

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY D. KOLTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	No. 16-cv-3792
)	
v.)	The Honorable Charles Kocoras
)	
MICHAEL W. FRERICHS, Illinois State)	
Treasurer,)	
)	
Defendant.)	

DECLARATION OF SARAH H. NEWMAN

I, Sarah H. Newman, state that I have personal knowledge of the facts set forth herein, that I am competent to testify and if called to testify would state as follows:

1. I am an Assistant Attorney General with the Office of the Illinois Attorney General. I am the attorney representing Defendant Michael W. Frerichs in this matter.
2. On July 14 and 15, 2021, I caused a notice of the proposed settlement in this case to be sent to the Attorney General of the United States and the attorneys general of the states and United States jurisdictions in which class members reside or may reside. I caused these notices to be sent pursuant to Paragraph 3.1.4 of the Agreement of Settlement and in accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b). Working at my direction, Stephanie Ratliff, Roxy Hollenstine, and Rick Cory, employees of the Illinois State Treasurer's office, sent the CAFA notices to the attorneys general via certified mail, return receipt requested. Exhibit A hereto is a list of the recipients of the CAFA notices, including the tracking numbers for each notice sent.

3. Exhibit B hereto is a copy of the letter I caused to be sent to the United States Attorney General. Exhibit C hereto is a copy of the letter I caused to be sent to the Attorney General of Alabama; identical letters were sent to the attorneys general of the other states and United States jurisdictions listed in Exhibit A.

4. Exhibits 1-5 to the July 14, 2021 and July 15, 2021 letters are documents that have been filed with the Court, while Exhibits 8 and 9 are copies of Seventh Circuit decisions issued in this case. Exhibit 6 to the letters is a state-specific list of the class members in each jurisdiction, while Exhibit 7 to the letters is a chart providing the estimated number of class members in each state and their percentage of the estimated class. A copy of Exhibit 7 to the July 14, 2021 and July 15, 2021 letters is attached hereto as Exhibit D.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 19, 2021.

/s/ Sarah H. Newman
Sarah H. Newman

Exhibit A

CAFA Notice Recipients

Tracking #	Mailed Date	Addressee	Office	Department	Address	City	State	ZIP Code
7017-1450-0001-6109-6833	7/14/21	The Honorable Merrick Garland	Attorney General of the United States	U.S. Dept. of Justice	950 Pennsylvania Ave.	Washington	DC	20530-0001
7017-1450-0001-6109-6840	7/15/21	The Honorable Steve Marshall	Attorney General of Alabama	501 Washington Ave.	P.O. Box 300152	Montgomery	AL	36130-0152
7017-1450-0001-6109-6857	7/15/21	The Honorable Treg Taylor	Attorney General of Alaska	Alaska Department of Law – Civil Division	1031 W. 4th Avenue, Suite 200	Anchorage	AK	99501-1994
7017-1450-0001-6109-6826	7/15/21	The Honorable Eleasalo Va'iale Ale	Attorney General of American Samoa	Dept. of Legal Affairs	Executive Office Bldg., 3rd Floor, P.O. Box 7	Utulei	AS	96799
7017-1450-0001-6109-6864	7/15/21	The Honorable Mark Brnovich	Attorney General of Arizona		2005 N Central Avenue	Phoenix	AZ	85004
7017-1450-0001-6109-6871	7/15/21	The Honorable Leslie Rutledge	Attorney General of Arkansas		323 Center St., Suite 200	Little Rock	AR	72201-2610
7017-1450-0001-6109-6888	7/15/21	CAFA Coordinator	Attorney General of California	Consumer Protection Section	455 Golden Gate Ave., Suite 11000	San Francisco	CA	94102
7017-1450-0001-6109-6895	7/15/21	The Honorable Phil Weiser	Attorney General of Colorado	Ralph L. Carr Colorado Judicial Center	1300 Broadway, 10th Floor	Denver	CO	80203
7017-1450-0001-6109-6901	7/15/21	The Honorable William Tong	Attorney General of Connecticut		165 Capitol Avenue	Hartford	CT	06106-0000
7017-1450-0001-6109-6918	7/15/21	The Honorable Kathy Jennings	Attorney General of Delaware	Delaware Department of Justice	820 N. French St.	Wilmington	DE	19801
7017-1450-0001-6109-6925	7/15/21	The Honorable Karl A Racine	Attorney General of District of Columbia		400 6th St., NW	Washington	DC	20001
7017-1450-0001-6109-6819	7/15/21	The Honorable Ashley Moody	Attorney General of Florida		PL 01 The Capitol	Tallahassee	FL	32399-1050
7017-1450-0001-6109-6932	7/15/21	The Honorable Chris Carr	Attorney General of Georgia		40 Capitol Square, SW	Atlanta	GA	30334-1300
7017-1450-0001-6109-6949	7/15/21	The Honorable Leevin Taitano Camacho	Attorney General of Guam	ITC Building	590 S. Marine Corps Dr, Ste. 901	Tamuning	GU	96913
7017-1450-0001-6109-6994	7/15/21	The Honorable Clare E Connors	Attorney General of Hawaii		425 Queen St.	Honolulu	HI	96813

CAFA Notice Recipients

Tracking #	Mailed Date	Addressee	Office	Department	Address	City	State	ZIP Code
7017-1450-0001-6109-6956	7/15/21	The Honorable Lawrence Wasden	Attorney General of Idaho	700 W. Jefferson Street, Suite 210	P.O. Box 83720	Boise	ID	83720-1000
7017-1450-0001-6109-7007	7/15/21	The Honorable Todd Rokita	Attorney General of Indiana	Indiana Government Center South – 5th Fl. Street	302 West Washington Street	Indianapolis	IN	46204
7017-1450-0001-6109-6963	7/15/21	The Honorable Tom Miller	Attorney General of Iowa	Hoover State Office Bldg.	1305 E. Walnut	Des Moines	IA	50319
7017-1450-0001-6109-7014	7/15/21	The Honorable Derek Schmidt	Attorney General of Kansas		120 S.W. 10th Ave., 2nd Fl.	Topoka	KS	66612-1597
7017-1450-0001-6109-6970	7/15/21	The Honorable Daniel Cameron	Attorney General of Kentucky		700 Capitol Avenue, Suite 118	Frankfort	KY	40601
7017-1450-0001-6109-7021	7/15/21	The Honorable Jeff Landry	Attorney General of Louisiana		P.O. Box 94005	Baton Rouge	LA	70804
7017-1450-0001-6109-6987	7/15/21	The Honorable Aaron Frey	Attorney General of Maine		State House Station 6	Augusta	ME	04333-0000
7017-1450-0001-6109-7038	7/15/21	The Honorable Brian Frosh	Attorney General of Maryland		200 St. Paul Place	Baltimore	MD	212202-2202
7017-1450-0001-6109-7045	7/15/21	The Honorable Maura Healey	Attorney General of Massachusetts		1 Ashburton Place, 20 th Floor	Boston	MA	02108-1698
7017-1450-0001-6109-7076	7/15/21	The Honorable Dana Nessel	Attorney General of Michigan		525 W. Ottawa St. PO Box 30212	Lansing	MI	48909-0212
7017-1450-0001-6109-7052	7/15/21	The Honorable Keith Ellison	Attorney General of Minnesota		445 Minnesota Street, Suite 1400	Saint Paul	MN	55101-2131
7017-1450-0001-6109-7113	7/15/21	The Honorable Lynn Fitch	Attorney General of Mississippi		P.O. Box 220	Jackson	MS	39205
7017-1450-0001-6109-7069	7/15/21	The Honorable Eric Schmitt	Attorney General of Missouri		207 W. High St. PO Box 899	Jefferson City	MO	65102
7017-1450-0001-6109-7120	7/15/21	The Honorable Austin Knudsen	Attorney General of Montana		215 N. Sanders	Helena	MT	59620-1401
7017-1450-0001-6109-7083	7/15/21	The Honorable Doug Peterson	Attorney General of Nebraska		2115 State Capitol PO Box 68509	Lincoln	NE	68509-8920
7017-1450-0001-6109-7137	7/15/21	The Honorable Aaron D Ford	Attorney General of Nevada		555 E. Washington Ave., Suite 3900	Las Vegas	NV	89101

