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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDGAR W. TUTTLE, ERIC BRAUN, and THE
BRAUN FAMILY TRUST by its co-trustee ERIC
BRAUN, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

SKY BELL ASSET MANAGEMENT, LLC, *et al.*,

Defendants.

No. C 10-03588 WHA

**ORDER REGARDING
MODIFICATIONS TO
CLASS NOTICE**

Yesterday, class counsel submitted a response to the May 16, 2012 order regarding notice of pendency of class action and proposed settlement. A revised class notice and model request to opt out of the class action or object to the proposed class settlement form are appended hereto.

The notice has now been revised to reflect many of the changes recently proposed by class counsel. The notice will not, however, be revised to state that a professional mediator, a retired United States District judge, agreed that the proposed settlement was reasonable. The notice already indicates that the parties accepted the mediator's proposal. Nothing more is necessary. Referring to the mediator as a judge may confuse class members and cause them to believe the settlement has been approved by a judge. It has not. The notice will not be revised to state that to date class counsel have received no compensation for their work. This is unnecessary. All other changes have been accepted in whole or in part.

As stated in the order dated May 16, 2012, the court does *not* approve the use of a claims

1 administrator in any way, at least at this point. Please seek no compensation for this item.

2 **1. SECOND OPPORTUNITY TO OPT OUT.**

3 Class counsel request deletion of the provision in the class notice that a second
4 opportunity to opt out will be afforded to class members who timely object. Although the Court
5 believes it has the discretion to provide a second opportunity to opt out, in its exercise of
6 discretion, the Court will go along with counsel's preference to give only one opportunity to opt
7 out. The requested deletion has been made.

8 **2. BROKER DEALERS.**

9 Class counsel have indicated that although they previously proposed it, the paragraph
10 regarding notice to securities brokers should be deleted in its entirety. The paragraph has been
11 deleted. Because class counsel have represented that the addresses for all class members are
12 good, there is no need to send pro forma notices to brokers dealers who might be involved as
13 nominees. The proposed settlement is so small, the cost of distributing notice to broker dealers
14 should not be imposed on the class.

15 **3. AVERAGE SIZE OF CHECKS.**

16 Previously, class counsel were ordered to submit a statement of the average size of the
17 checks to class members (assuming no opt outs) before all proposed expenses are deducted.
18 Counsel submitted a statement of the average size of the checks to class members in each class.
19 Currently, the notice states: "After deduction for fees and costs, the estimated average recovery
20 for each class member will be \$5,503." By **NOON ON MAY 23, 2012**, class counsel shall file a
21 statement of the estimated average recovery for class members in each class, after deduction for
22 fees and costs (as has been done for the estimated average recovery before deductions). The
23 Court will include this information in the notice and will file a final version of the notice. Class
24 counsel will then be responsible for disseminating all class notices and request forms by **5:00**
25 **P.M. ON JUNE 1, 2012**, in compliance with this order and the order dated May 16, 2012. As
26 stated in the May 16 order, class counsel shall fill out the chart in the request form with the
27 requested information, specific to each class member.

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4. AMENDED SCHEDULE.

The schedule set forth in the order dated May 16, 2012, has been amended. The deadline for class counsel to mail all class notices along with the request form has been continued from 12:01 a.m. on May 30 to 5:00 p.m. on June 1, per class counsel's request. Accordingly, the postmark deadline for class members to mail requests to opt out and object has been continued from 12:01 a.m. on July 12, to 12:01 a.m. on July 14. The deadline for class counsel to submit a signed declaration stating that all class notices and the request forms were mailed has been continued to noon on June 5. The June 14, deadline for class counsel to submit a signed declaration stating they have communicated with the securities brokers to ensure the securities brokers mailed the notices has been omitted in light of the fact that pro forma notices need not be mailed to the securities brokers, as stated above. Finally, per class counsel's request, the deadline to submit papers in support of final approval of the settlement will be July 26. The deadline to respond to objections filed by July 13 will also be July 26.

The following amended schedule shall be adhered to strictly:

5:00 P.M. ON JUNE 1, 2012:

- Deadline by which class counsel must mail all class notices along with the request forms.

NOON ON JUNE 5, 2012:

- Deadline by which class counsel must submit a signed declaration under oath that all class notices along with the request forms were mailed by the stated deadline and state the date of the mailings.

NOON ON JUNE 27, 2012:

- Deadline for class counsel to file their motion for attorney's fees and costs.

12:01 A.M. ON JULY 14, 2012:

- Deadline for class members to mail requests to opt out of the class.
- Deadline for class members to mail their objections to the proposed settlement or/and attorney's fees and costs.

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5:00 P.M. ON JULY 26, 2012:

- Deadline for parties to submit papers in support of final approval of the settlement.
- Deadline for class counsel to respond to objections filed by July 13.

3:00 P.M. ON AUGUST 9, 2012:

- Fairness hearing.

IT IS SO ORDERED.

Dated: May 22, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE