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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2019-CV-000720



Court: Shawnee County District Court
Case Number: 2019-CV-000720
Case Title: Thomas Edward Blumer - obo himself and others
similarly situated vs. State of Kansas
Type: Journal Entry

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, stylized circular flourish.

/s/ Honorable Teresa L Watson, District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
CIVIL COURT DIVISION**

THOMAS EDWARD BLUMER, on behalf of))	
Himself and all others similarly situated,))	
)	
Plaintiff,))	Case No. 2019-CV-000720
)	
v.))	
)	
STATE OF KANSAS))	
)	
Defendant.))	
_____))	

JOURNAL ENTRY

On June 21, 2021, this matter came before the Court on the Joint Motion for Certification of Settlement Class and Conditional Approval of Class Action Settlement. Plaintiff appeared by and through counsel Matthew V. Bartle and David L. Marcus of Bartle + Marcus LLC and Ryan Kriegshauser of Kriegshauser Law, LLC, and Defendant appeared by and through counsel Stanley Parker and Dennis Depew of the Kansas Attorney General’s office.

WHEREUPON, the Court has considered the written submissions on file and statements of counsel and hereby finds the parties’ Joint Motion for Certification of Settlement Class and Conditional Approval of Class Action Settlement will be GRANTED. The Court certifies a settlement class as defined herein and directs that notice be given to the settlement class in substantially the same form as Exhibit A attached hereto. Notice shall be sent by electronic mail so as to be received no later than August 13, 2021. Absent further order from the Court, the final approval hearing will take place on September 2, 2021, commencing at 9:00 a.m.

I. Background

Plaintiff sued the State of Kansas alleging that it violated Section V of Article 11 of the Kansas Constitution and the commerce clause and the Fourteenth Amendment of the United States

Constitution by causing fees collected by the Kansas Securities Commissioner to be swept into the State's general fund and used for purposes unrelated to the regulation of the Kansas Securities Industry. The authority to collect these fees comes from K.S.A. 17-12a601. Particular fee amounts are set forth in K.A.R. 81-3-2, 81-4-1, 81-5-15 and 81-14-2. Fees are assessed in accordance with these regulations, with all fee payors within a category paying the same fee.

The Kansas Securities Commissioner remits the fees he or she collects to the Kansas treasurer. K.S.A. 17-12a601(a)(3). The treasurer credits 10% of these fees—up to an annual cap of \$100,000—to the general fund. The remaining balance is credited to the Securities Fee Fund (the “Securities Fund”), where it can be used to cover the cost of the operations of the Kansas Securities Commissioner. K.S.A. 17-12a601(a)(3). This operational regulatory cost is approximately \$3 million annually. On the last day of the fiscal year, any amount left in the Securities Fund in excess of \$50,000 is transferred or “swept” into the general fund. K.S.A. 17-12a601(a)(4).

The stated purpose of these sweeps is “to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.” K.S.A. 17-12a601(a)(5). But the sweeps under K.S.A. 17-12a601(a)(4) allegedly exceed any amounts needed for reimbursement. This allegedly brings these sweeps in conflict with Section 5 of Article 11 of the Kansas Constitution, which provides: “No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied.” Kan. Const. Art. XI, § 5. These sweeps also may amount to an unlawful tax on fee-paying participants in the Kansas securities industry, with taxes used for general purposes

and not for any specified purpose. Furthermore, because the fees required under K.S.A. 17-12a410(3), K.A.R. 81-3-2 and K.A.R. 81-14-2 are paid by persons and entities engaged in interstate commerce and are allegedly excessive in comparison to the purported purpose for which they are collected, the fee sweeps may violate the commerce clause and the Fourteenth Amendment of the United States Constitution.

In his First Amended Class Action Petition, Plaintiff prays for a declaration that the statutory sweeps are unconstitutional and void; injunctive relief to stop future sweeping of the Securities Fee Fund and over-collection of fees; and a judgment in favor of class members for all monies paid by the class in fiscal years 2016 through the present over and above the amounts actually expended for regulatory operations.

II. Certification of Settlement Class

In Kansas, class actions are governed by K.S.A. 60-223. Under K.S.A. 60-223(a), a plaintiff's claims may be certified for class action treatment if "(1) The class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." K.S.A. 60-223(a)(1)-(4); *Dragon v. Vanguard Indust.*, 282 Kan. 349, 355 (2006).

