified as the “WCM040728\_Special Notice” to be sent to 12,020 people and entities (*i.e.*, those who had requested exclusion)), and noting that the mail date was to be July 30, 2004 ; (2) a screen printout of the page of the list of files sent to Lawler Direct showing (in highlight) Mr. Poole’s name and identification number; (3) a screen printout (showing both Mr. Poole’s name and identification number) of Mr. Poole’s “NME History,” which is GCG’s summary information for each Claim, and which shows Mr. Poole’s current address and that he was included in July 28, 2004 Special Revocation Notice mailing; and (4) a “Verification of Phase I” from Lawler Direct confirming that the Special Revocation Notice (WCM040728\_SpecialNotice) was mailed on the July 30, 2004 mailing target date.

<sup>12</sup> December 12, 2006 letter to GCG, attached hereto as Exhibit H. Although Mr. Rubin also states that he contacted GCG by telephone, GCG’s Call Center records do not reflect any calls from 2004 to date received from either of the two telephone numbers (including the telephone number included in his

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December 12, 2006 letter and in his response to the Final Distribution Motion) GCG has on file for Mr. Rubin.

Mr. Rubin also refers to the fact that he first received a Notice of Deficiency, rather than a Final Letter of Rejection, as demonstrating GCG's position that the Claim was acceptable. However, GCG's standard Quality Assurance protocol, which was followed in this administration, is to confirm at the conclusion of claims processing that excluded parties – those who are excluded by the Class definition and those who request exclusion – are excluded from any distribution. When Claims are compared to exclusions, many false positive matches are identified via the initial system-generated search (*i.e.*, the system search criteria are designed to be sufficiently broad so as to pick up as many potential exclusions – Claimants with similar names and addresses – as possible to guard against improperly paying excluded persons). As a result, all matches must be reviewed by GCG personnel (*i.e.*, the procedure cannot be completely automated) to assure accuracy. This protocol is performed only at the end of the administration because it is very costly to individually review each potential match. Here, for example, GCG processed almost 1,000,000 claims, and addressed approximately 15,000 requests for exclusion. Accordingly, until the list of excluded parties is compared to all filed Claims, GCG's database does not cross-reference a filed Claim to a separate previously filed exclusion request. Unless a Claimant informs GCG when the Claim is filed or in connection with any subsequent inquiries concerning the Claim, GCG staff will not know that the Claimant had previously requested exclusion from the Class.

Moreover, any Claimant, like Mr. Rubin, who previously submitted a request for exclusion but asserts reliance on GCG's failure to match that request for exclusion with his Claim prior to the sending of a Final Letter of Rejection, is ignoring the express terms set forth on the Court-approved Proof of Claim form. The Proof of Claim form states, at paragraph 5 of the "Instructions," that "[a]lso excluded from the Class, are those persons and entities who served a Request for Exclusion from the Class, and who did not subsequently revoke such Request for Exclusion by the time of the deadline for persons to exclude themselves from the Class." A similar statement is made in paragraph 7 of the "Instructions," and paragraph 9 of the "Instructions" set forth the following admonition in uppercase typeface:

IF YOU ARE NOT A CLASS MEMBER, OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, FILED A REQUEST FOR EXCLUSION FROM THE CLASS WHICH WAS NOT SUBSEQUENTLY REVOKED, DO NOT SUBMIT A PROOF OF CLAIM AND RELEASE. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT.

And, perhaps most importantly, all Claimants were required to sign the Proof of Claim attesting to certain matters, including that the Claimant did not request exclusion from the Class. The "Signature and Certification" section states as follows:

By signing and submitted this Proof of Claim and Release, the Claimant or the person who represented the Claimant, certifies as follows

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4. that I (we) have not filed a Request for Exclusion from the Class (which Request for Exclusion has not been revoked) and that I (we) do not know of any Request for Exclusion from the Class (which Request for Exclusion has not been revoked) filed on my (our) behalf with respect to my (our) transactions in the Subject Securities.

Mr. Rubin signed both Proof of Claim forms, and thus attested that he had not previously submitted a request for exclusion from the Class, when in fact he had done so.