CAFA Notice Recipients

Tracking #	Mailed Date	Addressee	Office	Department	Address	City	State	ZIP Code
7017-1450-0001-6109-7090	7/15/21	The Honorable Jane Young	Attorney General of New Hampshire		33 Capitol Street	Concord	NH	03301-0000
7017-1450-0001-6109-7144	7/15/21	The Honorable Gurbir S Grewal	Attorney General of New Jersey		25 Market Street PO Box 080	Trenton	NJ	08625-0000
7017-1450-0001-6109-7106	7/15/21	The Honorable Hector Balderas	Attorney General of New Mexico		408 Galisteo Street	Santa Fe	NM	87501
7017-1450-0001-6109-7151	7/15/21	CAFA Coordinator	Attorney General of New York	CAFA Coordinator	28 Liberty Street, 15th Floor	New York	NY	10005
7017-1450-0001-6109-7168	7/15/21	The Honorable Josh Stein	Attorney General of North Carolina		9001 Mail Service Center	Raleigh	NC	27699-9001
7017-1450-0001-6109-7229	7/15/21	The Honorable Wayne Stenehjem	Attorney General of North Dakota		600 E. Boulevard Ave., Dept. 125	Bismarck	ND	58505-0040
7017-1450-0001-6109-7175	7/15/21	The Honorable Edward Manibusan	Attorney General of the Northern Mariana Islands		Caller Box 10007	Saipan	MP	96950-8907
7017-1450-0001-6109-7236	7/15/21	The Honorable Dave Yost	Attorney General of Ohio		30 E. Broad St., 14 th Floor	Columbus	OH	43266-0410
7017-1450-0001-6109-7182	7/15/21	The Honorable Mike Hunter	Attorney General of Oklahoma		313 NE 21st Street	Oklahoma City	OK	73105
7017-1450-0001-6109-7243	7/15/21	The Honorable Ellen F Rosenblum	Attorney General of Oregon		1162 Court St., NE	Salem	OR	97301
7017-1450-0001-6109-7199	7/15/21	The Honorable Josh Shapiro	Attorney General of Pennsylvania		Strawberry Square, 16th Floor	Harrisburg	PA	17120
7017-1450-0001-6109-7250	7/15/21	The Honorable Domingo Emanuelli Hernandez	Attorney General of Puerto Rico		Apartado 9020192	San Juan	PR	00902-0192
7017-1450-0001-6109-7205	7/15/21	The Honorable Peter F Neronha	Attorney General of Rhode Island		150 S. Main St.	Providence	RI	02903-0000
7017-1450-0001-6109-7267	7/15/21	The Honorable Alan Wilson	Attorney General of South Carolina		P.O. Box 11549	Columbia	SC	29211
7017-1450-0001-6109-7212	7/15/21	The Honorable Jason Raynsborg	Attorney General of South Dakota		1302 East Highway 14, Suite 1	Pierre	SD	57501-8501
7017-1450-0001-6109-7274	7/15/21	The Honorable Herbert H Slatery III	Attorney General of Tennessee		P.O. Box 20207	Nashville	TN	37202-0207
7017-1450-0001-6109-7281	7/15/21	The Honorable Ken Paxton	Attorney General of Texas		P.O. Box 12548	Austin	TX	78711-2548

CAFA Notice Recipients

Tracking #	Mailed Date	Addressee	Office	Department	Address	City	State	ZIP Code
7017-1450-0001-6109-7335	7/15/21	The Honorable Denise N George	Attorney General of the U.S. Virgin Islands		3438 Kronprindsens 2nd Floor	St Thomas	VI	00802-0000
7017-1450-0001-6109-7298	7/15/21	The Honorable Sean Reyes	Attorney General of Utah		PO Box 142320	Salt Lake City	UT	84114-2320
7017-1450-0001-6109-7366	7/15/21	The Honorable TJ Donovan	Attorney General of Vermont		109 State Street	Montpelier	VT	05609-1001
7017-1450-0001-6109-7304	7/15/21	The Honorable Mark Herring	Attorney General of Virginia		202 North Ninth Street	Richmond	VA	23219
7017-1450-0001-6109-7373	7/15/21	The Honorable Bob Ferguson	Attorney General of Washington		1125 Washington St. SE, PO Box 40100	Olympia	WA	98504-0100
7017-1450-0001-6109-7311	7/15/21	The Honorable Patrick Morrissey	Attorney General of West Virginia		Bldg. 1, Room E-26	Charleston	WV	25305
7017-1450-0001-6109-7380	7/15/21	The Honorable Josh Kaul	Attorney General of Wisconsin		State Capitol, Room 114 East, PO Box 7857	Madison	WI	53707-7857
7017-1450-0001-6109-7328	7/15/21	The Honorable Bridget Hill	Attorney General of Wyoming		109 State Capitol	Cheyenne	WY	82002

Exhibit B



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Kwame Raoul
ATTORNEY GENERAL

July 14, 2021

Via Certified Mail

The Honorable Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530-0001

**Re: Notice of Proposed Settlement pursuant to 28 U.S.C. § 1715
Kolton v. Frerichs, No. 16 CV 03792 (N.D. Ill.)**

Dear Mr. Garland:

We are writing on behalf of our client Michael W. Frerichs, the Illinois State Treasurer, to advise your office of a proposed class action settlement in the above-referenced case. Under the Class Action Fairness Act of 2005 (“CAFA”), each defendant participating in a proposed class action settlement is required to serve a notice on the Attorney General of the United States and the appropriate state official of each state in which a settlement class member resides. *See* 28 U.S.C. § 1715(b). We are providing this notice to you in compliance with 28 U.S.C. § 1715.

BACKGROUND

On March 29, 2016, Plaintiffs Anthony D. Kolton and S. David Goldberg filed this lawsuit pursuant to 42 U.S.C. § 1983 in the Northern District of Illinois. Pursuant to the Illinois Uniform Disposition of Unclaimed Property Act, 765 ILCS § 1025/1, *et seq.*, (the “UPA”), the Treasurer is authorized to take custody of personal property that is presumed abandoned and that is held by a third party, such as a bank, insurance company, corporation, or public utility. Under the UPA, property is presumed abandoned if the owner has not communicated in writing with the holder concerning the property within a period of five years. The Treasurer holds the property and will return it to the owner upon submission of a claim form; however, under the UPA the

Treasurer did not pay interest on returned property for the period the Treasurer held the property.¹

Plaintiffs Kolton and Goldberg alleged that the Treasurer's failure to pay interest constituted an unconstitutional taking of their property without just compensation in violation of their rights under the Fifth Amendment of the Constitution. Plaintiffs Kolton and Goldberg sought declaratory and injunctive relief on behalf of a Rule 23(b)(2) class, and damages on behalf of a Rule 23(b)(3) class.

On September 16, 2016, the district court dismissed the Complaint without prejudice. The court held that it lacked subject-matter jurisdiction under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). Plaintiffs had not filed a claim with the Treasurer for return of their property, nor had they filed a lawsuit in state court seeking just compensation. Accordingly, Plaintiffs did not challenge a final decision of the Treasurer, nor had they exhausted their remedies under state law.

The Seventh Circuit reversed on appeal. *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017). The Seventh Circuit held that, because the UPA clearly barred any payment of interest, any claim presented to the Treasurer or state court for such interest would have been futile. *Williamson County* did not require resort to state court when state law unequivocally denies compensation. However, the Seventh Circuit held that Plaintiffs would not be entitled to damages against the Treasurer under 42 U.S.C. § 1983.

On remand, the Plaintiffs filed an Amended Complaint on October 10, 2017. The Amended Complaint added a new plaintiff, Jeffrey S. Sculley, and dropped the Plaintiffs' damages claim, pursuing only a claim for declaratory and injunctive relief on behalf of a Rule 23(b)(2) class. Plaintiffs filed a motion to certify a class, which the Treasurer opposed.

On March 28, 2018, the district court denied certification of the class. The court held that, under *Cerajeski v. Zoeller*, 735 F.3d 577 (7th Cir. 2013), and the previous decision in *Kolton*, owners of property were only entitled to be paid interest if the property was earning interest at the time the Treasurer took the property into custody. This meant that the proposed class had internal divisions and class certification was inappropriate. At Plaintiffs' request, the court entered final judgment on Plaintiff Goldberg's claims (the only class representative whose property was not earning interest at the time the Treasurer took custody of it), and Plaintiff Goldberg appealed this decision.

The Seventh Circuit reversed on appeal. *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019). The Seventh Circuit held that owners of property in the State's custody are entitled to be compensated for the time value of money regardless of whether the property was earning interest at the moment the State took it into custody. However, the Treasurer could charge an administrative fee to property owners, which for small accounts could exceed the property's time value, such that the property would not earn net interest.

¹ Under the Revised Uniform Unclaimed Property Act, which took effect on January 1, 2018, the Treasurer pays interest on interest-bearing properties taken into the Treasurer's custody after July 1, 2018. See 765 ILCS 1026.

The Treasurer has now entered into an agreement (the “Settlement Agreement”) to settle this matter. The Settlement Agreement was filed with the Court on July 13, 2021, in connection with the Plaintiffs’ Motion for Preliminary Approval of Proposed Class Action Settlement. The Settlement Agreement provides for the payment of compensation to two classes:

- (1) A Rule 23(b)(3) class consisting of all owners of unclaimed property in the form of money whose claims were paid or approved for payment from August 22, 2017, through the date of entry of the Preliminary Approval order; and
- (2) A Rule 23(b)(2) class consisting of all owners of unclaimed property held in the form of money by the Treasurer as of the date of entry of the Preliminary Approval Order.

The Settlement Agreement also provides for the payment of compensation to future claimants, defined as owners of unclaimed property delivered to the Treasurer after the date of the entry of the Preliminary Approval Order.

COMPLIANCE WITH 28 U.S.C. § 1715

Subsection 1715(b) lists eight items that must be provided in connection with any proposed class action settlement. Each of these items is addressed below.

1. *Complaint and Related Materials* (28 U.S.C. § 1715(b)(1))

Enclosed as Exhibit 1 is a copy of Plaintiffs’ original complaint, filed March 29, 2016. Enclosed as Exhibit 2 is a copy of Plaintiffs’ Amended and Supplemental Class Action Complaint, filed October 10, 2017. Enclosed as Exhibit 3 is a copy of Plaintiffs’ proposed Second Amended Complaint, filed July 13, 2021.

2. *Notice of Any Scheduled Judicial Hearing* (28 U.S.C. § 1715(b)(2))

On July 13, 2021, Plaintiffs filed a Motion for Preliminary Approval of Proposed Class Action Settlement. A copy of that motion is enclosed as Exhibit 4. Plaintiffs’ Memorandum in Support of their Motion for Preliminary Approval of Proposed Class Action Settlement was also filed with the Court on July 13, 2021, and is attached as Exhibit 5. An executed copy of the Agreement of Settlement (“Settlement Agreement”) was attached to Plaintiffs’ Motion for Preliminary Approval. The Court has not yet scheduled a preliminary approval hearing; however, Plaintiffs have noticed their Motion for Preliminary Approval for presentment on July 20, 2021 at 9:30 a.m.

3. *Proposed Notification to Class Members* (28 U.S.C. § 1715(b)(3))

As set forth in Paragraph 4 below, the proposed notice to be provided to the Rule 23(b)(3) class members is included as Exhibit A-1 to the Settlement Agreement, which is attached to Plaintiffs’ Motion for Preliminary Approval (Exhibit 4) as Exhibit 1. This notice will be sent to the email address provided by the class member or to the class member’s mailing address via first-class mail.

In addition, Rule 23(b)(2) class members whose claims are approved by the Treasurer in the period between the issuance of the Preliminary Approval Order and Final Judgment will

receive the summary notice attached as Exhibit A-2 to the Settlement Agreement. This notice will be sent to the email address provided by the class member or to the class member's mailing address via first-class mail.

4. *Proposed Class Action Settlement* (28 U.S.C. § 1715(b)(4))

A copy of the executed Settlement Agreement between the parties is attached to Plaintiffs' Motion for Preliminary Approval (Exhibit 4) as Exhibit 1. The Settlement Agreement includes the following exhibits:

- Exhibit A: Proposed Preliminary Approval Order
- Exhibit A-1: Proposed Class Notice to the Rule 23(b)(3) Class
- Exhibit A-2: Proposed Summary Notice for publication, posting to the Illinois Treasurer's website, and distribution to Rule 23(b)(2) class members whose claims are approved by the Treasurer in the period between the issuance of the Preliminary Approval Order and Final Judgment
- Exhibit B: Proposed Final Judgment

5. *Any Settlement or Other Agreement Contemporaneously Made Between Class Counsel and Defendant's Counsel* (28 U.S.C. § 1715(b)(5))

There are no other settlements or other agreements that were contemporaneously made between class counsel and counsel for the defendant.

6. *Final Judgment* (28 U.S.C. § 1715(b)(6))

There has been no final judgment or notice of dismissal. Accordingly, no such document is presently available. A copy of the parties' proposed Final Judgment is attached to the Settlement Agreement as Exhibit B.

7. *Names of the Class Members who Reside in Each State and the Estimated Proportionate Share of the Claims of Such Members to the Entire Settlement* (28 U.S.C. § 1715(b)(7))

The names of the Rule 23(b)(3) class members who reside in each state have been provided to that State's appropriate State official, as required by 28 U.S.C. § 1715(b)(7)(A). Copies of these state-specific lists are available upon request. Exhibit 7 is a chart showing the number of properties claimed by class members in each state, the estimated payable interest going to the class members in each state, and the percentage of the estimated settlement recovery going to the Rule 23(b)(3) class members in each state.

Because of the nature of the class, it is impossible to identify the Rule 23(b)(2) class members residing in each state. However, it is expected that the percentage of Rule 23(b)(2) class members residing in each state should be roughly similar to the percentage of Rule 23(b)(3) class members shown in Exhibit 7.

8. *Judicial Opinions Related to the Settlement* (28 U.S.C. § 1715(b)(8))

There are no judicial opinions related to settlement at this time. However, enclosed are the following Seventh Circuit opinions related to this case: *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017) (attached as Exhibit 8); and *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019) (attached as Exhibit 9).

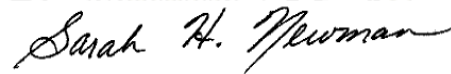
TIMELINESS OF THIS NOTICE

Section 1715 provides two deadlines for service of the CAFA notice, and the Treasurer has complied with both of these deadlines. First, Section 1715(b) provides that a defendant must serve this notice “not later than 10 days after a proposed settlement of a class action is filed in court.” The Treasurer has complied with this deadline because the settlement was filed in court on July 13, 2021, and this notice is being served by certified mail on or before July 23, 2021.

Second, Section 1715(d) provides that “[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after” service of the notice on the appropriate state official. This notice complies with that deadline as well, because the parties intend to request that the Court set a final approval hearing on or after October 21, 2021.

Should you have any questions regarding this matter, please do not hesitate to contact us directly.

Sincerely,



Sarah H. Newman
Assistant Attorney General
Office of the Attorney General of Illinois
100 West Randolph Street, 13th Floor
Chicago, Illinois 60601
312.814.6131
sarah.newman@illinois.gov

Exhibit C



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Kwame Raoul
ATTORNEY GENERAL

July 15, 2021

Via Certified Mail

The Honorable Steve Marshall
Attorney General of Alabama
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36130-0152

**Re: Notice of Proposed Settlement pursuant to 28 U.S.C. § 1715
Kolton v. Frerichs, No. 16 CV 03792 (N.D. Ill.)**

Dear Mr. Marshall:

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BACKGROUND

On March 29, 2016, Plaintiffs Anthony D. Kolton and S. David Goldberg filed this lawsuit pursuant to 42 U.S.C. § 1983 in the Northern District of Illinois. Pursuant to the Illinois Uniform Disposition of Unclaimed Property Act, 765 ILCS § 1025/1, *et seq.*, (the “UPA”), the Treasurer is authorized to take custody of personal property that is presumed abandoned and that is held by a third party, such as a bank, insurance company, corporation, or public utility. Under the UPA, property is presumed abandoned if the owner has not communicated in writing with the holder concerning the property within a period of five years. The Treasurer holds the property

and will return it to the owner upon submission of a claim form; however, under the UPA the Treasurer did not pay interest on returned property for the period the Treasurer held the property.¹

Plaintiffs Kolton and Goldberg alleged that the Treasurer's failure to pay interest constituted an unconstitutional taking of their property without just compensation in violation of their rights under the Fifth Amendment of the Constitution. Plaintiffs Kolton and Goldberg sought declaratory and injunctive relief on behalf of a Rule 23(b)(2) class, and damages on behalf of a Rule 23(b)(3) class.

On September 16, 2016, the district court dismissed the Complaint without prejudice. The court held that it lacked subject-matter jurisdiction under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). Plaintiffs had not filed a claim with the Treasurer for return of their property, nor had they filed a lawsuit in state court seeking just compensation. Accordingly, Plaintiffs did not challenge a final decision of the Treasurer, nor had they exhausted their remedies under state law.

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On remand, the Plaintiffs filed an Amended Complaint on October 10, 2017. The Amended Complaint added a new plaintiff, Jeffrey S. Sculley, and dropped the Plaintiffs' damages claim, pursuing only a claim for declaratory and injunctive relief on behalf of a Rule 23(b)(2) class. Plaintiffs filed a motion to certify a class, which the Treasurer opposed.

On March 28, 2018, the district court denied certification of the class. The court held that, under *Cerajeski v. Zoeller*, 735 F.3d 577 (7th Cir. 2013), and the previous decision in *Kolton*, owners of property were only entitled to be paid interest if the property was earning interest at the time the Treasurer took the property into custody. This meant that the proposed class had internal divisions and class certification was inappropriate. At Plaintiffs' request, the court entered final judgment on Plaintiff Goldberg's claims (the only class representative whose property was not earning interest at the time the Treasurer took custody of it), and Plaintiff Goldberg appealed this decision.

The Seventh Circuit reversed on appeal. *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019). The Seventh Circuit held that owners of property in the State's custody are entitled to be compensated for the time value of money regardless of whether the property was earning interest at the moment the State took it into custody. However, the Treasurer could charge an administrative fee to property owners, which for small accounts could exceed the property's time value, such that the property would not earn net interest.

¹ Under the Revised Uniform Unclaimed Property Act, which took effect on January 1, 2018, the Treasurer pays interest on interest-bearing properties taken into the Treasurer's custody after July 1, 2018. See 765 ILCS 1026.

The Treasurer has now entered into an agreement (the “Settlement Agreement”) to settle this matter. The Settlement Agreement was filed with the Court on July 13, 2021, in connection with the Plaintiffs’ Motion for Preliminary Approval of Proposed Class Action Settlement. The Settlement Agreement provides for the payment of compensation to two classes:

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COMPLIANCE WITH 28 U.S.C. § 1715

Subsection 1715(b) lists eight items that must be provided in connection with any proposed class action settlement. Each of these items is addressed below.

1. *Complaint and Related Materials* (28 U.S.C. § 1715(b)(1))

Enclosed as Exhibit 1 is a copy of Plaintiffs’ original complaint, filed March 29, 2016. Enclosed as Exhibit 2 is a copy of Plaintiffs’ Amended and Supplemental Class Action Complaint, filed October 10, 2017. Enclosed as Exhibit 3 is a copy of Plaintiffs’ proposed Second Amended Complaint, filed July 13, 2021.

2. *Notice of Any Scheduled Judicial Hearing* (28 U.S.C. § 1715(b)(2))

On July 13, 2021, Plaintiffs filed a Motion for Preliminary Approval of Proposed Class Action Settlement. A copy of that motion is enclosed as Exhibit 4. Plaintiffs’ Memorandum in Support of their Motion for Preliminary Approval of Proposed Class Action Settlement was also filed with the Court on July 13, 2021, and is attached as Exhibit 5. An executed copy of the Agreement of Settlement (“Settlement Agreement”) was attached to Plaintiffs’ Motion for Preliminary Approval. The Court has not yet scheduled a preliminary approval hearing; however, Plaintiffs have noticed their Motion for Preliminary Approval for presentment on July 20, 2021 at 9:30 a.m.

3. *Proposed Notification to Class Members* (28 U.S.C. § 1715(b)(3))

As set forth in Paragraph 4 below, the proposed notice to be provided to the Rule 23(b)(3) class members is included as Exhibit A-1 to the Settlement Agreement, which is attached to Plaintiffs’ Motion for Preliminary Approval (Exhibit 4) as Exhibit 1. This notice will be sent to the email address provided by the class member or to the class member’s mailing address via first-class mail.

In addition, Rule 23(b)(2) class members whose claims are approved by the Treasurer in the period between the issuance of the Preliminary Approval Order and Final Judgment will

receive the summary notice attached as Exhibit A-2 to the Settlement Agreement. This notice will be sent to the email address provided by the class member or to the class member's mailing address via first-class mail.

4. *Proposed Class Action Settlement* (28 U.S.C. § 1715(b)(4))

A copy of the executed Settlement Agreement between the parties is attached to Plaintiffs' Motion for Preliminary Approval (Exhibit 4) as Exhibit 1. The Settlement Agreement includes the following exhibits:

- Exhibit A: Proposed Preliminary Approval Order
- Exhibit A-1: Proposed Class Notice to the Rule 23(b)(3) Class
- Exhibit A-2: Proposed Summary Notice for publication, posting to the Illinois Treasurer's website, and distribution to Rule 23(b)(2) class members whose claims are approved by the Treasurer in the period between the issuance of the Preliminary Approval Order and Final Judgment
- Exhibit B: Proposed Final Judgment

5. *Any Settlement or Other Agreement Contemporaneously Made Between Class Counsel and Defendant's Counsel* (28 U.S.C. § 1715(b)(5))

There are no other settlements or other agreements that were contemporaneously made between class counsel and counsel for the defendant.

6. *Final Judgment* (28 U.S.C. § 1715(b)(6))

There has been no final judgment or notice of dismissal. Accordingly, no such document is presently available. A copy of the parties' proposed Final Judgment is attached to the Settlement Agreement as Exhibit B.

7. *Names of the Class Members who Reside in Each State and the Estimated Proportionate Share of the Claims of Such Members to the Entire Settlement* (28 U.S.C. § 1715(b)(7))

For the Rule 23(b)(3) Class, Exhibit 6 is a list of the Rule 23(b)(3) class members residing in your state or jurisdiction, based upon the addresses those individuals provided when claiming their properties. Exhibit 7 is a chart showing the number of properties claimed by class members in each state, the estimated payable interest going to the class members in each state, and the percentage of the estimated settlement recovery going to the Rule 23(b)(3) class members in each state.

Because of the nature of the class, it is impossible to identify the Rule 23(b)(2) class members residing in each state. However, it is expected that the percentage of Rule 23(b)(2) class members residing in each state should be roughly similar to the percentage of Rule 23(b)(3) class members shown in Exhibit 7.

8. *Judicial Opinions Related to the Settlement* (28 U.S.C. § 1715(b)(8))

There are no judicial opinions related to settlement at this time. However, enclosed are the following Seventh Circuit opinions related to this case: *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017) (attached as Exhibit 8); and *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019) (attached as Exhibit 9).

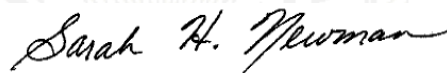
TIMELINESS OF THIS NOTICE

Section 1715 provides two deadlines for service of the CAFA notice, and the Treasurer has complied with both of these deadlines. First, Section 1715(b) provides that a defendant must serve this notice “not later than 10 days after a proposed settlement of a class action is filed in court.” The Treasurer has complied with this deadline because the settlement was filed in court on July 13, 2021, and this notice is being served by certified mail on or before July 23, 2021.

Second, Section 1715(d) provides that “[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after” service of the notice on the appropriate state official. This notice complies with that deadline as well, because the parties intend to request that the Court set a final approval hearing on or after October 21, 2021.

Should you have any questions regarding this matter, please do not hesitate to contact us directly.