In addition to these four threshold requirements, a putative class action must meet certain additional criteria to be certified. For a lawsuit such as this one, involving a governmental assessment, K.S.A. 60-223(b)(1)(A) applies. This provision "takes in cases where the party is obliged by law to treat members of the class alike (a utility acting toward customers; a government imposing a tax)." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614, 117 S. Ct. 2231, 2245 (1997)(citations omitted)(discussing Fed.R.Civ.P. 23(b)(1)(A)). A class may be certified under K.S.A. 60-223(b)(1)(A) if "[p]rosecuting separate actions by or against individual members would

create a risk of ...[i]nconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.” K.S.A. 60-223(b)(1)(A). A class certified under K.S.A. 60-223(b)(1)(A) is a mandatory class, meaning class members need not receive notice of the class action and have no opportunity to opt out. *Anderson Office Supply, Inc. v. Advanced Medical Associates, P.A.*, 47 Kan.App.2d 140, 161-62 (2012).

In attempting to establish that the requirements of K.S.A. 60-223 are satisfied, “[i]t is not necessary to prove the facts of the underlying cause of action. Class certification is purely procedural. Therefore, the issue at a class certification hearing is whether the class action is procedurally preferable, not whether any of the plaintiffs will be successful in urging the merits of their claims. [Citation omitted.]” *Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285, 293 (2011)(citations omitted). “The district court must rigorously analyze the proffered evidence to determine whether the plaintiffs have met or are likely to meet the statutory requirements for certification” but need not “conduct a mini-trial with extensive fact-finding before certifying or denying certification to a class.” *Id.* (citations omitted). The Kansas class certification requirements resemble the federal class certification requirements, and Kansas courts look to federal case law to determine whether certification is appropriate. *See id.* at 301-02.

A. Class Definition

The parties have defined the proposed settlement class as “[a]ll persons and entities that paid fees imposed pursuant to the Kansas Uniform Securities Act, K.S.A. 17-12a601, during the time period October 1, 2016 to the present.” Excluded from the class are all judicial officers presiding over this or any related case and all employees of the State of Kansas.

Based on the Court's review of the parties' written submission, the Court finds this class definition is appropriate. Class members can be identified with reference to objective criteria, namely, the payment of fees during the specified time-period. This time-period corresponds to the three-year statute of limitations period that applies to Plaintiff's claims. *See, e.g., Girard Gas Co. v. BOCC Crawford County*, 139 Kan. 452 (1934).

B. Numerosity

The parties' written submission cites deposition testimony estimating the proposed settlement class at 150,000 members. At the hearing, this number was increased to 170,000 members. This is more than sufficient to satisfy the numerosity requirement of K.S.A. 60-223(a)(1).

C. Commonality

The central issue in this case is whether statutory sweeps from the Securities Fund violate Article 11 of the Kansas Constitution and/or the commerce clause and the Fourteenth Amendment of the United States Constitution. This is a common issue because it is identical for all members of the settlement class and does not depend upon facts specific to any particular class member. This is sufficient to satisfy the commonality requirement of K.S.A. 60-223(a)(2).

D. Typicality

A review of the parties' written submission shows that Plaintiff Blumer possesses the same interest and suffered the same injury as the members of the class he seeks to represent. He has paid and continues to pay the fees required of a registered investment adviser under the Kansas Uniform Securities Act, which are accumulated by the State in the Securities Fund pursuant to K.S.A. 17-12a601. This is sufficient to satisfy the typicality requirement.

E. Adequacy of Representation

To meet the adequacy of representation requirement of K.S.A. 60-223(a)(4), “the representative plaintiff must show that (1) her interests do not conflict with the interests of other class members and (2) she will prosecute the action vigorously through qualified counsel.” *Lengel v. HomeAdvisor, Inc.*, Civil Action No. 15-2198-KHV, 2017 WL 364582, at *6 (D. Kan. Jan. 25, 2017).

A review of the parties’ written submission shows that Plaintiff Blumer’s interests do not conflict with the interests of other class members and that he was willing, prior to the parties’ proposed settlement, to vigorously prosecute this case. He has paid and continues to pay the same fees as the rest of the class, and he has done everything that has been asked of him in this litigation.

The Court also finds that Plaintiff Blumer retained qualified counsel. The parties’ written submission includes affidavits from Plaintiff’s attorneys detailing their background in complex commercial litigation, including class actions and securities litigation. In addition, Plaintiff’s attorneys have experience working in and with state government and are generally familiar with the budgeting process for the Kansas Securities Commissioner and the statutory fee sweep at issue in this case. This makes them uniquely well suited to represent Plaintiff’s interests and the interests of the proposed class. Finally, they have committed the necessary resources to this case, both in terms of their time and the out-of-pocket expenses they have shouldered on behalf of their client. *See* K.S.A. 60-223(g)(1)(A)(i)-(iv). They have paid deposition costs and have agreed to pay the cost of class notice.

F. Incompatible Standards of Conduct

The parties seek to certify this case pursuant to K.S.A. 60-223(b)(1)(A). K.S.A. 60-223(b)(1)(A) “establishes one of three alternative requirements for maintaining a class action

lawsuit. This requirement is that either the prosecution of separate actions would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the party opposing the class, or that adjudications with respect to individual members of the class would as a practical matter dispose of or impair the interests of the other members who were not parties to the adjudications.” *Critchfield*, 293 Kan. at 302.

Given the nature of Plaintiff’s claims, the Court finds that the prosecution of separate actions would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the State. Plaintiff’s claims, if successful, would necessitate an adjustment to the funding mechanism for the Office of the Kansas Securities Commissioner. Absent certification of a class, there is nothing to stop another Kansas fee-payor from challenging the State’s funding mechanism on the same or different grounds and asking a different court to articulate different parameters under which the State and the Kansas Insurance Department and Office of the Kansas Securities Commission may impose fees. This is exactly the situation K.S.A. 60-223(b)(1) is designed to address. *See Critchfield*, 293 Kan. at 303-4 (discussing the purposes of K.S.A. 60-223(b)(1)(A)).

For the foregoing reasons, and having vigorously analyzed the requirements of K.S.A. 60-223, the Court finds that Plaintiff’s claims meet the requirements for class certification pursuant to K.S.A. 60-223(b)(1)(A) and certifies the settlement class as defined herein.

III. Conditional Approval of Settlement

Under K.S.A. 60-223(e), the claims, issues or defenses of a certified class may be settled with the Court’s approval, provided that all class members who would be bound by the settlement are given reasonable notice of the settlement and the Court finds, following a hearing, that the settlement is fair, reasonable and adequate. The language of K.S.A. 60-223(e) is largely identical

to the language of Fed.R.Civ.P. 23(e), and Kansas courts look to federal precedent in interpreting the Kansas rule. *See, e.g., Coulter v. Anadarko Petroleum Corp.*, 296 Kan. 336, 358-59 (2013); *Freebird, Inc. v. Cimarex Energy Co.*, 46 Kan.App.2d 631, 635 (2011). The United States Court of Appeals for the Tenth Circuit has articulated four factors for a district court to consider in determining whether a proposed settlement is fair, reasonable, and adequate:

- (1) whether the proposed settlement was fairly and honestly negotiated;
- (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
- (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
- (4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 188 (10th Cir. 2002), *Id.* at 1188; *see also Coulter v. Anadarko Petroleum Corp.*, 296 Kan. 336, 364-367 (2013)(applying the four federal court factors).

Based on the parties' written submission and statements of counsel, the Court finds the proposed class action settlement is fair, adequate and reasonable. Accordingly, the settlement is conditionally approved.

A. Overview of Proposed Settlement

The proposed class action settlement calls for the State to request and recommend that the Kansas Legislature enact legislation preventing the statutory fee sweep before it is required in fiscal year 2021, and to enact legislation repealing the statutory provisions requiring the sweep before it is required for future years. The parties' written submission shows the Kansas Legislature already has enacted legislation preventing the statutory sweep for fiscal years 2021 and 2022. *See* Senate Bill 159, Conference Committee Report, § 64 ¶ (b). At the conditional approval hearing,

the Court was advised this will result in approximately thirteen million dollars being retained in the Securities Fund where it can be used for securities regulation.

The proposed class action settlement calls for the Kansas Insurance Department and Office of the Kansas Securities Commissioner to place a moratorium on fees assessed pursuant to the Kansas Uniform Securities Act for fiscal year 2022, with the moratorium to continue “as long as necessary to analyze and adjust the fee structures under the Act to correspond to the constitutionally permissible reasonable costs incurred in administering the Act.” At the conditional approval hearing, the Court was advised that the Office of the Kansas Securities Commissioner already is in the process of informing fee payors that no fees will be required for fiscal year 2022. The parties’ written submission shows this will save fee payors approximately \$16,000,000.00 in 2022, with this figure increasing exponentially each year the moratorium remains in place. Further, once fees are adjusted, and assuming this is a downward adjustment, the settlement class will continue to enjoy monetary savings well into the future.

The proposed class action settlement calls for the State to make a \$3,000,000.00 payment to the Investor Education Fund. The parties’ written submission indicates this money will be used to better educate investors about the risks and benefits of investing and avoiding investment fraud.

Finally, the proposed class action settlement calls for the State to pay \$3,000,000.00 in attorney’s fees and costs in connection with this action, subject to Court approval. The Court reserves the issue of the reasonableness of attorney’s fees for the final approval hearing but observes this is a separate payment by the State and will not diminish the benefit to the class.

B. The Proposed Settlement Was Fairly and Honestly Negotiated

The parties’ written submission describes in detail the lengthy process by which the parties’ arrived at the proposed settlement. Plaintiff’s counsel elaborated further on this process at the

hearing. The Court finds on the present record this was an arms-length negotiation and the proposed settlement was fairly and honestly negotiated.

C. Serious Questions of Fact and Law Exist

The Court finds that serious questions of law and fact exist in this case. Plaintiff contends the fees collected under K.S.A. 17-12a601 were grossly excessive but has not yet proposed any formula for determining what fees are constitutionally permissible. The parties' written submission acknowledges there need not be a one-to-one correlation between the fees collected and the actual cost of regulation. Similarly, Plaintiff has not yet provided convincing authority for the proposition that any excess fees must be returned to fee payors. The State has taken the contrary position, and this would be a significant issue in the case if it continued forward.

D. The Value of an Immediate Recovery Outweighs the Mere Possibility of Future Relief

The Court finds the value of an immediate recovery outweighs the mere possibility of future relief. The State represented at the conditional approval hearing that the Office of the Kansas Securities Commissioner was in the process of informing fee payors they would not be required to pay registration fees for 2022. Based on the figures in the parties' written submission, this will result in an immediate benefit to the class of approximately \$16,000,000.00. This amount will increase each year the fee moratorium remains in place. Juxtaposed against this and other benefits of the proposed settlement is the possibility that protracted litigation eventually will result in a ruling that requires excess fees to be returned to the class. While this relief is certainly possible, the logistical and legal hurdles that Plaintiff will face in attempting to obtain this relief, as detailed in the parties' written submission, counsel in favor of the proposed settlement.

E. The Judgment of the Parties

The parties written submission demonstrates that the parties have adjudged the proposed settlement to be in their best interests. The parties echoed this sentiment at the hearing. This counsels in favor of the proposed settlement.

For the foregoing reasons, the Court finds the proposed class action settlement is fair, adequate and reasonable. Accordingly, the proposed settlement is conditionally approved. Absent further order from the Court, a final approval hearing will take place on September 2, 2021 commencing at 9:00 a.m.

IV. Class Notice

Under K.S.A. 60-223(e)(1), members of the class are entitled to reasonable notice of the proposed settlement for the purpose of lodging objections. *See Flerlage v. US Foods, Inc.*, Case No. 18-2614-DDC-TJJ, 2020 WL 4673155, at *6 (D. Kan. Aug. 12, 2020) (“Rule 23(a) merely requires ‘notice in a reasonable manner to all class members who would be bound’ by the proposed settlement.”). This notice must “fairly apprise the class members of the terms of the proposed settlement and of their options.” *Freebird*, 46 Kan.App.2d at 636 (citations omitted).

The Court finds that notice in substantially the same form as Exhibit A fairly apprises class members of the terms of the proposed settlement and of their options. Notice shall be given by electronic mail to the email addresses on file with the Office of the Kansas Securities Commissioner. Notice shall be sent by electronic mail so as to be received no later than August 13, 2021. For any emails that are undeliverable, a postcard in substantially the same form as Exhibit B shall be sent by first class U.S. mail to the physical addresses on file with the Office of the Kansas Securities Commissioner. The postcard shall direct the class member to a website where the full notice and proposed settlement may be found.

IT IS SO ORDERED.

Entered on this _____ day of June 2021.

District Judge

RESPECTFULLY SUBMITTED,

BARTLE & MARCUS, LLC

By: /s/ Matthew V. Bartle

Matthew V. Bartle, KS #14983

David L. Marcus, KS #18034

116 W. 47th Street, Suite 200

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Olathe, KS 66063

ryan@kriegshauserlaw.us

Tel: (913) 303-0639

Attorney for Plaintiff

Agreed to as to form by:

Stanley Parker

Assistant Attorney General/Trial Counsel

120 SW 10th Avenue, 2nd Floor

Topeka, KS 66612

Stanley.parker@ag.ks.gov

Tel: (785) 368-8423

Fax: (785) 291-3767

Attorney for Defendant

A COURT ORDERED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
CIVIL COURT DIVISION**

**THOMAS EDWARD BLUMER, on
behalf of himself and all similarly
situated individuals,**

Plaintiff,

Case No. 2019-CV-000720

v.

Judge Teresa L. Watson

STATE OF KANSAS,

Division No. 3

Defendant.

NOTICE OF CLASS ACTION SETTLEMENT

Thomas Edward Blumer (“Plaintiff”) has sued the State of Kansas (the “Defendant” or “Kansas”) alleging that it violated Section V of Article 11 of the Kansas Constitution and the commerce clause and the Fourteenth Amendment of the United States Constitution by causing fees collected by the Kansas Securities Commissioner to be swept into the State’s general fund and used for purposes unrelated to the regulation of the Kansas Securities Industry.

Defendant denies the allegations and contends that it acted lawfully and in compliance with the Kansas Constitution and United States Constitution at all times. The Court has not yet ruled in favor of either side. Nevertheless, the parties have reached a settlement that affects your legal rights.

A settlement has been proposed on behalf of all persons and entities that paid fees imposed pursuant to the Kansas Uniform Securities Act, K.S.A. 17-12a601, during the time period October 1, 2016 to the present (the “Class”).

You have received this notice because records indicate that you may be a member of the Class.

Your legal rights will be affected by the settlement of this lawsuit. Please read this notice carefully. It explains the lawsuit, the settlement, and your legal rights, including objecting to the settlement.

EXHIBIT A

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
IF YOU DO NOTHING	If the Court approves the settlement and you do nothing, you will be able to register with the Office of the Kansas Securities Commissioner for 2022 without being required to pay any registration fee. You will not be able to file any claim against the State related to the fee sweep described herein or for any fees you paid to the Office of the Kansas Securities Commissioner. The State will analyze and adjust the fee structures under the Kansas Uniform Securities Act to correspond to the constitutionally permissible reasonable costs incurred in administering the Act. To see the actual settlement agreement, please visit the following website: _____.
IF YOU OBJECT TO THE SETTLEMENT	You cannot opt out of the proposed settlement, but you can submit objections. Objections must be submitted by first-class U.S. Mail to each of the addresses indicated in Section 10 below and postmarked no later than August 27, 2021. You must state the precise basis for your objection and any proposed modifications to the settlement. Objections not received on or before September 1, 2021 will not be considered. Notwithstanding your objections, if the Court approves the proposed settlement, you will be bound by its terms.

1. WHY DID I RECEIVE THIS NOTICE?

A Court authorized the notice because you have a right to know about a proposed settlement of this class action lawsuit and all of your options before the Court decides whether to give “final approval” to the settlement. This notice explains the lawsuit, the settlement, and your legal rights. The Honorable Teresa L. Watson in Division 3 of the District Court of Shawnee County, Kansas is overseeing this class action. The case is known as *Thomas Edward Blumer, on behalf of himself and all others similarly situated v. State of Kansas*, Case No. 2019-CV-000720 (the “Lawsuit”).

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Thomas Edward Blumer is a registered representative in the State of Kansas who has paid fees pursuant to the Kansas Uniform Securities Act, K.S.A. 17-12a101, *et seq.* He sued the State of Kansas alleging that it violated Section V of Article 11 of the Kansas Constitution and the commerce clause and the Fourteenth Amendment of the United States Constitution by causing fees collected by the Kansas Securities Commissioner to be swept into the State’s general fund and used for purposes unrelated to the regulation of the Kansas Securities Industry.

How the Defendant Responded

The State denies the allegations and contends that it acted lawfully and in compliance with the Kansas Constitution and United States Constitution at all times. Notwithstanding the denial of liability and alleged unlawful conduct, the State has decided it is

in its best interest to settle the Lawsuit to avoid the burden, expense, risk, and uncertainty of continuing the litigation.

3. HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

You are affected by the settlement because the State of Kansas's records indicate that you paid fees imposed pursuant to the Kansas Uniform Securities Act, K.S.A. 17-12a601, during the time period October 1, 2016 to the present. Specifically, for the purposes of settlement only, the Court has provisionally certified a Settlement Class defined as follows:

All persons and entities that paid fees imposed pursuant to the Kansas Uniform Securities Act, K.S.A. 17-12a601, during the time period October 1, 2016 to the present. Excluded from the class are all judicial officers presiding over this or any related case. The class definition also excludes all employees of the State of Kansas.

If you fall within the foregoing Settlement Class definition, you will be a Settlement Class Member.

4. WHAT DOES THE SETTLEMENT PROVIDE?

If the Court approves the settlement, you will be able to register with the Office of the Kansas Securities Commissioner for 2022 without being required to pay any registration fee. This benefit may continue for future years at the discretion of the Office of the Kansas Securities Commissioner. Furthermore, the Office of the Kansas Securities Commissioner has agreed to analyze its fee structure going forward which could result in fees being reduced indefinitely. To see the settlement agreement itself, please visit the following website: _____.

5. WHAT HAPPENS IF I DO NOTHING?

If the Court approves the settlement and you do nothing, you will be able to register with the Office of the Kansas Securities Commissioner for 2022 without being required to pay any registration fee. You will not be able to file any claim against the State related to the fee sweep described herein or for any fees you paid to the Office of the Kansas Securities Commissioner. The State will analyze and adjust the fee structures under the Kansas Uniform Securities Act to correspond to the constitutionally permissible reasonable costs incurred in administering the Act. To see the settlement agreement itself, please visit the following website: _____.

6. WHAT AM I GIVING UP TO GET A BENEFIT?

You are releasing all claims asserted or which could have been asserted under federal or state or local constitution, statute, law, regulation, ordinance or common law that in any way relate to the sweep described herein, up to the effective date of this agreement, regardless of the type of relief sought and whether for declaratory relief, class action status, injunctive relief, damages, return of funds, reversal of funds, transfer of funds, improper charge against funds, attorneys fees, interest, prejudgment interest, costs or any other type of relief, including but not limited to claims pursuant to:

- (a) Any and all claims related to the Sweep;

- (b) Conversion;
- (c) Any and all claims asserting a wrongful transfer, misappropriation, breach of trust, breach of fiduciary duty, or unlawful appropriation of funds;
- (d) Any and all claims that the STATE or Kansas Legislature acted in excess of its authority;
- (e) Any and all claims that the STATE'S or Kansas Legislature's actions constituted an unlawful or unconstitutional tax;
- (f) Any and all claims that the Kansas Legislature's actions were unconstitutional, including but not limited to claims that they amounted to an unconstitutional tax or unconstitutional taking or that they violated Article 11, § 5 of the Kansas Constitution, the Commerce Clause of the United States Constitution, the Fifth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, or PLAINTIFFS' Equal Protection rights.
- (g) Any and all tort claims, including but not limited to alleged retaliation, conspiracy, libel, slander, or intentional or negligent infliction of emotional distress.

7. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

You cannot exclude yourself from the settlement. If the Court approves the settlement agreement, you will be bound by its terms.