### PAYMENT OBJECTIONS

g. **Dominick (Claim No. 5581639).** Mr. Dominick asserts that GCG miscalculated his Claim because we did not take into consideration the total cost of the shares he acquired via the exercise of stock options, which, according to Mr. Dominick, should have included the option strike price (which he asserts we did correctly) and the income he reported as a result of the exercise (which he accurately asserts GCG did not deem relevant). As stated in the Amended Supplemental Plan of Allocation (and repeated in the Exhibits to the Garr Final Distribution Declaration), a Recognized Claim for Class Period purchases of common stock – whether by option exercise or otherwise – is calculated based on the lesser of market loss or artificial inflation on the date of purchase. The amount of artificial inflation on the date Mr. Dominick purchased WorldCom common stock via the exercise of options, and the amount GCG used to calculate Mr. Dominick’s Recognized Claim, was \$1.126 per share. The Amended Supplemental Plan of Allocation does not refer at all to any income or loss reported for income tax (or any other) purpose.

h. **Dubois (Claim No. 842158141).** Mr. Dubois asserts that the calculation of his Recognized Claim for his purchase of WorldCom May 2000 8% Notes should include the \$36,444.44 of interest he paid the seller from the date of the last interest payment prior to his purchase through the settlement date. Under the terms of the Amended Supplemental Plan of Allocation, Recognized Claims for purchases of May 2000 and May 2001 Notes are based on the amount paid *for the Note*.<sup>13</sup> Any interest paid at the settlement date was not *for the Note*, but was for the passage of time from the last interest payment date prior to the transaction. The seller of the Note held it from that

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<sup>13</sup> With respect to the May 2000 and May 2001 Notes, the Supplemental Plan of Allocation is based on Section 11(e) of the Securities Act of 1933.



time until the settlement date and was, therefore, entitled to receive interest for that time period. However, the issuer, WorldCom, was contractually obligated to pay interest only at the next interest payment date, and then only to the owner of the Note at the time interest was to be paid. The convention, therefore, is for the purchaser, who will (absent a subsequent sale of the Note) receive the interest payment, including for the time frame when he, she or it did not yet own the Note, to pay to the seller at settlement of the transaction the amount of interest earned by the seller. The amount paid *for the Note* is determined without reference to interest, which varies from transaction to transaction, and is a matter of contract between the owner of the Note and the issuer.

i. **Elliott Associates (Claim No. 5819255).** Elliott Associates challenged GCG's determination that certain transactions were not properly documented. This Claim was voluminous, with 582 transactions in 26 different WorldCom securities. After continued communications with the Claimant and its counsel, and further review of the Claim and related documentation, GCG has determined that initially deficient transactions with a Recognized Claim of \$6,902,323.38 are now eligible for recovery. If those transactions had been deemed eligible prior to the Initial Distribution, it would have been entitled to an aggregate payment amount from the Distributions of \$184,121.58, which it will receive now with the Court's approval. Elliott Associates was so advised, and also was informed that the remaining transactions either were undocumented or occurred outside the Class Period. As set forth in the Reinhardt-Gonzales Declaration (attached hereto as Exhibit E), Elliott Associates concurs with GCG's current determinations.

j. **Matteson (Claim No. 842205469).** Mr. Matteson acquired his WorldCom common stock at \$5.00 per share as a result of the assignment to him of Put Option contracts that he wrote. According to Mr. Matteson, at the time the assignment was made, WorldCom common stock was trading at approximately \$1.40 per share, but he contends that GCG should have calculated his Claim based on the artificial inflation amount at the time the Put Option contracts were written rather than, as GCG did, on the artificial inflation amount on the date the contracts were assigned to him. Put Option contracts are not Class securities – *i.e.*, they are derivative securities, not *securities of WorldCom*, that were publicly traded during the Class Period. Accordingly, any losses Mr. Matteson sustained as a result of transactions in Put Option contracts are not compensable under the terms of the Court-approved Amended Supplemental Plan of Allocation. Mr. Matteson recognizes in his response that, during the Class Period, he was “either an option holder or a share holder,” but, under the terms of the Amended Supplemental Plan of Allocation, only the losses he suffered on his purchase of WorldCom common stock are compensable.

**CURRENT STATUS OF  
UNCASHED AND UNDELIVERABLE CHECKS**

4. In ¶¶ 3-7 of the Garr Final Distribution Declaration, GCG provided information on checks that, notwithstanding GCG’s substantial efforts, remained either uncashed or undeliverable. As of March 31, 2009, there were 88,782 undeliverable and uncashed checks from both Distributions for total proceeds of \$33,021,388.30, which represented 0.56% of the \$5.92 billion distributed in the two Distributions. As of May 31, 2009, there are total proceeds of \$30,556,741.31 from 88,201 undeliverable and uncashed checks from both Distributions, which represented 0.52% of the \$5.92 billion distributed in the two Distributions. As the chart

below demonstrates, there has not been much activity since March 31, 2009,<sup>14</sup> and, as was the case as of that date, the substantial majority of those outstanding checks are for relatively small amounts:

<b>Summary of Uncashed Checks</b>		
<u>Range</u>	<u>Number of Uncashed Checks</u>	<u>Total Proceeds</u>
\$1.00 or less	19,334	\$ 8,465.43
\$1.01 to \$10.00	29,121	119,460.23
\$10.01 to \$25.00	12,415	198,913.02
\$25.01 to \$50.00	7,584	271,837.53
\$50.01 to \$75.00	3,791	233,159.24
\$75.01 to \$100.00	2,416	209,355.32
\$100.01 to \$500.00	9,119	2,062,744.71
\$500.01 to \$1,000.00	1,790	1,266,157.24
\$1,000.01 to \$5,000.00	1,854	3,823,643.77
\$5,000.01 to \$10,000.00	281	2,022,759.85
\$10,000.01 to \$25,000.00	247	3,924,252.29
\$25,000.01 to \$50,000.00	137	4,741,735.45
\$50,000.01 to \$100,000.00	84	6,139,668.49
\$100,000.01 to \$250,000.00	25	3,880,946.58
Greater than \$250,000.00	<u>3</u>	<u>1,663,642.16</u>
TOTAL	<u>88,201</u>	<u>\$30,556,741.31</u>

85,570 checks, or over 97.0%, of the outstanding checks are for amounts of \$1,000 or less, while only 2,631 checks are for amounts greater than \$1,000. And with respect to the 28 remaining outstanding checks for amounts greater than \$100,000.00, GCG's focused efforts, as described in

<sup>14</sup> \$1,633,415.29, or 66.3%, of the \$2,464,646.99 decrease in the amount of outstanding checks from March 31, 2009 to May 31, 2009 resulted from four checks being cashed or returned to the fund.

the Garr Final Distribution Declaration, have resulted in 14 checks being reissued from November 7, 2008 through the date hereof for \$3,179,793.16.<sup>15</sup>

5. As set forth in the Garr Final Distribution Declaration, Lead Plaintiff proposes, and GCG concurs, to notify Authorized Claimants who have not cashed their checks – whether or not currently stale-dated – that those checks will be deemed void 30 days after the date of notification and that, once that occurs, they will have irrevocably forfeited all recovery from the Settlements. The funds remaining for such stale checks should then be made available to be redistributed. This proposal is further supported by the lack of substantial activity since March 31, 2009. Accordingly, GCG continues to agree with it.

**ADJUSTED CLAIMS SINCE THE FILING  
OF THE FINAL DISTRIBUTION MOTION**

6. In addition to the 3 adjusted eligible Claims described in paragraph 3 above (*i.e.*, for the Greenberg, Liverpool and Elliott Associates Claims), since the Final Distribution Motion was filed GCG has received documentation that cured deficiencies in 14 Claims. If all of those adjustments had been made prior to the Initial Distribution cut-off date of July 31, 2006, those 17 eligible Adjusted Claims would have been entitled to an aggregate payment amount from the Distributions of \$217,290.22, which they will receive now with the Court's approval.<sup>16</sup>

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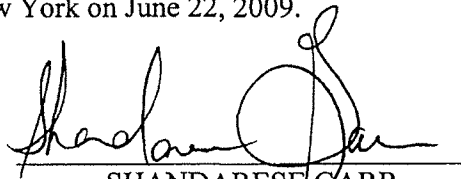
<sup>15</sup> Checks reissued through November 24, 2008 each bore a sixty-day void legend; checks reissued thereafter bore a thirty-day void legend. All 14 reissued checks are now stale.

<sup>16</sup> A revised list of all of the Adjusted Claims deemed to be eligible for additional awards in whole or in part by GCG and recommended for acceptance by the Court is set forth in Exhibit D hereto.

**LATE CLAIMS SINCE THE FILING OF  
THE FINAL DISTRIBUTION MOTION**

7. Since the filing of the Final Distribution Motion, GCG has received and processed 3 additional Late Claims that are eligible for payment if they are deemed valid by the Court.<sup>17</sup> If those 3 eligible Late Claims are deemed valid by the Court, they will be entitled to an aggregate payment amount from the Distributions of \$258.42.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed in Melville, New York on June 22, 2009.

  
SHANDARESE GARR

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<sup>17</sup> A revised list of the Late Claims deemed to be eligible in whole or in part by GCG and recommended for acceptance by the Court is set forth in Exhibit I hereto.