

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 04-21160-CIV-MORENO

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.

**ORDER CERTIFYING SETTLEMENT CLASS AND
PRELIMINARILY APPROVING PROPOSED SETTLEMENTS**

THE COURT, having reviewed and considered Lead Plaintiffs' Motion for Preliminary Approval of Settlements (**D.E. No. 888**) filed on **November 14, 2008**, and having reviewed and considered the Stipulations of Settlement ("Settlements" or "Settlement Agreements") executed on behalf of Lead Plaintiffs Scheck Investments, L.P., Elena Parrales, individually and on behalf of Franova Investment Ltd., The PMT Irrevocable Trust, Juan Manuel Ponce De Leon, and Maria Paulina Ponce De Leon Uribe, individually, and on behalf of the Settlement Class (as defined below), and Defendants Citibank, N.A., Union Planters, N.A. and American Express Tax and Business Services Inc. n/k/a RSM McGladrey, Inc. ("Settling Defendants"), it is hereby

ADJUDGED that the Motion is **GRANTED** as follows:

**Preliminary Approval of Settlements and
Conditional Certification of the Settlement Class**

1. The Court finds that it has jurisdiction over this Action.

2. The terms of the Settlement Agreements provide for the immediate payment of Nine Million Seven Hundred and Fifty Thousand Dollars (\$9,750,000) by the Settling Defendants, in exchange for a full release of claims associated with the Settling Defendants' provision of services to Mutual Benefits Corporation.
3. The Court finds that the Settlements reached are sufficiently within the range of reasonableness to warrant preliminary approval, subject to further consideration at the Fairness Hearing provided for below. Notice of the Proposed Settlements shall be given as provided below.
4. For purposes of the Settlements only, the Court conditionally certifies the following Settlement Class ("Class"), solely with respect to the Settling Defendants:

All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from Mutual Benefits Corp. ("MBC") or Viatical Benefactors, LLC ("VBLLC") and have been damaged thereby. Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

5. The Court conditionally finds that Lead Plaintiffs are adequate class representatives for the Class. If the Settlement Agreements are terminated or not consummated for any reason whatsoever, the certification of the Class shall be void, and the Settling Defendants shall have reserved all of their rights to oppose any and all class certification motions and to contest the adequacy of Lead Plaintiffs as representatives of any putative class.
6. Pursuant to the Reform Act, the Court has already appointed Hanzman & Criden, P.A. (n/k/a Hanzman Gilbert LLP) and Podhurst Orseck, P.A. as Lead Counsel for the Class ("Class Counsel"). In accordance with Rule 23, the Court hereby approves Class Counsel

as best able to represent the interests of the Class under Rule 23. Class Counsel, in consultation with the Receiver, shall retain a Settlement Administrator to assist in notifying the Class of these Settlements.

Notice to Potential Class Members

7. On or before **December 23, 2008**, the Settlement Administrator shall mail by first class mail, postage prepaid, (and/or by email if addresses are available) copies of the Notice of Pendency of Class Action, Proposed Settlements and Final Hearing ("Notice"), substantially in the form attached as Exhibit "E" to the Motion for Preliminary Approval, to all potential members of the Class, to the extent that they can be identified by reasonable diligence. A Spanish translation of the Notice shall be included in the Notice package.
8. Notice of the settlements shall also be posted on the Receiver's website.
9. Given the Receiver's database of names and addresses of Class Members, and the success of the Receiver's Website, I find that publication notice is not necessary to advise Class Members of the Settlements.
10. At least ten (10) days before the Fairness Hearing, the Settlement Administrator or Class Counsel shall file with the Court a sworn statement attesting to compliance with the provisions of paragraphs 7 and 8.
11. The Notice to be provided to potential class members as set forth in paragraphs 7 and 8 is found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Proposed Settlements and the Fairness Hearing to all persons affected by and/or entitled to participate in the settlements reached by the parties, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Requests for Exclusion From the Class

12. Any member of the Class who wishes to be excluded from the Class shall mail a written request for exclusion ("Notice of Exclusion") to Class Counsel, to be received by Class Counsel no later than **January 22, 2009**. All original Notices of Exclusion shall be filed with the Court by Class Counsel at or before the Final Hearing.
13. Any Class Member that submits a valid and timely Notice of Exclusion shall not be bound by the Settlement Agreements, shall not be entitled to share in the benefits of the Settlements, and shall not be bound by the Final Order and Judgment, whether favorable or adverse.
14. Any potential member of the Class that does not properly and timely mail a Notice of Exclusion shall be included in the Class, and shall be bound by all the terms and provisions of the Settlement Agreements, whether or not such potential member of the Class shall have objected to the Settlements, whether or not such potential member of the Class received actual notice, and whether or not such potential member of the Class makes a claim upon or participates in the Settlements. No request for exclusion with respect to any previous settlement class in this action shall be effective for purposes of this Settlement Class.

Fairness Hearing

15. A Fairness Hearing shall be held on **March 10, 2009** at **2:30 p.m.** at United States District Court of the Southern District of Florida, at the United States Courthouse, 400 North Miami Avenue, Room 13-3, Miami, Florida 33128, before the undersigned to consider: (i) the fairness, reasonableness and adequacy of the Settlements; (ii) Class Counsel's motion for attorneys' fees and expenses; (iii) certification of the Class; and (iv) such other matters as the Court may deem necessary or appropriate.

16. At least seven days prior to the date of the Fairness Hearing, Class Counsel shall file its motion for final approval and its motion for attorneys' fees and expenses.
17. Any Class Member who has not filed a written Notice of Exclusion from the Class and who wishes to object to the fairness, reasonableness, or adequacy of the Settlements, must serve upon Class Counsel, the Receiver's Counsel, and the Settling Defendants' Counsel, and file with the Court, received by Counsel on or before **January 22, 2009**, a statement of objection, as well as the specific reasons, if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of the objection.
18. Any Class Member that has not filed a Notice of Exclusion in the manner set forth above may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to: the fairness, reasonableness and adequacy of the Settlements; or Class Counsel's motion for attorneys' fees and expenses; provided, however, that no person shall be heard, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before **January 22, 2009**, such person: (a) files with the Clerk of the Court a notice of such person's intention to appear along with a statement (including any supporting documentation) that indicates the basis for such person's support of or opposition to the fairness, reasonableness and adequacy of the Settlements or Class Counsel's motion for attorneys' fees and expenses; and (b) serves copies of such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon Class Counsel, the Receiver's Counsel and the Settling Defendants' Counsel.

19. The date and time of the Fairness Hearing shall be set forth in the Notice, but shall be subject to adjournment by the Court without further notice to the members of the Class other than that which may be posted at the Court and on the Court's website.
20. The Court may finally approve the Proposed Settlements at or after the Fairness Hearing with any modification agreed to by the Settling Parties and without further notice to the Class.

Other Provisions

21. Terms used in this Order that are defined in the Settlement Agreements, unless otherwise defined in this Order, are used in this Order as defined in the Settlement Agreements.
22. In the event any of the Settlements is terminated in accordance with the provisions of the Settlement Agreement, such Settlement(s) and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreements.
23. If any of the Settlements is terminated or ultimately not approved, the Court will modify any existing scheduling order to ensure that the parties will have sufficient time to prepare for the resumption of litigation.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of December, 2008.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to: Counsel of Record