8. DO I HAVE A LAWYER IN THIS CASE?

The Class Representative retained Matthew V. Bartle and David Marcus, Bartle + Marcus LLC, 116 W. 47th Street, Suite 200, Kansas City, MO 64112 and Ryan Kriegshauser, Kriegshauser Law, LLC, 15050 W. 138th Street, Unit 4493, Olathe, KS 66063 to represent him. In connection with the preliminary approval of the settlement, the Court appointed these attorneys to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be separately charged by these lawyers for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court for an award of attorneys' fees and costs of up to \$3,000,000.00, which the Defendant has agreed not to oppose. Any attorneys' fees will be separately paid by the State and will not reduce the benefits you will receive under the

10. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Settlement Class Member, you can object to the settlement if you do not think any part of the settlement is fair, reasonable, and/or adequate. You can and should explain the detailed reasons why you think the Court should not approve the settlement, if this is the case. The Court and Class Counsel will consider your views carefully. To object, you must send notice via First-Class U.S. Mail postmarked no later than August 27, 2021 to each of the addresses listed below stating that you object to the settlement in the *Thomas Edward Blumer v. State of Kansas* case: 2019-CV-000720. Be sure to include (1) the name of this Lawsuit, *Blumer v. State of Kansas*, Civil Action No. 2019-CV-000720; (2) your full name, current address, and telephone number; (3) a sentence stating that to the best of your knowledge, you are a member of the Settlement Class; and (4) the factual basis and legal grounds for the objection to the settlement.

<u>COURT</u>	<u>CLASS COUNSEL</u>	<u>DEFENSE COUNSEL</u>
Judge Teresa L. Watson Division 3 Shawnee County Courthouse 200 SE 7 th Street Topeka, KS 66603	Matthew V. Bartle David L. Marcus Bartle + Marcus LLC 116 W. 47 th Street Kansas City, MO 64112	Stanley R. Parker Carrie A. Barney Assistant Attorneys General 120 SW 10 th Avenue Topeka, KS 66612
	Ryan Kriegshauser Kriegshauser Law LLC 15050 W. 138 th Street Unit 4493 Olathe, KS 66063	

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend, and you may ask to speak, but you do not have to.

11. WHEN AND WHERE WILL THE COURT DECIDE TO APPROVE THE SETTLEMENT?

The Court will hold a Fairness Hearing on September 2, 2021, commencing at 9:00 a.m., in Division 3 of the District Court of Shawnee County, Kansas, 200 SE 7th Street, Topeka, KS 66603. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide the amount that Class Counsel and the Class Representatives shall be paid. After the hearing, the Court will decide whether to finally approve the settlement.

12. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time to the address listed herein, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

GETTING MORE INFORMATION

13. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This notice summarizes the proposed settlement. To see the settlement agreement itself, please visit the following website: _____.

14. HOW DO I GET MORE INFORMATION?

Please call or email Class Counsel, Matthew V. Bartle and David L. Marcus, Bartle + Marcus LLC, 116 W. 47th Street, Suite 200, Kansas City, MO 64112, mbartle@bmlawkc.com, dmarcus@bmlawkc.com.

**PLEASE, DO NOT CALL THE COURT, THE CLERK,
OR THE DEFENDANT REGARDING THIS SETTLEMENT.**

NOTICE OF CLASS ACTION SETTLEMENT

Thomas Edward Blumer v. State of Kansas
Case No. 2019-CV-000720 (Shawnee County Dist. Ct.)
Judge Teresa L. Watson, Division 3

Thomas Edward Blumer (“Plaintiff”) has sued the State of Kansas (the “Defendant” or “Kansas”) alleging that it violated Section V of Article 11 of the Kansas Constitution and the commerce clause and the Fourteenth Amendment of the United States Constitution by causing fees collected by the Kansas Securities Commissioner to be swept into the State’s general fund and used for purposes unrelated to the regulation of the Kansas Securities Industry. Defendant denies the allegations and contends that it acted lawfully and in compliance with the Kansas Constitution and United States Constitution at all times. The Court has not yet ruled in favor of either side. Nevertheless, the parties have proposed a settlement on behalf of all persons and entities that paid fees imposed pursuant to the Kansas Uniform Securities Act, K.S.A. 17-12a601, during the time period October 1, 2016 to the present (the “Class”). You have received this notice because records indicate that you may be a member of the Class. While you cannot opt out of the proposed settlement, you can submit objections. The mailing addresses for objections can be found at _____, along with more information about the settlement and the actual settlement agreement. **Objections must be submitted by first-class U.S. Mail and postmarked no later than August 27, 2021.** You must state the precise basis for your objection and any proposed modifications to the settlement. Objections not received on or before September 1, 2021, will not be considered. Notwithstanding your objections, if the Court approves the proposed settlement, you will be bound by its terms.

EXHIBIT B