Sincerely,



Sarah H. Newman
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Exhibit D

Exhibit 7

Estimated Interest Payable to Rule 23(b)(3) Class
For the Period from 8/22/2017 to 3/31/2021

State or Location	Claimed Properties	Value of Claimed Properties	Properties with Payable Interest	Payable Interest	Percentage of Recovery
Alabama	1,393	\$804,227	333	\$20,089	0.148%
Alaska	175	\$220,389	32	\$11,179	0.082%
Arizona	11,121	\$5,528,298	2,157	\$149,024	1.099%
Arkansas	1,857	\$710,708	292	\$14,644	0.108%
California	17,307	\$12,499,472	3,810	\$306,431	2.259%
Colorado	7,294	\$4,181,043	1,505	\$132,784	0.979%
Connecticut	3,073	\$2,413,744	916	\$60,075	0.443%
Delaware	271	\$77,418	52	\$1,683	0.012%
Florida	22,388	\$13,233,409	4,800	\$321,483	2.370%
Georgia	7,248	\$3,107,045	1,554	\$85,488	0.630%
Hawaii	536	\$283,761	121	\$8,368	0.062%
Idaho	403	\$306,503	87	\$4,706	0.035%
Illinois	1,014,048	\$426,528,209	160,307	\$9,916,233	73.108%
Indiana	15,300	\$8,568,341	3,032	\$210,786	1.554%
Iowa	4,298	\$1,733,099	715	\$41,801	0.308%
Kansas	1,685	\$1,715,187	459	\$45,178	0.333%
Kentucky	2,746	\$1,317,883	546	\$30,987	0.228%
Louisiana	1,478	\$952,413	345	\$21,807	0.161%
Maine	267	\$79,612	56	\$1,023	0.008%
Maryland	1,867	\$1,530,699	514	\$49,956	0.368%
Massachusetts	2,558	\$4,166,625	710	\$135,245	0.997%
Michigan	8,820	\$4,737,093	2,138	\$119,144	0.878%
Minnesota	5,778	\$3,539,468	1,244	\$83,806	0.618%
Mississippi	933	\$220,648	154	\$3,833	0.028%
Missouri	9,501	\$5,742,432	1,781	\$123,908	0.914%
Montana	544	\$439,082	146	\$15,811	0.117%
Nebraska	772	\$302,564	154	\$6,278	0.046%
Nevada	3,767	\$1,588,795	698	\$34,027	0.251%
New Hampshire	468	\$419,932	187	\$10,825	0.080%
New Jersey	5,526	\$5,859,044	1,551	\$168,718	1.244%
New Mexico	850	\$425,024	181	\$7,736	0.057%
New York	7,505	\$13,990,765	2,029	\$210,513	1.552%
North Carolina	5,802	\$4,264,446	1,129	\$75,825	0.559%
North Dakota	264	\$48,888	55	\$790	0.006%
Ohio	5,600	\$3,365,997	1,278	\$102,563	0.756%
Oklahoma	1,094	\$427,986	192	\$8,473	0.062%
Oregon	1,993	\$1,184,225	472	\$37,571	0.277%
Pennsylvania	3,447	\$2,707,259	808	\$54,251	0.400%
Rhode Island	1,356	\$278,624	110	\$11,933	0.088%
South Carolina	2,432	\$1,028,026	466	\$22,590	0.167%
South Dakota	314	\$97,301	50	\$1,034	0.008%

Exhibit 7

Estimated Interest Payable to Rule 23(b)(3) Class
For the Period from 8/22/2017 to 3/31/2021

State or Location	Claimed Properties	Value of Claimed Properties	Properties with Payable Interest	Payable Interest	Percentage of Recovery
Tennessee	6,363	\$3,759,472	1,252	\$105,926	0.781%
Texas	18,416	\$14,596,644	3,903	\$372,892	2.749%
Utah	884	\$324,992	183	\$7,325	0.054%
Vermont	191	\$43,218	26	\$941	0.007%
Virginia	3,977	\$2,518,328	888	\$48,541	0.358%
Washington	3,630	\$1,648,116	761	\$58,193	0.429%
West Virginia	184	\$103,216	38	\$3,665	0.027%
Wisconsin	13,897	\$5,830,363	2,555	\$137,016	1.010%
Wyoming	329	\$248,775	66	\$6,220	0.046%
APO (American Military Overseas)	117	\$56,503	19	\$1,236	0.009%
American Samoa	0	\$0	0	\$0	0.000%
District of Columbia	1,066	\$770,388	276	\$21,829	0.161%
Guam	5	\$332	1	\$6	0.000%
Northern Mariana Islands	1	\$283	0	\$0	0.000%
Puerto Rico	56	\$5,329	2	\$34	0.000%
U.S. Virgin Islands	19	\$6,605	4	\$204	0.002%
All Other Countries	2,123	\$4,353,524	581	\$131,099	0.967%
Totals	1,235,337	\$574,891,771	207,721	\$13,563,731	100.000%

* All monetary values are rounded to the nearest dollar.

** Percentages may not add to 100% due to rounding.